

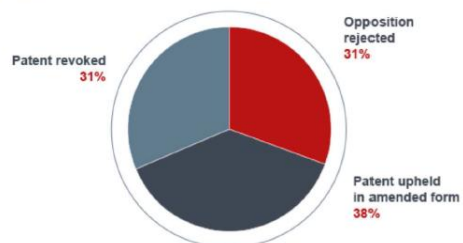


EPO Statistics (1)

EPO Homepage: Outcome of Opposition Proceedings (only 1st instance decisions)

Year	Number of Decisions	Opposition Rate
2013	2.176	4,5 %
2014	2.143 (- 1,5 %)	4,7 %

Outcome of decision



Source: Annual Report 2014 of the EPO
 (Statistics of the outcome of 2nd instance decisions are not available)

EPO Statistics (2)

EPO Opposition Proceedings :

Overall Situation in 2014	New Cases	Cases settled			
		Total	(partly) successful	dismissed	Other settlements
Legal Board of Appeal	22	22	3	8	11
Technical Boards of Appeal	2.354	2.300	760	628	912
- Granting proceedings (one-sided)	996	1.110	269	309	532
- Opposition proceedings	1.358	1.190	491	319	380
Enlarged Board of Appeal	21	21			
- Referrals	3	4			
- Petitions for review	18	17	0	14	3
Disciplinary Board of Appeal	13	17	5	6	6
Total	2.410	2.360			

Source: Annual Report 2014 of the EPO

EPO Statistics (3)

Technical Appeals

Year	Technical cases received	Technical cases settled
2013	2.515	2.137
2014	2.354 (- 6,4 %)	2.300 (+ 7,6 %)

Source: Annual Report 2014 of the EPO

EPO Statistics (4)

Overall Statistics - Appeals Proceedings 2012-14

Year	Number of decisions in Appeals Proceedings	Number of results	
		Opposition decision is set aside	Opposition decision is set aside and patent is revoked
2012	723	424 (59 %)	187 (26 %)
2013	722	391 (54 %)	176 (24 %)
2014	895	481 (54 %)	175 (20 %)

Source: M. Nollen, *Revocations by the Boards of Appeal – statistics and analysis*, epi Information 1/15, pp. 17-22, table 1

EPO Statistics (5)

Duration of cases resulting in revocation of the patent in the appeals proceedings in 2014

Year of filing of the appeal	Number of cases	Number of cases in %
2008 or earlier	12	7 %
2009	21	12 %
2010	65	37 %
2011	43	25 %
2012	29	16 %
2013	5	3 %

Source: M. Nollen, *Revocations by the Boards of Appeal – statistics and analysis*, epi Information 1/15, pp. 17-22, Table 2

EPO Statistics (6)

Effect of non-admission of requests in appeals proceedings in 2014 resulting in the revocation of the patent

Number of remaining alternative requests after non-admittance	Number of cases	Number of cases in %	Number of cases without late filing	Number of cases with late filing
No main request	3	2 %	0	3
0 alternative requests	45	28 %	21	24
1 alternative request	34	20 %	20	14
2 alternative requests	17	10 %	12	5
3 alternative requests	20	12 %	11	9
4 or more alternative requests	45	28 %	34	11

statistics and analysis, epi Information 1/15, pp. 17-22, Table 7

EPO Statistics (7)

Grounds for revocation in appeals proceedings in 2014

	Total	Mechanics	Chemistry	Physics + Electricity
Added Matter	38 (19 %)	20 (25 %)	17 (17 %)	1 (4 %)
Extension of scope	3 (1 %)	0	3 (3 %)	0
Prohibition of reformatio in peius	7 (3 %)	4 (5 %)	3 (3 %)	0
Clarity	9 (4 %)	2 (3 %)	6 (6 %)	1 (4 %)
Sufficiency	14 (7 %)	3 (4 %)	10 (10 %)	1 (4 %)
Novelty	26 (13 %)	13 (16 %)	9 (9 %)	4 (18 %)
Inventive activity	105 (52 %)	37 (47 %)	52 (51 %)	16 (70 %)
Industrial application	1 (1 %)	0	1 (1 %)	0
TOTAL	203	79	101	23

Source: M. Nollen, *Revocations by the Boards of Appeal – statistics and analysis*, epi Information 1/15, pp. 17-22, Table 8

