



The UP & UPC at Two

What we've learned so far

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Michael is a Patent Attorney (EPO & UK) and registered UPC representative, working primarily in the technical fields of computer-implemented inventions & physics.

In over a decade working as a patent attorney, he has handled hundreds of European patent applications as well as European Patent Office oppositions and appeals, infringement and validity opinions, and IP due diligence assignments. He was part of the team that filed the first infringement action at the UPC's Copenhagen LD and regularly advises clients on the new court.

Michael is a member of epi's Litigation Committee and its UPC subcommittee.

Statistics

Key figures

320

Infringement
actions

174

Counterclaims
for revocation

88

Applications for
provisional
measures

65

Revocation
actions

~14 months

for a decision
(infringement)

~3 months

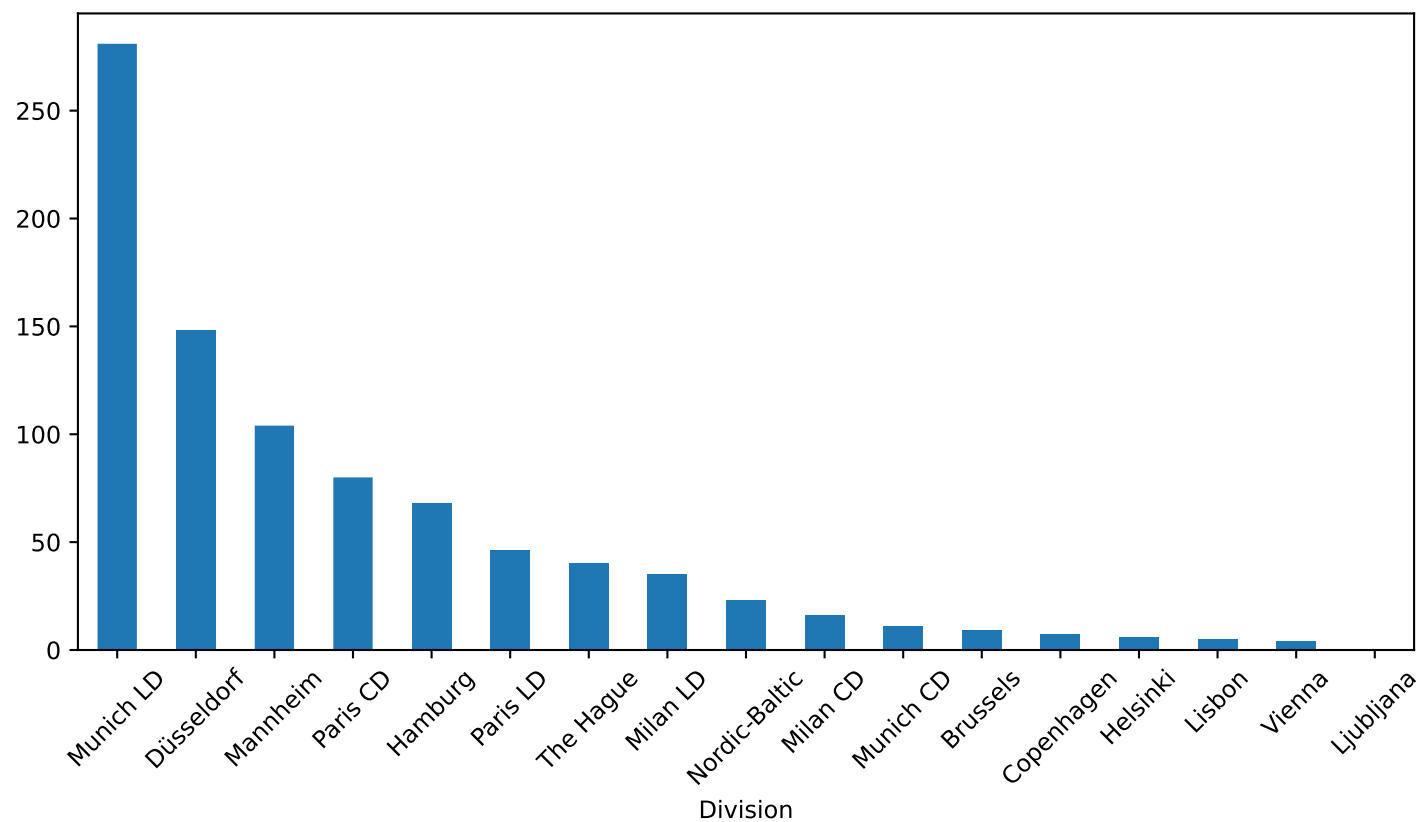
for a decision
(provisional measures)

~14.5 months

for a decision
(revocation)

