

Annual Report 2022

# **Federal Patent Court**

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# Executive Summary

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In the reporting year, the number of incoming cases dropped to 24 against the prior year (previous year 27). There were fewer ordinary proceedings (13, previous year 18) and a larger number of summary proceedings (11, previous year 9).

Of the 15 ordinary proceedings handled by the Court, five were settled by compromise and six were adjudicated.

Four cases were dismissed for irrelevance. Of the ten summary proceedings handled in the reporting year, four were adjudicated, two were settled by compromise, three were dismissed for irrelevance, and one was found inadmissible. The number of cases pending at end of the year was more or less the same (29, previous year 30).

At CHF 960,624, income was somewhat higher than the prior year (CHF 895,256) reflecting the large number of cases closed in the year under review. With slightly lower costs of CHF 1,548,036 (previous year, CHF 1,608,466), the deficit declined significantly to CHF 587,412 (prior year CHF 713,209). The cost-coverage rate attained 62% (previous year 56%).

The Federal Patent Court celebrated its 10th anniversary with a conference on «Harmonised European patent law and national patent courts: retrospective and outlook» in St. Gallen on 6 May 2022.

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## **Annual Report of the Federal Patent Court 2022**

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St. Gallen, 16 February 2023

Mr President

Distinguished members of the National Council and the Council of States

Relying on Article 3 paragraph 3 of the Patent Court Act (PatCA), we hereby submit the Annual Report covering our activities in 2022.

Please accept, Mr President and distinguished members of the National Council and the Council of States, the assurance of our highest consideration.

On behalf of the Federal Patent Court

President: Mark Schweizer

First Court Clerk: Sven Bucher

## Members of the court

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### Administrative Committee

President:	Mark Schweizer
Second permanent judge:	Tobias Bremi
Vice-President:	Frank Schnyder

### Non-permanent judges with technical training

Natalia Clerc  
Roland Dux  
Giovanni Gervasio  
Barbara Herren  
Michael Kaufmann  
Alfred Koepf  
Christoph Müller  
Markus A. Müller  
Lorenzo Parrini  
Peter Rigling  
André Roland  
Werner A. Roshardt  
Regula Rüedi  
Philipp Rüfenacht  
Christophe Saam  
Frank Schager  
Frank Schnyder  
Andreas Schöllhorn Savary  
Martin Sperrle  
Hannes Spillmann  
Kurt Stocker  
Michael Störzbach  
Kurt Sutter  
Daniel Vogel  
Prisca von Ballmoos  
Diego Vergani  
André Werner  
Marco Zardi

### Non-permanent judges with legal training

Daniel M. Alder  
Lara Dorigo  
Philippe Ducor  
Christoph Gasser  
Andri Hess  
Christian Hilti  
Simon Holzer  
Stefan Kohler  
Daniel Kraus  
Thomas Legler  
Rudolf Rentsch  
Ralph Schlosser  
Christoph Willi

## Caseload

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At the end of 2022, 23 ordinary proceedings and six summary proceedings were pending before the Federal Patent Court (previous year 25 and 5 respectively).

The total number of incoming cases declined to 24 (previous year 27). The number of ordinary proceedings fell to 13 (previous year 18), while the number of summary proceedings increased to 11 (previous year 9).

The Court heard 15 ordinary proceedings (previous year 17), of which five were settled by compromise (previous year 7), four were dismissed as irrelevant (previous year 2), and six were adjudicated (previous year, 7); no cases were found inadmissible (previous year 0). Three judgments on merits were appealed to the Federal Supreme Court. In the reporting year, the Federal Supreme Court heard four appeals against decisions by the Federal Patent Court. Three appeals were rejected and one was partially granted. At the end of the reporting year, one appeal was still pending.

The Federal Patent Court heard ten summary proceedings (five in the previous year), adjudicating in four (two in the previous year) and dismissing three for irrelevance (three in the previous year). One request was found inadmissible (previous year 0) and two were settled by compromise (previous year 0).

