

Annual Report 2012

Federal Patent Court

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Annual Report of the Federal Patent Court 2012

St. Gallen, 24 January 2013

Madam 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 2012.

Please accept, Madam 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:

Jakob Zellweger

Foreword

The Federal Patent Court (FPC) began its activities on 1 January 2012. Taking over responsibility from the cantonal courts, the FPC is now the court of first instance for all civil law disputes on patents. It is exclusively responsible for patent infringement and patent validity cases. Other civil actions relating to patents may also be taken to the FPC. Examples include complaints regarding patent license agreements or rights to a patent.

On 1 January 2012, the cantonal courts transferred all pending patent proceedings for which the main hearings had not yet been conducted to the FPC.

The FPC acts as the lower court to the Federal Supreme Court (FSC). The FPC is under the administrative supervision of the FSC and under the ultimate supervision of the Federal Assembly.

The Federal Assembly appoints FPC judges for a term of office of six years. In addition to two permanent judges, the FPC employs 36 non-permanent judges, 25 of whom with technical and 11 of whom with legal training. All FPC judges have proven expertise in the field of patent law.

The FPC's Administrative Board of Judges is comprised of the President (Dieter Brändle), the second permanent judge (Tobias Bremi) and the Vice-President (Frank Schnyder).

Individual cases may be handled by panels of three, five or seven judges. Each panel is comprised of both legal and technical experts. The composition of panels is determined on the basis of technical criteria.

Preliminary measures are handled by the President in the capacity of judge sitting alone. If understanding of specific technical aspects is particularly important in order to reach a decision regarding preliminary measures, then the President must form a three-member panel comprised of at least one judge with technical training.

The FPC seeks to handle proceedings in an expeditious and cost-efficient manner. The expertise of its judges should enable most cases to be handled without having to ask external experts to conduct time-consuming and expensive assessments.

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

In its first year of activity, the FPC received a total of 43 regular proceedings and 11 summary proceedings, which matched expectations. However, there were more cases transferred from cantonal courts (32 regular proceedings and 5 summary proceedings) and fewer cases submitted directly to the FPC (11 regular proceedings and 6 summary proceedings) than expected.

Some of the cases transferred from the cantonal courts proved to be quite dated (the oldest three had been pending for over 9, 10 and 11 years respectively) and correspondingly substantial.

During the reporting year, the FPC handled 17 regular proceedings, 11 of which were settled by compromise. All 11 of the summary proceedings received were handled, 6 of which were settled by judgment and 5 by compromise.

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. The litigants also appreciate this, as can be seen in the relatively high percentage of cases settled by compromises.

During the reporting year, all 11 non-permanent judges with legal training sat on panels while only 18 of the 25 non-permanent judges with technical training were brought in. This was either due to linguistic considerations or the technical fields to which the cases pertained. It is worth mentioning that the costs for non-permanent judges are only incurred when they are actually assigned to a panel.

Languages

As has been the case for many years, the distribution of patent disputes in the three official languages of Switzerland were as follows: over 90% of the proceedings received during the reporting year were in German and just under 10% of the proceedings were in French. This was true for both regular proceedings and summary proceedings, (as well as for protective letters). Not a single proceeding was in Italian.

If they so wish, litigants in disputes submitted to the FPC may decide to use English in submissions and hearings instead of an official language of Switzerland. However, in such cases, the decision of the FPC will be rendered in an official language of Switzerland. The litigants made use of this option in one case. The FPC expects English to become much more prevalent over the next few years.

Premises

In autumn 2011, the FPC temporarily moved its offices to St. Leonhardstrasse 49 in St. Gallen. The initial agreement reached with the Federal Administrative Court (FAC) was for the FPC to move into the new FAC building in the autumn of 2012. The FAC later requested that the FPC remain in its current location, given the fact that the FAC will need more space in the future. The FPC first consulted the FSC and the Federal Office for Buildings and Logistics (FOBL) and then agreed to the FAC's request. Remaining in its current temporary location will have no impact on the FPC's current costs nor will it result in any changes in the services that the FAC will provide the FPC. The FPC furthermore considers that the current offices meet its needs perfectly and that the decision to remain is also in its own interests. However, FPC hearings will continue to take place in the FAC building as planned.

