

Annual Report 2015

Federal Patent Court

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Annual Report of the Federal Patent Court 2015

St. Gallen, 10 February 2016

Mrs 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 2015.

Please accept, Mrs 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).

The internal processes of the Federal Patent Court are meanwhile well established and the court is functioning smoothly.

The Federal Patent Court's efforts to settle proceedings in an expeditious and cost-effective manner will continue. The technical expertise of its judges enabled most cases to be handled without having to ask external experts to conduct 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 impressively 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 Rufenacht
Christophe Saam
Frank Schnyder
Andreas Schöllhorn Savary
Martin Sperrle
Hannes Spillmann
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

Having reached the retirement age, Judge Erich Wäckerlin stepped down at the end of the reporting year. To replace him and address the problem of the shortage of judges with expertise in chemistry at the Federal Patent Court, the United Federal Assembly elected chemists Andreas Schöllhorn Savary, Martin Sperrle and Hannes Spillmann as judges.

Caseload

By the end of 2015, there were 26 regular and five summary proceedings pending at the Federal Patent Court.

The number of incoming regular proceedings increased with respect to the previous year, from 15 regular proceedings in the previous year to 19 in the reporting year. In contrast, the number of summary proceedings decreased from nine to four.

During the reporting year, the Federal Patent Court handled 19 regular proceedings (20 in the previous year), of which 16 were settled by compromise (17 in the previous year). This corresponds to an 84% 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 instruction 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 resulting ratio of cases settled by compromise over the past three years has remained stable at a level considerably above 80%. This is fairly remarkable considering that similar patent courts in Germany, France, the Netherlands 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.

Even in relation to the planned Unified Patent Court, this should be significant.

A total of nine summary proceedings (10 in the previous year) were settled during the reporting year, two of which (5 in the previous year) were settled either by compromise or declared groundless. Thus, no cases relating to preliminary measures were pending at the end of the reporting year. As desired, they have been dealt with very speedily; four in less than three months, two in four to six months, two in 12 to 14 months (each settled by way of a vote from judges with technical training), one case was settled in 17 months (after a recusal decision and referral of the case to the Federal Supreme Court).

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. The insufficient number of chemists on judicial panels was addressed by increasing the number of judges specialised in this field from seven to nine.

Languages

During the reporting year, 16 of the regular proceedings submitted to the Federal Patent Court were handled in German compared to three cases in French. With summary proceedings, German was used in all four cases. In three regular proceedings, litigants mutually agreed 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 three in French and seven in English. Not a single protective brief was drafted in Italian.

Premises

As reported in the previous year, the Federal Patent Court decided to heed the recommendation made by the Council of States Finance Committee, to definitively remain at St. Leonhardstrasse 49 in St. Gallen. Likewise, Federal Patent Court hearings will continue to take place in the Federal Administrative Court building.

This was deemed to be the most suitable and financially optimal solution for everyone concerned. Nevertheless, a currently unresolved issue is the lack of interpreter booths at the Federal Administrative Court. As a result, temporary *ad hoc* solutions need to be found each time interpreters are needed to facilitate communication between international litigants. This happens more regularly at the Federal Patent Court than at the Federal Administrative Court. The two institutions are currently working on ways to address this issue.

Finances

The profit and loss statement of the Federal Patent Court shows a total expenditure of CHF 1,570,963 and total income of CHF 809,441 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 761,522. This figure is practically identical to the previous reporting year. Once again, income from court fees covered over half of the expenditure of the Federal Patent Court (51.52%). This was a surprising outcome since the previous year had been characterised by one very large court case, which had generated CHF 280,000 in court fees. The reporting year, in contrast, was characterised mainly by cases with more normal values in dispute. The average value in dispute at the Federal Patent Court was nevertheless high enough that average court fees amounted to about CHF 30,000 per case.

Foreign visitors

The Federal Patent Court still draws considerable interest from abroad, particularly from countries with a large number of patents. During the reporting year, the Swiss Federal Patent Court received delegations from Germany (President of the Federal Patent Court of Germany and 1st Board), Japan and Korea as well as a parliamentary delegation from Indonesia.