## Languages

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In the reporting year, the language of the proceedings was German in eleven of the ordinary proceedings submitted to the Federal Patent Court, and in two it was French. As for the summary proceedings, the language of proceedings was German in ten cases, and French in

one. No proceedings, summary or ordinary, were conducted in Italian. In five of the ordinary proceedings and three of the summary proceedings, the parties mutually agreed to avail themselves of their right to use English in their submissions and hearings before the Federal Patent Court instead of an official language. Of the 81 protective briefs overall, 56 were submitted in English. Parties clearly show great interest in pleading their cases in English. This can be explained by the fact that English is the working language used not only by the many foreign companies involved in court cases here but also by the R&D and patent divisions of a number of Swiss companies, and due to the fact that most key state-of-the-art documents are also in English.

The number of electronic submissions rose sharply. Whereas in 2021, 65 submissions were made via an accredited platform for secure service, within the meaning of Article 2 of the Ordinance on Electronic Service in Civil and Criminal Proceedings and Debt Enforcement and Bankruptcy Procedures, in 2022 the number of submissions was already 143. The share of electronic submissions is expected to continue to rise.

## Non-permanent judges

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The system of non-permanent judges with technical training continues to prove extremely effective. Thanks to the combined participation of qualified legal specialists and technical experts from the fields of expertise at issue, the panels have a high level of competence enabling them to hear cases of significant technical complexity in a reasonable time frame and at an acceptable cost.

The number of cases in which the President has recused himself declined again, to a single case at the end of the report-

ing year. This case is expected to be settled soon.

## **Panel formation**

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As a rule, the Federal Patent Court conducts its decision-making through three-member panels, each of which must comprise one member with technical training and another with legal training. Where appropriate for the further development of the law or in the interest of case-law consistency, the President may order a case to be decided by a five-member panel. Decisions on precautionary measures are decided by the President sitting alone; where the understanding of a technical matter is of particular decision-making significance, the decision must be made by a panel of three.

The panel is formed by the President who participates in all decisions unless there are grounds to recuse himself. The judges with technical training are assigned depending on their working languages and the subject matter at issue in the dispute; at the same time, care is taken to ensure as balanced a workload as possible for the judges. In practice, the grounds for recusal play a decisive role in the assignment of the non-permanent judges to the panels, since judges must be impartial to sit on a panel. Given the small overall number of cases and the need to take into consideration the subject matter at issue, case-assignment is not automated.

If it subsequently appears that a judge cannot sit on a panel – e.g. because a ground for recusal is discovered or the judge is unable to discharge his or her duties for a longer period of time – the composition of the panel may be altered by way of exception. In the reporting year this happened twice, both times be-

cause a ground for recusal was discovered after the panel had been formed.

In their report of 22 June 2021 on the distribution of business in the federal courts, the Control Committees of the Council of States and the National Council (CC) made a number of recommendations to the Federal Supreme Court and the other federal courts on the assignment of business and on panel formation. In implementing those recommendations, the Federal Patent Court plans to amend its rules of procedure relating to panel formation. Language skills will be a specific criterion in panel formation, and subsequent changes in panel composition will be explicitly regulated. The amendments should come into force in 2023.

## **Administrative office**

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The staff continues to comprise just two administrative employees (equivalent to 130% full-time posts) and two court clerks (equivalent to 100% of a full-time post). The First Clerk was appointed to the position on 1 May 2022 after his predecessor accepted a position as a judge at the Bülach District Court, Zurich. The Second Clerk, whose principal employment is as Clerk in Division II of the Federal Administrative Court, is brought in on a case-by-case basis as required.

## **Premises**

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Like the hearing rooms that it shares with the Federal Administrative Court, the office premises of the Federal Patent Court serve their intended purpose and there is no need to modify the existing arrangement.

When the Federal Patent Court needs to sit somewhere other than in St. Gallen, the host canton provides the hearing rooms. In the reporting year, one preparatory hearing was held in the courtroom of the Zurich Commercial Court.

## **Anniversary**

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The first actions were filed with the Federal Patent Court on 1 January 2012. To celebrate its 10th anniversary, the Federal Patent Court organised a conference on «Harmonised European patent law and national patent courts: retrospective and outlook» in St. Gallen on 6 May 2022. The main speakers were Dr. iur. Martha Niquille, President of the Federal Supreme Court, Dr. iur. Catherine Chammartin, Director of the Intellectual Property Institute, Carl Josefsson, President of the Boards of Appeal of the European Patent Office, Dr. iur. Dieter Brändle, first President of the Federal Patent Court, Prof. Dr. iur. Cyrill Rigamonti (University of Bern), and Alexander Ramsay, Chairman of the Administrative Committee of the Unified Patent Court. The presentations were followed by lively debates on distinguished panels. Apart from prominent representatives of the Swiss judiciary, the conference was attended by representatives of the German and English judiciaries and of the World Intellectual Property Organization (WIPO). The one-day event, which brought together about 130 people, concluded with a group dinner.

