



# Annual Report of the Boards of Appeal

2022

May 2023

# Foreword

This report describes developments in the Boards of Appeal in 2022 and last year's impressive achievements in several different areas. It also provides information on topics of particular importance to the Boards of Appeal, such as quality, efficiency and interaction with national courts, users and representatives. We aim in this way to give insights into the Boards of Appeal beyond the main task of reviewing decisions within the framework of the EPC.

We saw one of the major achievements of 2022 already in March (one and a half years ahead of schedule), when we reached our five-year objective of reducing stock to below 7 000 cases before the end of 2023. With the COVID-19 pandemic continuing to impact our lives in 2022, colleagues adapted fully to the “new normal”, increasing their production and productivity even more and ensuring the continuation of our important judicial work. Over the course of the year, the number of pending cases fell by 12.8% to 6 216. In total, an all-time record of 3 576 appeal cases were settled, yet another increase in production (of 5.3% compared to 2021).

We are making major efforts to reach our second five-year objective – settling 90% of cases within 30 months of receipt by the end of 2023. These included changing the business distribution scheme of the Technical Boards of Appeal to allow for a flexible and transparent balancing out of the workload while ensuring the necessary technical expertise. With 71% of oral proceedings in 2022 held by videoconference, oral proceedings by videoconference continued to play an important role in enabling us to serve European patent system users and society at large during the pandemic.

We made substantial progress in several areas towards building and ensuring a modern judiciary. With the adoption of the Diversity and Inclusion (D&I) Strategy 2022-2027, which was given positive feedback and much attention by the Boards of Appeal Committee, we are now in a position to have a consistent and harmonised approach to D&I. Implementation of the strategy is under way, including special D&I training as well as workshops and training sessions on specific topics. In addition, our ongoing full digital transformation has enabled us to further improve efficiency while contributing to the environment. The holding of oral proceedings by videoconference is part of this transformation and will continue. Another 2022 milestone was the much-anticipated publication of the 10th edition of Case Law of the Boards of Appeal in July.

All this has been made possible thanks to the commitment and engagement of the entire staff of the Boards of Appeal, who have

fully embraced our objectives and adapted to a digital working environment. Equally important has been interaction with national courts, users and representatives, with their valuable feedback contributing to our continuing development.

Access to justice and rendering decisions of the highest quality is what we strive for every day – I look forward to continuing on this path!

*Carl Josefsson*  
*President of the Boards of Appeal*





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# 1. Executive summary

In 2022, the Boards of Appeal (BoA) continued to make progress towards reaching their five-year objectives. Already in March, the number of pending cases fell below 7 000, reaching this general objective long before the deadline. In the course of 2022, the number of pending cases before the BoA dropped by 12.8% to 6 216 cases. The continued commitment and tireless efforts of all colleagues – despite the challenging working conditions during the ongoing pandemic – were key in enabling these achievements. The successful introduction of conducting oral proceedings by videoconference in 2020 has been the backbone of the efficient functioning of the BoA; in 2022, some 71% of oral proceedings were conducted using videoconferencing technology. In addition, in 2022 there was generally an easing of COVID-19 restrictions, all of which enabled the BoA to exceed levels of production and recover productivity compared with pre-pandemic times. While 2022 saw another significant decrease in overall stock, a more significant improvement in the timeliness figure is still impacted by the effect of previously postponed older cases. Nonetheless, the BoA are broadly on track to meet their five-year objectives by the end of 2023.

The pandemic continued to pose a challenge to courts worldwide in 2022. As a judicial authority whose decisions are final, the BoA have a special responsibility to ensure that access to justice remains guaranteed while at the same time contributing to the containment of the pandemic. The measures taken by the President of the Boards of Appeal (PBoA) to ensure the proper and seamless functioning of the BoA during the pandemic continued to apply in 2022.



The need to work from home has pushed forward working electronically on electronic files with the support of iPads. The developments have allowed the BoA to make a contribution to environmental interests, like the reduction of paper consumption and reduction of emissions.

The PBoA submitted his **Diversity and Inclusion (D&I) strategy** for the **period 2022-2027** to the Boards of Appeal Committee (BOAC) for its opinion. The strategy aims at a more diverse and inclusive culture to help build a modern judiciary. The strategy received positive feedback and much attention. The first implementation activities of the strategy were launched in 2022.

The BOAC and user representatives welcomed the activities initiated by the PBoA relating to **quality-focused decision-making** which were presented to them.

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The effective measures taken by the President of the Boards of Appeal to ensure the proper and seamless functioning of the BoA during the pandemic continued to apply in 2022.



## 2. The BoA

The BoA are the first and final judicial instance in proceedings before the EPO. They are independent in their decisions and bound only by the European Patent Convention (EPC).



## 3. Production, productivity and pendency time

### 3.1. Five-year objective

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#### Five-year objectives:

- To reduce the number of pending cases to below 7 000 by 2023
- To settle 90% of all cases within 30 months of receipt by 2023.

With a view to reducing the backlog, the objective is to settle 90% of cases within 30 months of receipt and to reduce the number of pending cases to below 7 000 by 2023. The measures taken to achieve this objective are:

- increasing BoA productivity by 32% between 1 January 2017 and 31 December 2020
- allocating additional resources for a limited period of time.

As will be explained below in more detail, the BoA are broadly on track to meet their five-year objectives by the end of 2023.

As the current five-year objective nears its end, reflections have started about which objectives can be envisaged from 2024. As the backlog will have reduced considerably by then, it is expected that appeals will progressively be dealt with as they are filed.



## 3.2. Workload and production

In 2022, a total of **2 660 technical appeal cases were received, 18.5% more than in 2021**. Despite the continuing impact of the COVID-19 crisis, **3 576 technical appeal cases were settled, a 5.3% increase compared with 2021**. This is the highest production achieved in the history of the BoA. Overall, this represents an increase of 60.4% in production since the entry into force of the structural reform on 1 January 2017.

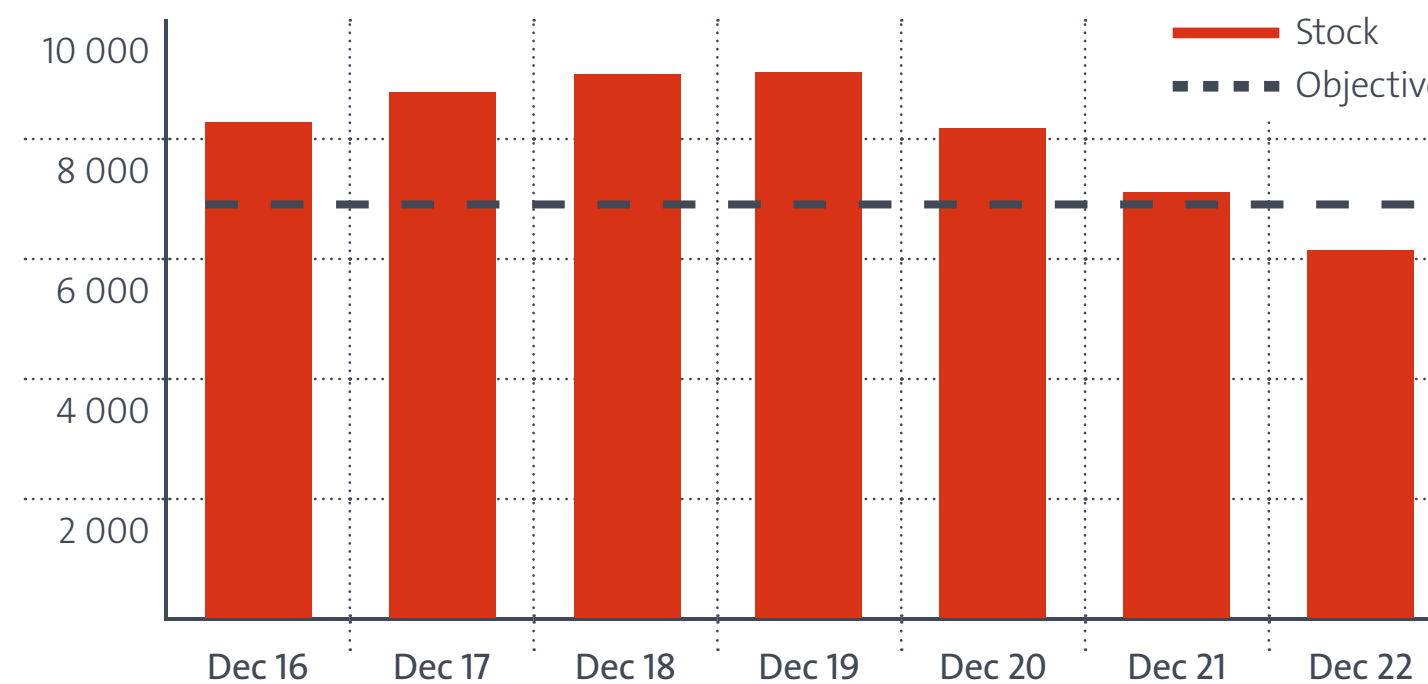
It should be noted in this context that the BoA workload and its fluctuations depend heavily on the output of the administrative departments of the Office, in particular the examining divisions and opposition divisions. In 2022 there was a 18.5% increase in incoming workload (from 2 245 to 2 660), and as foreseen there was a significant rise in inter partes cases as opposition divisions have increased production. However, ex parte cases showed a decline of 15.8% (from 810 to 682).

Because of the strong recovery, the number of pending cases was reduced by 915 despite the continuing impact of the COVID-19 crisis and the increase in the number of appeal cases received. **As at 31 December 2022, 6 216 technical appeal cases were pending, which is 12.8% fewer than at 31 December 2021**.

Table 1  
Number of new and settled cases

	New cases					Settled cases				
	2022	2021	2020	2019	2018	2022	2021	2020	2019	2018
Legal Board of Appeal	8	15	29	14	16	17	11	26	17	16
Technical Boards of Appeal	2 660	2 245	2 059	3 292	3 032	3 576	3 395	3 013	3 254	2 733
Enlarged Board of Appeal	27	17	14	12	12	9	15	6	11	15
Referrals	2	2	0	4	1	0	3	1	2	0
Petitions for review	25	15	14	8	11	9	12	5	9	15
Disciplinary Board of Appeal	45	55	3	19	18	57	6	15	12	20

Figure 1  
Number of pending cases



In 2022, 3 576 technical appeal cases were settled – the highest production achieved in the history of the BoA and a 5.3% increase compared to 2021.



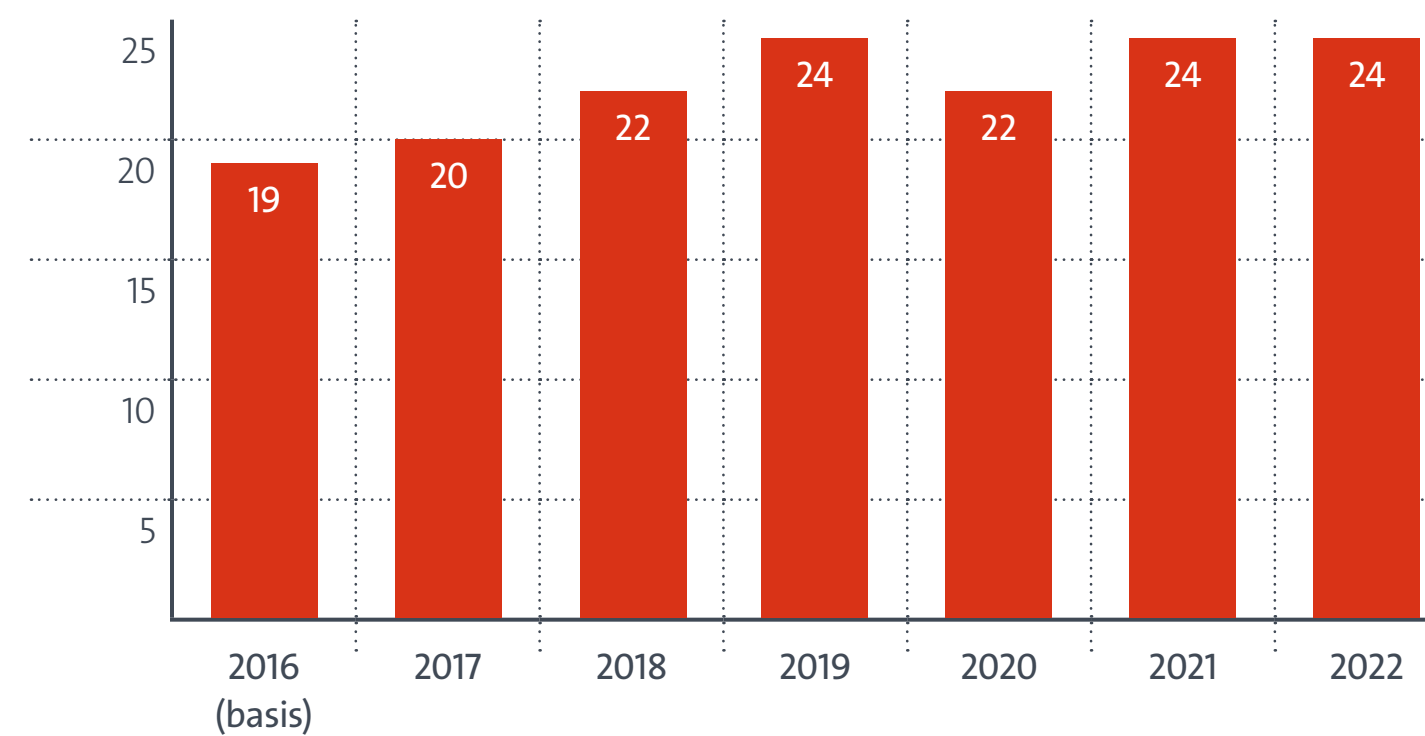
### 3.3. Productivity

When calculating productivity, only cases settled “with action” are taken into account. These are cases settled by a decision or after a communication has been issued by a board member and/or after oral proceedings have taken place. In **2022, the BoA settled 2 963 cases with action**, requiring 1 467 net technical member (TM) months. This represents a productivity rate of 2.02 cases per net TM month. In 2021, the corresponding figure was 2.00. In 2022 productivity thus increased by 1%. **The productivity increased by 27.8% from 1 January 2017 to 31 December 2022.**

The increase in productivity since 2017 is the combined effect of improved planning, the introduction of oral proceedings by videoconference, the positive effects of the revised Rules of Procedure of the Boards of Appeal (“RPBA 2020”) and the options for staggered reimbursement of the appeal fee. The required modernisation of the IT landscape in the BoA has also played an important role. **Above all, however, the concerted effort by all members of the boards and their support staff has been decisive for achieving this result.**

Figure 2

Cases settled with an action per net technical member year



Productivity increased  
27.8% from 1 January 2017  
to 31 December 2022.