Finances

The profit and loss statement of the FPC shows a total expenditure of CHF 1,703,394 and total income of CHF 319,313, 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 PatA therefore stands at CHF 1,384,081. This figure is considerably lower than the previously estimated amount of around CHF 2.5 million. This more favourable outcome is due to the fact that the actual expenditure was roughly CHF 1.1 million less than anticipated. Indeed, due to a lack of historical figures, the budgeted cost estimate was far too high.

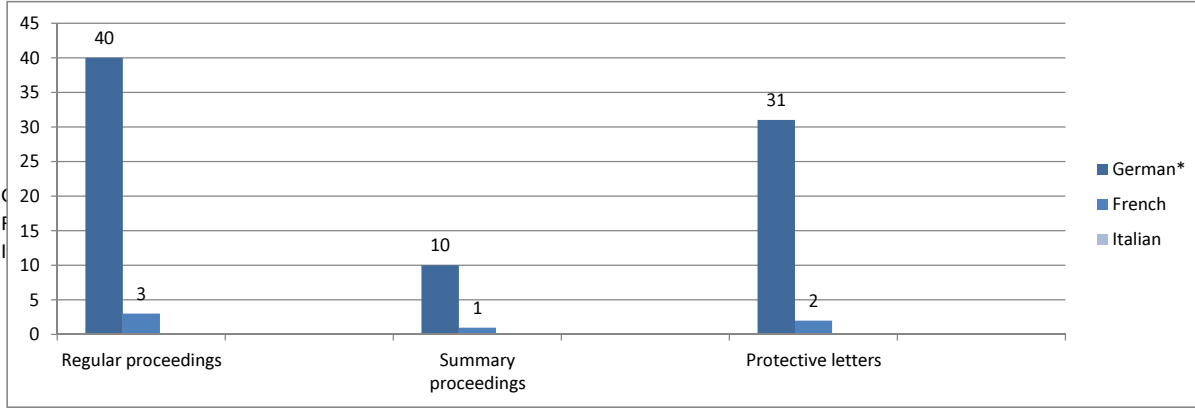
Cooperation

As a new court, the FPC greatly appreciates the support that it has received from its supervisory authority, the FSC. Cooperation with the FAC also went smoothly. Any difficulties encountered in the early stages were addressed and settled through collegial agreement. The annual meeting of the administrative commissions of the federal courts of first instance enabled all pending issues to be addressed in an informal and relevant fashion.

Number and type of case

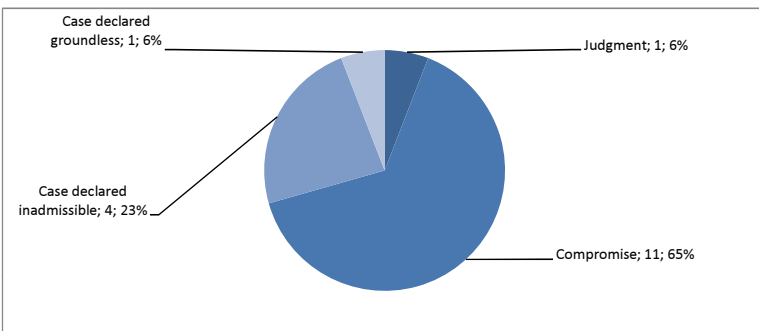
| | Action taken | | | | Outcome of proceedings | | | |
|---|--|--|----------------------|---------------------------|--------------------------|----------------------------|----------------------------|--------------------------|
| | Case transferred to FPC from cantonal courts in 2012 | Case submitted directly to FPC in 2012 | Case settled in 2012 | Case carried over to 2013 | 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 | 11 | 7 | 6 | 12 | - | 4 | 2 | - |
| Nullity of patent without counter-claim of infringement of patent | 12 | 1 | 6 | 7 | - | 5 | - | 1 |
| Infringement and nullity of patent | 2 | 1 | 1 | 2 | - | 1 | - | - |
| Right to a patent | 4 | 0 | 3 | 1 | 1 | 1 | 1 | - |
| Claim | 1 | 2 | 0 | 3 | - | - | - | - |
| Other | 2 | 0 | 1 | 1 | - | - | 1 | - |
| Total | 32 | 11 | 17 | 26 | 1 | 11 | 4 | 1 |
| Summary proceedings | | | | | | | | |
| Injunction/safeguarding of interests | 4 | 4 | 8 | 0 | 3 | 5 | - | - |
| Description | 1 | 1 | 2 | 0 | 2 | - | - | - |
| Seizure | 0 | 0 | 0 | 0 | - | - | - | - |
| Evidence secured | 0 | 1 | 1 | 0 | 1 | - | - | - |
| Other | 0 | 0 | 0 | 0 | - | - | - | - |
| Total | 5 | 6 | 11 | 0 | 6 | 5 | 0 | 0 |
| Protective letters | | | | | | | | |
| Swiss patents (incl. supplementary protection certificates) | 0 | 3 | 2 | 1 | | | | |
| European patents (incl. supplementary protection certificates) | 2 | 28 | 14 | 16 | | | | |
| Total | 2 | 31 | 16 | 17 | | | | |