## **Finances**

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The operating account of the Federal Patent Court shows slightly lower costs of CHF 1,548,036 (previous year CHF 1,608,466). This is explained by the fact that no costs for free legal aid had to

be funded in the reporting year. At CHF 960,624, income was somewhat higher than the prior year (CHF 895,256) reflecting the large number of cases completed in the year under review. The cost-coverage rate attained 62% (previous year 56%).

The shortfall of CHF 587,412 to be covered by the Swiss Federal Institute of Intellectual Property (IPI) pursuant to Article 4 PatCA was lower than the previous year (CHF 713,209.70) thanks to the higher income and lower costs recorded by the Court.

## **Co-operation**

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The supervisory meetings with the Federal Supreme Court took place on 1 April in Lucerne and on 31 October in St. Gallen; the support granted to the Federal Patent Court was well-appreciated.

As in prior years, the operational co-operation with the Federal Administrative Court was smooth and pleasant.



## Statistics

### Number and type of case

	Action taken				Outcome of proceedings			
	Cases still pending before 01.01.2022	Cases submitted to FPC in 2022	Cases settled in 2022	Cases still pending on 31.12.2022	Case settled by judgment	Case settled by compromise	Case declared inadmissible	Case declared groundless *
<b>Regular proceedings</b>								
Infringement of patent without counter-claim of nullity of patent	12	3	11	4	4	5	0	2
Nullity of patent without counter-claim of infringement of patent	4	3	1	6	0	0	0	1
Infringement and nullity of patent	5	1	0	6	0	0	0	0
Right to a patent	2	1	1	2	1	0	0	0
Claim	1	3	1	3	1	0	0	0
Other	1	2	1	2	0	0	0	1
<b>Total</b>	<b>25</b>	<b>13</b>	<b>15</b>	<b>23</b>	<b>6</b>	<b>5</b>	<b>0</b>	<b>4</b>

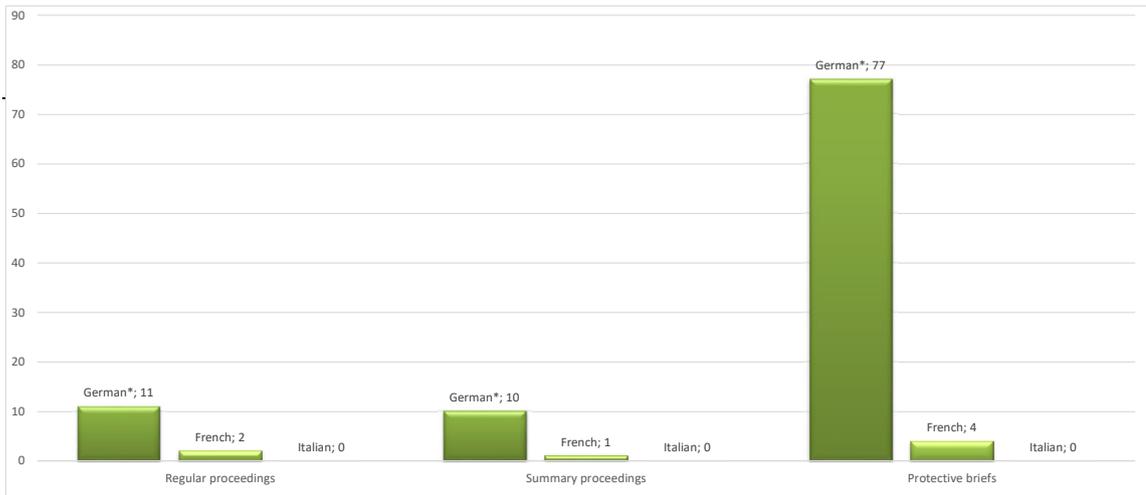
\*including due to withdrawal of action or acknowledgement of action

