

Annual Report 2017

Federal Patent Court

Executive Summary

Compared to the previous year, the total number of incoming cases increased to 34 (27 in the previous year). The increase was attributed to ordinary proceedings (26, 18 in the previous year), while the number of summary proceedings remained practically the same (8, 9 in the previous year).

During the reporting year the Federal Patent Court handled 15 ordinary proceedings, of which 10 were disposed of by compromise and 5 by judgment. A total of 9 summary proceedings were disposed of during the reporting year, 4 of which were settled by compromise and 5 were decided by judgment.

The current president, Dieter Brändle, resigned at the end of the reporting year due to his age. Mark Schweizer, former non-permanent judge with legal training, was elected as his successor. Four of the non-permanent judges with technical training resigned at the end of the term of office, the others were reelected. Moreover five new non-permanent judges with technical training were elected. All of the non-permanent judges with legal training except for the new president were reelected, and three new judges with legal training were elected. All newly elected judges take office on 1 January 2018.

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Annual Report of the Federal Patent Court 2017

St. Gallen, 2 February 2018

Mr President

Distinguished members of the National Council and the Council of States

In keeping with Art. 3 para. 3 of the Patent Court Act, we hereby submit the present Annual Report covering our activities in 2017.

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

On behalf of the Federal Patent Court

President:

Mark Schweizer

First Court Clerk:

Susanne Anderhalden

Foreword

The Federal Patent Court began its activities on 1 January 2012. Taking over responsibility from the cantonal courts, the Federal Patent Court is now the court of first instance for all civil law disputes on patents. It is exclusively competent for patent infringement and patent validity cases. Other civil action suits relating to patents may also be taken to the Federal Patent Court, e.g. civil action suits regarding patent license agreements.

In 2017 the number of incoming cases increased once again and corresponds to the assumptions made in the Dispatch on the Law on the Federal Patent Court. At the end of the first term of office all proceedings are handled in an optimal fashion. The court is functioning smoothly.

Members of the court

Administrative Board of Judges

President:	Dieter Brändle
Second permanent judge:	Tobias Bremi
Vice-President:	Frank Schnyder

Non-permanent judges with technical training

Natalia Clerc
Roland Dux
Giovanni Gervasio
Barbara Herren
Timothy Holman
Emmanuel Jelsch
Hanny Kjellsaa-Berger
Alfred Koepf
Herbert Laederach
Christoph Müller
Markus A. Müller
Peter Rigling
André Roland
Werner A. Roshardt
Regula Rüedi
Philipp Rüfenacht
Christophe Saam
Frank Schnyder
Andreas Schöllhorn Savary
Martin Sperrle
Hannes Spillmann
Kurt Stocker
Kurt Sutter
Daniel Vogel
Prisca von Ballmoos
André Werner
Marco Zardi

Non-permanent judges with legal training

Daniel M. Alder
Philippe Ducor
Christoph Gasser
Christian Hilti
Simon Holzer
Daniel Kraus
Thomas Legler
Rudolf Rentsch
Ralph Schlosser
Mark Schweizer
Christoph Willi

During the reporting year there have been no changes to the number of judges. Five newly elected non-permanent judges with technical training, three newly elected non-permanent judges with legal training and the newly elected president take office on 1st January 2018, while the current president, four non-permanent judges with technical training and one non-permanent judge with legal training resign at the end of the reporting period 2017.

Caseload

By the end of 2017 38 ordinary and one summary proceedings were pending at the Federal Patent Court.

Compared to the previous year, the total number of incoming cases increased to 34 (27 in the previous year). The increase was attributed to ordinary proceedings (26, 18 in the previous year), while the number of summary proceedings remained practically the same (8, 9 in the previous year). Due to the economic importance of summary proceedings (generally involving preliminary measures to prohibit the sale of a given product, mostly pharmaceuticals), these proceedings are handled with practically the same level of intensity as ordinary proceedings, which results in a correspondingly high processing workload for the court.

