

Annual Report 2023

Federal Patent Court

Executive Summary

In the reporting year, the total number of incoming cases increased to 31 (previous year 24). There was a significant increase in the number of ordinary proceedings (20, previous year 13), while the number of summary proceedings was unchanged (11, previous year 11).

Of the 21 ordinary proceedings handled by the Court, four were settled and 14 were adjudicated. Three cases were dismissed for irrelevance. Of the 11 summary proceedings handled in the reporting year, nine were adjudicated, one was settled and another one was dismissed for irrelevance. The number of cases pending at end of the year was practically stable at 28 (previous year 29).

Income declined to CHF 679,987 (previous year CHF 960,624) mainly because the court fees for part of the settled proceedings cannot be recognized in accounting before the rulings become final and enforceable. As a result, although expenditure was slightly less than the prior year – CHF 1,522,108 as against CHF 1,548,036 – the deficit was significantly higher at CHF 842,121 (previous year CHF 587,412). The cost-coverage rate attained 45% (previous year 62%).

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Annual Report of the Federal Patent Court 2023

St. Gallen, 15 February 2024

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 2023.

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

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

At the end of the reporting year, 22 ordinary proceedings and six summary proceedings were pending before the Federal Patent Court (previous year: 23 and 6 respectively).

The total number of incoming cases increased to 31 (previous year 24). There was a marked increase in the number of ordinary proceedings (20 as against 13 the previous year), while the number of summary proceedings was unchanged at eleven (previous year 11).

The Court heard 21 ordinary proceedings (previous year 15), of which four were settled by compromise (previous year 5), three were dismissed as irrelevant (previous year 4), and 14 were adjudicated (previous year, 6); as in the previous year, no cases were found inadmissible. Seven 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. Four appeals were still pending at the end of the reporting year.

The Federal Patent Court heard eleven summary proceedings (10 in the previous year), adjudicating in nine (4 in the previous year), settling one (previous year 2) and dismissing one for irrelevance (3 in the previous year).

Languages

In the reporting year, the language of proceedings was German in 15 of the ordinary proceedings submitted to the Federal Patent Court, and in five it was French. As for the summary proceedings, the language of proceedings was

German in seven cases, French in three, and Italian in one. In two ordinary proceedings and one summary proceeding, the parties mutually agreed to avail themselves of their right to use English instead of an official language in their submissions and hearings before the Federal Patent Court. Of the 77 protective briefs overall, 44 were submitted in English. Parties clearly show great interest in pleading their cases in English. This is due to 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 by the fact that most key state-of-the-art technical documents are also in English.

The number of electronic submissions 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, was up again (178, previous year 143). We expect the share of electronic submissions to continue to rise.

Non-permanent judges

The system of non-permanent judges with legal or 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.

At the end of the reporting year, three judges stepped down; two more will take age-related retirement at the end of 2024. On 27 September, the Federal Assembly accordingly elected four new

non-permanent judges with technical training. The resigning judge with legal training will not be replaced and, as a result, there will then be the same number of part-time legal specialist judges as there was in 2018.

The last case in which the President had recused himself was settled in the reporting year.

Panel formation

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 three-member panel.

The panel is formed by the President who participates in all decisions unless there are grounds for him 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 participate in 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 modified by way of exception. In the reporting year this only happened once when a ground for recusal was discovered after the panel had been formed.

On 1 July, an amendment to the Rules of Procedure regarding the formation of panels of judges, which had been suggested by the Control Committees of the Council of States and the National Council (CC) in their report of 22 June 2021 on case distribution at the federal courts (“Geschäftsverteilung bei den eidgenössischen Gerichten” BBI 2021 2437), came into force. Henceforth, language skills are a specific criterion in panel formation, and subsequent changes in panel composition are explicitly regulated.

Administrative office

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 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

Like the hearing rooms that it shares with the Federal Administrative Court, the office premises of the Federal Patent Court fulfil 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 main hearing and one preparatory hearing were held in the Salle du Conseil Général of the Hôtel de Ville in Neuchâtel.

Finances

The operating account of the Federal Patent Court shows slightly lower costs of CHF 1,522,108 (previous year CHF 1,548,036). Despite the larger number of cases handled, income declined to CHF 679,987, falling short of the level of the prior year (CHF 960,624). The cost-coverage rate dropped to 45% (previous year 62%).