<b>Summary proceedings</b>								
Injunction/safeguarding of interests	4	7	5	6	1	1	0	3
Description	0	0	0	0	0	0	0	0
Seizure	0	0	0	0	0	0	0	0
Evidence secured	0	0	0	0	0	0	0	0
Description and evidence secured	0	0	0	0	0	0	0	0
Other	1	4	5	0	3	1	1	0
<b>Total</b>	<b>5</b>	<b>11</b>	<b>10</b>	<b>6</b>	<b>4</b>	<b>2</b>	<b>1</b>	<b>3</b>

\* including due to withdrawal of action or acknowledgement of action

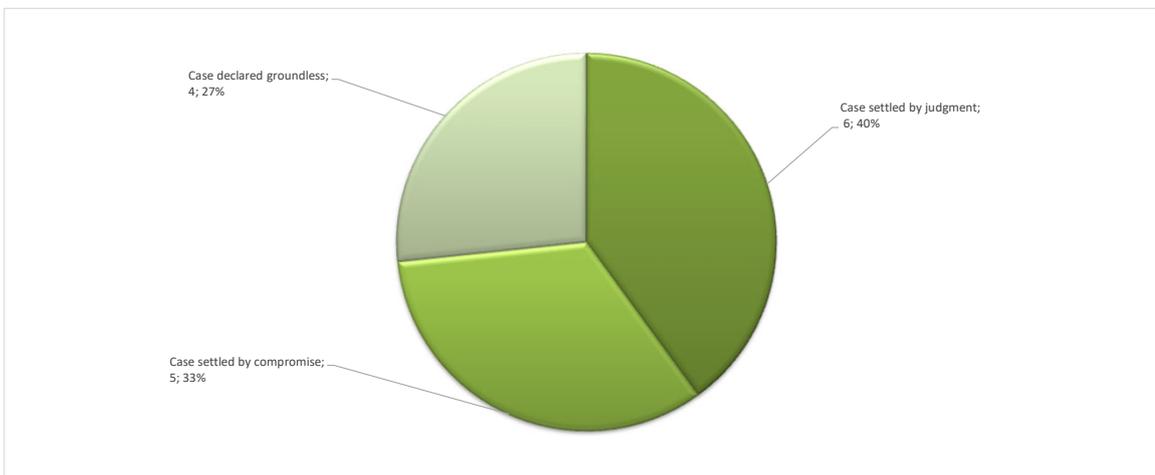
	Transfer from 2021	Received in 2022	Period of protection expired	Relevant up to 2023
<b>Protective briefs</b>				
Swiss patents (incl. supplementary protection certificates)	2	8	5	5
European patents (incl. supplementary protection certificates)	35	73	72	36
Others (applications, other national patents)	0	0	0	0
<b>Total</b>	<b>37</b>	<b>81</b>	<b>77</b>	<b>41</b>

### Cases by language of proceedings in 2022



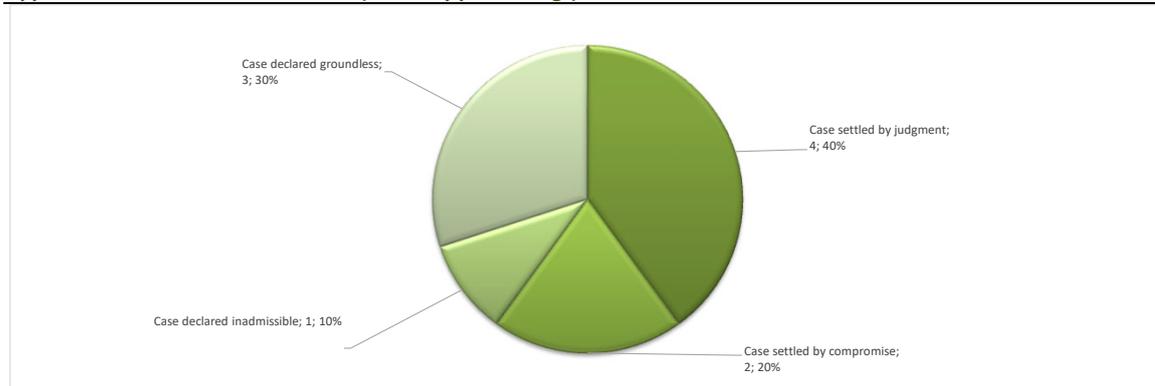
\*including 64 cases where English was used during proceedings (5 ordinary cases, 3 summary proceedings and 56 protective briefs)