### 3.4. Pendency time

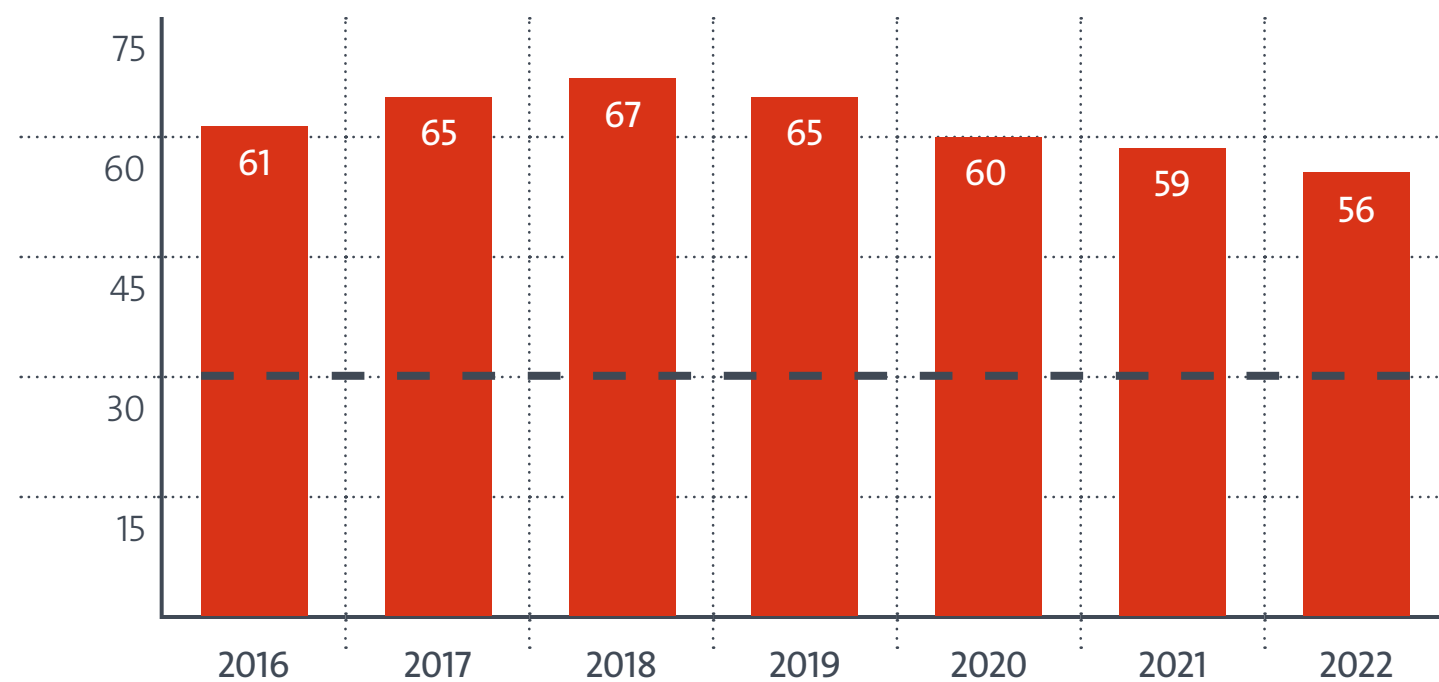
While 2022 saw another significant decrease in overall stock, a more significant improvement in the timeliness figure is still impacted by the effect of previously postponed older cases.

As the timeliness indicator measures the oldest 10% of settlements in a given year, it will become even more sensitive to “pockets” of older stock in a number of boards. This issue was addressed through changes in the Business Distribution Scheme in 2022 (see section 5.2 below) and will remain an ongoing priority for the BoA in the future.

In 2022, the BoA succeeded in reducing pendency time for the fourth year in a row.

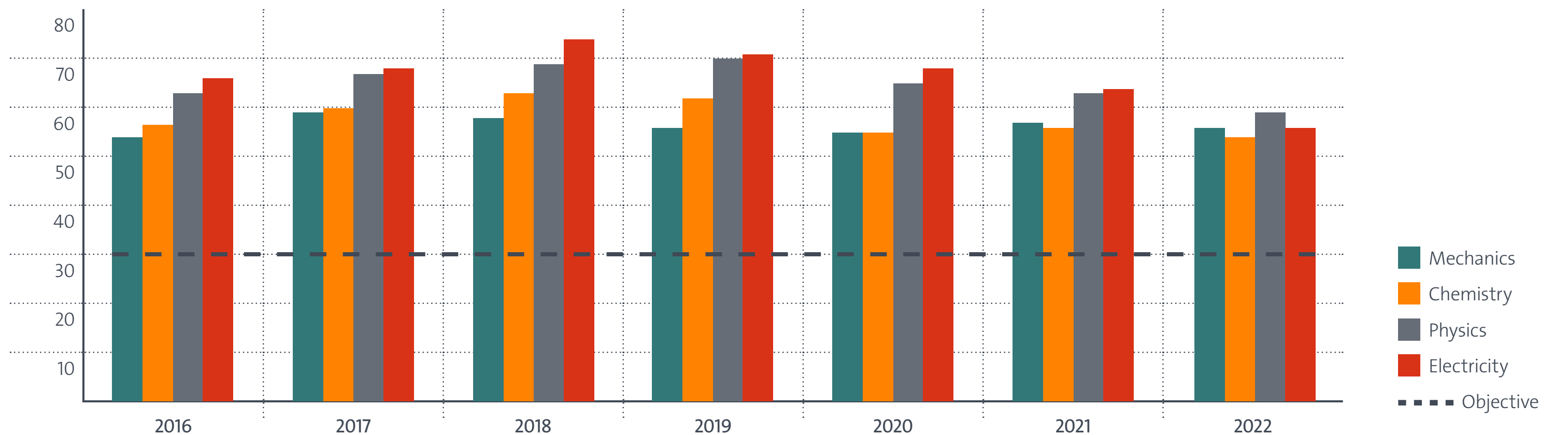


Figure 3  
Timeliness results (90% of cases settled in months)



■ All technical fields    - - - - Objective

Figure 4  
Timeliness results per technical field (90% of cases settled in months)



■ Mechanics  
■ Chemistry  
■ Physics  
■ Electricity  
- - - - Objective



As at 31 December 2022, 1 907 backlog cases were pending, which is 26.1% fewer than at 31 December 2021. As the backlog consists of pending cases that are older than 30 months, the significant drop in the number of appeal cases received in the second half of 2020 will result in a much lower number of appeals reaching backlog status in 2023. As a result, a **large decrease** in the number of **backlog cases is expected in 2023**.

In 2022, the number of backlog cases (pending cases that are older than 30 months) declined by 26.1%. A further substantial decrease is expected in 2023.

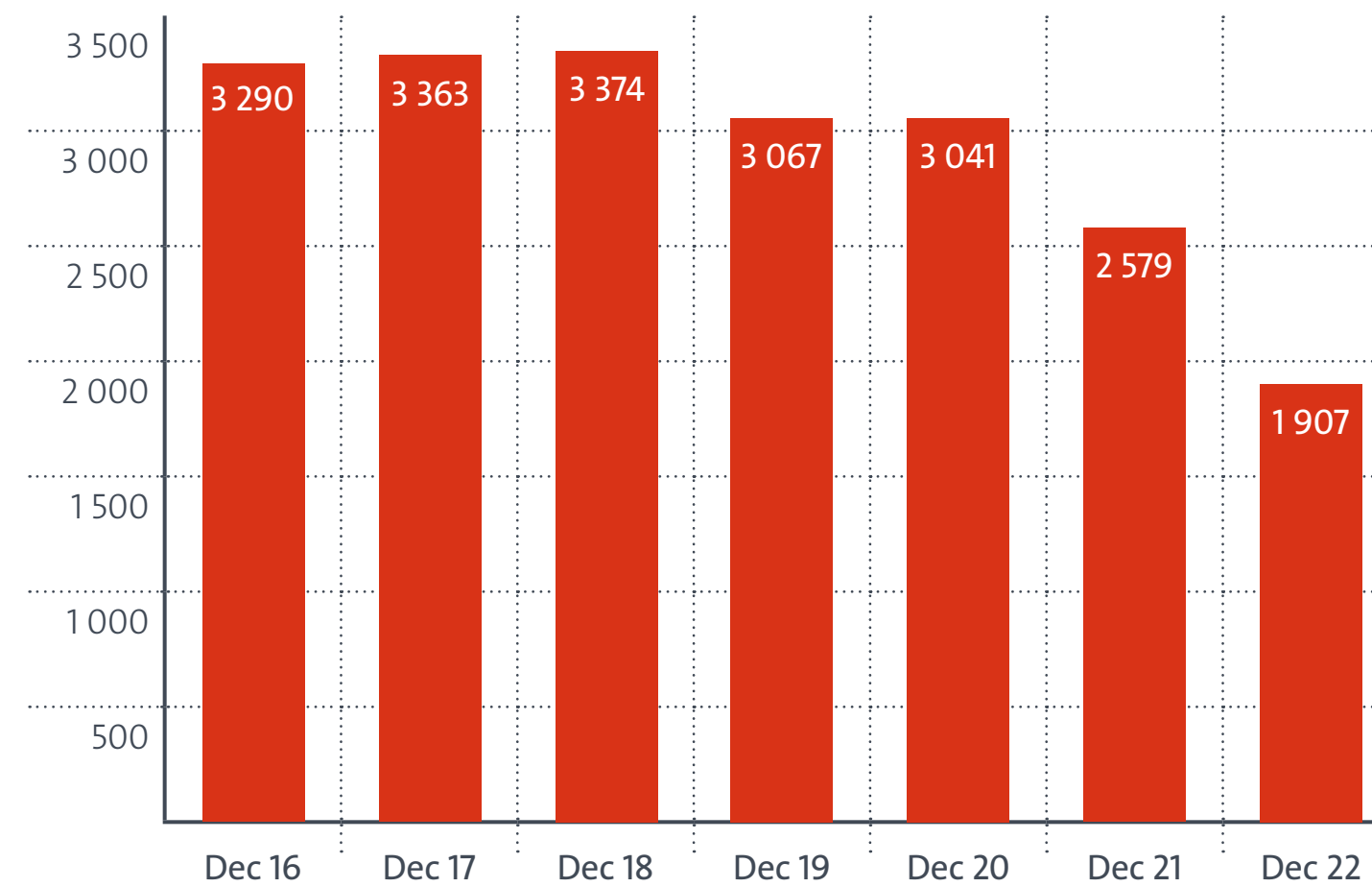
Table 2

Pending cases per age group

		0-12 months	13-18 months	19-24 months	25-30 months	Backlog Over 30 months	Total pending
2021	Pending cases	1 963	446	1 164	979	2 579	7 131
	Percentage	27.5%	6.3%	16.3%	13.7%	36.2%	100%
2022	Pending cases	2 251	1 013	710	335	1 907	6 216
	Percentage	36.2%	16.3%	11.4%	5.4%	30.7%	100%

Figure 5

Backlog cases





## 4. Quality

### 4.1. Quality-focused decision-making

The **legal and technical quality of the decisions** taken by the BoA has been a **central priority** since the beginning of the BoA's activity. Users, and the public in general, rightfully expect the highest quality from a judicial authority whose decisions are final. In order to ensure that efficiency gains are made at no material cost to the quality of the decision-making, the PBoA has commissioned a working group to provide a definition of quality as well as practical working aids for BoA members with regard to the workflow in appeal proceedings and the drafting of decisions and communications.