Taking into account the lower income and lower costs recorded by the Court in the reporting year, the shortfall to be covered by the Swiss Federal Institute of Intellectual Property (IPI) pursuant to Article 4 PatCA was higher than the year before at CHF 842,121 (previous year CHF 587,412).

Co-operation

The supervisory meetings with the Federal Supreme Court took place on 3 April in Lucerne and on 16 October in St. Gallen; the support granted to the Federal Patent Court is well-appreciated.

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

Statistics

Number and type of case

	Action taken				Outcome of proceedings			
	Cases still pending before 01.01.2023	Cases submitted to FPC in 2023	Cases settled	Cases still pending on 31.12.2023	Case settled by judgment	Case settled by compromise	Case declared inadmissible	Case declared groundless *
Regular proceedings								
Infringement of patent without counter-claim of nullity of patent	6	8	7	7	5	1	0	1
Nullity of patent without counter-claim of infringement of patent	7	9	6	10	4	1	0	1
Infringement and nullity of patent	3	0	3	0	3	0	0	0
Right to a patent	2	0	2	0	1	0	0	1
Claim	3	1	1	3	0	1	0	0
Other	2	2	2	2	1	1	0	0
Total	23	20	21	22	14	4	0	3

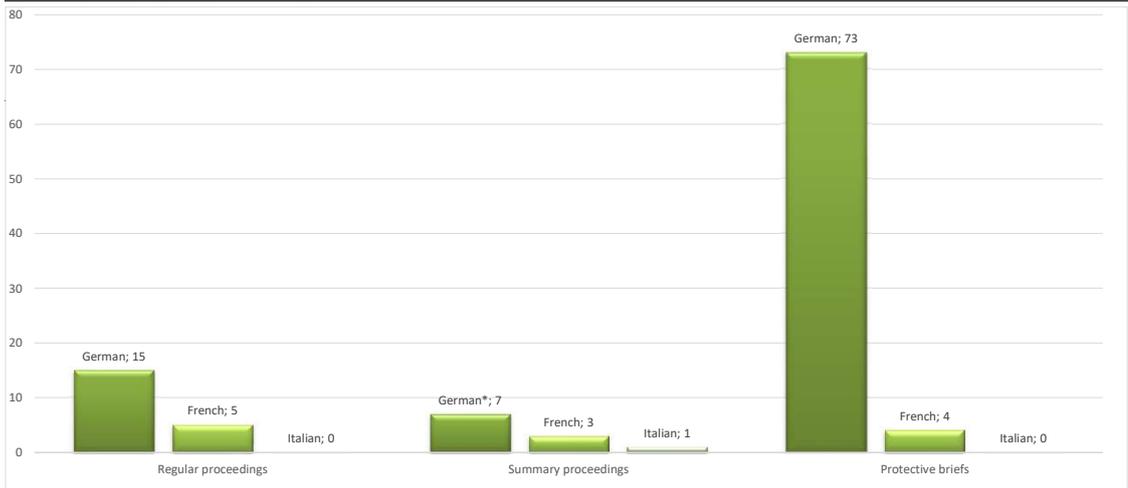
*Including due to withdrawal of action or acknowledgement of action

Summary proceedings					
Injunction/safeguarding of interests	6	5	9	2	7
Description	0	2	1	1	1
Seizure	0	1	0	1	0
Evidence secured	0	1	0	1	0
Description and evidence secured	0	1	0	1	0
Other	0	1	1	0	1
Total	6	11	11	6	9