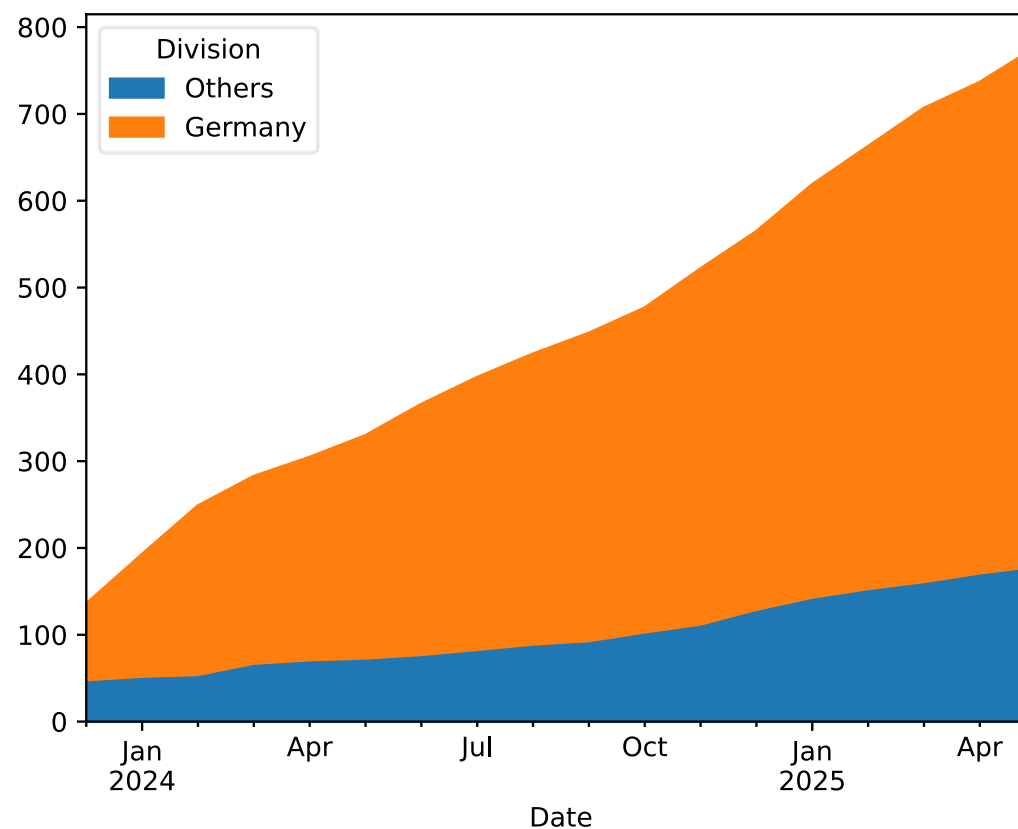
Statistics

Case distribution