Cases by language of proceedings in 2012



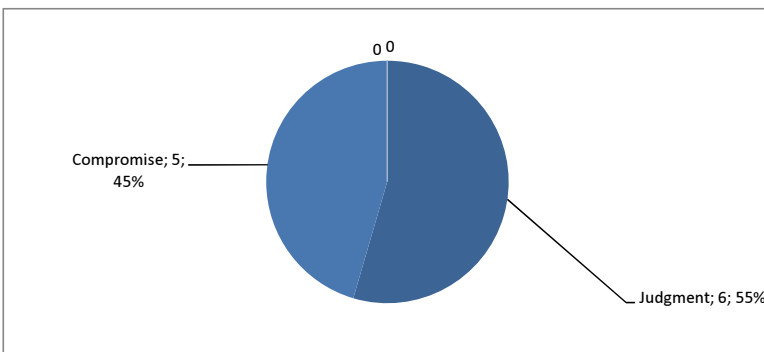
*including 1 case where English was used during proceedings

Approach used to settle cases in 2012 (regular proceedings)



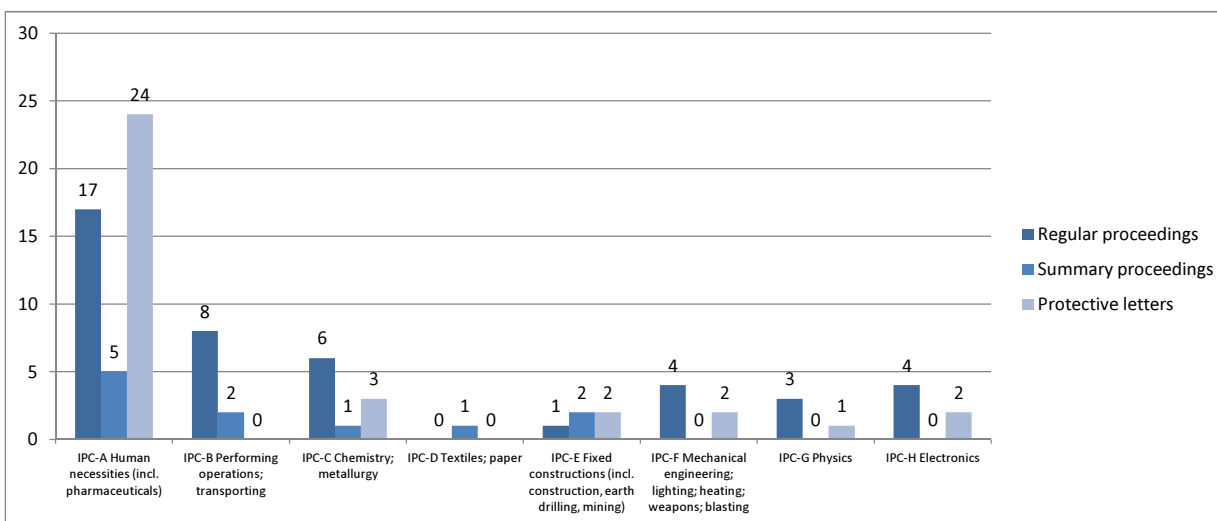
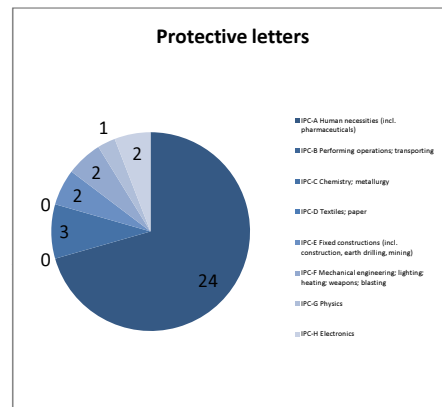
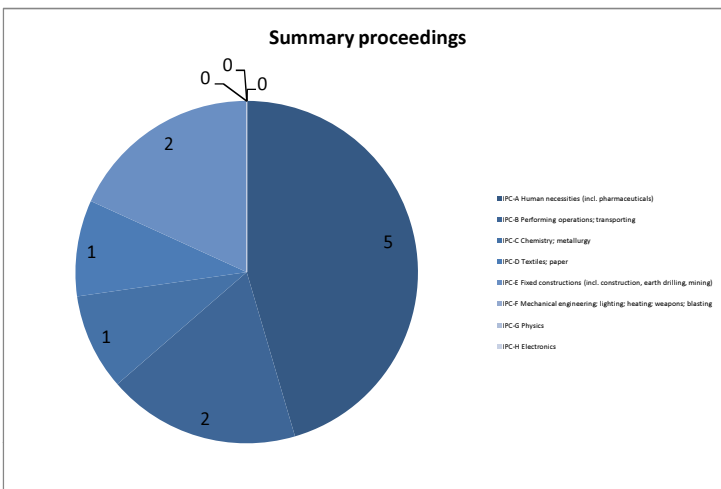
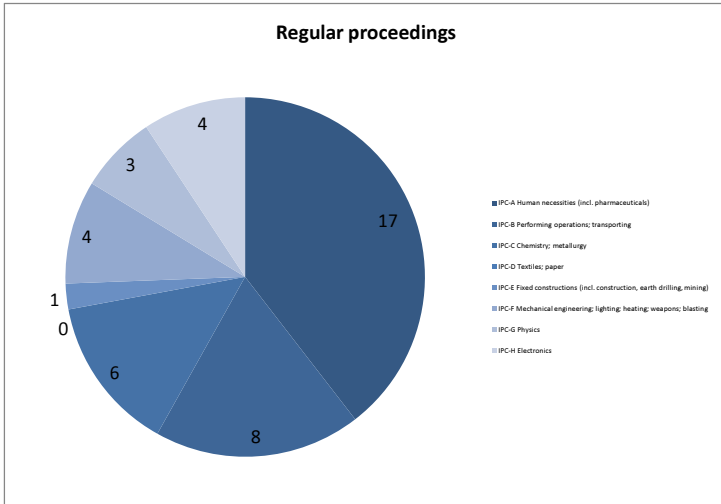
Total 17 100%

Approach used to settle cases in 2012 (summary proceedings)