The first document drafted by the working group, which outlines guiding principles for quality-focused decision-making, is available on the BoA [website](#). It lists the following as the most important elements in the quality of BoA decisions:

- in the proceedings leading up to the decision: transparency, respect of the right to a fair trial, timeliness, and completeness of the examination of relevant factual and legal issues while paying regard to the respective purposes of ex parte and inter partes appeal proceedings
- for the written, reasoned decision: clarity, clear reasoning, succinctness, responsiveness to the relevant arguments of the parties, particularly those of the losing party, proper analysis of the factual and legal issues, compliance with the right to be heard, and consideration of diverging lines of case law.

The working group continues to support members, especially new ones, by providing guidance on the workflow in appeal proceedings

and on the drafting of decisions and communications. After considering detailed advice from the chairs and the Presidium of the BoA, three internal documents have been finalised and made available to all board members:

- a document on “Workflow in appeal procedures”, which is aimed at giving board members guidance on the workflow in appeal proceedings
- a document on decision writing, which includes recommendations on style and on how to structure decisions and avoid redundancies
- a document which provides guidance on drafting the communication in preparation for the oral proceedings and contains two illustrative example communications.

These working aids are used as a starting point for further discussion, harmonisation and training.

The working group's quality activities as well as further initiatives in the BoA aimed at supporting, in the widest sense, members and chairs in delivering high-quality decisions were presented to the BOAC in September 2022.

The quality activities in the BoA were also presented and discussed with a delegation of user representatives from the International Federation of Intellectual Property Attorneys (FICPI), as well as representatives from industry (nominated by BusinessEurope) and the patent profession (nominated by epi) during the yearly meetings organised by the PBoA (see point 9 below).

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Improving the legal and technical quality of decisions remained a top priority for the BoA.



## 4.2. Professional development

Professional development activities, a key contributor to the high quality of the work performed by the BoA, continued in 2022.

The Professional Development Committee (PDC) again organised several successful talks and presentations in the form of webinars, held by both internal staff and external professionals. The introductory training for new members took place online again. Newly appointed chairs were given training on aspects of performance evaluation, followed by individual coaching sessions on a voluntary basis. Further rounds of the highly popular “English advanced legal drafting” course took place in March 2022. Following feedback collected via a survey among BoA staff, legal drafting courses in French and in German will also be offered in future. The Chairpersons’ Day events, during which all chairs and the PBoA get together, took place in a virtual format in April and in October. The first event focused on the new ways of working and on the conduct of oral proceedings by videoconference. The second event revolved around hybrid working, the psychology of judicial decision-making, and D&I.

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Professional development continues  
to be key for the high quality  
of the work performed by the BoA.





## 4.3. Publications

All decisions of the Enlarged Board of Appeal, the Legal Board of Appeal and the technical boards of appeal handed down since 1979 are available free of charge on the [BoA website](#). This website gives users access not only to the BoA decisions database but also to BoA publications, up-to-date information, communications from the BoA and texts of importance for appeal proceedings.

“Supplementary publication 1 of the EPO Official Journal, Information from the Boards of Appeal” is issued at the beginning of each year (current version: [Supplementary publication 1, OJ 2023](#)). It contains the RPBA 2020, the Business Distribution Schemes of the BoA and further useful information on the boards and the appeal procedures.

In 2022, the 10th edition of the [Case Law of the Boards of Appeal](#) was published, which covers BoA case law up to the end of 2021, as well as some important decisions from the beginning of 2022. In total it contains references to almost 8 000 decisions which were issued in writing. In addition, and between editions of this publication, the BoA publish regular case law updates, by way of summaries on important decisions of the boards. The most recent is the Boards of Appeal Case Law 2022 containing summaries of important decisions of the boards in the language of the proceedings.

One of the main purposes of the BoA website is to provide easy access to BoA case law. With this goal in mind, its functionalities are updated

or refined on an ongoing basis. Thus, the recently introduced service [Selected decisions of the Boards of Appeal](#) alerts users to newly published decisions for which the board has provided a headnote or catchword. Usually, a board will use a headnote or catchword if it wishes to provide a brief summary of a particular point of law or draw attention to an important part of the reasons of the decision.

In addition, links to these selected decisions are added to the regularly updated HTML version of the [Case Law of the Boards of Appeal](#). Starting with decisions from 2019, the HTML version of the case law book also provides links to the [supplementary case law reports](#) described above. As with selected decisions, the links to the summaries in the supplementary publications are placed in the relevant chapters of the book. This service helps in identifying new decisions within their thematic context and brings together the content of the case law book and the case law supplementary publications.

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The 10th edition of the Case Law of the Boards of Appeal – containing references to almost 8 000 decisions – was published in July 2022.

## 4.4. Code of Conduct – follow-up action

Following its approval by the Administrative Council on 14 December 2021, the Code of Conduct entered into force on 1 July 2022.

Important measures were taken to implement the Code of Conduct. These included setting up a new Advisory Committee (“Advisory Committee on the Code of Conduct of the Boards of Appeal (ACCOC)”), composed of seven members and seven deputy members, to replace the one that existed under the superseded Code of Conduct of 1995. All the positions of members and deputy members of the new Advisory Committee have been filled with internal members and chairs or with legally qualified external members of the Enlarged Board of Appeal.

Information about the Code of Conduct was communicated to staff and users, with the Code of Conduct itself being published on the [BoA website](#).



## 5. Measures to increase efficiency

### 5.1. Objectives and improved planning

As part of operational planning, the production figures and filing trends of the departments of first instance are continuously analysed. The results of these analyses are used to achieve an even distribution of work among the boards and their members. Ultimately, this is reflected in the Business Distribution Scheme of the Technical Boards of Appeal. The results of the analyses are also used for recruitment planning and objective-setting. The total stock has been reduced by 24.9% in the last two years (from 8 280 cases to 6 216 cases) and as this trend continues it will be increasingly important to balance the smaller amount of stock among the boards. In particular, relatively large volumes of older stock must be prevented from accumulating in boards as this will impede the BoA in reaching their timeliness targets. In 2022, the minutes of oral proceedings were issued within seven calendar days in 92.2% of cases, and the written decision was despatched within three months in 83.4% of cases. Where the decision on the appeal is announced orally, under Article 15(9)(a) RPBA 2020 it has been mandatory since 1 January 2020 to put the decision in writing and despatch it within three months of the date of the oral proceedings. If the board is unable to do so, it has to inform the parties and the PBoA of when the decision will be despatched.

### 5.2. Amendments to the BDS of the TBA – enhancing timeliness

In order to increase timeliness and deal with “pockets” of older stock in a number of boards, amendments to the Business Distribution Scheme of the Technical Boards of Appeal had to be considered.

After having reallocated cases by making individual amendments to the Business Distribution Scheme in the first half of 2022, the extended Presidium unanimously adopted a new provision at its meeting in December 2022. Under this new provision, for the purpose of **balancing out the workload of the boards, chairs may agree to allocate an appeal, or a group of appeals otherwise** than as provided by the regular arrangements for allocating appeals under the Business Distribution Scheme. By requiring the agreement of the chairs, who are familiar with the technical expertise of the members of their boards, the provision **guarantees the technical expertise needed** to decide the **reallocated appeals. Transparency is likewise ensured**, as parties are informed in writing of the reallocation and of the legal basis for it. The new provision entered into force on 1 January 2023.

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The BoA have taken several measures with a view to improving timeliness in a sustainable manner.





## 5.3. New Article 15a RPBA 2020

New Article 15a RPBA 2020 entered into force on 1 April 2021. This provision states that the BoA may hold oral proceedings pursuant to Article 116 EPC by videoconference.

Boards hold oral proceedings if they consider them to be expedient or if so requested by any party to the proceedings (Article 116(1) EPC). Where oral proceedings are to take place in a given case, then, according to Article 15a(1) RPBA 2020, the board in the particular appeal determines whether it is appropriate to hold them by videoconference.

Article 15a(2) RPBA 2020 concerns oral proceedings scheduled to be held on the EPO premises and allows for the use of videoconferencing means during those proceedings. Under Article 15a(2) RPBA 2020, any party, representative or accompanying person may, upon request, be allowed to attend by videoconference rather than in person. Under Article 15a(3) RPBA 2020, the chair in the particular appeal can also allow any other member of the board in the particular appeal to attend remotely by videoconferencing means, regardless of whether the oral proceedings are scheduled to be held on the EPO premises or by videoconference. Under this provision, the chair too may attend remotely.

Whether oral proceedings may be held by videoconference without the parties' consent was the subject of the referral G 1/21 to the Enlarged Board of Appeal.

The PBoA and the BOAC intend to evaluate the experience gained from the use of videoconferencing in oral proceedings before the BoA. A user survey in this regard was conducted from January to March 2023 and feedback is currently being assessed.



## 5.4. Oral proceedings by videoconference

The internal working group set up in 2020 continued to provide advice on measures to be taken in order to enable board members and parties to attend oral proceedings by videoconference. On the basis of the recommendations of the working group, different set-ups for oral proceedings by videoconference were introduced.

In “co-located oral proceedings” by videoconference, the board members are located together in a room on the premises in Haar while the other attendees (parties, representatives, accompanying persons) attend by videoconference.

In “mixed-mode oral proceedings”, some parties, representatives and/or accompanying persons attend by videoconference while others are physically present in the oral proceedings room together with board members. Exceptionally, one or more of the board members may also attend by videoconference.

In “distributed oral proceedings”, all members, representatives and/or accompanying persons attend by videoconference.

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The successful introduction of oral proceedings by videoconference in 2020 has been crucial to the efficient functioning of the BoA; in 2022 some 71% of oral proceedings were held using videoconferencing technology.



**In 2022, the BoA conducted 1 134 oral proceedings by videoconference.**

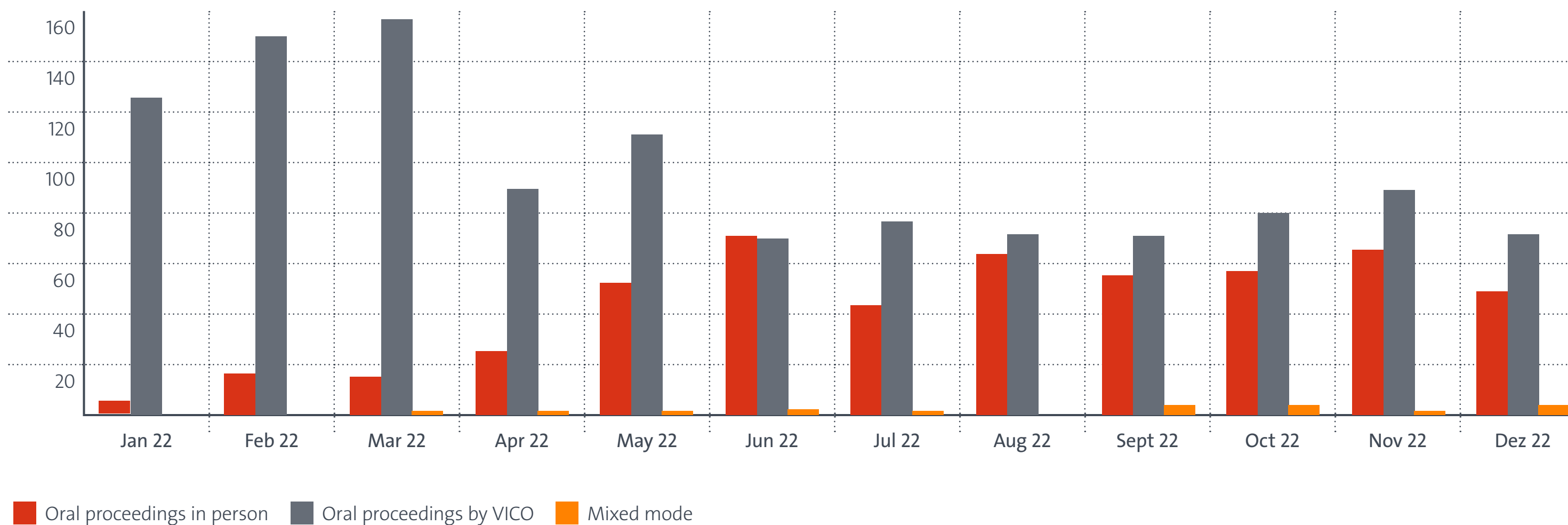
Of these, 278 were held with interpreting and 16 were held by mixed mode. During the same period, 462 in-person oral proceedings took place. These figures show that 71% of oral proceedings were organised by videoconference. Further improvements regarding the technical means for oral proceedings by videoconference have been implemented, including remote interpretation for mixed-mode oral proceedings.