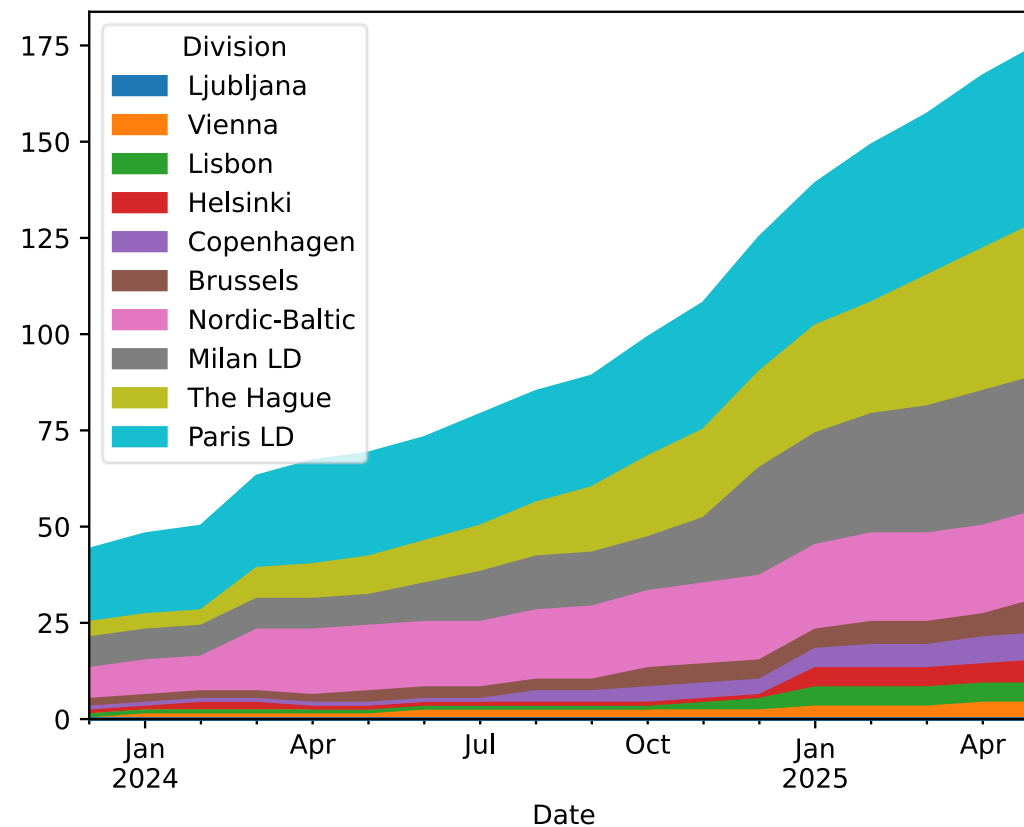
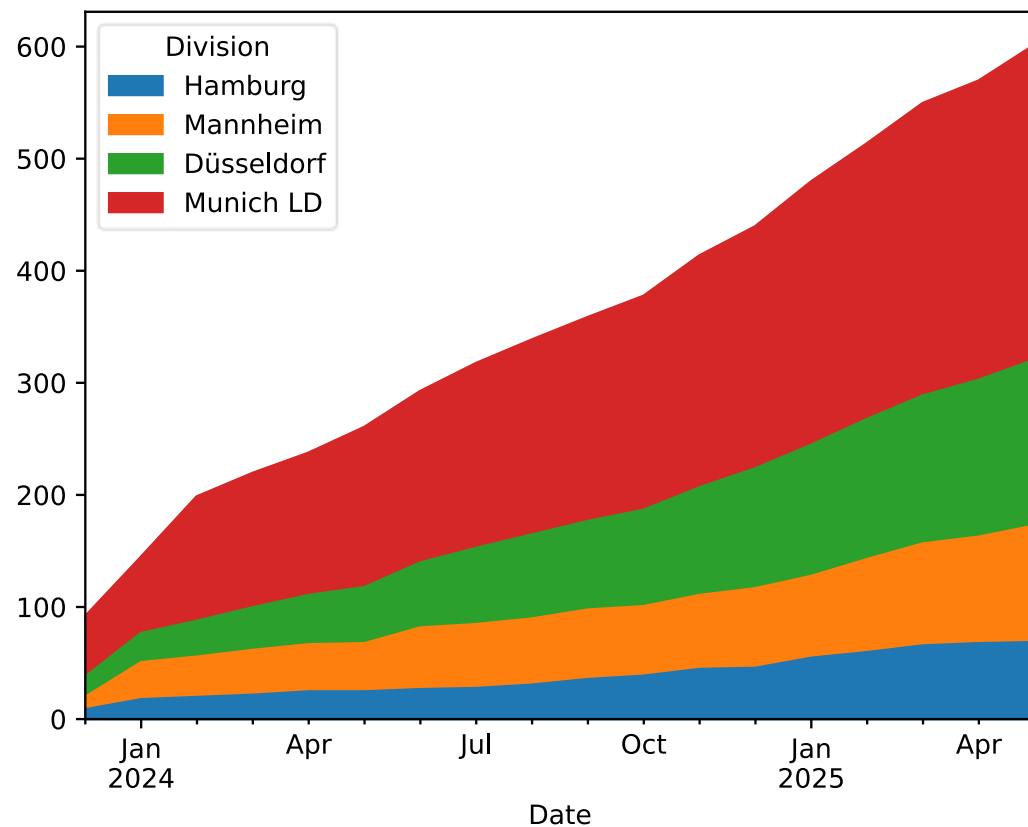
Statistics

