

Annual Report 2014

Federal Patent Court

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Annual Report of the Federal Patent Court 2014

St. Gallen, 5 February 2015

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 (PatCA, SR 173.41), we hereby submit the present Annual Report describing our activities in 2014.

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:

Dieter Brändle

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 actions relating to patents may also be taken to the Federal Patent Court (e.g. civil actions regarding patent license agreements).

With the development phase now behind it, the Federal Patent Court was able to devote its attention to pending patent proceedings, which led to a significant increase in the number of settled cases.

The Federal Patent Court's efforts to settle proceedings in an expeditious and cost-effective manner were largely successful. The technical expertise of its judges enabled most cases to be handled without having to ask external court experts to establish time-consuming and expensive court expert opinions. In addition, the court's judges with technical training clearly enjoyed a high level of acceptance from the parties, which led to an unusually high percentage of cases settled by compromise.

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
Kurt Stocker
Kurt Sutter
Daniel Vogel
Prisca von Ballmoos
Erich Wäckerlin
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

Caseload

By the end of 2013, there were 31 ordinary and six summary proceedings pending at the Federal Patent Court.

The number of incoming cases decreased with respect to the previous year. The Federal Patent Court received 15 ordinary proceedings (22 in 2013) and nine summary proceedings (eleven in 2013).

During the reporting year, the Federal Patent Court handled 20 ordinary proceedings (18 in the previous year), of which 17 were settled by compromise (16 in the previous year). This corresponds to an 85% ratio of cases settled by compromise. The Federal Patent Court sees itself as a service provider to the private sector. Each patent case is an obstacle for all of the parties concerned and the aim is to overcome this obstacle. One means of achieving this objective is to issue a judgment but a better alternative is for the parties to reach a compromise that both sides can agree to. This saves a great deal of time and money compared to a case in which a judgment is rendered and may eventually be taken before the Federal Supreme Court. The Federal Patent Court therefore strives to reach mutually acceptable compromises in its handling of cases. During instructional hearings, which take place after the first exchange of briefs, the court delegation provides the parties with a preliminary legal as well as – and especially – a technical assessment of the dispute. The Federal Patent Court initially expected that this approach would result in a settlement by compromise in around 50% of the cases, either during the hearing itself or shortly afterwards. However, given the higher than expected 89% ratio of cases settled by compromise in the previous year and the similar 85% ratio obtained this year, the Federal Patent Court now feels that it is possible to maintain the ratio more or less at current levels. This is fairly remarkable considering that similar patent courts in Germany, France, the Nether-

lands and the United Kingdom rarely reach such an outcome. Over time, such outcomes achieved by the Federal Patent Court will have a positive impact on the number of incoming cases.

A total of ten summary proceedings (five in the previous year) were settled during the reporting year, five of which (one in the previous year) were settled either by compromise or declared groundless. It appears that the parties often expect the decision in the ordinary proceedings to match the one made in relation to preliminary measures. As a result, the parties also incur costs in relation to preliminary measures, just like in ordinary proceedings, with a corresponding volume of written submissions that the court must devote considerable time to examine.

As always, scheduling of instructional and main hearings has a crucial impact on the duration of ordinary proceedings. The Federal Patent Court feels that it is important that not only the parties' legal counsels and patent attorneys be present at hearings but also representatives of the parties who are familiar with the case and who have the power to act on behalf of the party to settle cases by compromise. This can lead to delays, particularly in case foreign parties are involved in the dispute (i.e. in over 50% of the cases), but the parties tend to accept this as an unavoidable consequence.

Non-permanent judges

The system of non-permanent judges with technical or legal training has proven to be effective. The possibility of staffing panels with 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. Staffing panels with chemists has been somewhat of a problem. Only seven of the current non-permanent judges with technical training have expertise in chemistry. This is deemed to be too little since there are currently quite a few highly complex cases pending in this field and roughly half of all of the cases received by the Federal Patent Court require assistance from chemists. The Federal Patent Court therefore intends to increase the number of judges specialised in this field.