Total 11 100%

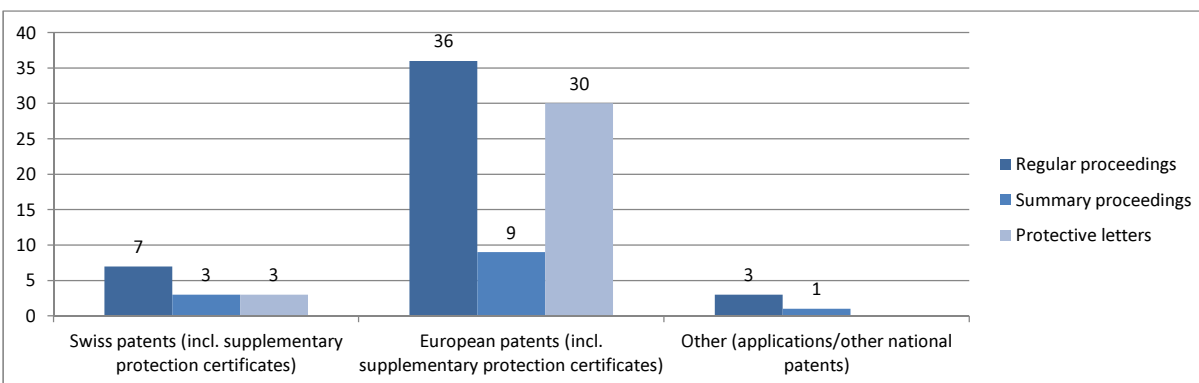
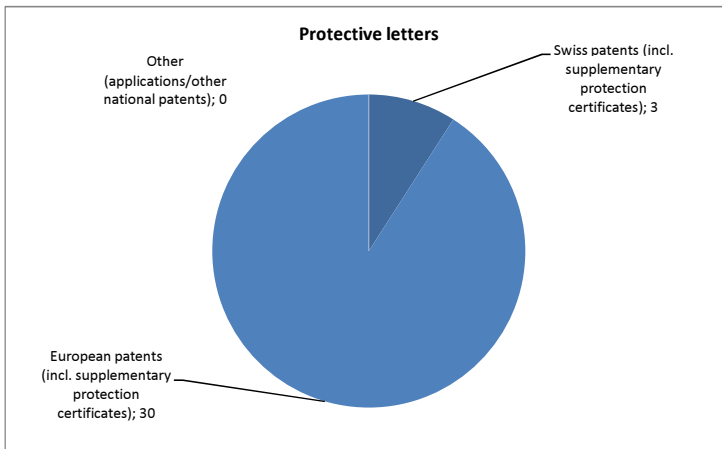
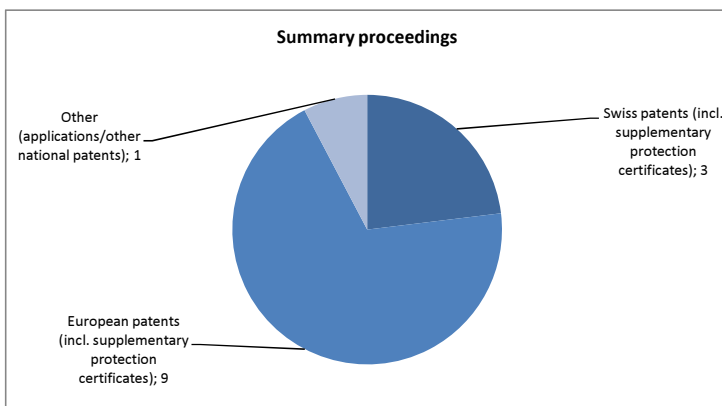
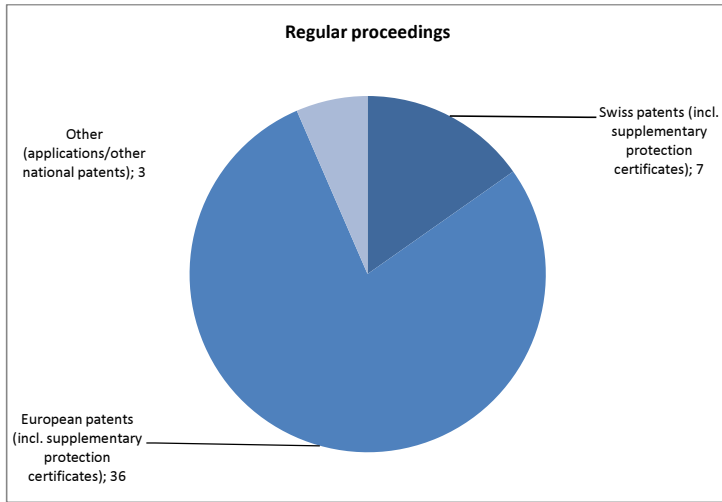
Cases by technical field