* including due to withdrawal of action or acknowledgement of action

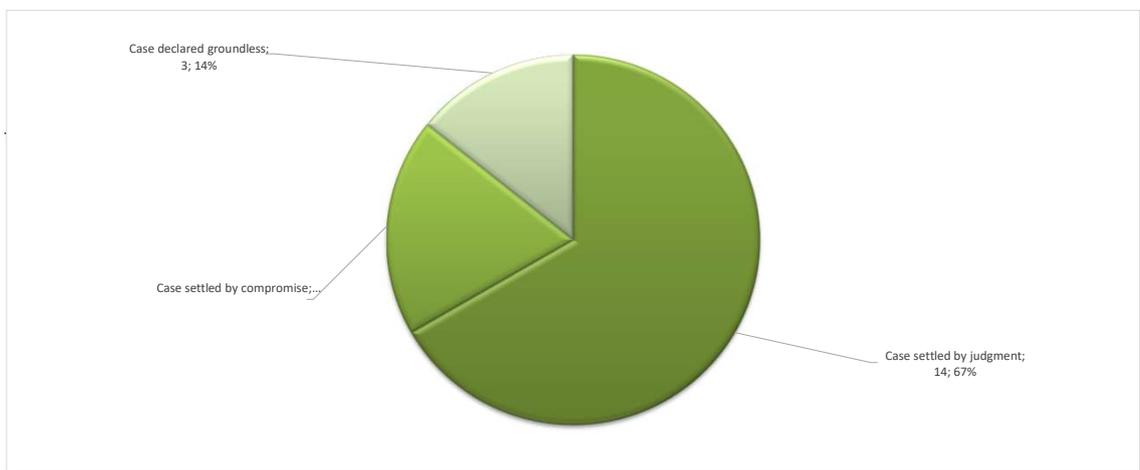
Protective briefs	Transfer from 2022	Received in 2023	Period of protection expired	Relevant up to 2024
Swiss patents (incl. supplementary protection certificates)	5	11	10	6
European patents (incl. supplementary protection certificates)	36	65	76	25
Others (applications, other national patents)	0	1	1	0
Total	41	77	87	31

Cases by language of proceedings in 2023



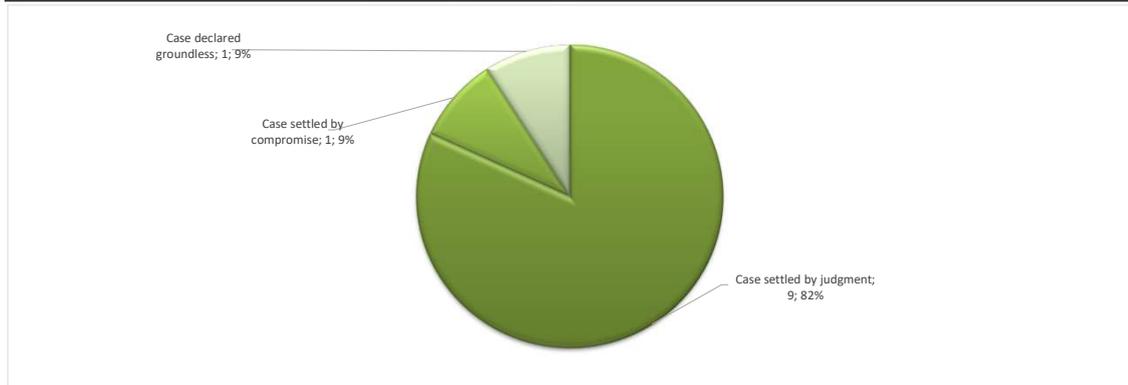
*Including 47 cases where English was used during proceedings (2 regular proceedings, 1 summary proceeding, 44 protective briefs)

Approach used to settle cases in 2023 (regular proceedings)