During the reporting year, the Federal Patent Court disposed of 15 ordinary proceedings (17 in the previous year), of which 10 were settled (8 in the previous year) and 5 were terminated by judgment (7 in the previous year). Mainly disputes with a high value in litigation between pharmaceutical companies doing research and manufacturers, distributors respectively, of generic drugs were terminated by judgment. 4 of the 5 judgments were appealed before the Federal Supreme Court (1 appeal was approved, the others are still pending). Another appeal against a judgment from the previous year was rejected. Over the first six years of activity the ratio of cases settled stands at around 75 %. The high ratio of cases settled is due to the practice to hold an instructional hearing at a relatively early stage of the procedure, during which a court delegation provides the parties with a preliminary legal and technical assessment of the dispute and tries to foster a settlement. Because the judges with technical expertise clearly enjoy a high level of acceptance from the parties, the ratio of cases settled after these

hearings has remained at a constantly high level. As far as we can tell, no other country has achieved comparable ratios. This helps to avoid the duration and costs of full proceedings, and the parties save a considerable amount of time and money. Compared to similar patent courts in Germany, France, the Netherlands and the United Kingdom, this constitutes a quality of the Federal Patent Court, which over time should have a positive impact on the number of incoming cases. The high ratios are likely to also compare favourably to the EU's Unified Patent Court, if and once it will be established.

A total of 9 summary proceedings (7 in the previous year) were terminated during the reporting year, 4 of which were settled (2 in the previous year), and 5 (5 in the previous year) terminated by judgment. With respect to the costs, one judgment was appealed before the Federal Supreme Court; the Federal Supreme Court did not allow the appeal.

Client Satisfaction Survey

In March 2017 the Federal Patent Court sent out a written questionnaire concerning the satisfaction of clients with the performance of the Federal Patent Court to all party representatives (attorneys and patent agents), who since 1 January 2012 had had a case at the Federal Patent Court. Of 189 questionnaires sent out 97 were returned, 90 of which were fully completed.

The information provided by the Court on the courses of proceedings and jurisdiction was deemed to be very good. Likewise more than 80 % of respondents are satisfied or very satisfied with the courtesy and cooperation of the Federal Patent Court dealing with inquiries, and with the quality, reliability and promptness of information.

Practically all respondents deemed durations of proceedings and time-limits to be appropriate. In case of summary proceedings about one fourth of the respondents would like faster proceedings. Two thirds of the respondents would like an instructional hearing after the first correspondence even if this is requested by one party only. A few respondents would welcome it if after failed settlement proceedings binding terms for the further procedural steps were fixed by agreement with the parties. 78% of the respondents evaluate the clarity and traceability of the reasons given for the decisions with 3 or higher on a scale from 1 to 5.

The results of the survey show that the great majority of users is satisfied with the work of the Federal Patent Court. The Federal Court takes suggestions by the users seriously and examines if instructional hearings can be held on a regular basis even if requested by one party only and how the proposal to fix binding terms for the further procedural steps at an early stage can be realized.

Non-permanent judges

The system of non-permanent judges with technical and legal expertise has proven to be effective. The possibility of composing panels of qualified legal and technical experts from a given field ensures that these panels are highly competent and able to provide the parties with judgments that will be accepted and form the basis for compromise solutions.

Languages

During the reporting year, 23 of the ordinary proceedings submitted to the Federal Patent Court were handled in German, 3 cases in French. In the summary proceedings, German was used in seven cases, French in one case. None of the cases were handled in Italian. In five ordinary proceedings and two summary proceedings, litigants mutually agreed to invoke the legal right conferred upon them by the Federal Patent Court Act to use English in submissions and hearings instead of an official language of Switzerland. Clearly, the parties show a great interest to plead their cases in English. This can be explained by the fact that English is the working language used not just by foreign companies involved in court cases here but also by the R&D and patent divisions of a number of Swiss companies, and that frequently the main state-of-the-art documents are also in English. The Administrative Board of Judges is convinced that the possibility to also choose English as the language of a case would further increase the attractiveness of the court.