Languages

During the reporting year, twelve of the regular proceedings submitted to the Federal Patent Court were handled in German compared to two cases in French and one in Italian. With summary proceedings, German was used in eight cases and Italian in one case. In only one case did litigants mutually agree to invoke their right to use English in submissions and hearings instead of an official language of Switzerland. The distribution of languages was similar for protective briefs: 42 were drafted in German and four in French. Not a single protective brief was drafted in Italian.

Premises

In autumn 2011, the Federal Patent Court temporarily moved its offices to St.-Leonhard-Strasse 49 in St. Gallen. The initial agreement reached with the Federal Administrative Court was for the Federal Patent Court to move into the new Federal Administrative Court building in the autumn of 2012. At the request of the Federal Administrative Court, and with the agreement of the Federal Supreme Court and the Federal Office for Buildings and Logistics, the Federal Patent Court expressed its willingness to remain in its current location. The conclusion reached since then has been that the disadvantages of moving the Federal Patent Court outweigh the advantages. Following detailed clarification, including on site, the Council of States Finance Committee decided on 14 September 2014 not to move the Federal Patent Court and to keep it in its current location. There is no need for any legislative changes in order to do this. Following the decision by the Council of States Finance Committee, the Federal Administrative Court and the Federal Patent Court have agreed that the offices of the Federal Patent Court will definitively remain at St.-Leonhard-Strasse 49 in St. Gallen. Moreover, Federal Patent Court hearings will continue to take place in the Federal Administrative Court building.

Finances

The profit and loss statement of the Federal Patent Court shows a total expenditure of CHF 1,715,627 and total income of CHF 957,453 before payment from the Swiss Federal Institute of Intellectual Property (IPI). The remaining amount to be covered by the IPI by virtue of Art. 4 PatCA therefore stands at CHF 758,173. This figure is considerably lower than in the previous reporting years (2012: CHF 1,384,081, 2013: CHF 1,121,248). For the first time, income from court fees covered over half of the expenditure of the Federal Patent Court (55.8%). That said there was one very large court case that generated CHF 280,000 in court fees. Generally speaking, such cases may be considered exceptional and so we should therefore not automatically assume that the level of income from court fees achieved this year will be reached next year.

Cooperation

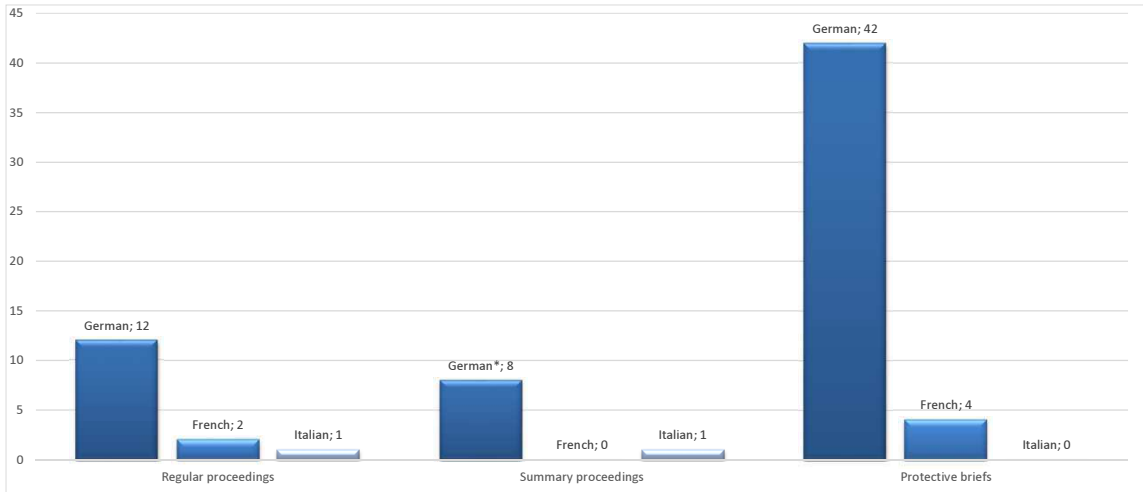
The Federal Patent Court greatly appreciated the support that it received in supervisory meetings with the Federal Supreme Court in Lucerne on 2 March and in St. Gallen on 31 October. Cooperation with the Federal Administrative Court also went smoothly. During the reporting year, the Federal Patent Court organised 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. This annual meeting enabled pending issues affecting all three federal courts to be discussed in an informal and relevant manner.