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 patent

Duration of cases

| | Cases settled | | | | | Total cases settled in 2012 | Cases still pending | | | | | Total cases still pending at the end of 2012 |
|---|---------------|---------------|----------------|--------------|--------------|-----------------------------|---------------------|---------------|----------------|--------------|--------------|--|
| | 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 | - | 2 | 2 | - | 2 | 6 | 1 | 5 | - | 4 | 2 | 12 |
| Nullity of patent without counter-claim of infringement of patent | - | - | - | 4 | 2 | 6 | - | - | 1 | - | 6 | 7 |
| Infringement and nullity of patent | - | - | - | - | 1 | 1 | - | - | 1 | - | 1 | 2 |
| Right to a patent | - | - | - | - | 3 | 3 | - | - | - | - | 1 | 1 |
| Claim | - | - | - | - | - | 0 | - | - | 2 | - | 1 | 3 |
| Other | - | - | - | - | 1 | 1 | - | - | 1 | - | - | 1 |
| Total | 0 | 2 | 2 | 4 | 9 | 17 | 1 | 5 | 5 | 4 | 11 | 26 |
| Summary proceedings | | | | | | | | | | | | |
| Injunction/safeguarding of interests | 2 | 3 | 2 | 1 | - | 8 | - | - | - | - | - | 0 |
| Description | - | 1 | 1 | - | - | 2 | - | - | - | - | - | 0 |
| Seizure | - | - | - | - | - | 0 | - | - | - | - | - | 0 |
| Evidence secured | 1 | - | - | - | - | 1 | - | - | - | - | - | 0 |
| Other | - | - | - | - | - | 0 | - | - | - | - | - | 0 |
| Total | 3 | 4 | 3 | 1 | 0 | 11 | 0 | 0 | 0 | 0 | 0 | 0 |

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 | 280 | 181 | 415 | 821 | 228 | 639 |
| Nullity of patent without counter-claim of infringement of patent | 546 | 224 | 770 | 879 | 312 | 1065 |
| Infringement and nullity of patent | 652 | 279 | 931 | 1335 | 316 | 983 |
| Right to a patent | 1195 | 184 | 1380 | 1022 | 396 | 1418 |
| Claim | - | - | - | 3937 | 236 | 1548 |
| Other | 3792 | 4 | 3796 | 36 | 268 | 304 |
| Average | 794 | 192 | 940 | 1033 | 266.3 | 902 |
| Summary proceedings | | | | | | |
| Injunction/safeguarding of interests | 210 | 105 | 210 | - | - | - |
| Description | 198 | 104 | 203 | - | - | - |
| Seizure | - | - | - | - | - | - |
| Evidence secured | - | 24 | 24 | - | - | - |
| Other | - | - | - | - | - | - |
| Average | 208 | 98 | 192 | 0 | 0 | 0 |

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

| | Single judge | Three-member panel | Five-member panel | Seven-member panel | Total | Instruction hearings | Main hearings | Hearings in relation to preliminary measures |
|---|--------------|--------------------|-------------------|--------------------|-----------|----------------------|---------------|--|
| Regular proceedings | | | | | | | | |
| Infringement of patent without counter-claim of nullity of patent | 4 | 1 | 1 | - | 6 | 3 | 1 | |
| Nullity of patent without counter-claim of infringement of patent | 6 | - | - | - | 6 | 1 | - | |
| Infringement and nullity of patent | 1 | - | - | - | 1 | - | - | |
| Right to a patent | 2 | - | 1 | - | 3 | - | - | |
| Claim | - | - | - | - | 0 | - | - | |
| Other | 1 | - | - | - | 1 | - | - | |
| Total | 14 | 1 | 2 | 0 | 17 | 4 | 1 | |
| Summary proceedings | | | | | | | | |
| Injunction/safeguarding of interests | 2 | 6 | - | - | 8 | | | 3 |
| Description | - | 2 | - | - | 2 | | | - |
| Seizure | - | - | - | - | 0 | | | - |
| Evidence secured | 1 | - | - | - | 1 | | | - |
| Other | - | - | - | - | 0 | | | - |
| Total | 3 | 8 | 0 | 0 | 11 | | | 3 |
| Overall total | 17 | 9 | 2 | 0 | 28 | 4 | 1 | 3 |