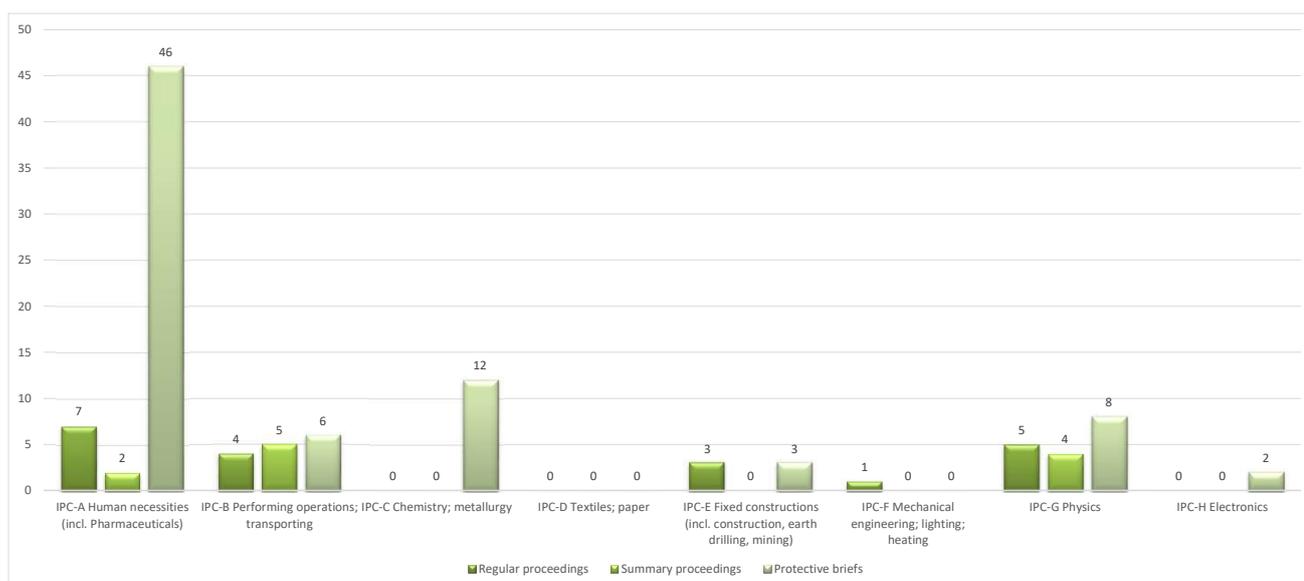
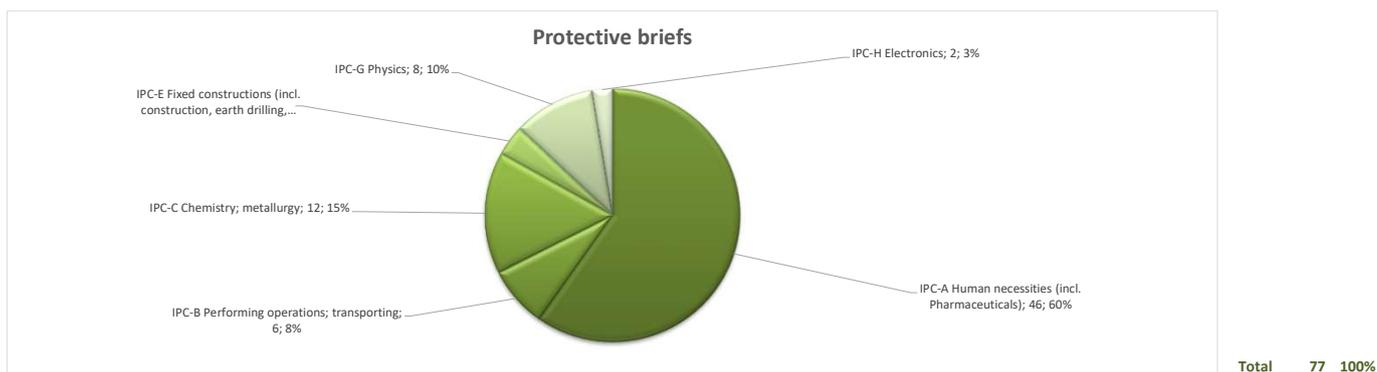