Number and type of case

	Action taken				Outcome of proceedings			
	Cases still pending before 1 Jan. 2014	Cases submitted to FPC in 2014	Cases settled in 2014	Cases still pending on 31 Dec. 2014	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	18	9	13	14	1	11	1	0
Nullity of patent without counter-claim of infringement of patent	7	2	3	6	0	2	0	1
Infringement and nullity of patent	1	0	0	1	0	0	0	0
Right to a patent	3	3	2	4	0	2	0	0
Claim	1	1	1	1	0	1	0	0
Other	1	0	1	0	0	1	0	0
Total	31	15	20	26	1	17	1	1
Summary proceedings								
Injunction/safeguarding of interests	3	7	7	3	2	4	0	1
Description	0	0	0	0	0	0	0	0
Seizure	0	0	0	0	0	0	0	0
Evidence secured	1	0	1	0	1	0	0	0
Description and evidence secured	1	0	1	0	1	0	0	0
Other	1	2	1	2	1	0	0	0
Total	6	9	10	5	5	4	0	1
Cases								
	Transfer from 2013	Received in 2014	Period of protection expired	Relevant up to 2015				
Protective briefs								
Swiss patents (incl. supplementary protection certificates)	1	1	2	0				
European patents (incl. supplementary protection certificates)	19	45	45	19				
Total*	20	46	47	19				

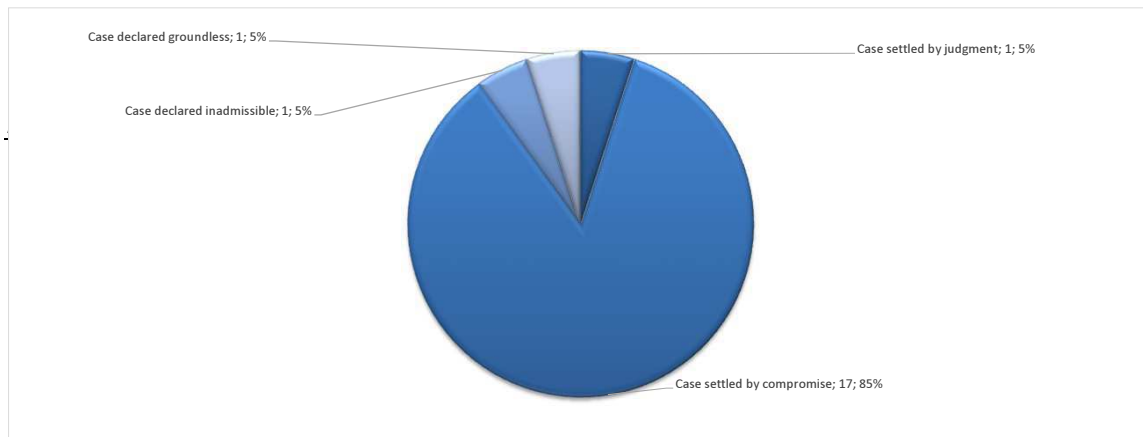
* in some cases, European and Swiss patents in same protective letter