It has been about two and a half years since the BoA organised their first oral proceedings by videoconference, on 8 May 2020. The very high number of oral proceedings by videoconference, both in absolute numbers and as a percentage of the total number of oral proceedings, was very much driven by the urgency created by the COVID-19 pandemic to reduce travelling and meeting in person. However, the **wide acceptance of oral proceedings by videoconference** has made it a **highly appreciated additional means** for organising oral proceedings in general. The BoA will therefore continue to offer the possibility of organising oral proceedings by videoconference even after the COVID-19 pandemic is over. The conduct of oral proceedings using VICO contributes towards reaching the United Nations Sustainable Development Goals, in particular Goal 13 – Climate Action – by 2030.

Figure 6

**Oral proceedings**



To provide complete and up-to-date information on oral proceedings before the BoA, an [information page](#) has been published on the internet. Within the BoA section, parties and members of the public can find information on all topics related to any type of oral proceedings.



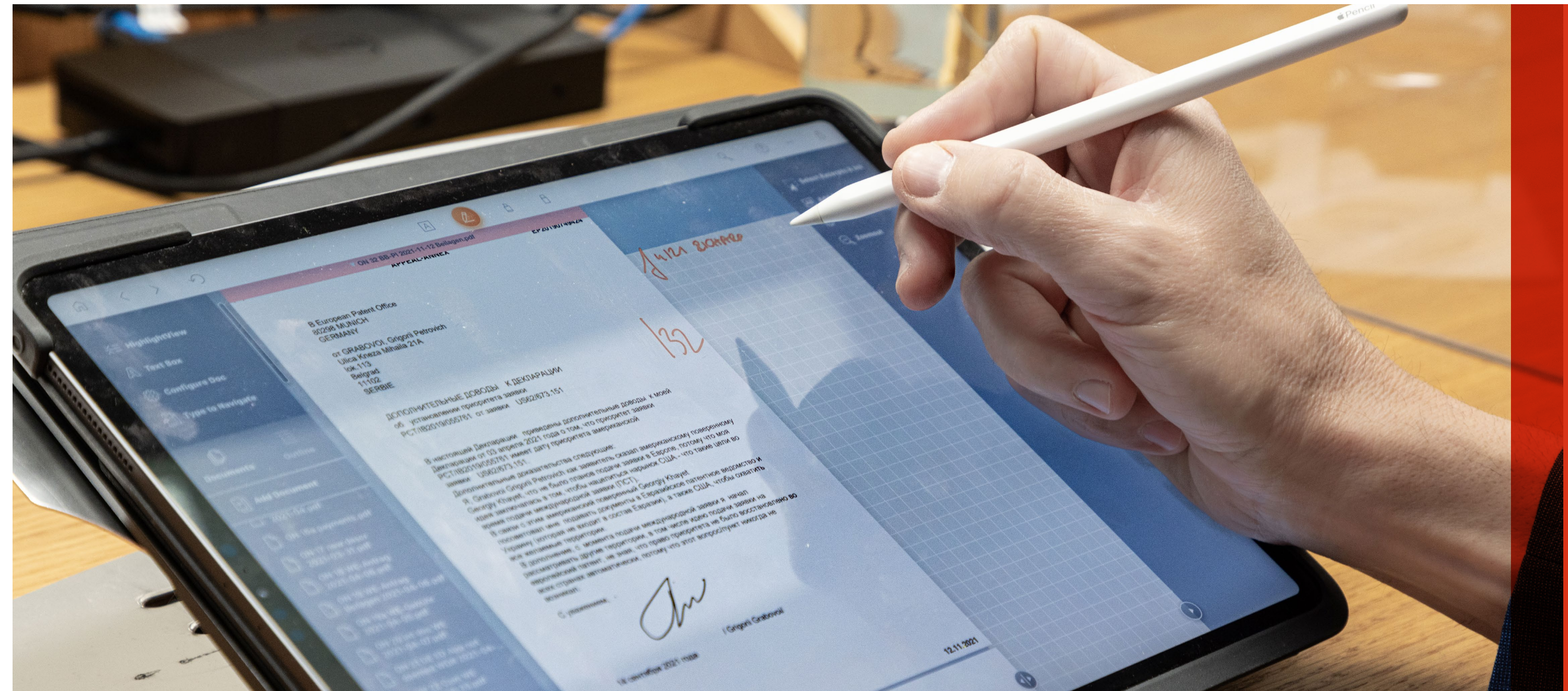
## 5.5. Paperless working

The roll-out of iPads to all BoA staff in the first half of 2020 and the call for all staff to come to the premises only when absolutely necessary for the continuation of oral proceedings have both given a boost to paperless working. Many colleagues have pioneered new ways of working electronically, with the support of software applications like Acrobat® and LiquidText®. With the Office's move to make use of cloud-based solutions, new ways of collaborative working were also made available.

The use of iPads allows board members to work on digital copies of the appeal case. The BoA have also received seamless access to Office systems like Aly and Digital File Repository (DFR).

The transition from traditional ways of working to digital ones has been facilitated by contact persons representing each board. This group of contact persons shared experiences and specified requirements for improvement. Training has been provided online and the group allowed for peer-to-peer training.

Almost all boards now use the electronic file and refrain from routinely printing files. Regarding the member's working files, about 55% are now produced electronically, whereas 45% are still being printed.

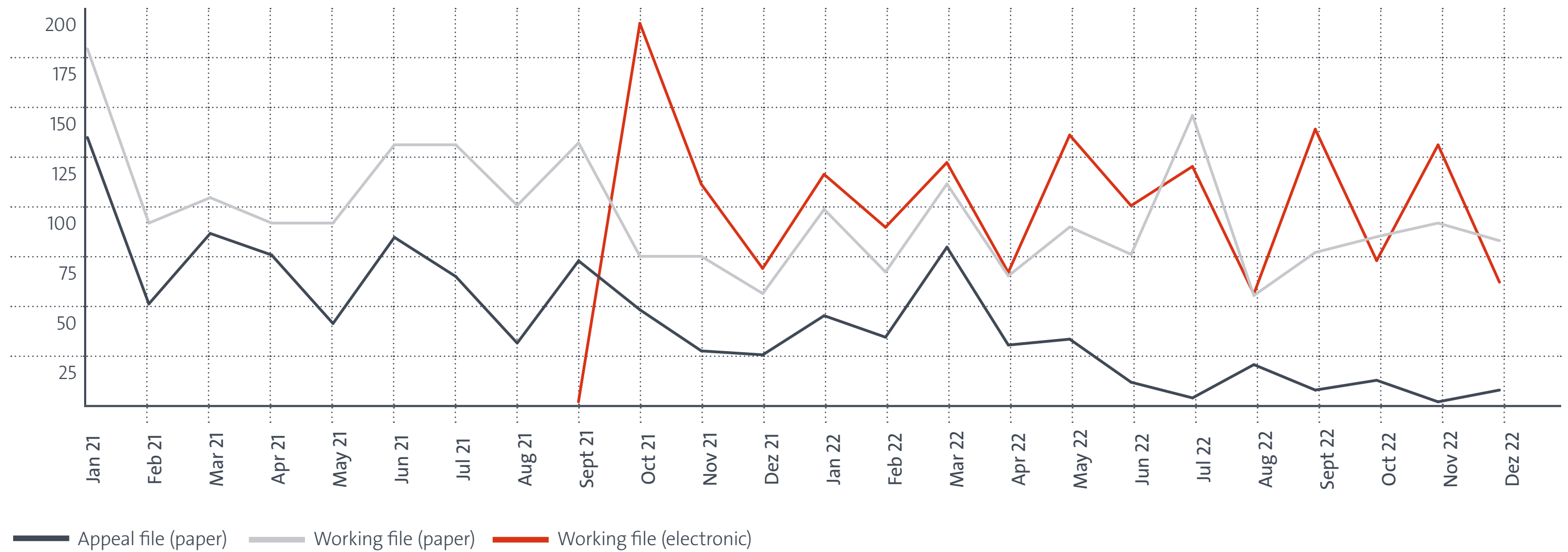


Working with iPads has accelerated the transition from traditional to digital ways of working.





Figure 7  
File constitution



## 5.6. Annual list of cases

All these efforts have resulted in an impressive reduction in paper consumption from 600 000 pages in 2021 to 325 000 pages in 2022, a decrease of 46%.

Despite the wealth of experience gained, there is still much potential for improving the software solutions; the BoA are working closely with the Office on this. Discussion also continues on best practices.

Article 1(2) RPBA 2020 states that a list of cases in which the BoA are likely to hold oral proceedings or issue a communication or a decision in written proceedings in the following working year must be published in advance of that year. The list is based on a working plan drawn up by each chair for their board. Its purpose is to increase efficiency and make the work of the BoA more transparent and predictable. The list for 2023 was published on the [BoA website](#) in October 2022.



## 6. Building

During the 169th meeting of the Administrative Council, the PBoA announced that, together with the President of the Office, a joint proposal would be made to relocate the BoA to a building that was part of the PschorrHöfe complex.

The location at “Building VII” in the PschorrHöfe complex will facilitate access to the BoA for its users (parties and representatives), the public and the majority of BoA staff.





## 7. Staff

In total, the BoA had 269 permanent posts in 2022 (205 board members and chairs and 64 staff members in the support services).

In 2022, following the departure of 4 members and 4 chairs, the BoA recruited 3 new chairs and 1 legally qualified member. There were also 8 support staff recruited, five of these were hired to fill posts that had become vacant due to retirement or transfer.

As at 31 December 2022, the headcount of chairpersons and members of the Boards of Appeal is 189. The 130 technically qualified and 31 legally qualified members were divided among 27 technical boards and the Legal Board of Appeal chaired by 28 chairpersons. The total number of BoA staff, including the PBoA, was 252.

As the BoA are on plan to achieve their five-year objectives by the end of 2023, including the reduction of the backlog in pending appeals, there has been no need to fill all member posts which were vacated in 2022.



### 7.1. Staff survey

In summer 2022, the BoA took part in the Office-wide staff engagement survey run by Willis Towers Watson.

The BoA had a response rate of 75% with very good results and improvements in most areas (12 out of 13 categories had improved) compared with the last survey in 2019, demonstrating that a **cultural change was underway**. The most significant improvements concerned “external reputation” (42% higher than in 2019) and “communication” (23% higher than in 2019). Scores were also high on flexibility and line management questions, including caring for well-being. Other areas above average included skills development, inclusion, respect, recognition, fair pay, use of technology, autonomy and integrity.

Areas for **further improvement** were identified in **communication, staff engagement and feedback culture**.

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The very good results of the 2022 BoA staff survey demonstrate staff appreciation for the cultural change within the BoA.



## 7.2. Diversity and inclusion

In March 2021, the BoA’s Working Party on Diversity and Inclusion (D&I) was created by the PBoA to advise him on how the BoA can create a more diverse and inclusive culture to help build a modern judiciary. The PBoA submitted his D&I strategy for the period 2022-2027 to the BOAC for its opinion and it received positive feedback and much attention.

In 2022, aside from a D&I website which was created on the intranet presenting inter alia the BoA’s D&I vision and mission as well as its goals and actions, several D&I initiatives also took place. Presentations on neurodiversity and intercultural awareness, conducted in virtual format but in a highly interactive manner, were well attended and received positive feedback. As part of Goal 1 under the BoA D&I strategic plan 2022-2027, the chairs participated in a D&I awareness training session in October, which was then offered to all BoA staff. In two 90-minute virtual classroom workshops in small groups, staff developed a common understanding and language around D&I, learnt how inclusive practices help to manage diversity more effectively, developed a sound understanding of barriers to inclusion, stereotypes, unconscious biases and microaggressions, and identified concrete actions to take in their different areas of responsibility to create a more inclusive working environment.