Cooperation

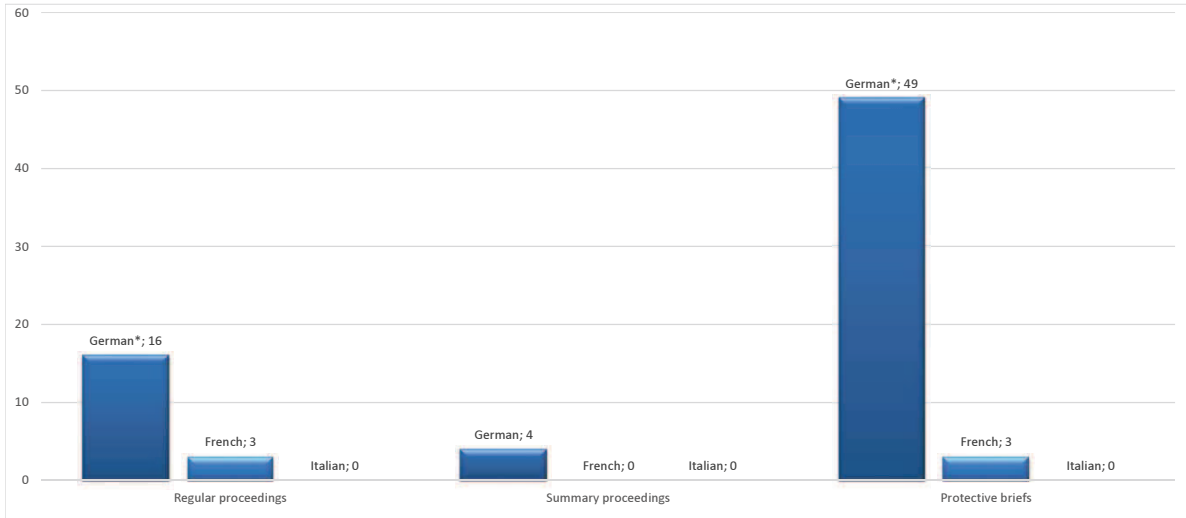
The Federal Patent Court greatly appreciated the support that it received in supervisory meetings with the Federal Supreme Court in Lucerne on 2 March and in St. Gallen on 31 October. Cooperation with the Federal Administrative Court also went smoothly. The annual meeting between the Administrative Board of Judges of the Federal Patent Court and the administrative commissions of the Federal Criminal Court and the Federal Administrative Court 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 01.01.2015	Cases submitted to FPC in 2015	Cases settled	Cases still pending on 31.12.2015	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	13	7	9	11	1	8	0	0
Nullity of patent without counter-claim of infringement of patent	6	6	5	7	0	4	0	1
Infringement and nullity of patent	2	1	1	2	0	1	0	0
Right to a patent	4	3	3	4	0	2	1	0
Claim	1	1	1	1	0	1	0	0
Other	0	1	0	1	0	0	0	0
Total	26	19	19	26	1	16	1	1
Summary proceedings								
Injunction/safeguarding of interests	3	3	6	0	5	1	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	2	1	3	0	2	1	0	0
Total	5	4	9	0	7	2	0	0
Protective briefs								
	Transfer from 2014	Received in 2015	Period of protection expired	Relevant up to 2016				
Swiss patents (incl. supplementary protection certificates)	0	12	3	9				
European patents (incl. supplementary protection certificates)	19	42	37	24				
Total*	19	52	39	32				

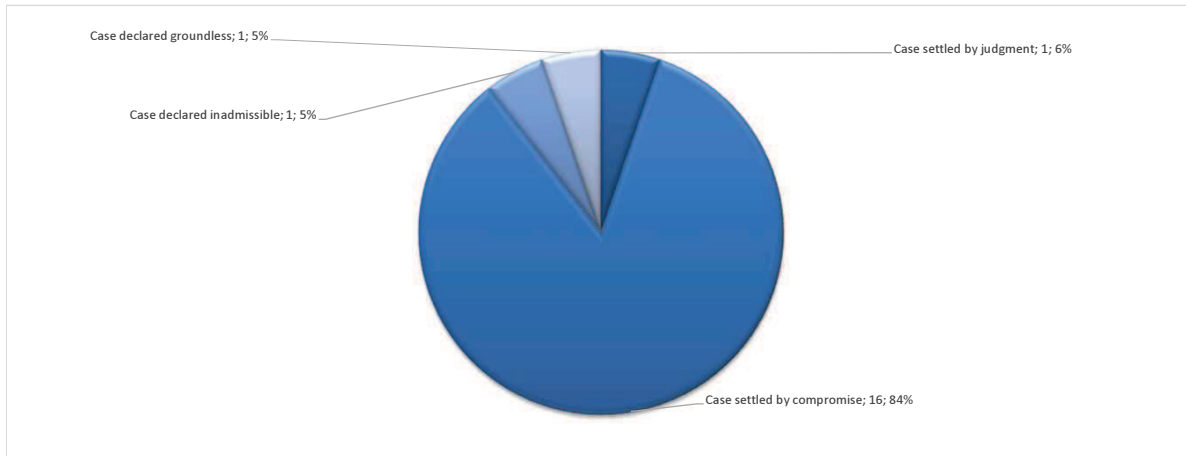
* in some cases, European and Swiss patents in same protective brief