Administrative office

There are currently two office co-managers (equivalent to a combined workweek percentage of 130%) and two clerks (equivalent to a combined workweek percentage of 100%). No staff changes have been made with respect to the previous year, in terms of staff size, positions held and/or staff turnover.

Premises

The office space of the Federal Patent Court, like the hearing rooms that the Federal Administrative Court shares with the Federal Patent Court, serve their intended purpose; there is no need to change the current arrangements.

When the Federal Patent Court needs to conduct proceedings away from St. Gallen, the cantons where the proceedings are to be held provide the hearing rooms. Corresponding cooperation has gone smoothly.

Finances

The profit and loss statement of the Federal Patent Court shows a total expenditure of CHF 1,519,014 and a total income of CHF 672,804 before payments from the Swiss Federal Institute of Intellectual Property (IPI). The remaining amount to be covered by the IPI by virtue of Article 4 PatCA therefore stands at CHF 846,210. This figure is around 12% higher than in the previous reporting year. This is due to the fact that the income from court fees is 28% lower than in the previous year. This is because in three cases with high values of litigation appeals before the Federal Supreme Court are still pending and the respective court fees could not be booked with relevance to success. Should the appeals be rejected, an additional income from court fees amounting to CHF 120,000 will accrue and the deficit corresponds to that of the previous year. In the reporting year expenditure was 6% below that of the previous year.

Cooperation

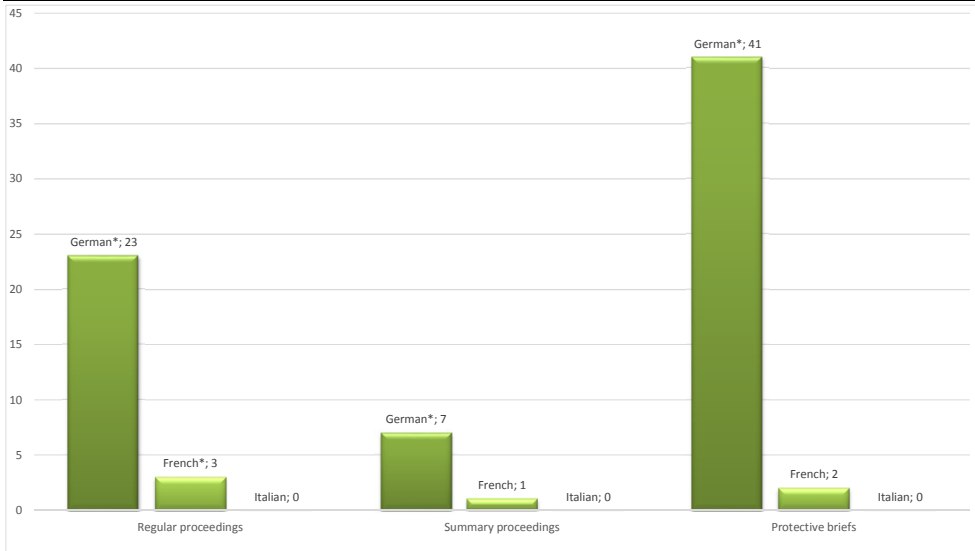
The Federal Patent Court greatly appreciated the support that it received in supervisory meetings with the Federal Supreme Court in Lucerne on 31 March and in St. Gallen on 13 October. As in previous years, cooperation with the Federal Administrative Court also went smoothly. The annual meeting between the Administrative Board of Judges of the Federal Patent Court and the administrative commissions of the Federal Criminal Court and the Federal Administrative Court was held on 1 September in Bellinzona, enabling pending issues affecting all three federal courts to be discussed in an informal and relevant manner.