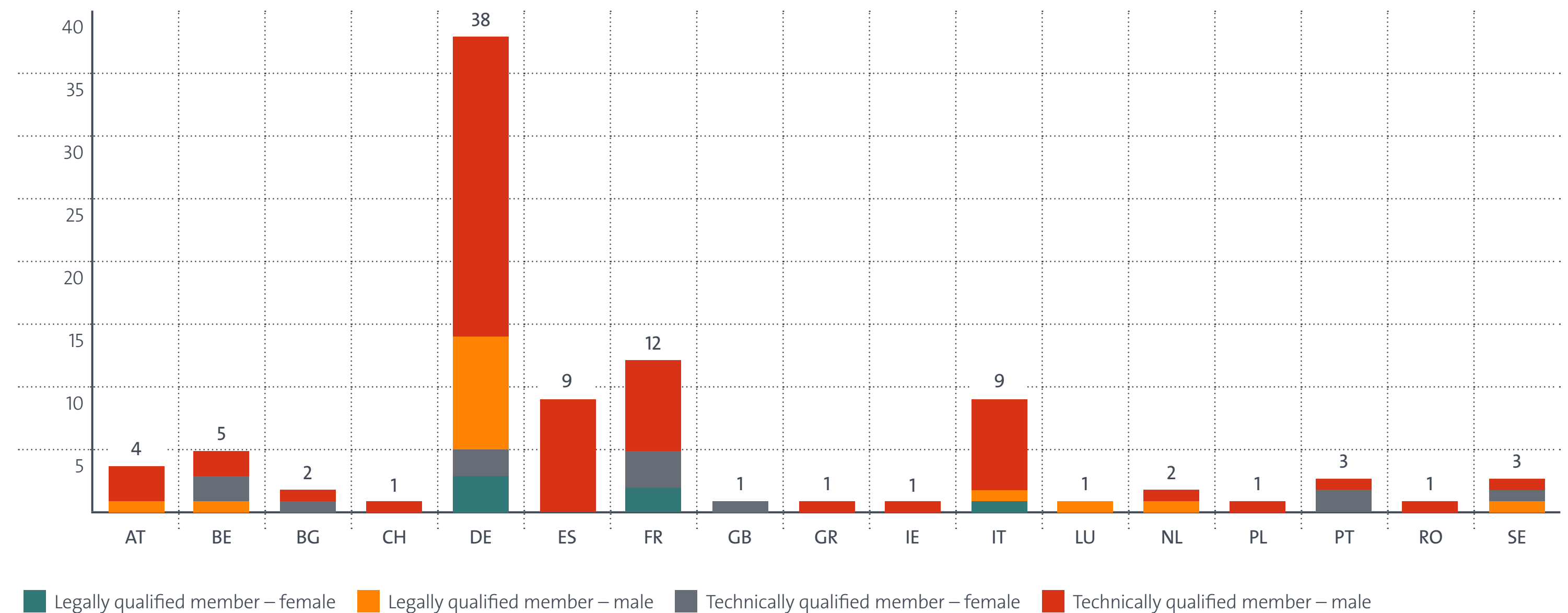
Furthermore, the D&I working party reviewed publications, forms and other communications on the aspect of gender inclusiveness, building on the revision of the Business Distribution Scheme in terms of gender-neutral language, to ensure a consistent and harmonised approach for the BoA.

Lastly, by having one member of the D&I working party on the taskforce for the relocation of the BoA, it is ensured that D&I aspects are considered when planning the renovation and the move to the new building.

Recruitment, professional development and work-life balance are further areas that will be addressed by the D&I working party.

Figure 8

Gender and nationality distribution of newly recruited members since 2017





## 7.3. New ways of working

The PBoA has provided guidelines on the application of the Office's New Ways of Working scheme, which entered into force on 1 June 2022. Its purpose is to enable members and chairs to benefit from the more flexible teleworking of the New Ways of Working scheme while at the same time ensuring that the specific organisational needs in relation to the conduct of oral proceedings before the BoA are met, in the sense that the scheduling, re-scheduling and conduct of oral proceedings take precedence over teleworking.



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The new ways of working provide for more flexibility, while ensuring the continued functioning of the BoA.



## 8. Enlarged Board of Appeal

The main task of the Enlarged Board of Appeal is to ensure the uniform application of the EPC. It decides on points of law of fundamental importance referred to it either by a board of appeal or by the President of the EPO under Article 112 EPC. It is also competent to decide on petitions for review of BoA decisions under Article 112a EPC.





## 8.1. Referrals under Article 112 EPC

In 2022, the Enlarged Board of Appeal received two new referrals under Article 112 EPC.

In case T 1513/17 (consolidated with case T 2719/19) the board considered the **“joint applicants approach”** in the context of a **PCT application**. The application on which the patent was granted was originally filed by the inventors (for the US only) and the appellant together with a university (for all other designated states) as an international application under the PCT, claiming priority from a US provisional application filed by the inventors. The opposition division had rejected the priority claim and revoked the patent for lack of novelty and inventive step. Relying on Article 11(3) PCT and Articles 118 and 153(2) EPC, the patent proprietor argued that the PCT application had the same effects as the European patent application. Therefore, even where the applicants who jointly filed the PCT application are not the same in respect of different designated states, the applicants for the designation EP should benefit from the priority right to which their co-applicants (for the US only) are entitled. The question was also raised if the EPO was competent to determine who was “successor in

title” (Art. 87(1) EPC), at all. The board referred the following questions to the Enlarged Board of Appeal (referrals pending as G 1/22 and G 2/22):

- I. Does the EPC confer jurisdiction on the EPO to determine whether a party validly claims to be a successor in title as referred to in Article 87(1)(b) EPC?
- II. If question I is answered in the affirmative, can a party B validly rely on the priority right claimed in a PCT application for the purpose of claiming priority rights under Article 87(1) EPC in the case where:
  1. a PCT application designates party A as applicant for the US only and party B as applicant for other designated States, including regional European patent protection and
  2. the PCT application claims priority from an earlier patent application that designates party A as the applicant and
  3. the priority claimed in the PCT application is in compliance with Article 4 of the Paris Convention?

As at 31 December 2022, three referrals under Article 112 EPC were pending before the Enlarged Board of Appeal (G 2/21, G 1/22, G 2/22). At the time of publication, following oral proceedings in November 2022, [decision G 2/21](#) was published.

## 8.2. Petitions for review under Article 112a EPC

In 2022, the Enlarged Board of Appeal received 25 petitions for review.

In its Business Distribution Scheme for 2021, the Enlarged Board of Appeal created the possibility of including external legally qualified members in its composition for petitions for review under Article 112a EPC. External legally qualified members can now sit on the Enlarged Board of Appeal in its three- and five-member composition when hearing petitions for review. Use was made of this option for the first time in 2022.

As at 31 December 2022, a total of 39 petitions for review are currently pending. In 2022, nine petitions for review were settled.



## 9. Contact with national courts, users and representatives

Discussions and contact with national courts, users and representatives continued throughout 2022. These meetings are an important means of strengthening interaction between national judges, users and the BoA, and of deepening knowledge of the respective legal and appeal systems. Due to the continuing pandemic and for reasons of efficiency, most meetings were held in a virtual format to ensure the discussions could continue (with some exceptions for conferences organised as in-person-only events).

As a judicial authority, the BoA maintains and highly values interaction with other national courts. In 2022, there were several opportunities for direct discussions and debate with judicial colleagues, for example at the annual workshop between BoA members and national patent judges on patentability-related issues, this year's topic being that of added subject-matter and intermediate generalisations. The PBoA also attended the 10th anniversary of the Swiss Federal Patent Court, as well as the European Judges' Forum in Venice, which brings together expert patent litigators, national judges – this year including for the first time judges appointed to the Unified Patent Court – and the BoA. Within Europe, the boards were also represented at the IP Case Law conference organised by the Boards of Appeal of the European Union Intellectual Property Office (EUIPO) and the WIPO Judges Forum. At a global level, and together with other members of the judiciary, the BoA attended the Fordham IP Law & Policy conference and the Judicial Symposium on IP hosted by the Japan Patent Office, comparing and contrasting approaches on substantive topics with judicial peers.

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Interaction with national courts, users and representatives is key to sharing experiences and discussing relevant topics.





The BoA interact regularly with institutional counterparts. A high-level meeting was organised with the EUIPO Boards of Appeal to discuss topics of common interest. In addition, the BoA Registry and the Registry of the Boards of Appeal at the EUIPO met virtually to share experiences and discuss relevant topics. An important event was the annual high-level meeting of the IP5 Trial and Appeal Boards, which the BoA organised and hosted in a virtual format in 2022. At this meeting, the IP5 Trial and Appeal Boards discussed developments and activities in each of the IP5 partners; WIPO representatives participated at the meeting as observers and also reported on their recent activities. Furthermore, the PBoA welcomed a delegation from the IPTAB of KIPO at the BoA premises to discuss topics of common interest.

In a larger forum, teaming up with the European Patent Academy, the **BoA organised the annual “Boards of Appeal and key decisions”** conference showcasing recent case law of the boards and in-depth analysis on added subject-matter and intermediate generalisations, as well as exploring the boundaries between clarity, sufficiency of disclosure and inventive step. This conference welcomes patent practitioners, judges, national office staff and IP counsel. As in previous years, it was **well attended with over 300 participants**. The conference was also livestreamed internally with views from a large number of EPO staff members.

Every year, the PBoA and members of the boards hold virtual meetings with delegations from the user community, namely from the patent profession (epi), industry (BusinessEurope) and the FICPI. These meetings give the boards valuable insight into the views and expectations of the user community on a variety of issues, such as online hearings, topics of substantive patent law and quality issues (such as those mentioned above).

The BoA were also represented and delivered speeches at other larger conferences with a variety of stakeholders present in the audience, notably at the FICPI World Congress and Patentdagen in Sweden.

At the request of the European Patent Academy, board members and members of the Legal Research Service of the BoA gave 12 virtual talks and presentations at conferences, seminars and workshops organised by the Office. This year the number was significantly lower than in previous years. However, despite the limitations, the BoA were glad to be able to help guarantee a high level of expertise and quality for the benefit of a demanding professional audience.

All these activities continue to have the unreserved support of the BoA as they increase the overall outreach of the EPO and raise knowledge and awareness of patents and industrial property.



## 10. Data protection

Under the Data Protection Rules (DPR), data protection at the BoA involves three pillars. With regard to administrative tasks, the President of the EPO acts as Controller for activities not delegated to the PBoA under the Act of Delegation (AoD). Another pillar concerns administrative activities which are delegated under the AoD and where the PBoA acts as Controller. The third pillar encompasses the BoA acting in their judicial capacity, with the PBoA acting as Controller and the DPR laying down that an independent oversight mechanism must be established.

A decision by the PBoA concerning the processing of personal data in appeal proceedings is being prepared, as is a proposal on the independent oversight mechanism for the Boards of Appeal acting in their judicial capacity.

Data protection records and statements either have already been published or are to be published soon. Further records will be finalised and published, once the rules on the independent oversight mechanism for the Boards of Appeal acting in their judicial capacity are enacted.





# 11. Statistics

## 11.1. Breakdown of appeal cases by type

Table 3

Breakdown of appeal cases by type

	New cases						Settled cases						Pending cases			
	2022		2021		2020		2022		2021		2020		2022		2021	
<b>Enlarged Board of Appeal</b>	<b>27</b>		<b>17</b>		<b>14</b>		<b>9</b>		<b>15</b>		<b>6</b>		<b>42</b>		<b>24</b>	
Referrals	2		2		0		0		3		1		3		1	
Petitions for review	25		15		14		9		12		5		39		23	
<b>Legal Board of Appeal</b>	<b>8</b>		<b>15</b>		<b>29</b>		<b>17</b>		<b>11</b>		<b>26</b>		<b>11</b>		<b>20</b>	
<b>Technical boards of appeal</b>	<b>2 660</b>	<i>100%</i>	<b>2 245</b>	<i>100%</i>	<b>2 059</b>	<i>100%</i>	<b>3 576</b>	<i>100%</i>	<b>3 395</b>	<i>100%</i>	<b>3 013</b>	<i>100%</i>	<b>6 216</b>	<i>100%</i>	<b>7 131</b>	<i>100%</i>
Examination procedure (ex parte)	682	25.6%	810	36.1%	957	46.5%	1 271	35.5%	1 304	38.4%	1 331	44.2%	2 181	35.1%	2 769	38.8%
Opposition procedure (inter partes)	1 978	74.4%	1 435	63.9%	1 102	53.5%	2 305	64.5%	2 091	61.6%	1 682	55.8%	4 035	64.9%	4 362	61.2%
<b>Mechanics</b>	<b>993</b>	<i>37.3%</i>	<b>704</b>	<i>31.4%</i>	<b>613</b>	<i>29.8%</i>	<b>1 141</b>	<i>31.9%</i>	<b>1 110</b>	<i>32.7%</i>	<b>928</b>	<i>30.8%</i>	<b>1 915</b>	<i>30.8%</i>	<b>2 077</b>	<i>29.1%</i>
Examination procedure	77		97		122		134		145		199		197		258	
Opposition procedure	916		607		491		1 007		965		729		1 718		1 819	
<b>Chemistry</b>	<b>842</b>	<i>31.7%</i>	<b>755</b>	<i>33.6%</i>	<b>573</b>	<i>27.8%</i>	<b>1 097</b>	<i>30.7%</i>	<b>1 011</b>	<i>29.8%</i>	<b>927</b>	<i>30.8%</i>	<b>1 906</b>	<i>30.7%</i>	<b>2 152</b>	<i>30.2%</i>
Examination procedure	77		107		123		153		215		238		206		282	
Opposition procedure	765		648		450		944		796		689		1 700		1 870	
<b>Physics</b>	<b>205</b>	<i>7.7%</i>	<b>156</b>	<i>6.9%</i>	<b>171</b>	<i>8.3%</i>	<b>413</b>	<i>11.5%</i>	<b>399</b>	<i>11.7%</i>	<b>355</b>	<i>11.8%</i>	<b>660</b>	<i>10.6%</i>	<b>867</b>	<i>12.2%</i>
Examination procedure	90		84		104		243		260		257		379		532	
Opposition procedure	115		72		67		170		139		98		281		335	
<b>Electricity</b>	<b>620</b>	<i>23.3%</i>	<b>630</b>	<i>28.1%</i>	<b>702</b>	<i>34.1%</i>	<b>925</b>	<i>25.9%</i>	<b>875</b>	<i>25.8%</i>	<b>803</b>	<i>26.6%</i>	<b>1 735</b>	<i>27.9%</i>	<b>2 035</b>	<i>28.5%</i>
Examination procedure	438		522		608		741		684		637		1 399		1 697	
Opposition procedure	182		108		94		184		191		166		336		338	
<b>Disciplinary Board of Appeal</b>	<b>45</b>		<b>55</b>		<b>3</b>		<b>57</b>		<b>6</b>		<b>15</b>		<b>48</b>		<b>60</b>	
<b>Total</b>	<b>2 740</b>		<b>2 332</b>		<b>2 105</b>		<b>3 659</b>		<b>3 427</b>		<b>3 060</b>		<b>6 317</b>		<b>7 235</b>	