Cases by language of proceedings in 2015



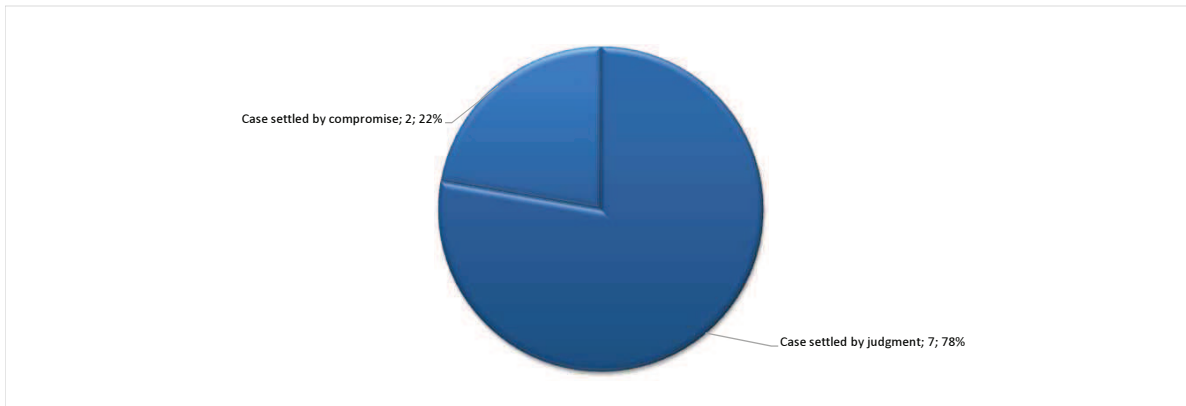
*including 10 cases where English was used during proceedings (3 regular proceedings, 7 protective briefs)

Approach used to settle cases in 2015 (regular proceedings)



Total 19 100%

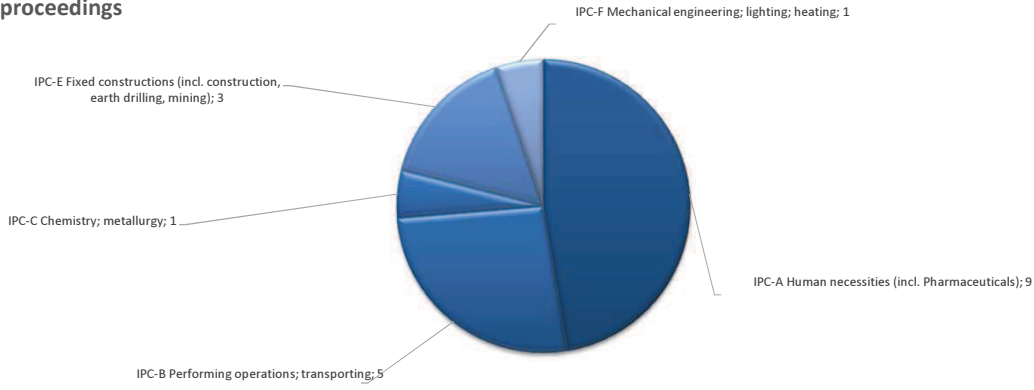
Approach used to settle cases in 2015 (summary proceedings)