Cases by language of proceedings in 2014



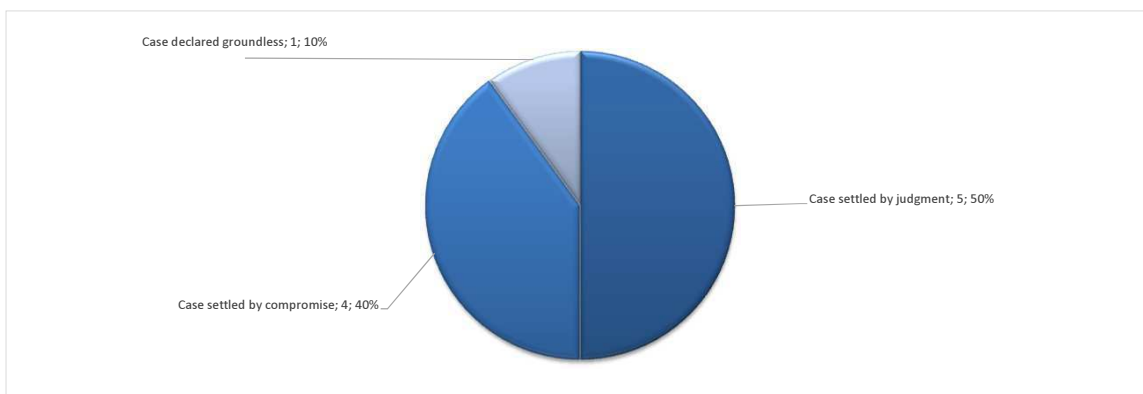
*including 1 case where English was used during proceedings

Approach used to settle cases in 2014 (regular proceedings)