Figure 9  
Number of new cases

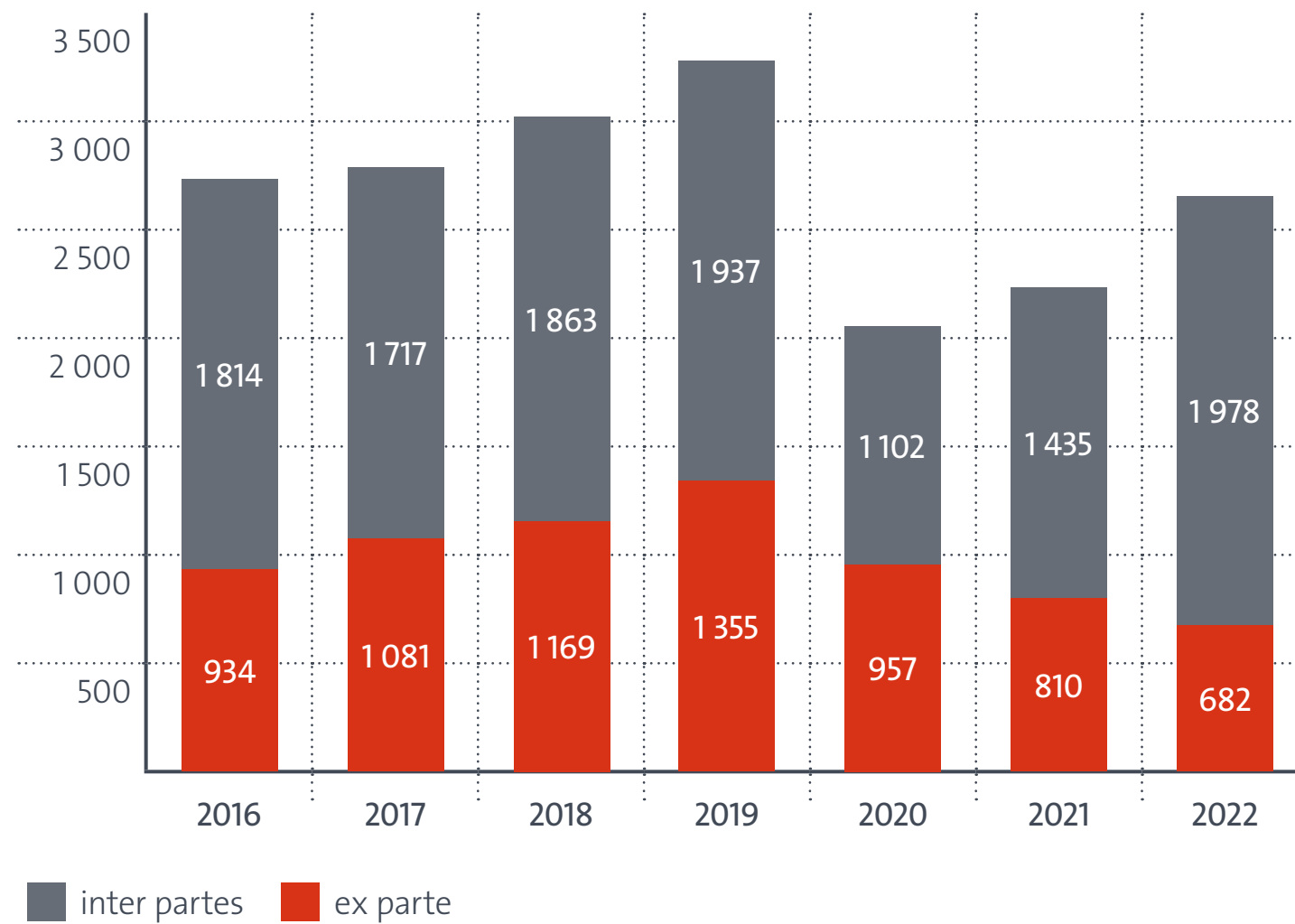


Figure 10  
Number of new cases per technical field

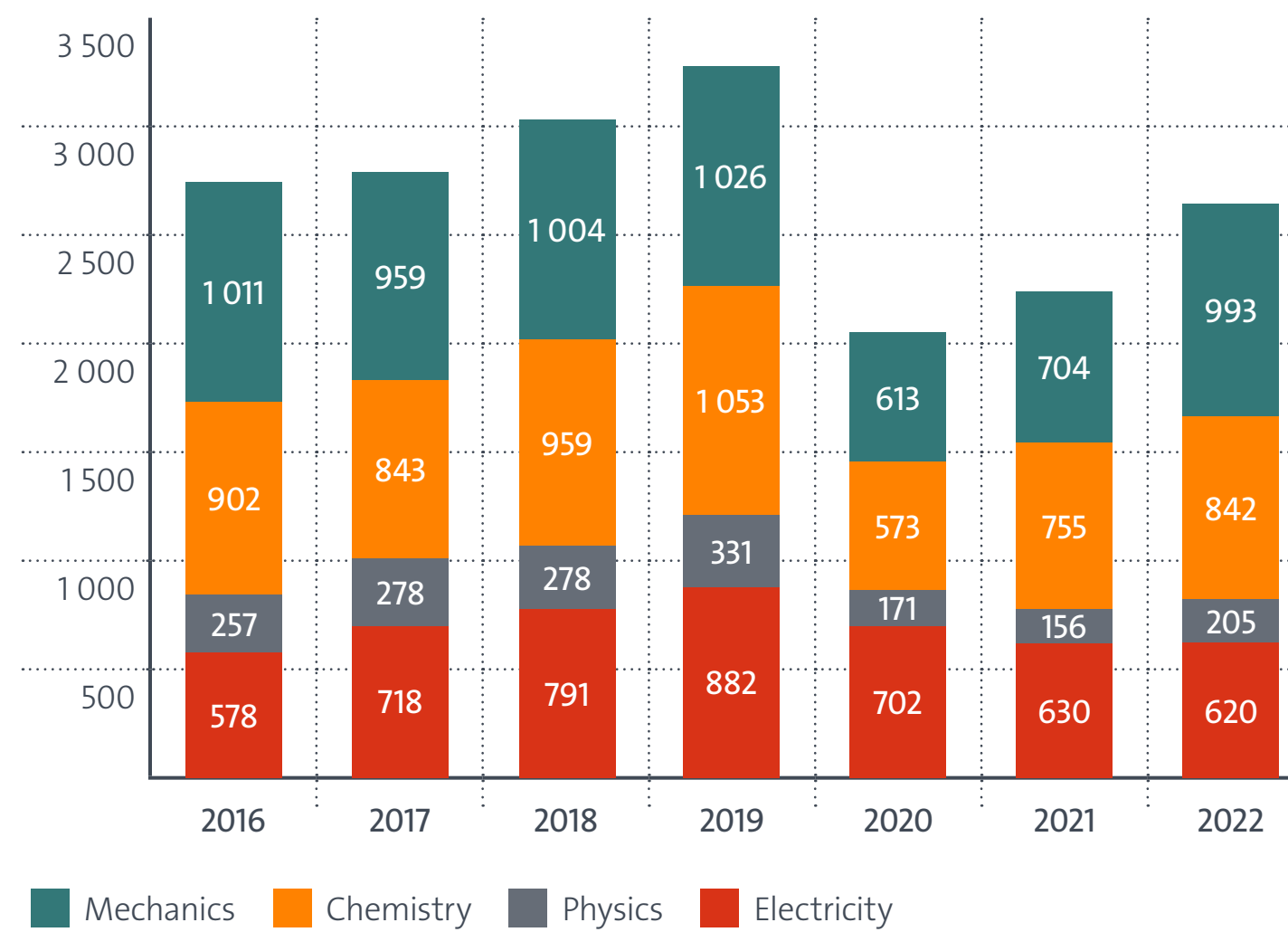


Figure 11  
Number of settled cases

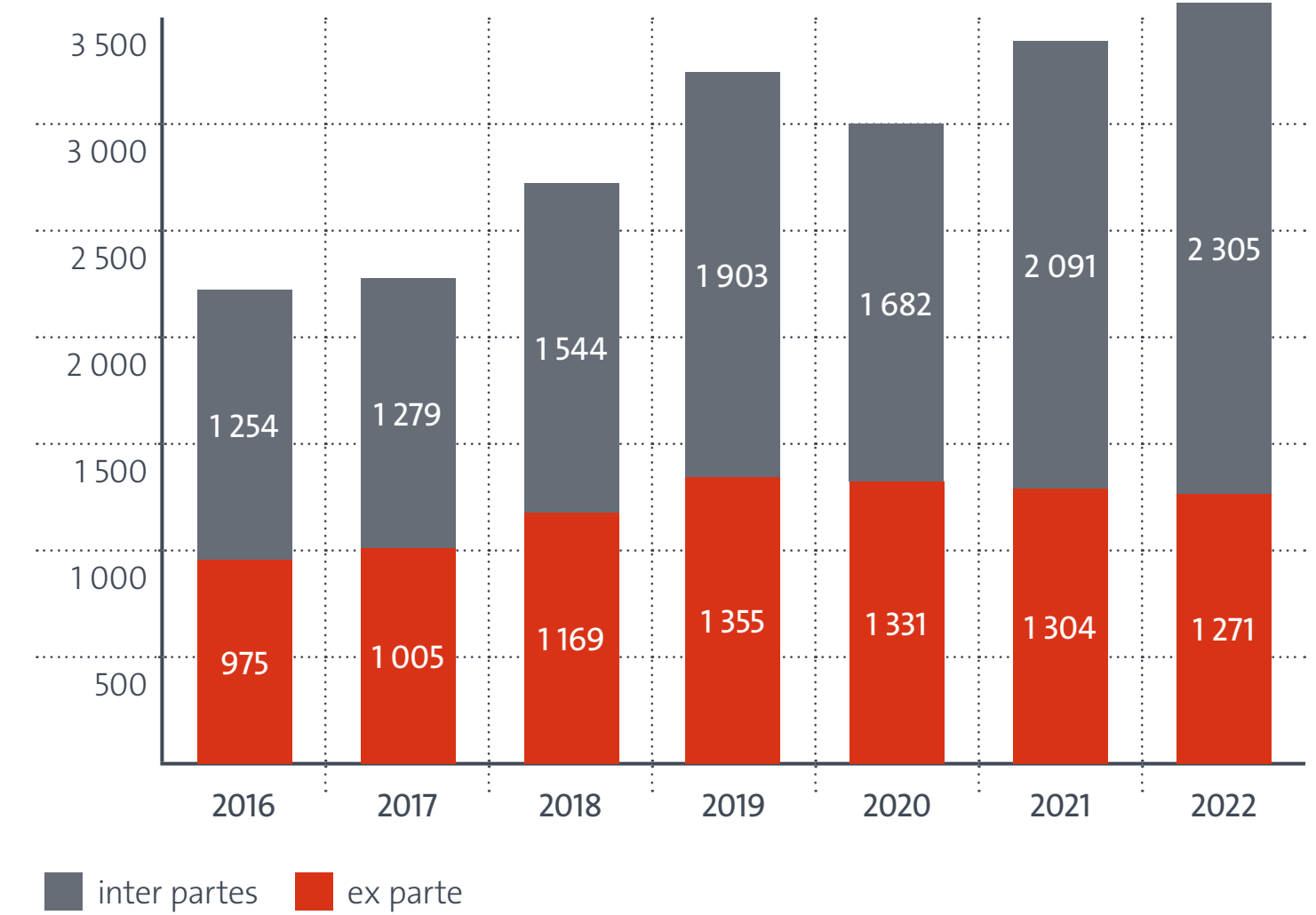




Figure 12  
Number of cases settled per technical field