Total 9 100%

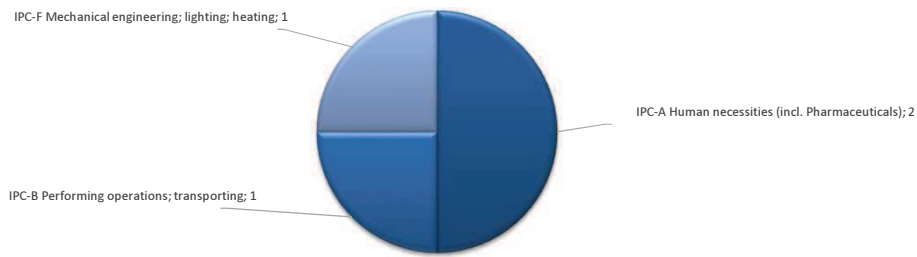
Cases by technical field

Regular proceedings



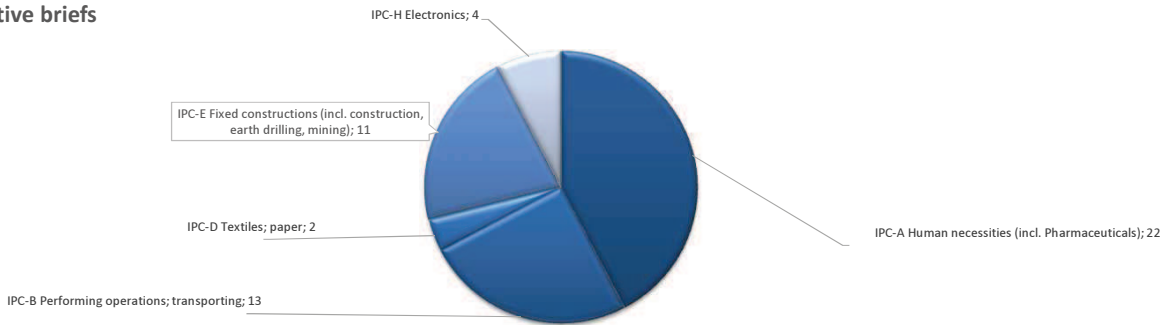
Total* 19

Summary proceedings

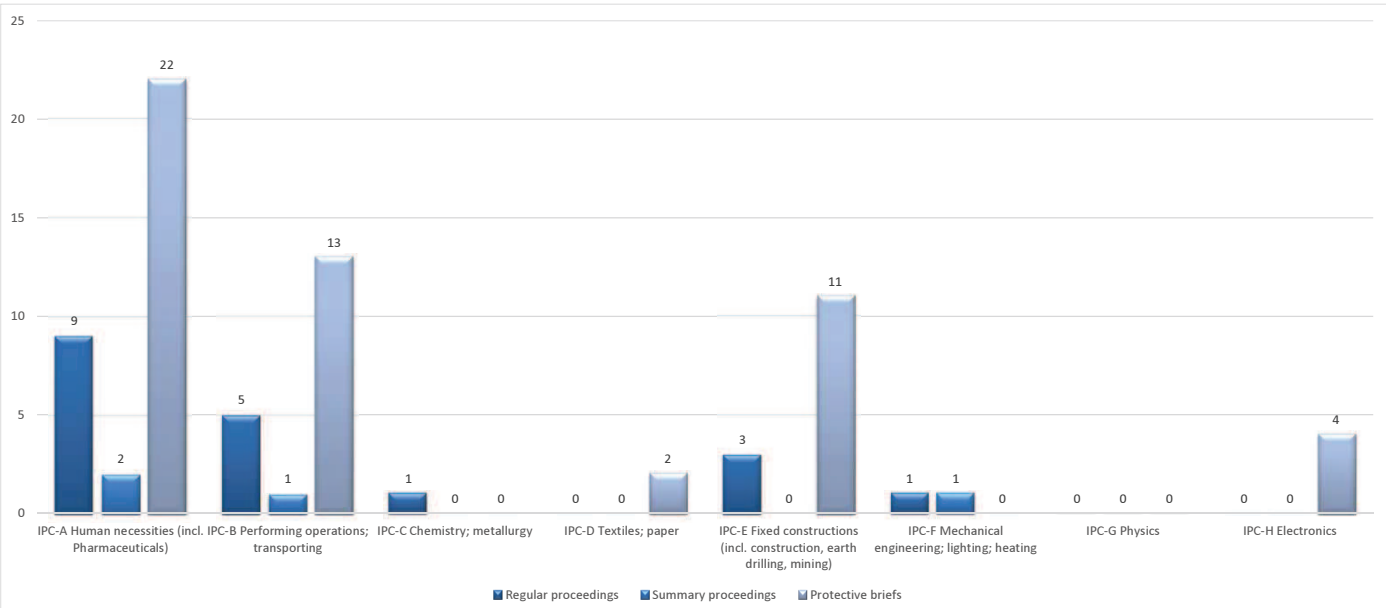


Total* 4

Protective briefs

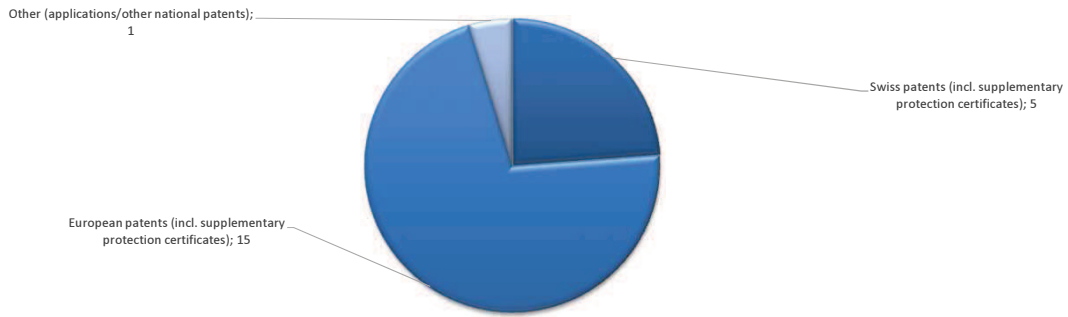


Total* 52



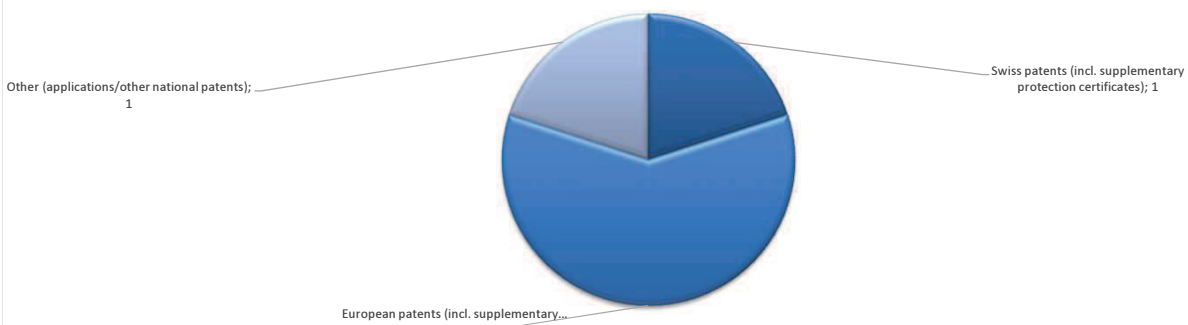
Cases by intellectual property rights

Regular proceedings



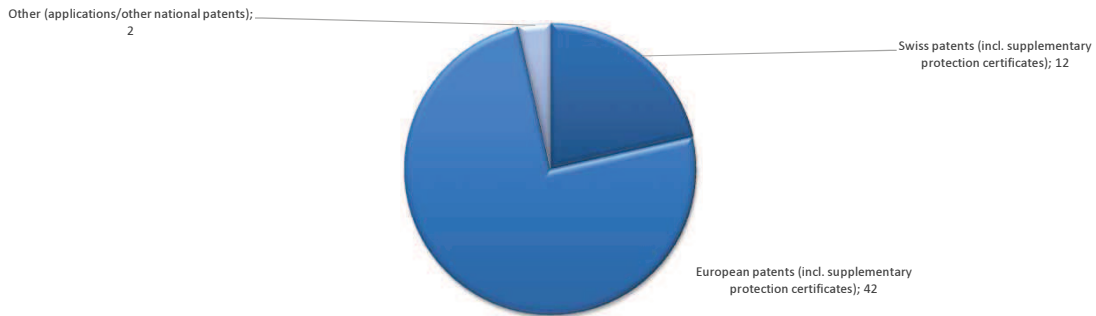
Total* 19

Summary proceedings

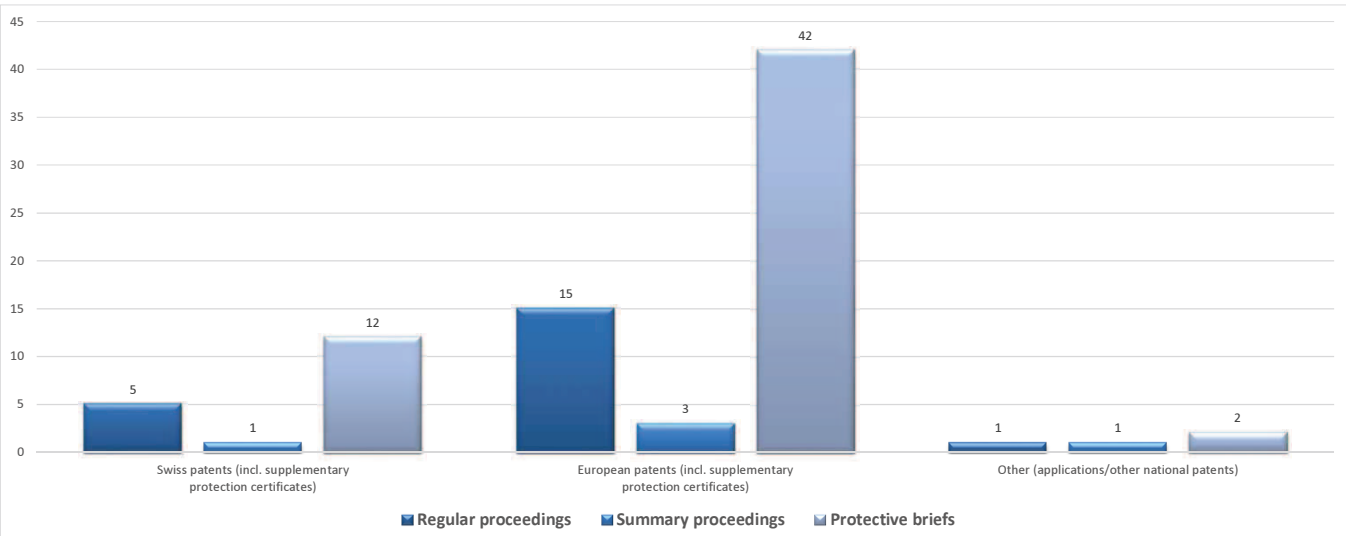


Total* 4

Protective briefs



Total* 52



* 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 2015	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 2015
Regular proceedings												
Infringement of patent without counter-claim of nullity of patent	0	0	2	2	5	9	4	1	2	2	2	11