### Approach used to settle cases in 2022 (regular proceedings)



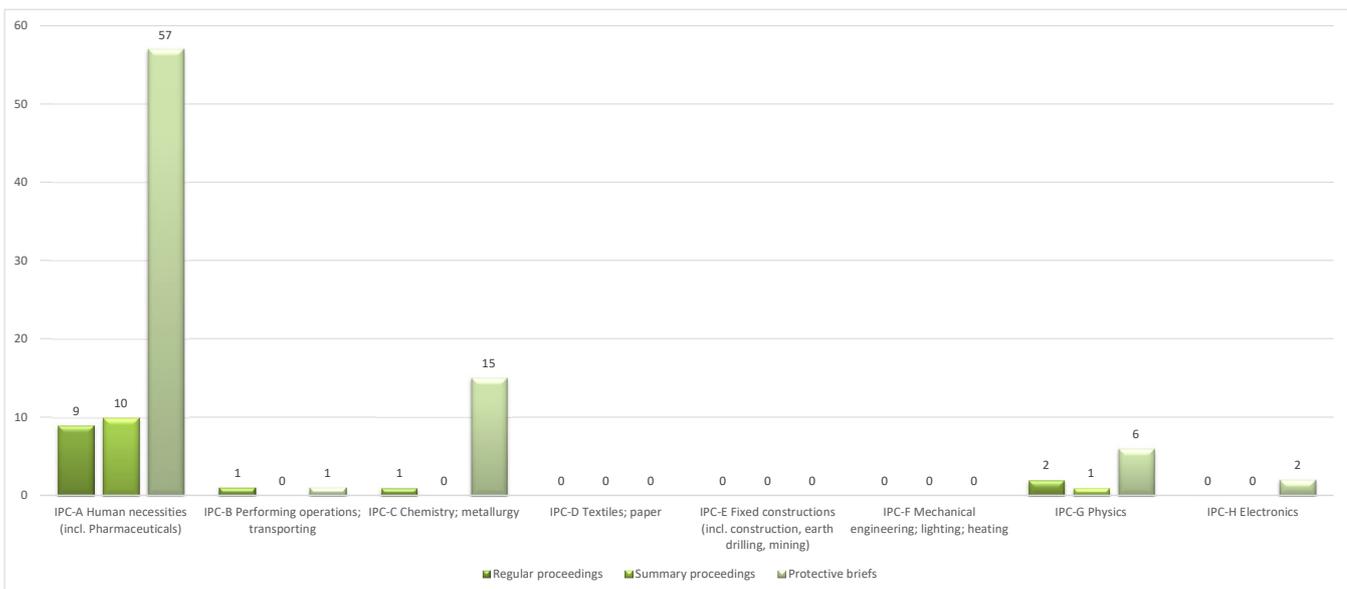