Statistics

Number and type of case	Number of Cases				Type of settlement			
	Cases still pending before 01.01.2017	Cases submitted to FPC in 2017	Cases settled	Cases still pending on 31.12.2017	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	10	14	5	19	0	5	0	0
Nullity of patent without counter-claim of infringement of patent	7	6	5	8	3	2	0	0
Infringement and nullity of patent	5	2	1	6	0	1	0	0
Right to a patent	2	1	0	3	0	0	0	0
Claim	2	0	1	1	0	1	0	0
Other	1	3	3	1	2	1	0	0
Total	27	26	15	38	5	10	0	0
Summary proceedings								
Injunction/safeguarding of interests	2	8	9	1	5	4	0	0
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	0	0	0	0	0	0	0	0
Total	2	8	9	1	5	4	0	0
Protective briefs								
Swiss patents (incl. supplementary protection certificates)	0	5	4	2				
European patents (incl. supplementary protection certificates)	20	38	40	17				
Total*	20	43	44	19				

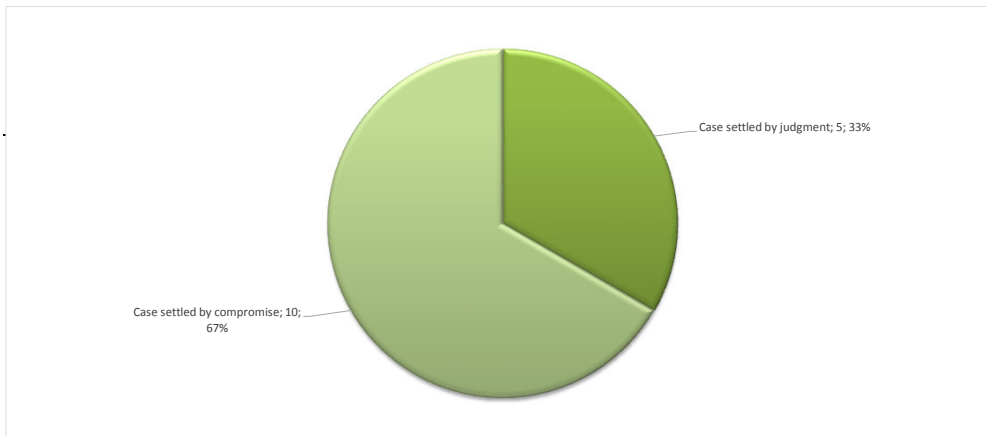
* in some cases, European and Swiss patents in same protective letter

Cases by language of proceedings in 2017



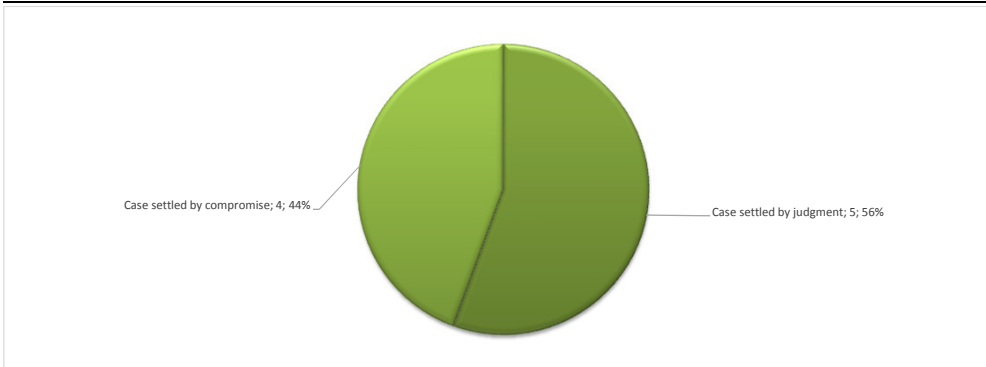
*including 14 cases where English was used during proceedings (5 ordinary proceedings, 2 summary proceedings, 7 protective briefs)

Approach used to settle cases in 2017 (regular proceedings)