Case distribution



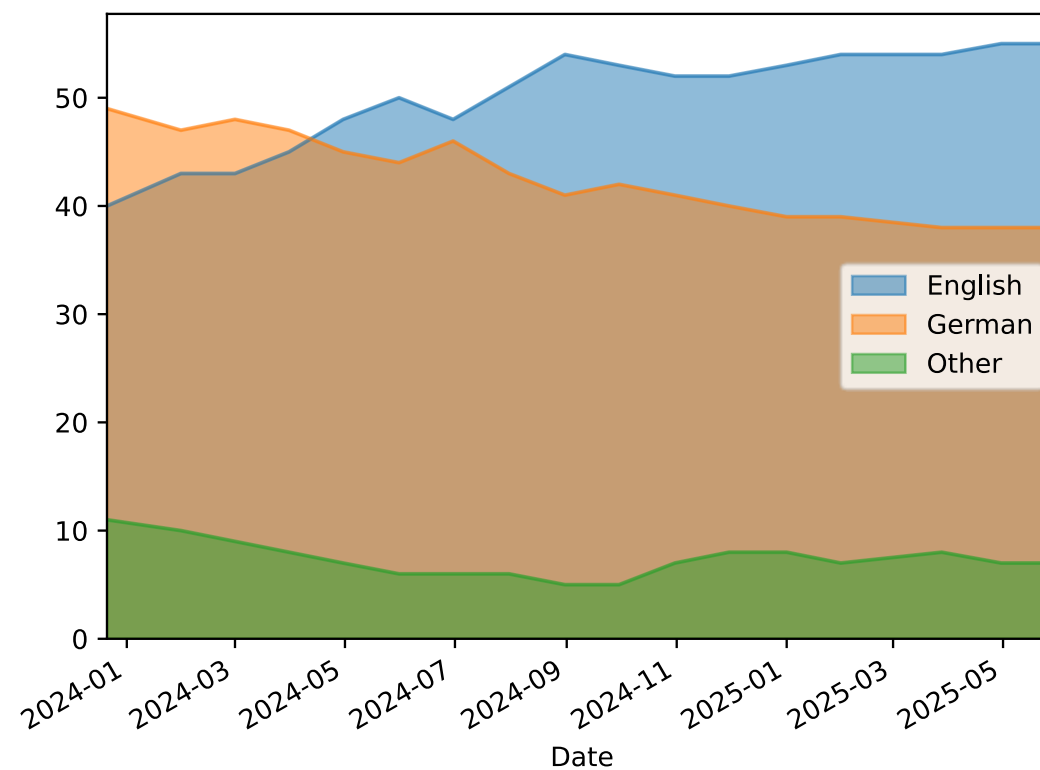
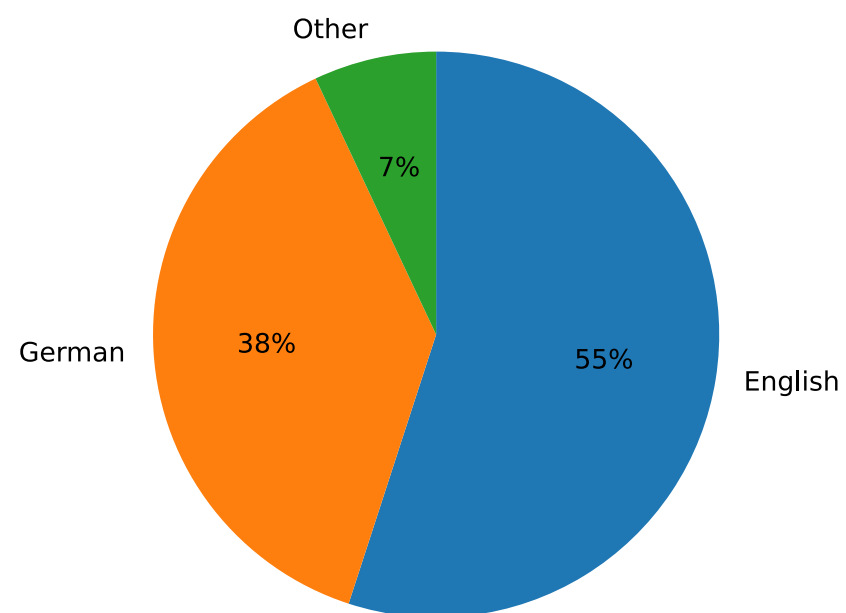
Statistics