Nullity of patent without counter-claim of infringement of patent	0	0	1	3	1	5	2	3	1	0	1	7
Infringement and nullity of patent	0	0	0	1	0	1	0	0	1	0	1	2
Right to a patent	1	0	1	0	1	3	0	0	3	1	0	4
Claim	0	1	0	0	0	1	0	0	1	0	0	1
Other	0	0	0	0	0	0	0	0	1	0	0	1
Total	1	1	4	6	7	19	6	4	9	3	4	26
Summary proceedings												
Injunction/safeguarding of interests	3	1	1	1	0	6	0	0	0	0	0	0
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	1	1	0	1	0	3	0	0	0	0	0	0
Total	4	2	1	2	0	9	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	302	687	706	248	404	425
Nullity of patent without counter-claim of infringement of patent		558	558	0	215	215
Infringement and nullity of patent		577	577	1335	803	1469
Right to a patent		398	398	0	284	284
Claim		174	174	0	301	301
Other		0	0	0	310	310
Total	302	575	560	480	358	418
Summary proceedings						
Injunction/safeguarding of interests	-	174	174	-	0	0
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	-	240	240	-	0	0
Total	-	196	196	-	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	Hearings in relation to preliminary measures	Main hearings	Total hearings
Regular proceedings									
Infringement of patent without counter-claim of nullity of patent	8	1	0	0	9	3		4	7
Nullity of patent without counter-claim of infringement of patent	4	1	0	0	5	2		1	3
Infringement and nullity of patent	1	0	0	0	1	1		0	1
Right to a patent	2	1	0	0	3	1		0	1
Claim	1	0	0	0	1	1		0	1
Other	0	0	0	0	0	1		0	1
Total	16	3	0	0	19	9		5	14
Summary proceedings									
Injunction/safeguarding of interests	2	4	-	-	6		0		0
Description	0	0	-	-	0		0		0
Seizure	0	0	-	-	0		0		0
Evidence secured	0	0	-	-	0		0		0
Description and evidence secured	0	0	-	-	0		0		0
Other	3	0	-	-	3		0		0
Total	5	4	-	-	9		0		0
Overall total	21	7	0	0	28	9	0	5	14