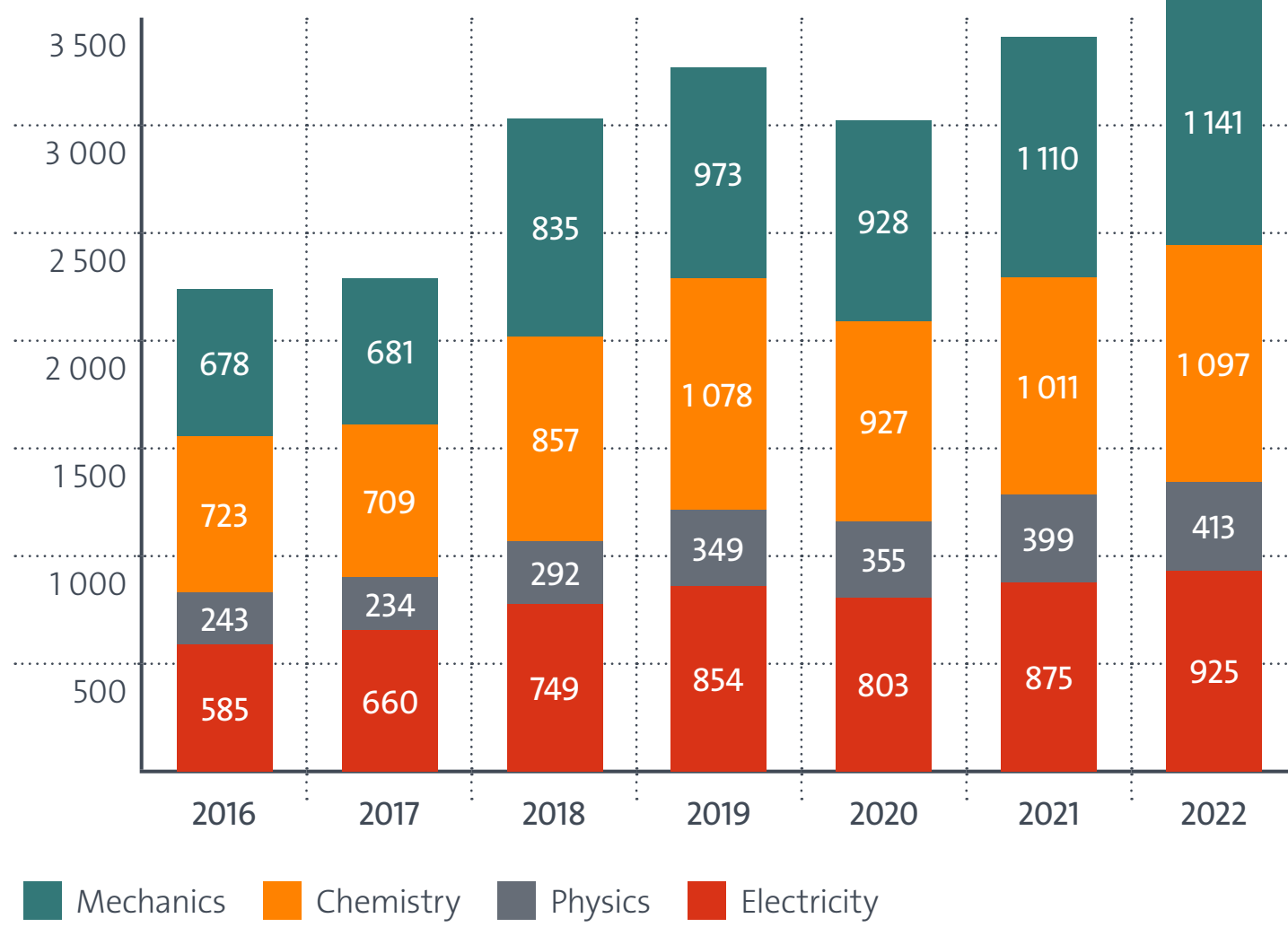


Figure 13  
Number of pending cases

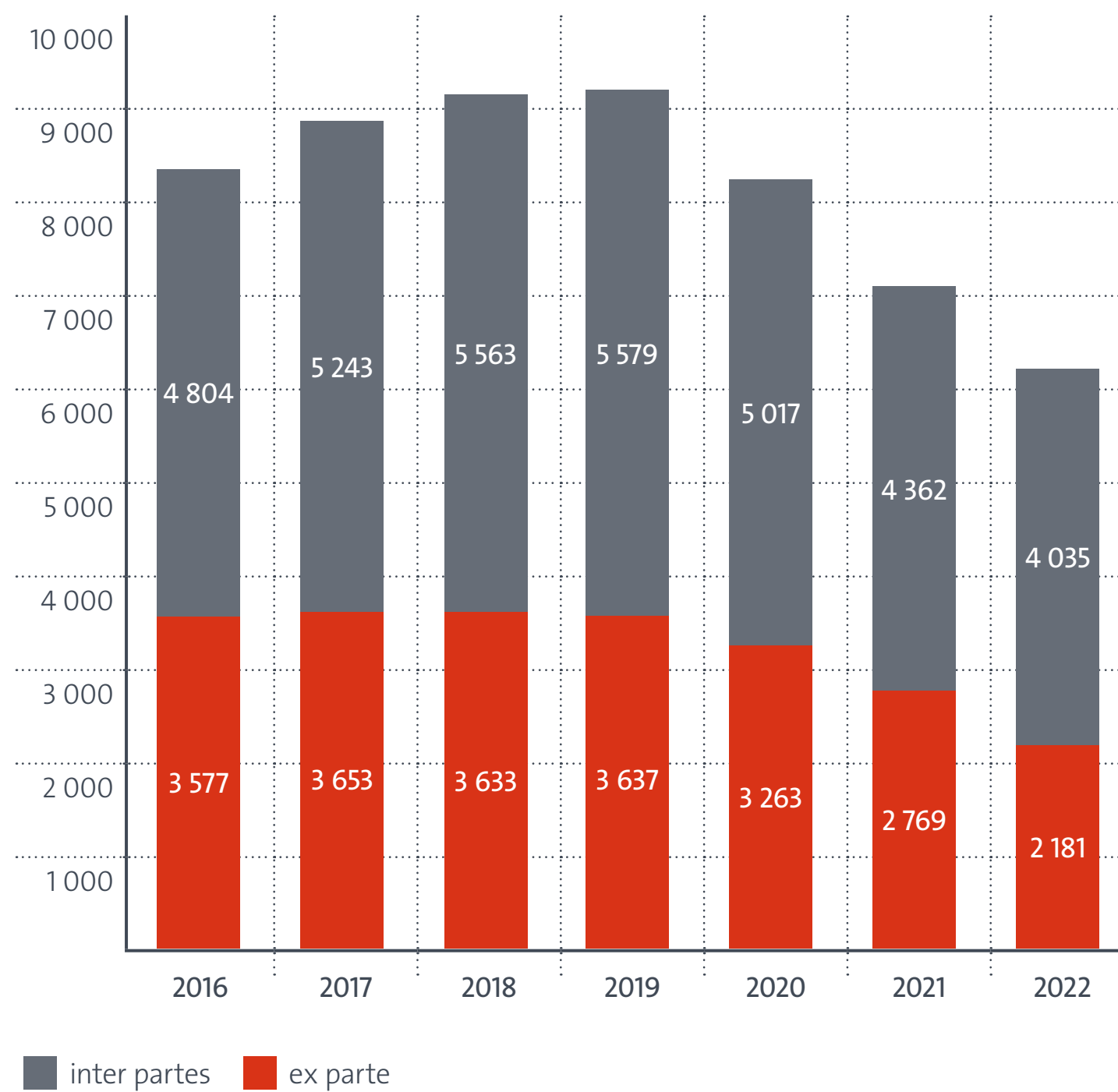
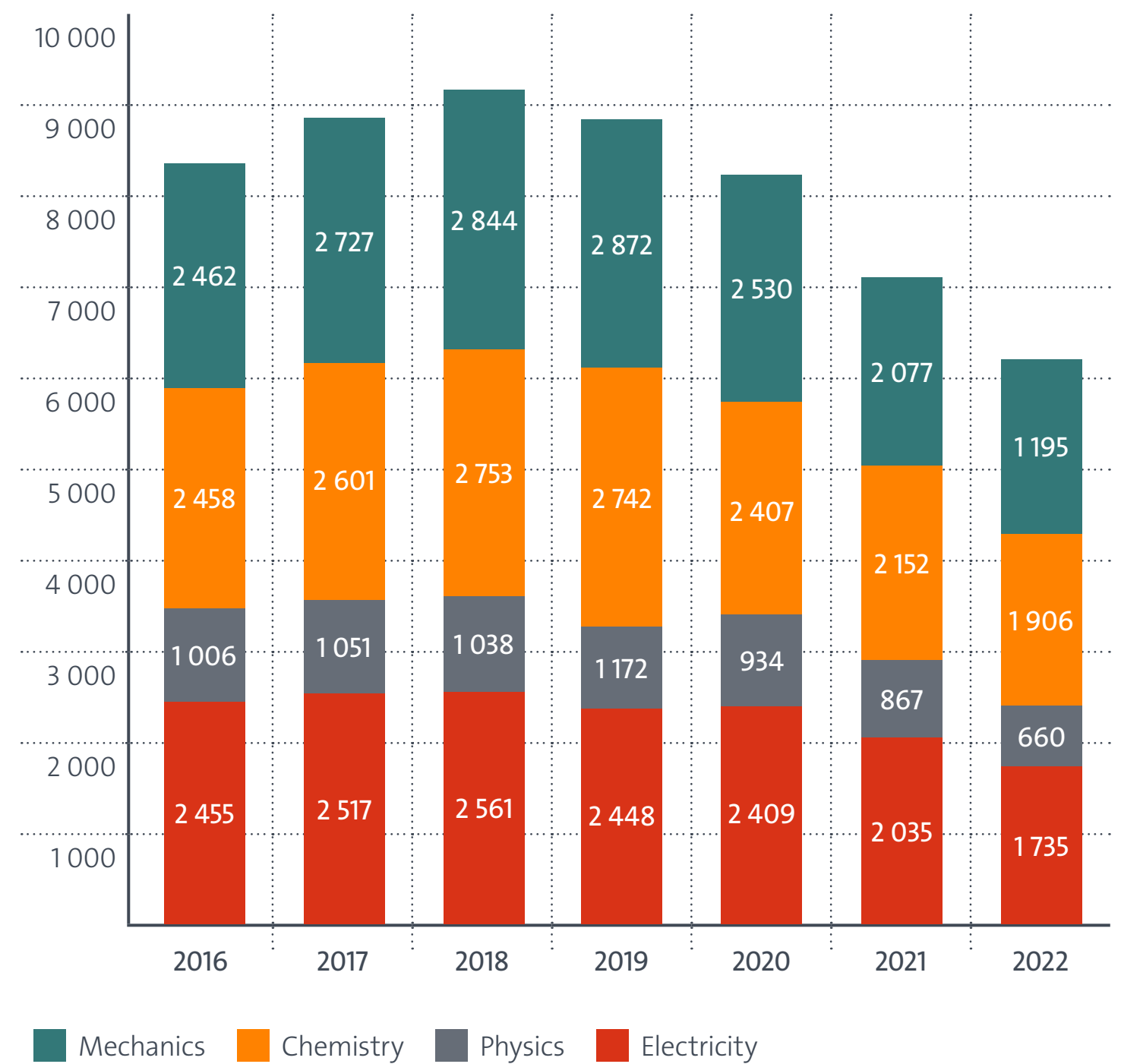


Figure 14  
Number of cases pending per technical field





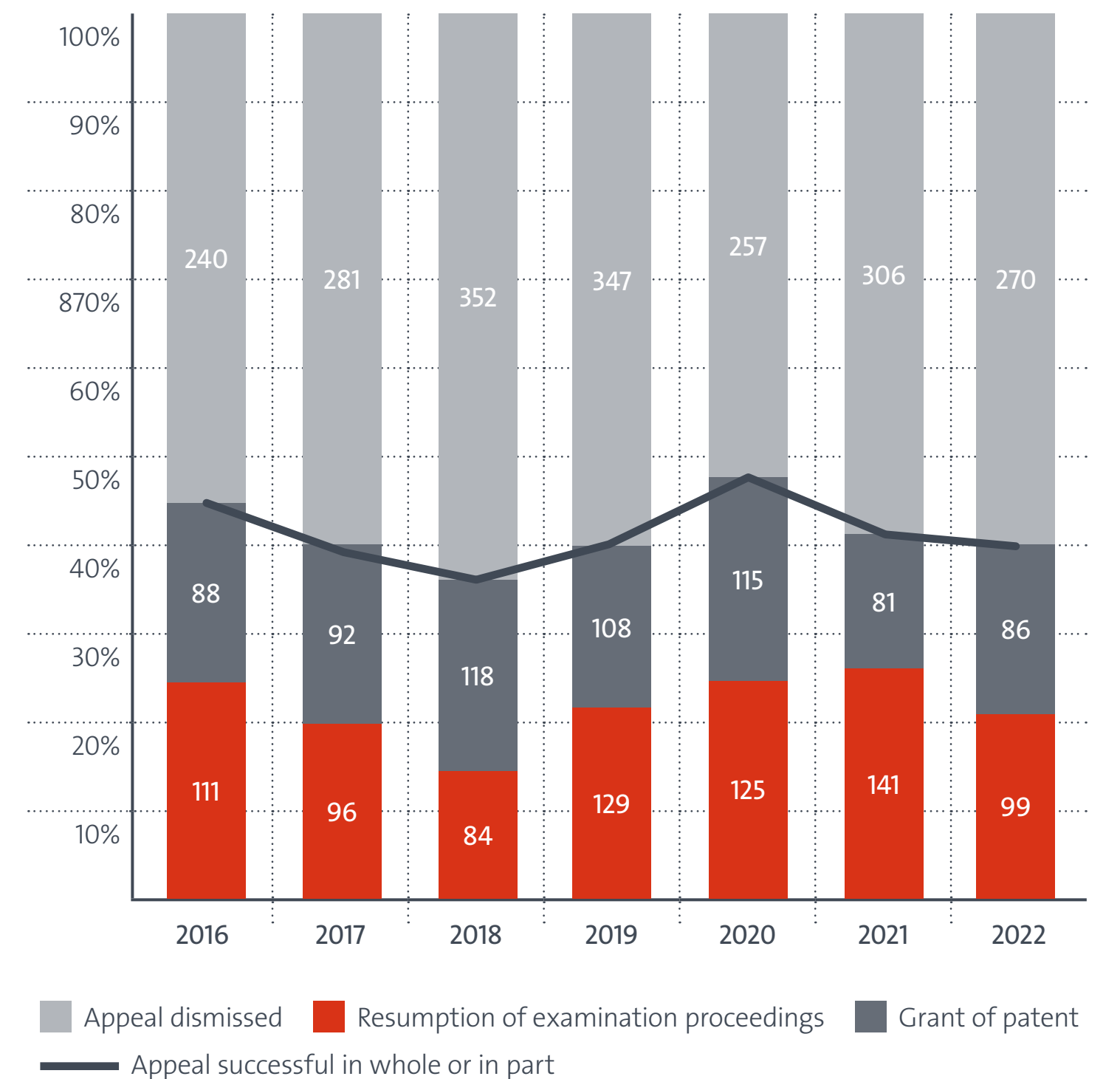
## 11.2. Outcome of proceedings before the technical boards of appeal