Case distribution



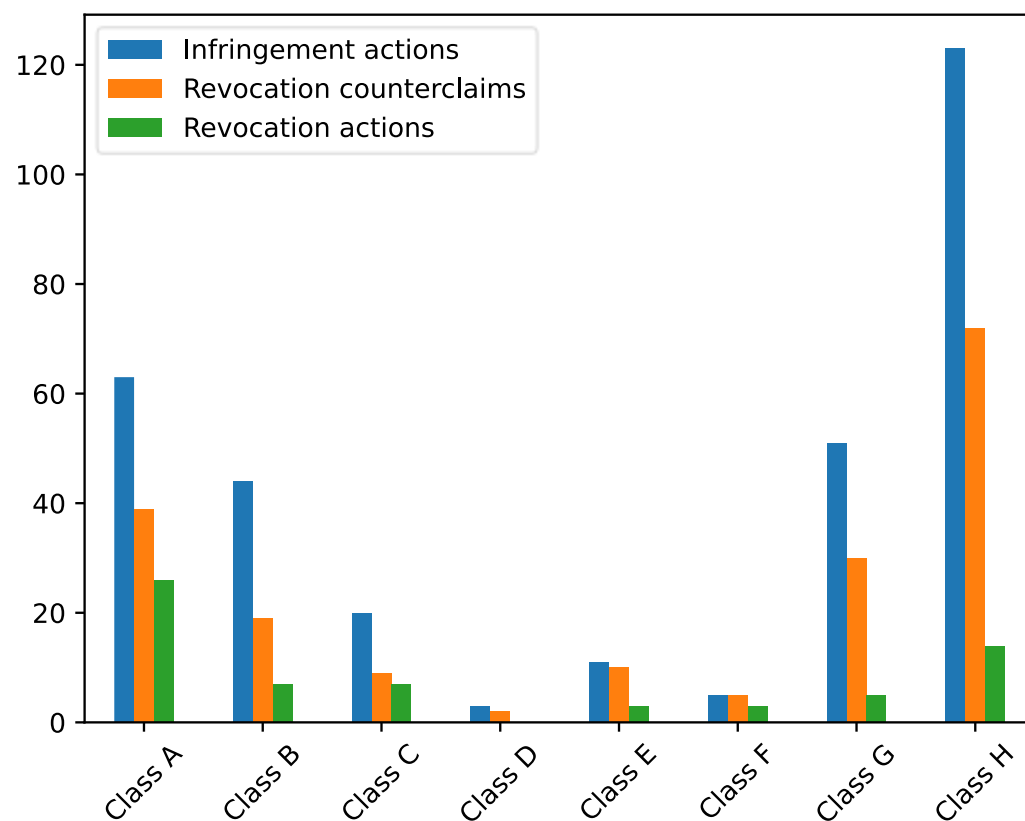
Statistics

Language



Statistics

Technical fields



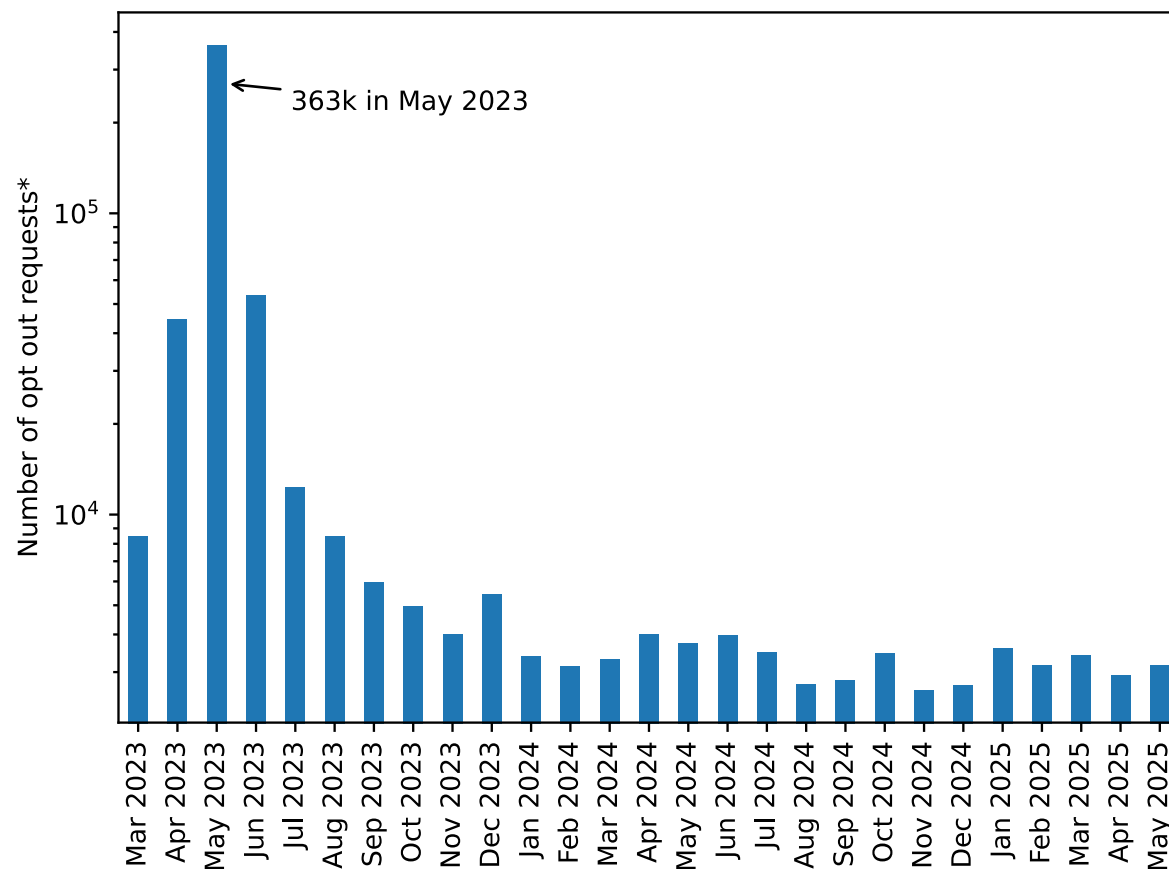
- A. Human Necessities
- B. Performing Operations, Transporting
- C. Chemistry, Metallurgy
- D. Textiles, Paper
- E. Fixed Constructions
- F. Mechanical Engineering, Lighting, Heating, Weapons
- G. Physics
- H. Electricity