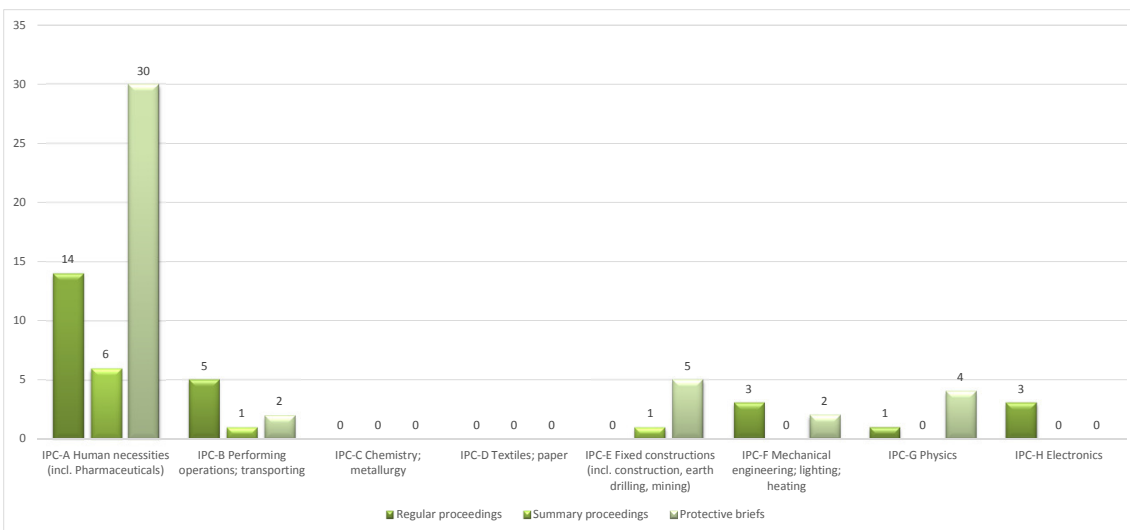
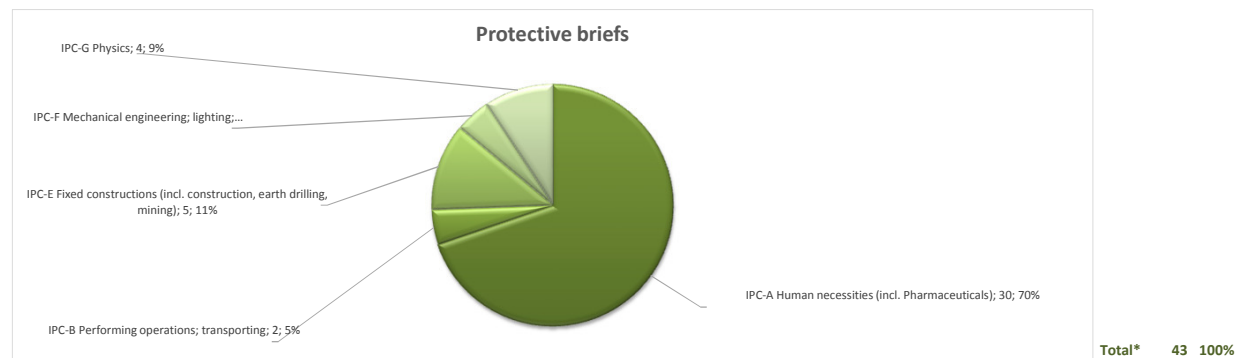
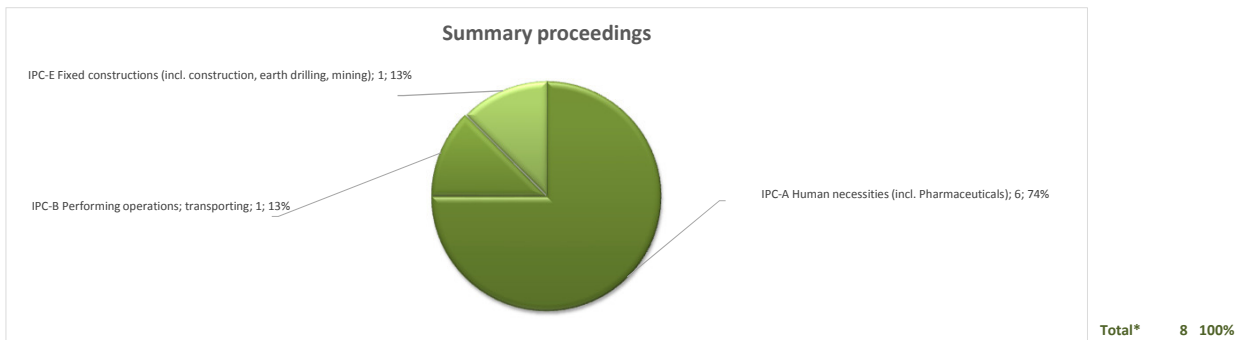
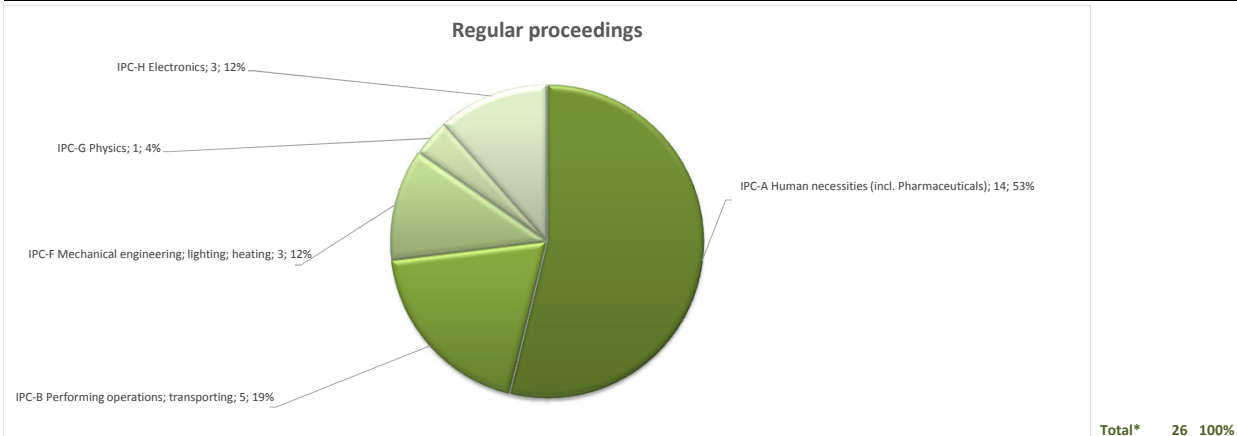
Total 15 100%