TBoA 3.2.08 (Mechanics), last 20 decisions until 30.06.2015

	1 st Instance		2 nd Instance
3 Upheld as granted	3 Upheld as granted	1 Upheld as granted	1 Upheld as granted
		2 Upheld limited	2 Upheld limited
9 Upheld limited	9 Upheld limited	12 Remitted to 1 st instance	12 Remitted to 1 st instance
8 Revocations	8 Revocations	5 Revocations	5 Revocations

TBoA 3.2.02 (Pharma), last 20 decisions until 30.06.2015

	1 st Instance		2 nd Instance
1 Upheld as granted	1 Upheld as granted	1 Upheld as granted	1 Upheld as granted
8 Upheld limited	8 Upheld limited	1 Upheld limited	1 Upheld limited
		3 Remitted to 1 st instance	3 Remitted to 1 st instance
		15 Revocations	15 Revocations
11 Revocations	11 Revocations		

Responsibility

Responsibility for incorrect patent granting	EPO	Applicant
Missing technical character	+	+
Medical treatment	+	+
Insufficiency - clarity	+	+
Insufficiency - enablement	0	+
Added matter - new features introduced	+	+
Added matter - Intermediate generalisation	+	+
Extension of scope of protection	+	+
Missing novelty or missing inventive step in view of newly cited patent literature	(+)	-
Missing novelty or missing inventive step in view of prior use or non-patent disclosure	-	-

Result

- Statistics are important to assess the impact of procedural questions on legal decisions
- Statistical data are difficult to obtain
- Official data may not always be reliable
- The differentiation of the outcome of opposition or nullity proceedings in only three categories (maintained, limited, revoked) is unsatisfactory
- Statistical data can make it obvious whether there is a connection between the workload of a legal body and its tendency to issue decisions based on formal matters.

Proposal (Final Version after Discussion in the WG)

A group of EPLIT members will analyse all BoA and later all UPC decisions according to a predetermined scheme.

When there is a sufficient number of participants, the workload for the single member should be acceptable.

The decisions should be distributed among the participating members in accordance with the technical field of the respective patent. Therefore, it can be guaranteed that decisions e.g. in the field of chemistry are analysed by chemists etc.

Political Use of Statistics (1):

Statistics of the efficiency of the BoA, published in CA/16/15, a proposal by the EPO to „increase the autonomy and the efficiency” of the BoA:

Year	New cases	Settled cases	Withdrawals (amongst settled cases)	Settled cases without withdrawals	Difference new/settled cases	Difference new/settled cases without withdrawals
2009	2 484	1 918	453	1 465	566	1 019
2010	2 545	1 962	502	1 460	583	1 085
2011	2 657	1 875	548	1 327	782	1 330
2012	2 602	2 029	593	1 436	573	1 166
2013	2 515	2 137	681	1 456	378	1 059
2014	2 354	2 300	800	1 500	54	854

Those figures were inter alia compared to the figures of the German Federal Patent Court (GFPC) resulting in the finding that the average proceedings before the TBoA was 34.3 months, whereas the average duration in nullity cases before the GFPC was only 23.56 months.

Political Use of Statistics (2):

A comment on these results can be found in EPLIT's position paper on CA/16/15 dated June 30, 2015, point 9. The figures do not take into account that:

- according to Rule 84 (2) EPC opposition proceedings can be continued if the opposition is withdrawn. If, e. g., the patent was revoked in the 1st instance, they have to be continued.
- in nullity cases before the GFPC, the cases are terminated by law as soon as the notice of withdrawal is received by the court. In 2012 (newer figures are not known), in the GFPC 252 nullity cases were settled, 112 of which (44 %) by withdrawal.
- in the EPO in 2013, 2,137 cases (including 681 withdrawals, i. e. 32 %) were settled by 28 TBoA; these are 76 cases per Board. In the GFPC, 7 nullity senates settled 262 cases (including withdrawals); these are 37 cases per senate.
- the overall number of 2,320 cases reported in Annex 2 for the GFPC in 2013 includes 1,188 cases handled by the trade mark senates and only 483 cases handled by the patent senates, which are comparable to the TBoA cases. The average duration of the patent cases at the GFPC in 2013 was 51.7 months which is considerable more than the 34.3 months which the TBoA needed.
- the TBoA handle complex opposition cases, e. g. in the field of pharmaceutical or biochemical inventions, with sometimes ten or more opponents. Those cases are rare at the GFPC, since applicants in these fields usually seek overall protection in Europe and not at national patent offices.

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PATENT- UND RECHTSANWÄLTE

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