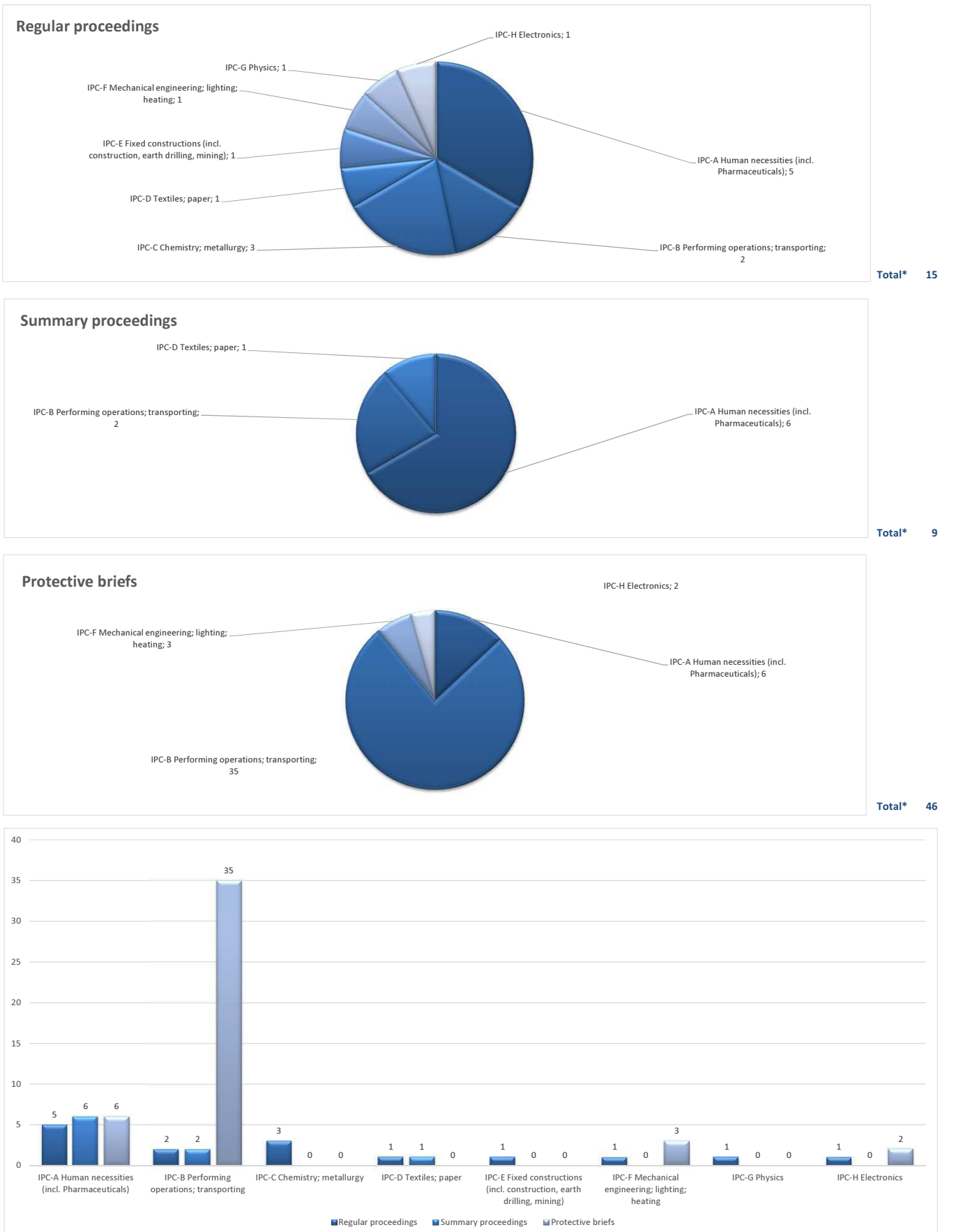
Total 20 100%

Approach used to settle cases in 2014 (summary proceedings)