Statistics

Opt-outs

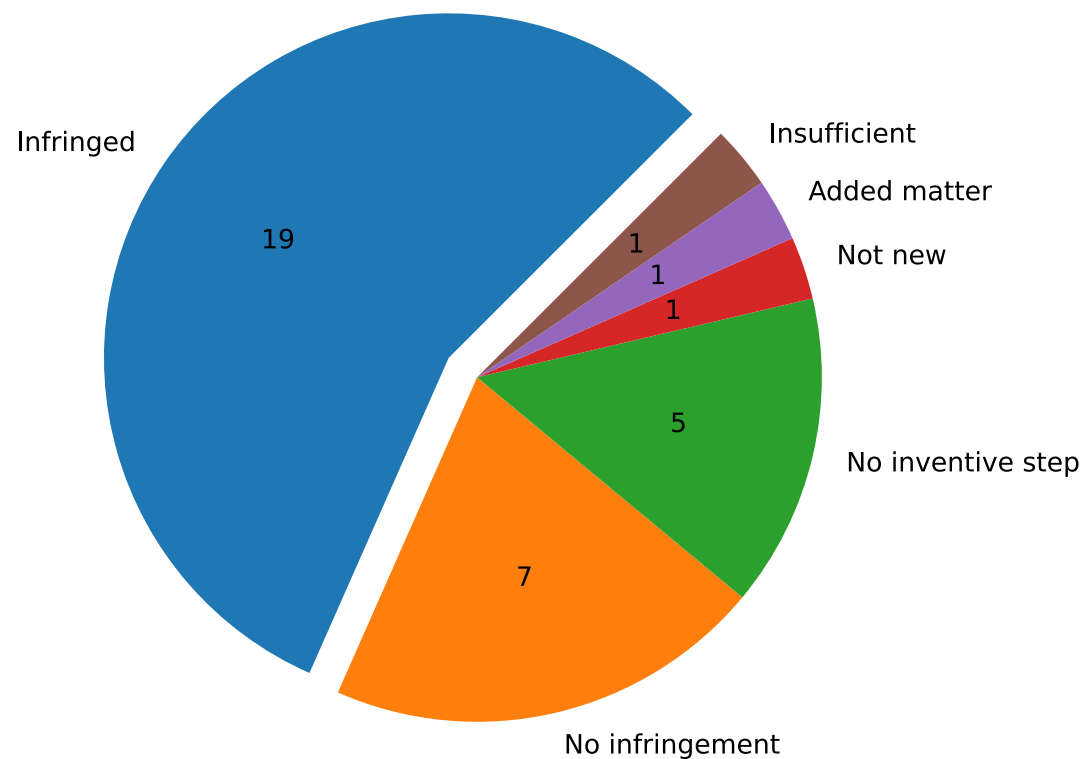
638,365

Number of opt-outs filed



Trends

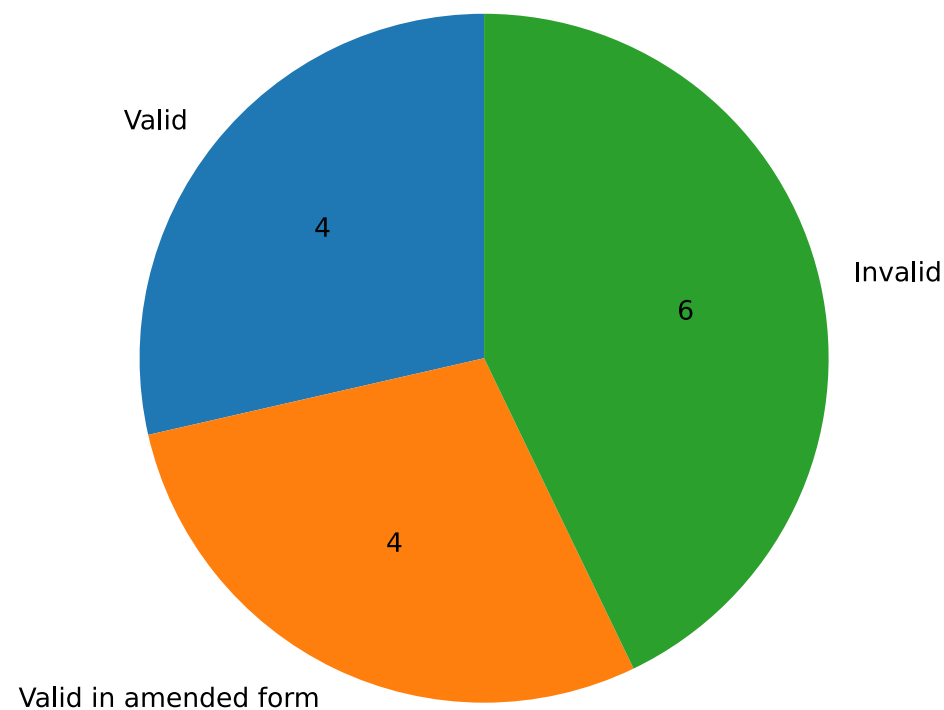
Infringement, 1st instance



Based on 34 decisions as of 6 June 2025.