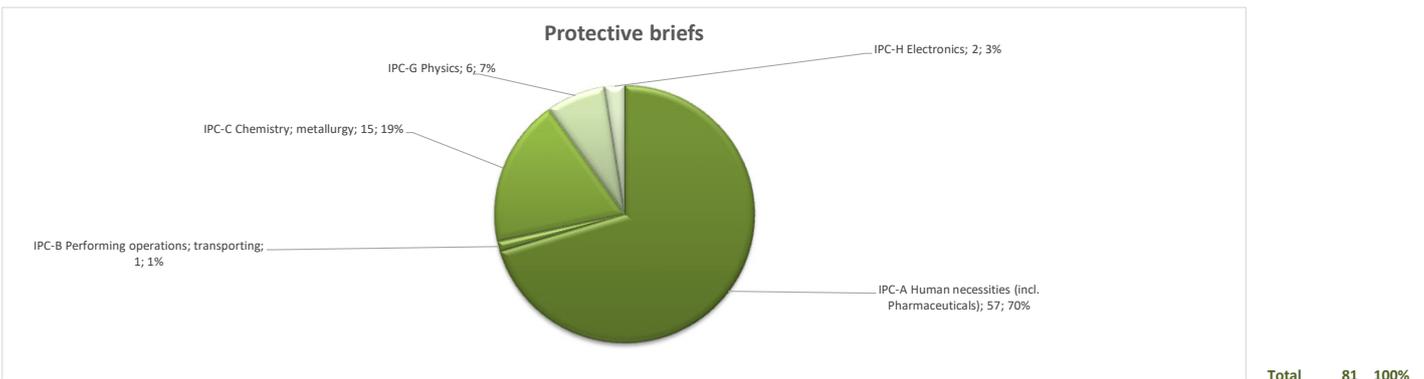
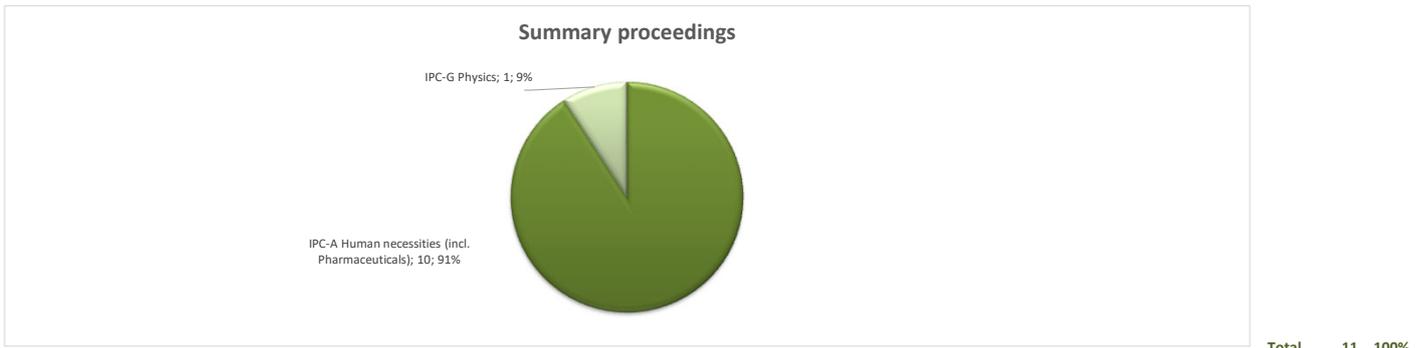
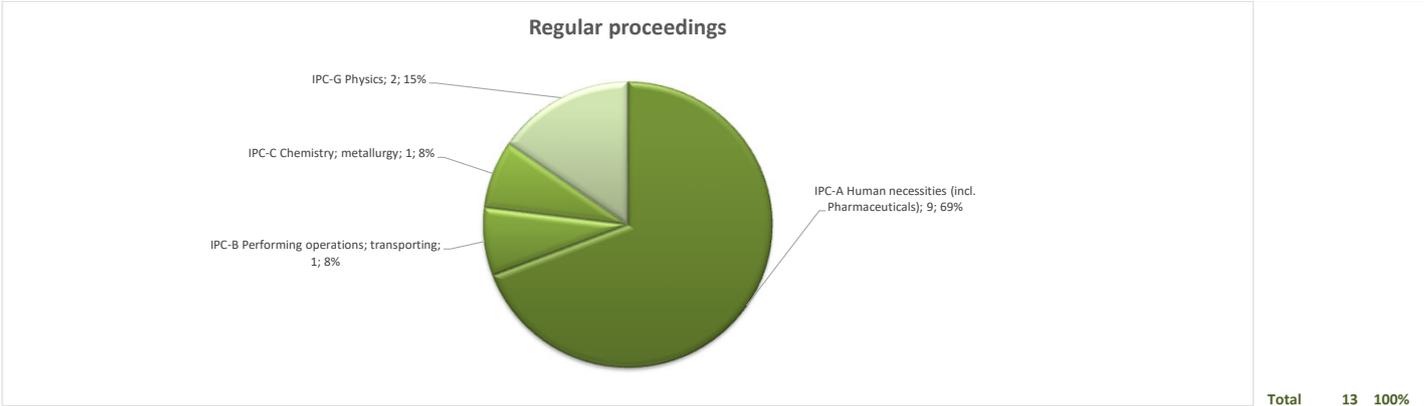
Total 15 100%