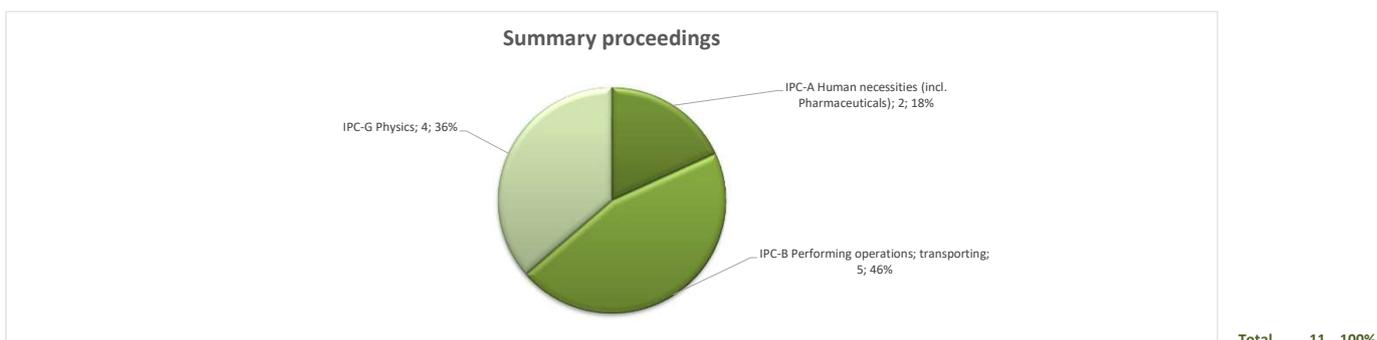
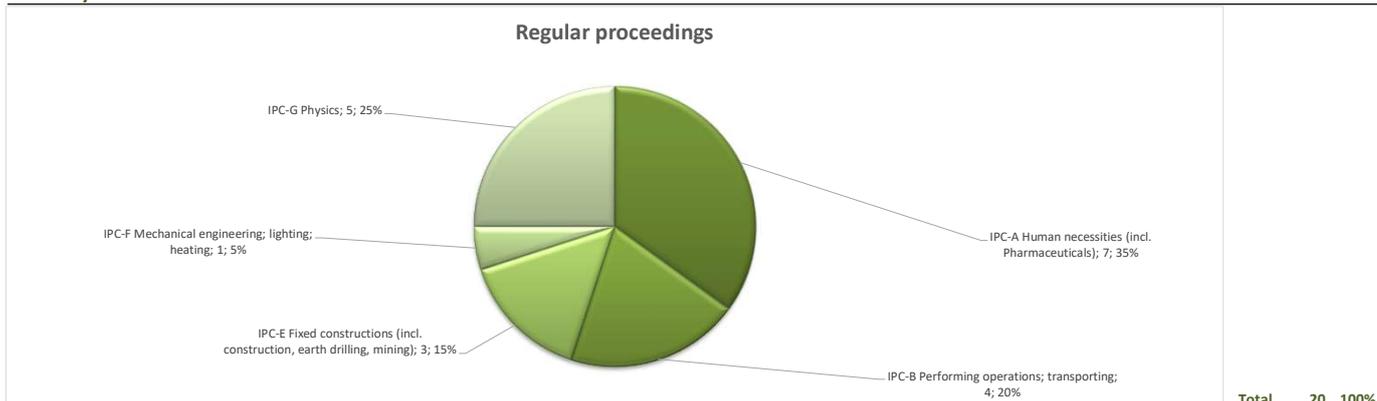
Total 21 100%