Trends

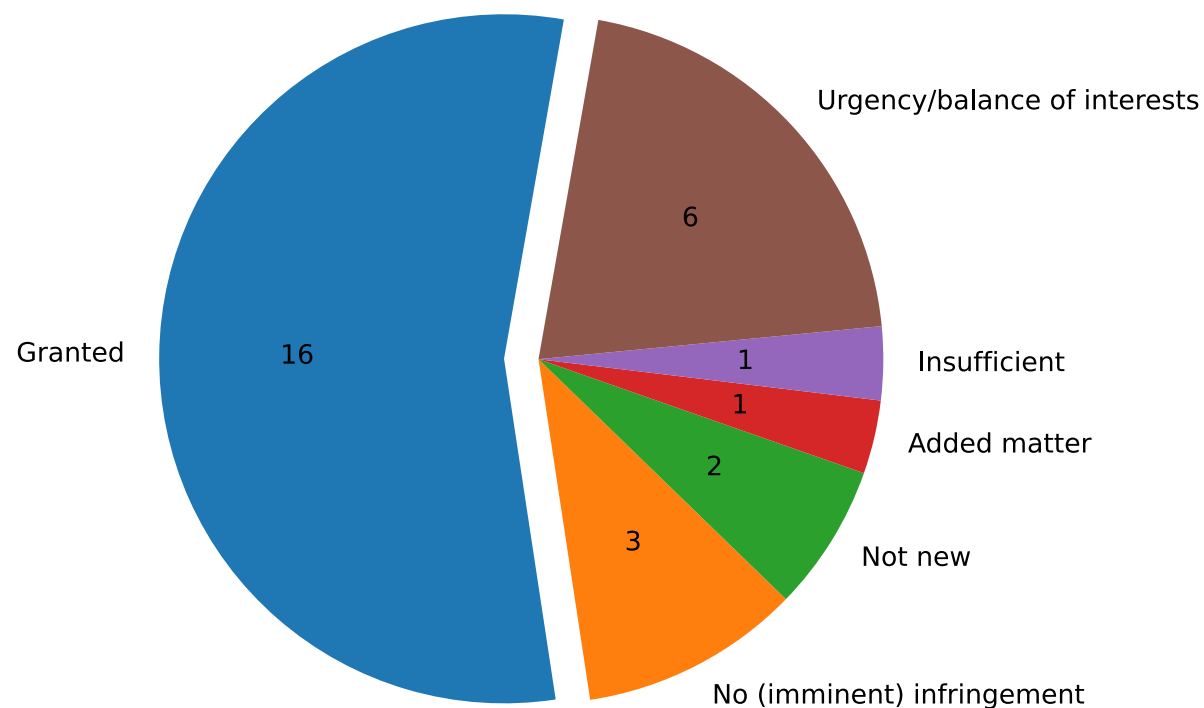
Revocation, 1st instance



Based on 14 decisions as of 6 June 2025.

Trends

Preliminary injunctions, 1st instance



Based on 29 decisions as of 6 June 2025.

Case Law

Provisional measures

Procedural issues (jurisdiction, representation)

Substantive issues (claim construction, added matter, inventive step)

Provisional measures

Sufficient degree of certainty ⁽¹⁾

*In taking its decision the Court may require the applicant to provide reasonable evidence to satisfy the Court with a **sufficient degree of certainty** that the applicant is **entitled to commence proceedings** pursuant to Article 47, that **the patent in question is valid and that his right is being infringed**, or that such infringement is imminent.*

Rule 211.2 RoP

Provisional measures

Sufficient degree of certainty (2)

*A **sufficient degree of certainty**... requires that the court considers it **on the balance of probabilities at least more likely than not** that the Applicant is entitled to initiate proceedings and that the patent is infringed.*

NanoString Technologies v. 10x Genomics, UPC CoA 335/2023
ORD_595990/2023, 26 February 2024

Provisional measures

Sufficient degree of certainty (3)

*The conclusion from the above is that the Court of Appeal considers **on the balance of probabilities** that it is not **more likely than not** that the patent is invalid and also that it is **more likely than not** that the patent is infringed.*

Abbott v. Sibio Technology, UPC CoA 382/2024
ORD_67504/2024, 14 February 2025

Provisional measures

Balance of interests (1)

*In taking its decision the Court shall in the exercise of its discretion **weigh up the interests of the parties** and, in particular, take into account **the potential harm for either of the parties** resulting from the granting or the refusal of the injunction.*

Rule 211.3 RoP

Provisional measures

Balance of interests (2)

*In the present case, the **massive damage** referred to by the Defendants results solely from the fact that, in the event of an injunction, the Defendants will no longer be able to fulfil their current obligations to BMW... In the light of the foregoing, it is considered **appropriate and in the interests of the parties to limit the scope of the preliminary injunction** as far as supplies to BMW are concerned...*

Valeo Electrification v. Magna, UPC CFI 368/2024
ORD_56534/2024, 31 October 2024

Provisional measures

Urgency ⁽¹⁾

*The Court shall have regard to **any unreasonable delay** in seeking provisional measures.*

Rule 211.4 RoP

Provisional measures

Urgency (2)

*The urgency required for the ordering of provisional measures is only lacking if the injured party has been **so negligent and hesitant in pursuing his claims** that, from an objective point of view, it must be concluded **that the injured party is not interested in enforcing his rights quickly**, which is why it does not seem appropriate to allow him to take advantage of provisional legal protection.*

Ortovox v. Mammut, UPC CFI 452/2023
ORD_592936/2023, 11 December 2023

Provisional measures

Urgency (3)

*Abbott **cannot reasonably be denied an injunction for being cautious** not to accuse Sibionics of infringing acts prior to having done a **thorough investigation by an independent third party**...*

*It cannot be concluded... that Abbott behaved in **such a negligent and hesitant manner** in lodging the Application that, from an objective perspective, it must be concluded that **it was not interested in promptly enforcing its patent**.*

Provisional measures

Protective letters

*The Respondent **has not significantly denied**... in their protective letter that the contested embodiment directly and literally infringes the patent... Nor has the Respondent been able to **present relevant prior art**... in its protective letter...*

*The Court has issued the provisional measures **without prior hearing of the Respondent**.*

myStromer v. Revolt Zycling, UPC CFI 177/2023
ORD_525740/2023, 22 June 2023

Case Law

Provisional measures

Procedural issues (jurisdiction, opt-outs)

Substantive issues (claim construction, added matter, inventive step)

Jurisdiction

Infringement in other EPC states

*If the **defendant is domiciled in a Contracting Member State** (here: Germany), the Unified Patent Court has jurisdiction to hear the infringement action **in respect of the UK part of the patent in suit**.*