### Approach used to settle cases in 2022 (summary proceedings)



Total 10 100%

Cases by technical field



IPC = International Patent Classification

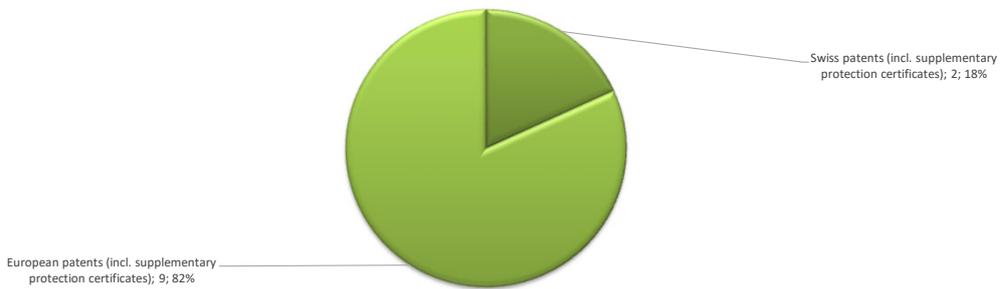
Cases by intellectual property rights

Regular proceedings



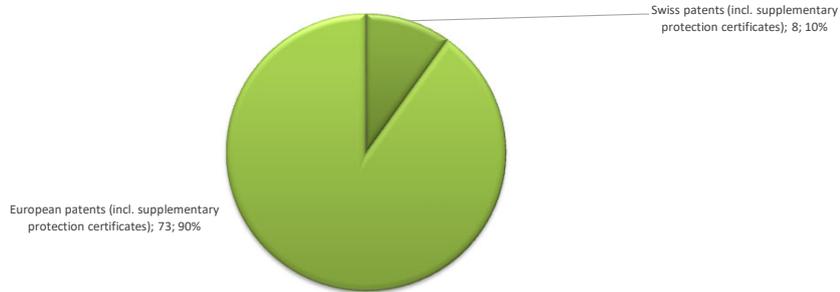
Total\* 13 100%

Summary proceedings

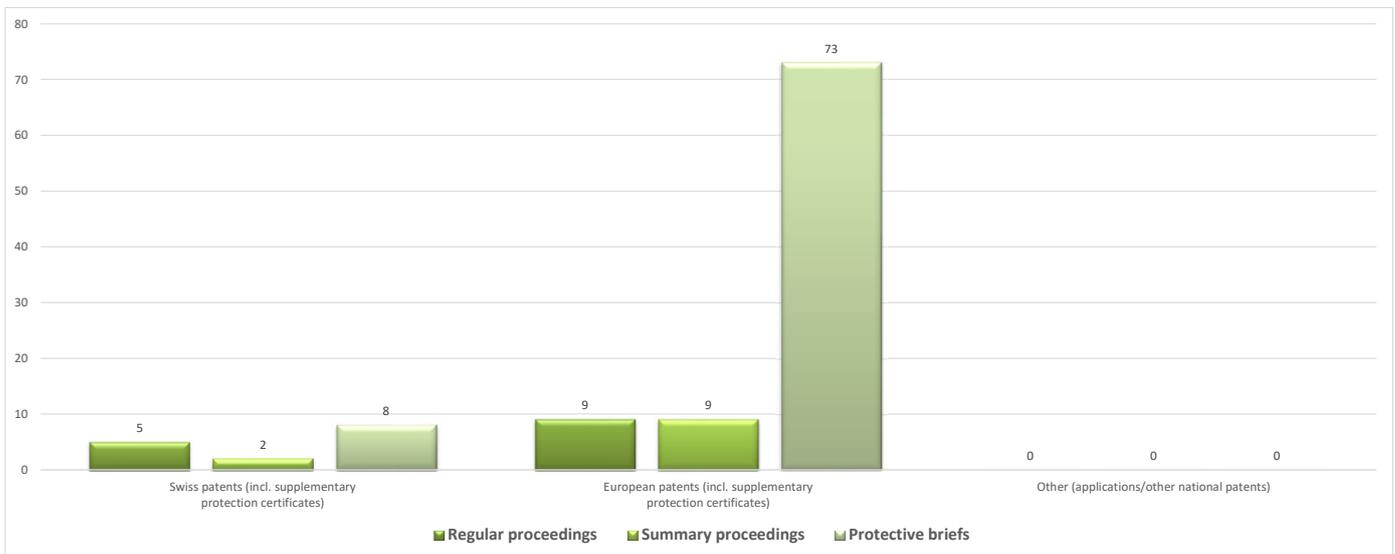


Total 11 100%

Protective briefs



Total 81 100%



\* some cases related to both a Swiss and European and/or other patent

## Duration of cases

	Cases settled						Cases still pending					
	1 to 3 months	4 to 6 months	7 to 12 months	1 to 2 years	over 2 years	Total cases settled in 2022	1 to 3 months	4 to 6 months	7 to 12 months	1 to 2 years	over 2 years	Total cases still pending at the end of 2022
<b>Regular proceedings</b>												
Infringement of patent without counter-claim of nullity of patent	1	1	4	4	1	11	0	0	1	2	1	4
Nullity of patent without counter-claim of infringement of patent	0	0	0	1	0	1	0	1	3	2	0	6
Infringement and nullity of patent	0	0	0	0	0	0	1	0	4	1	0	6
Right to a patent	0	0	0	0	1	1	0	0	1	1	0	2
Claim	0	0	0	1	0	1	2	0	1	0	0	3
Other	1	0	0	0	0	1	1	0	0	1	0	2
<b>Total</b>	<b>2</b>	<b>1</b>	<b>4</b>	<b>6</b>	<b>2</b>	<b>15</b>	<b>4</b>	<b>1</b>	<b>6</b>	<b>10</b>	<b>2</b>	<b>23</b>
<b>Summary proceedings</b>												
Injunction/safeguarding of interests	1	0	4	0	0	5	5	0	1	0	0	6
Description	0	0	0	0	0	0	0	0	0	0	0	0
Seizure	0	0	0	0	0	0	0	0	0	0	0	0
Evidence secured	0	0	0	0	0	0	0	0	0	0	0	0
Description and evidence secured	0	0	0	0	0	0	0	0	0	0	0	0
Other	3	2	0	0	0	5	0	0	0	0	0	0
<b>Total</b>	<b>4</b>	<b>2</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>5</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>6</b>

## Average duration of cases

	Cases settled		Cases still pending	
	Average duration (days)		Average duration (days)	