Approach used to settle cases in 2023 (summary proceedings)



Total 11 100%

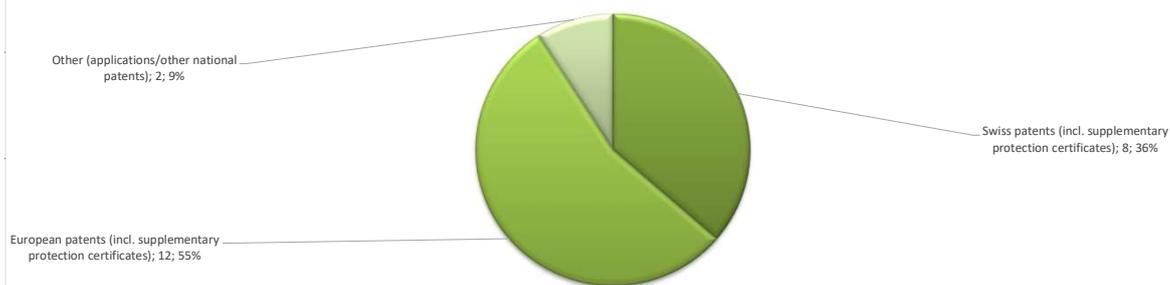
Cases by technical field



IPC = International Patent Classification

Cases by intellectual property rights

Regular proceedings



Total* 20 100%

Summary proceedings

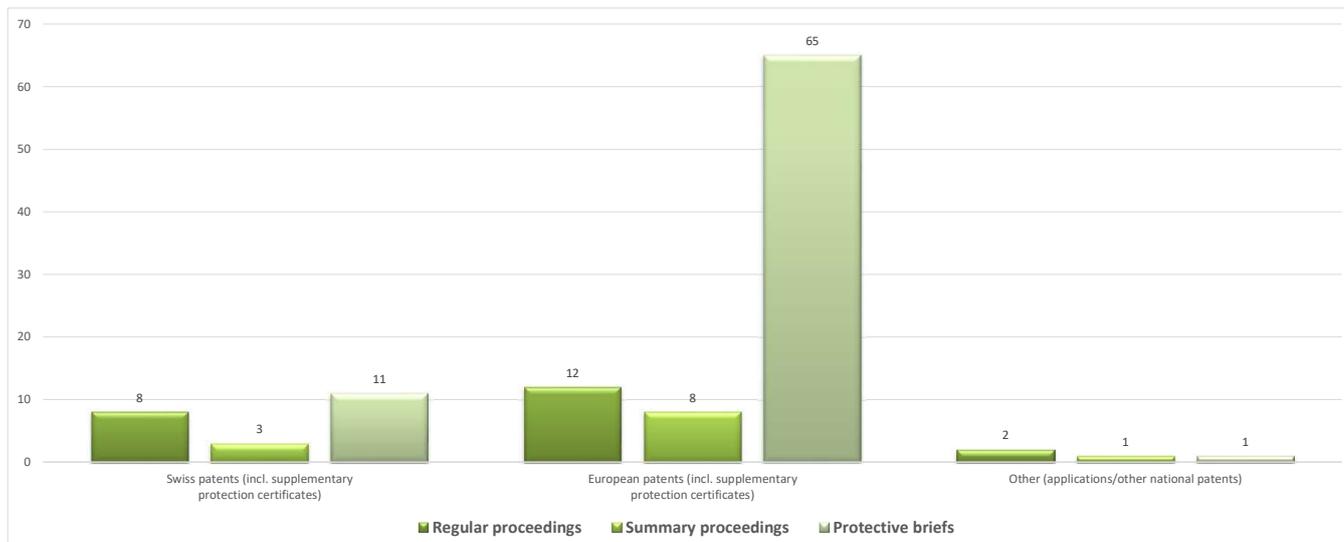


Total* 11 100%

Protective briefs



Total 77 100%



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

Duration of cases

	Cases settled					Total cases settled in 2023	Cases still pending					Total cases still pending at the end of 2023
	1 to 3 months	4 to 6 months	7 to 12 months	1 to 2 years	over 2 years		1 to 3 months	4 to 6 months	7 to 12 months	1 to 2 years	over 2 years	
Regular proceedings												
Infringement of patent without counter-claim of nullity of patent	1	2	0	3	1	7	2	2	1	2	0	7
Nullity of patent without counter-claim of infringement of patent	1	1	0	3	1	6	2	1	5	2	0	10
Infringement and nullity of patent	0	0	0	2	1	3	0	0	0	0	0	0
Right to a patent	0	0	0	2	0	2	0	0	0	0	0	0
Claim	1	0	0	0	0	1	1	0	1	1	0	3
Other	1	0	0	1	0	2	0	0	2	0	0	2
Total	4	3	0	11	3	21	5	3	9	5	0	22
Summary proceedings												
Injunction/safeguarding of interests	7	0	2	0	0	9	0	2	0	0	0	2
Description	1	0	0	0	0	1	1	0	0	0	0	1
Seizure	0	0	0	0	0	0	0	1	0	0	0	1
Evidence secured	0	0	0	0	0	0	1	0	0	0	0	1
Description and evidence secured	0	0	0	0	0	0	1	0	0	0	0	1
Other	1	0	0	0	0	1	0	0	0	0	0	0
Total	9	0	2	0	0	11	3	3	0	0	0	6

Average duration of cases

	Cases settled		Cases still pending	
	Average duration (days)		Average duration (days)	
Regular proceedings				
Infringement of patent without counter-claim of nullity of patent	467		208	
Nullity of patent without counter-claim of infringement of patent	534		259	
Infringement and nullity of patent	700		0	
Right to a patent	516		0	
Claim	86		362	
Other	318		233	
Average	492		254	
Summary proceedings				
Injunction/safeguarding of interests	84		145	
Description	41		62	
Seizure	0		168	
Evidence secured	0		80	
Description and evidence secured	0		80	
Other	56		0	
Average	78		113	

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
Regular proceedings									
Infringement of patent without counter-claim of nullity of patent	2	4	1	0	7	2		5	7
Nullity of patent without counter-claim of infringement of patent	2	4	0	0	6	2		3	5
Infringement and nullity of patent	0	1	2	0	3	0		1	1
Right to a patent	1	1	0	0	2	0		1	1
Claim	1	0	0	0	1	2		1	3
Other	1	1	0	0	2	1		0	1
Total	7	11	3	0	21	7		11	18
Summary proceedings									
Injunction/safeguarding of interests	5	4	0	0	9		2		2
Description	1	0	0	0	1		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	1	0	0	0	1		0		0
Total	7	4	0	0	11		2		2
Overall total	14	15	3	0	32	7	2	11	20

issued by

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