Fujifilm v. Kodak, UPC CFI 355/2023
ORD_598539/2023, 28 January 2025

Jurisdiction

Validity of foreign patents

*If a court of a Member State is seised... of an action **alleging infringement of a patent granted or validated in a third State** in which the question of the **validity of that patent is raised, as a defence, that court has jurisdiction... to rule on that defence**, its decision in that regard not being such as to affect the existence or content of that patent in that third State or to cause the national register of that State to be amended.*

BSH Hausgeräte GmbH v Electrolux AB, CJEU Case C-339/22
25 February 2025

Jurisdiction

Time travel

*...the concurrent jurisdiction of the UPC and the national court during the transitional period **also applies to infringements that occurred prior to the entry into force of the Agreement.***

XSYS v. ESKO, UPC CoA 156/2025
ORD_23545/2025, 25 February 2025

Opt-outs

Effective opt-out

*Art. 83(3) UPCA must be interpreted such that a valid opt out application requires that it is **lodged by or on behalf of all proprietors of all national parts of a European patent.***

Toyota v. Neo Wireless, UPC CoA 79/2024
ORD_30505/2024, 4 June 2024

Opt-outs

Effective withdrawal

*Art. 83(4) UPCA must be understood to mean that an earlier opt-out cannot effectively be withdrawn if an action has been brought before the national court at any time **during the transitional period**. Proceedings that were **brought prior to the transitional period, whether still pending or not, do not stand in the way** of an effective withdrawal of an opt-out.*

AIM Sport Development v. Supponor, UPC CoA 489/2023
ORD_598488/2023, 12 November 2024

Opt-outs

Effect of withdrawal

*In case of an effective withdrawal from an effective opt-out, the UPC is competent to decide on alleged acts of infringement which have occurred **during the time period between the date of the opt-out and that of the withdrawal.***

XSYS v. ESKO, UPC CoA 156/2025
ORD_23545/2025, 25 February 2025

Case Law Topics

Provisional measures

Procedural issues (jurisdiction, representation)

Substantive issues (claim construction, added matter, inventive step)

Claim interpretation

Divergence from the EPO

*The interpretation of a patent claim **does not depend solely on the strict, literal meaning** of the wording used. Rather, the description and the drawings **must always be used** as explanatory aids for the interpretation of the patent claim and **not only to resolve any ambiguities** in the patent claim.*

NanoString Technologies v. 10x Genomics, UPC CoA 335/2023
ORD_595990/2023, 26 February 2024

Claim interpretation

Product by process

*Product-by-process claims are characterized by the fact that the technical content of the invention generally **does not consist in the process itself**, but rather in **the technical properties imparted to the product by the process**.*

Yellow Sphere Innovations v. Knaus Tabbert AG, UPC CFI 50/2024
ORD_68984/2024, 10 April 2024

Claim interpretation

Second medical use

*For a finding of infringement of a second medical use claim, the alleged infringer must offer or place the medical product on the market in such way that it **leads or may lead to the claimed therapeutic use** of which the alleged infringer **knows or reasonably should have known** that it does.*

Sanofi v. Amgen, UPC CFI 505/2024
ORD_598583/2023, 13 May 2025

Inventive step

Problem-solution approach?

*For assessing whether an invention shall be considered obvious having regard to the state of the art, **the problem-solution approach developed by the European Patent Office shall primarily be applied** as a tool to the extent feasible to enhance legal certainty and further align the jurisprudence of the Unified Patent Court with the jurisprudence of the European Patent Office and the Boards of Appeal.*

Edwards Lifesciences v. Meril, UPC CFI 501/2023
ORD_598588/2023, 4 April 2025

Inventive step

Problem-solution approach?

*The assessment of inventive step **starts from a realistic starting point** in the prior art. There can be several realistic starting points. It is not necessary to identify the “most promising” starting point.*

Sanofi v. Amgen, UPC CFI 1/2023
ORD_598362/2023, 16 July 2024

Inventive step

Could–would?

*In general, a claimed solution is obvious if the skilled person **would be motivated** to consider the claimed solution and **would implement it** as a next step in developing the prior art.*

Sanofi v. Amgen, UPC CFI 1/2023
ORD_598362/2023, 16 July 2024

Inventive step

Technical effect

A *technical effect or advantage achieved by the claimed subject matter compared to the prior art* may be an indication for inventive step. A feature that is selected in an arbitrary way out of several possibilities cannot generally contribute to inventive step.

Sanofi v. Amgen, UPC CFI 1/2023
ORD_598362/2023, 16 July 2024

Inventive step

Technical effect

*For assessing whether an invention shall be considered obvious having regard to the state of the art, **the problem-solution approach** developed by the European Patent Office **shall primarily be applied as a tool to the extent feasible** to enhance legal certainty and further align the jurisprudence of the Unified Patent Court with the jurisprudence of the European Patent Office and the Boards of Appeal.*

Edwards Lifesciences v. Meril, UPC CFI 501/2023
ORD_598588/2023, 4 April 2025

Added subject matter

The Gold Standard

*In order to ascertain whether there is added matter, the Court must thus first ascertain **what the skilled person would derive directly and unambiguously** using his common general knowledge and seen objectively and relative to the date of filing, **from the whole of the application as filed...***

Abbott v. Sibio Technology, UPC CoA 382/2024
ORD_67504/2024, 14 February 2025

Questions?