Total 10 100%

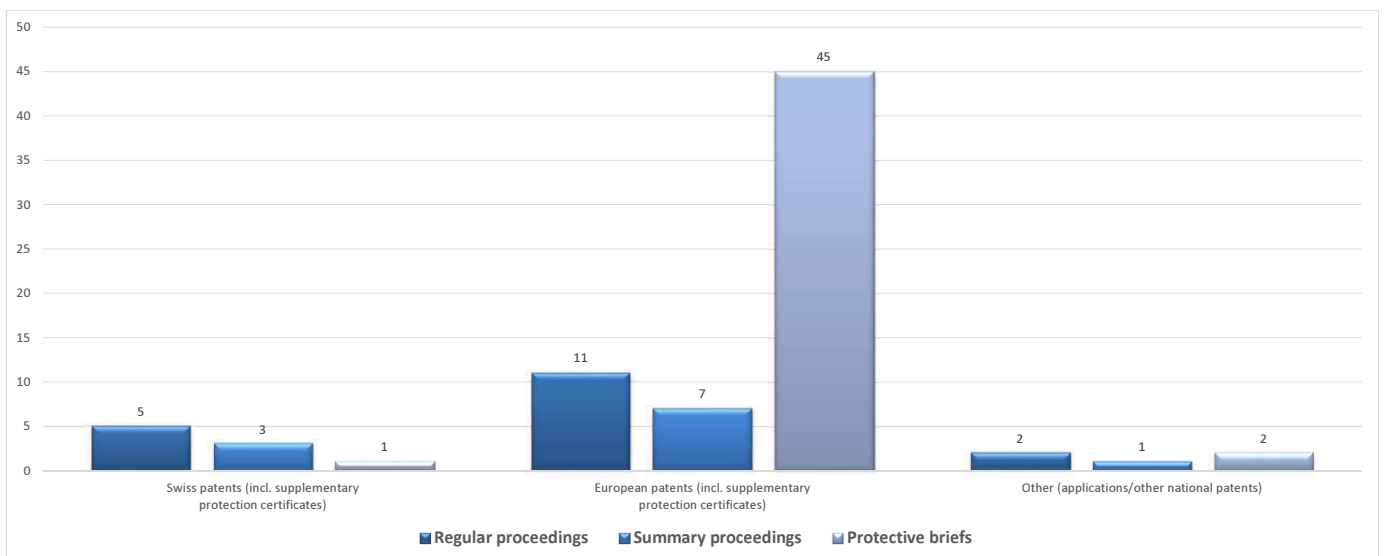
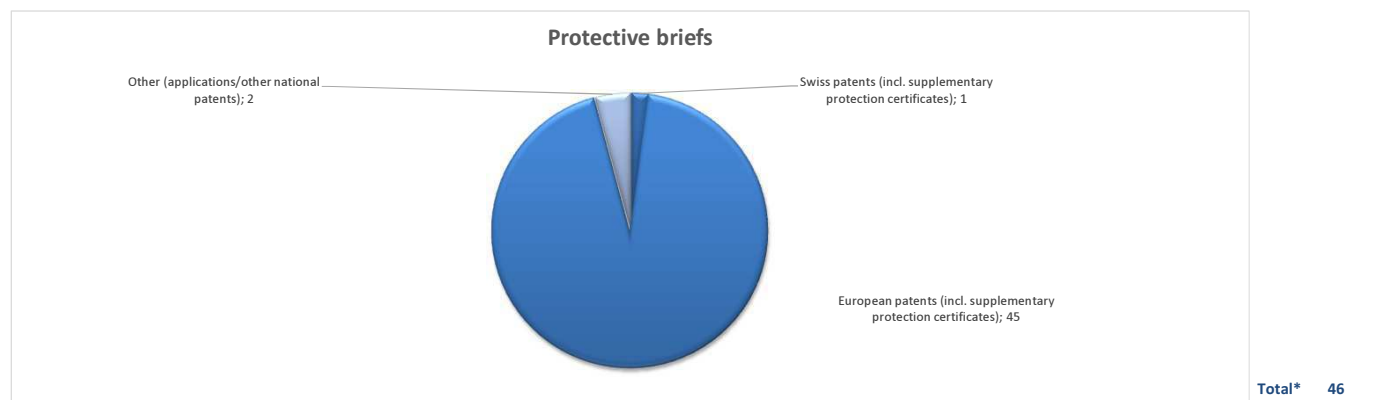
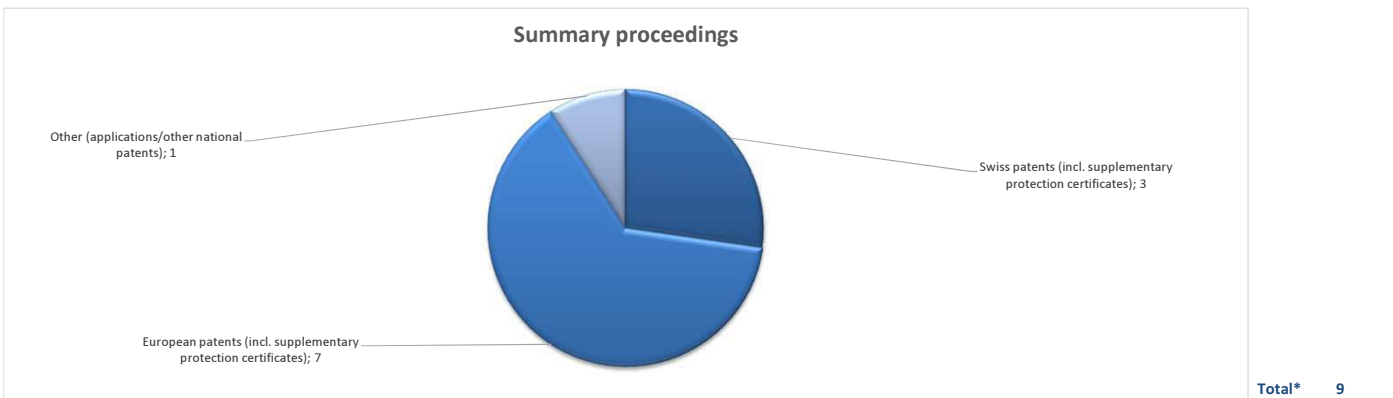
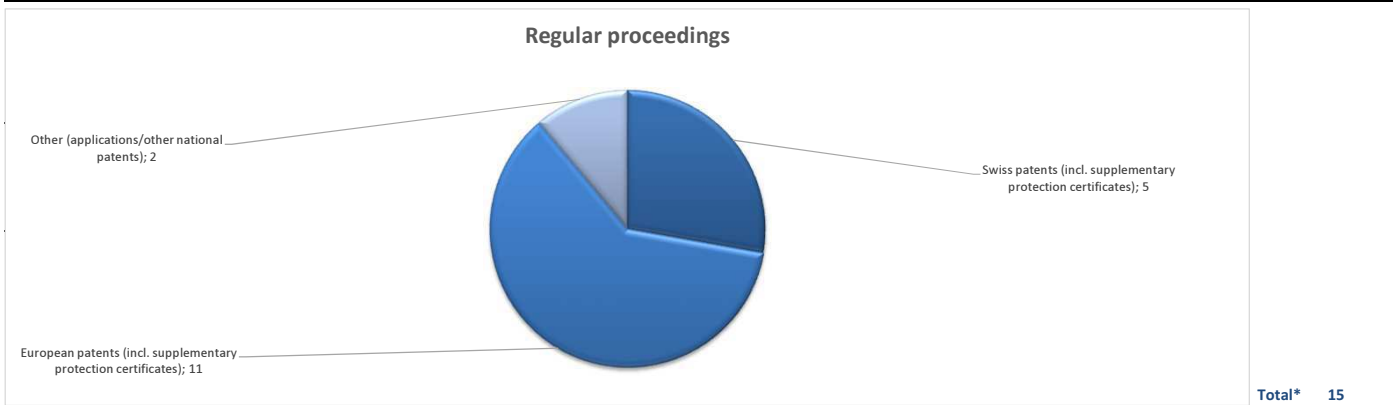
Cases by technical field