Approach used to settle cases in 2017 (summary proceedings)



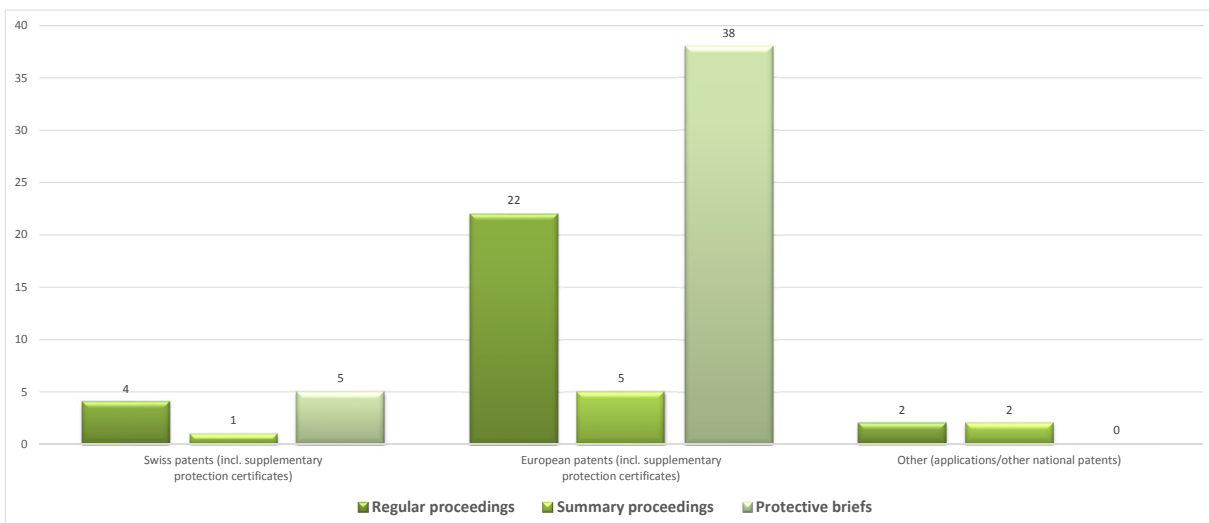