<b>Regular proceedings</b>				
Infringement of patent without counter-claim of nullity of patent		463		453
Nullity of patent without counter-claim of infringement of patent		471		319
Infringement and nullity of patent		0		516
Right to a patent		1162		357
Claim		377		124
Other		49		208
<b>Average</b>		<b>477</b>		<b>362</b>
<b>Summary proceedings</b>				
Injunction/safeguarding of interests		167		62
Description		0		0
Seizure		0		0
Evidence secured		0		0
Description and evidence secured		0		0
Other		92		0
<b>Average</b>		<b>130</b>		<b>62</b>

Approach used to settle case (panel of judges/decision)

	Single judge	Three-member panel	Five-member panel	Seven-member panel	Total	Instruction hearings	Hearings in relation to preliminary measures	Main hearings	Total hearings
<b>Regular proceedings</b>									
Infringement of patent without counter-claim of nullity of patent	7	4	0	0	11	7		3	10
Nullity of patent without counter-claim of infringement of patent	1	0	0	0	1	2		0	2
Infringement and nullity of patent	0	0	0	0	0	2		2	4
Right to a patent	0	1	0	0	1	2		1	3
Claim	0	1	0	0	1	0		0	0
Other	1	0	0	0	1	0		0	0
<b>Total</b>	<b>9</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>15</b>	<b>13</b>		<b>6</b>	<b>19</b>
<b>Summary proceedings</b>									
Injunction/safeguarding of interests	4	1	0	0	5		3		3
Description	0	0	0	0	0		0		0
Seizure	0	0	0	0	0		0		0
Evidence secured	0	0	0	0	0		0		0
Description and evidence secured	0	0	0	0	0		0		0
Other	4	1	0	0	5		0		0
<b>Total</b>	<b>8</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>10</b>		<b>3</b>		<b>3</b>
<b>Overall total</b>	<b>17</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>25</b>	<b>13</b>	<b>3</b>	<b>6</b>	<b>22</b>

**issued by**

Federal Patent Court  
P. O. Box  
CH-9023 St. Gallen

Phone 058 465 21 10  
info@bpatger.ch  
www.bpatger.ch

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