IPC = International Patent Classification

* some cases related to several technical fields simultaneously

Cases by intellectual property rights



* 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 2014	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 2014
Regular proceedings												
Infringement of patent without counter-claim of nullity of patent	2	0	5	4	2	13	1	1	3	5	4	14
Nullity of patent without counter-claim of infringement of patent	0	1	2	0	0	3	1	0	1	4	0	6
Infringement and nullity of patent	0	0	0	0	0	0	0	0	0	0	1	1
Right to a patent	0	1	1	0	0	2	0	1	2	1	0	4
Claim	0	0	0	1	0	1	0	1	0	0	0	1
Other	0	0	0	1	0	1	0	0	0	0	0	0
Total	2	2	8	6	2	20	2	3	6	10	5	26
Summary proceedings												
Injunction/safeguarding of interests	3	3	0	1	0	7	1	0	1	1	0	3
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	1	0	0	1	0	0	0	0	0	0
Description and evidence secured	0	0	1	0	0	1	0	0	0	0	0	0
Other	0	1	0	0	0	1	0	1	0	1	0	2
Total	3	4	2	1	0	10	1	1	1	2	0	5

Average duration of cases

	Cases settled			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	475	416	489	275	565	604
Nullity of patent without counter-claim of infringement of patent	0	216	216	0	376	376
Infringement and nullity of patent	0	0	0	1335	1014	2349
Right to a patent	0	206	206	0	334	334
Claim	0	597	597	0	167	167
Other	36	667	703	0	0	0
Total	329	387	436	480	488	580
Summary proceedings						
Injunction/safeguarding of interests	113		113	247		247
Description	0		0	0		0
Seizure	0		0	0		0
Evidence secured	340		340	0		0
Description and evidence secured	190		190	0		0
Other	107		107	272		272
Total	143		143	257		257

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	12	1	0	0	13	8		2	10
Nullity of patent without counter-claim of infringement of patent	3	0	0	0	3	4		0	4
Infringement and nullity of patent	0	0	0	0	0	0		0	0
Right to a patent	2	0	0	0	2	1		0	1
Claim	1	0	0	0	1	0		1	1
Other	1	0	0	0	1	0		1	1
Total	19	1	0	0	20	13		4	17
Summary proceedings									
Injunction/safeguarding of interests	5	2			7		2		2
Description	0	0			0		0		0
Seizure	0	0			0		0		0
Evidence secured	1	0			1		0		0
Description and evidence secured	0	1			1		0		0
Other	0	1			1		0		0
Total	6	4	0	0	10		2		2
Overall total	25	5	0	0	30	13	2	4	19

issued by

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

Phone 058 705 21 10
info@bpatger.ch
www.bpatger.ch

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