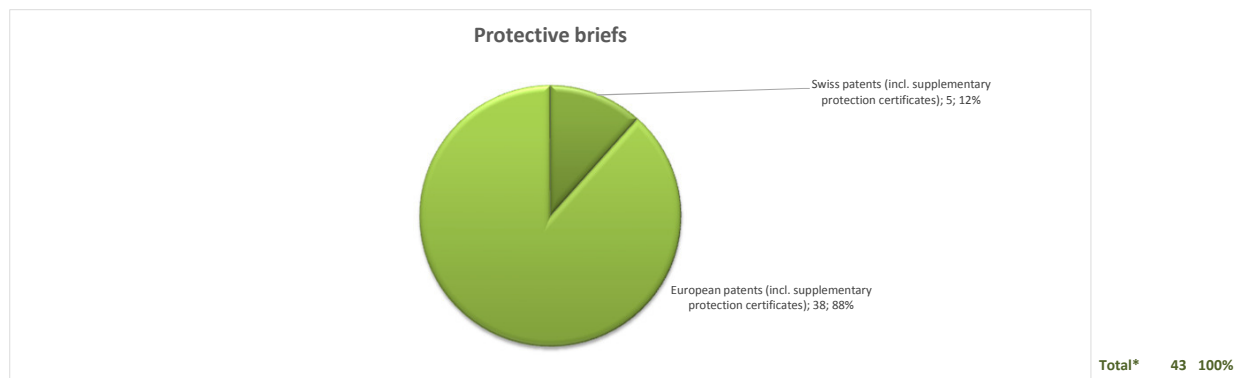
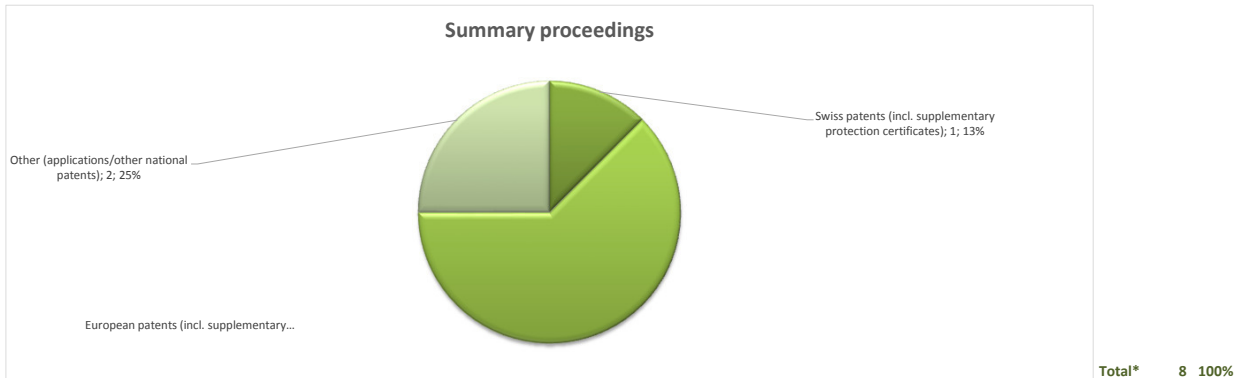
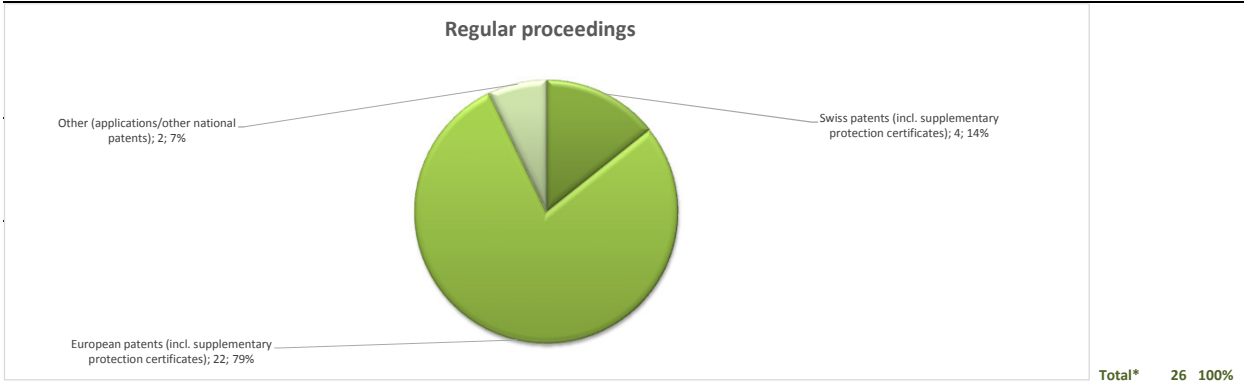
Total 9 100%

Cases by technical field



* some cases related to several technical fields simultaneously
 IPC = International Patent Classification

Cases by intellectual property rights



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

Duration of cases

	Cases terminated						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 2017	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 2017
Regular proceedings												
Infringement of patent without counter-claim of nullity of patent	1	0	2	2	0	5	5	4	4	6	0	19
Nullity of patent without counter-claim of infringement of patent	0	0	2	3	0	5	2	2	0	4	0	8
Infringement and nullity of patent	0	0	0	0	1	1	0	1	1	3	1	6
Right to a patent	0	0	0	0	0	0	1	0	1	0	1	3
Claim	1	0	0	0	0	1	0	0	1	0	0	1
Other	1	0	1	0	1	3	0	0	1	0	0	1
Total	3	0	5	5	2	15	8	7	7	14	2	38
Summary proceedings												
Injunction/safeguarding of interests	3	4	2	0	0	9	1	0	0	0	0	1
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	0	0	0	0	0	0	0	0	0	0	0	0
Total	3	4	2	0	0	9	1	0	0	0	0	1

Average duration of cases

	Cases terminated			Cases still pending		
	Average duration (days)			Average duration (days)		
	in cantonal courts	in FPC	Total	in cantonal courts	in FPC	Total
Regular proceedings						
Infringement of patent without counter-claim of nullity of patent		287	287	235		235
Nullity of patent without counter-claim of infringement of patent		474	474	355		355
Infringement and nullity of patent	1335	1885	3220	439		439
Right to a patent		0	0	370		370
Claim		47	47	441		441
Other		352	352	353		353
Average		453	541	311		311
Summary proceedings						
Injunction/safeguarding of interests	-	108	108	-	59	59
Description	-	0	0	-	0	0
Seizure	-	0	0	-	0	0
Evidence secured	-	0	0	-	0	0
Description and evidence secured	-	0	0	-	0	0
Other	-	0	0	-	0	0
Average	-	108	108	-	59	59

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	5	0	0	0	5	4		0	4
Nullity of patent without counter-claim of infringement of patent	2	0	3	0	5	2		3	5
Infringement and nullity of patent	1	0	0	0	1	2		0	2
Right to a patent	0	0	0	0	0	0		0	0
Claim	1	0	0	0	1	0		0	0
Other	1	2	0	0	3	2		0	2
Total	10	2	3	0	15	10		3	13
Summary proceedings									
Injunction/safeguarding of interests	5	4	0	0	9		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	0	0	0	0	0	0			0
Total	5	4	0	0	9		3		3
Overall total	15	6	3	0	24	10	3	3	16

issued by

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