A total of 1 271 ex parte cases were settled in 2022 (2021: 1 304). Of these, 472 were settled by a decision. The remaining 799 were settled without a decision. In 578 of these (2021: 545), the appeal was withdrawn after a substantive communication by the board.

Of the ex parte cases, 455 (36%) were settled after a decision on the merits, i.e. not terminated as a result of rejection due to inadmissibility, because of withdrawal of the appeal or patent application, or for some other reason. The outcome of these 455 cases is shown in Figure 15.

Figure 15

Ex parte cases settled after a decision on the merits



A total of 1 271 ex parte cases were settled in 2022.



A total of 2 305 inter partes cases were settled in 2022 (2021: 2 091). Of these, 1 440 were settled by a decision. The remaining 865 were settled without a decision. In 470 of these (2021: 492), the appeal was withdrawn after a substantive communication by the board.

Of the inter partes cases, 1 375 (60%) were settled after a decision on the merits, i.e. not terminated as a result of rejection due to inadmissibility, because of withdrawal of the appeal, or for some other reason. The outcomes of these 1 375 cases are shown in Figure 16 (no distinction is drawn between appeals by patent proprietors and appeals by opponents; in any one case, there may be more than one appellant).

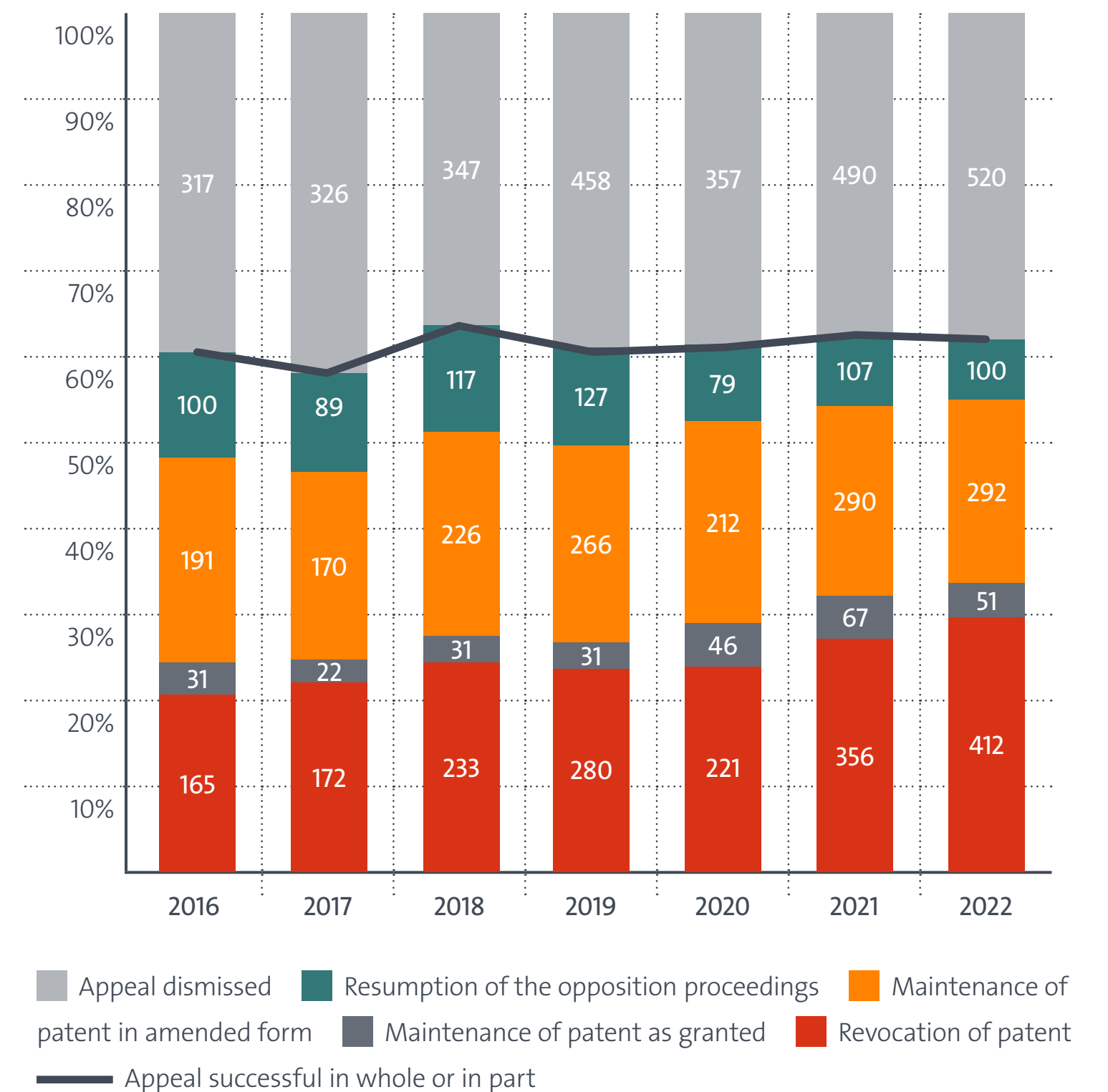
In 2022 there were a total of 1 051 withdrawals which is a slight increase of 1.3% compared to 2021 when there were 1 037 withdrawals. Following the large increase in the number of withdrawals in 2020 and 2021 the trend appears to have stabilised at this higher level. The 1 051 withdrawals in 2022 represents an increase of 62.9% compared to the 645 withdrawals in 2019. The **reasons for this higher level of withdrawals** being reached and kept may be related to measures such as the **amendments to the RPBA 2020** (which include the mandatory despatch of a substantive communication, in most cases with a preliminary opinion on the likely outcome of the case), the **reform of the reimbursement options for the appeal fee**, the **increased number of communications** produced by the boards and **reasons related to the extraordinary circumstances under the COVID-19 pandemic**.

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A total of 2 305 inter partes cases were settled and a total of 1 051 cases were withdrawn in 2022.

Figure 16

Inter partes cases settled after a decision on the merits





## 11.3. Proceedings before the Disciplinary Board of Appeal

The Disciplinary Board of Appeal decides on appeals in cases relating to the European qualifying examination (EQE) for professional representatives before the EPO and in cases concerning breaches by professional representatives of their Rules of Professional Conduct. In EQE cases, it is composed of two legally qualified members of the BoA and one European professional representative; in disciplinary cases, it is composed of three legally qualified members of the BoA and two European professional representatives.

Table 4

Proceedings before the Disciplinary Board of Appeal

	2022	2021
<b>New cases</b>	<b>45</b>	<b>55</b>
EQE	44	53
Professional representatives code of conduct	1	2
<b>Settled cases</b>	<b>57</b>	<b>6</b>
EQE	52	5
Professional representatives code of conduct	5	1
<b>Pending cases</b>	<b>48</b>	<b>60</b>
EQE	45	53
Professional representatives code of conduct	3	7

## 11.4. Breakdown by language of proceedings

Table 5

Breakdown by language of proceedings

	Total	English	German	French
<b>Appeals filed before the technical boards in 2022</b>	<b>2 660</b>	74.1%	21.1 %	4.8%
<b>Oral proceedings scheduled by technical boards in 2022</b>	<b>2 892</b>	73.7%	22.1%	4.2 %
<b>Oral proceedings held by technical boards in 2022</b>	<b>1 596</b>	69.9%	24.9%	5.2 %





## 11.5. Staff statistics and distribution of responsibilities

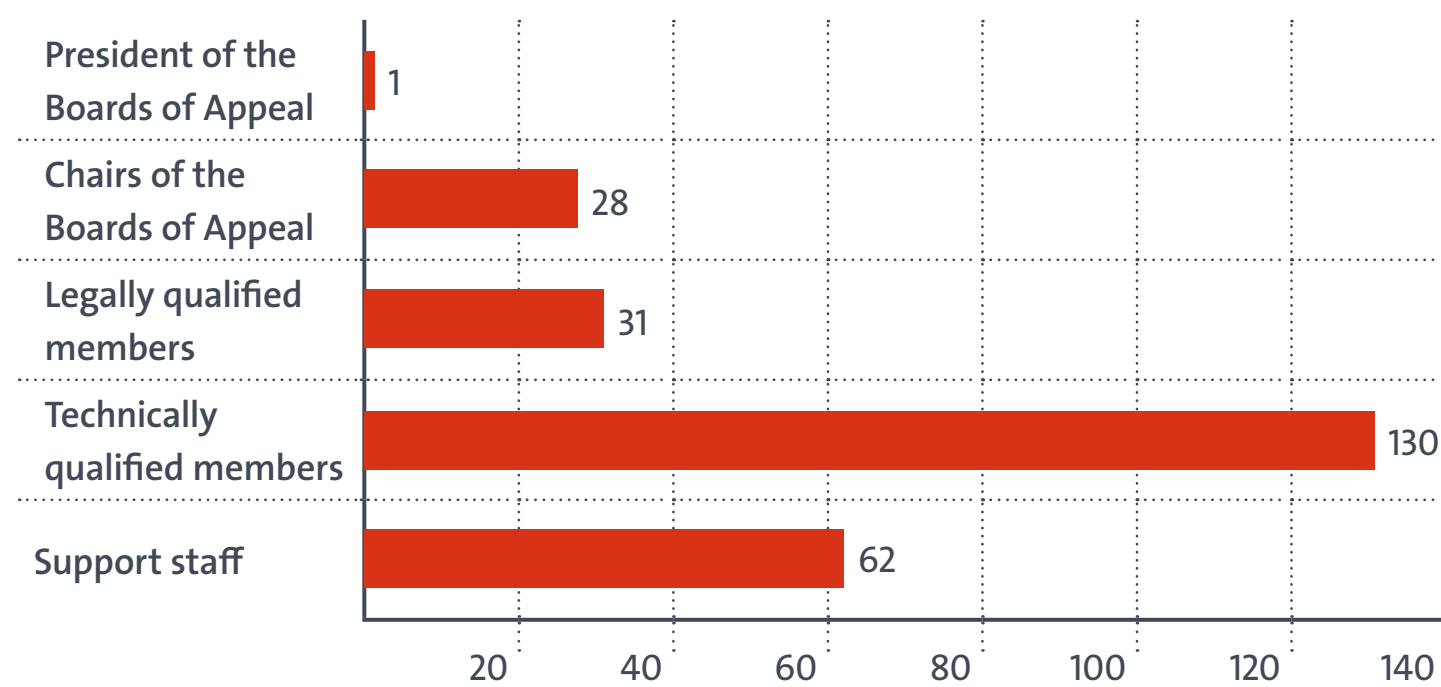
### 11.5.1. Total number of BoA staff

At the end of 2022 the BoA had a total of 252 staff.

### 11.5.2. Breakdown of staff by function

As at 31 December 2022, 189 staff were working as chairs and members of the boards. The remainder were involved in the support services.

Figure 17  
Breakdown of staff by function



### 11.5.3. Breakdown of staff by age and gender

The average age of chairs and members is 54. The biggest age group, for both male and female staff, is 51 to 55.

For support staff, the average age is 51. The age distribution is quite even up to 60 years old.

Figure 18  
Age groups, chairs and members

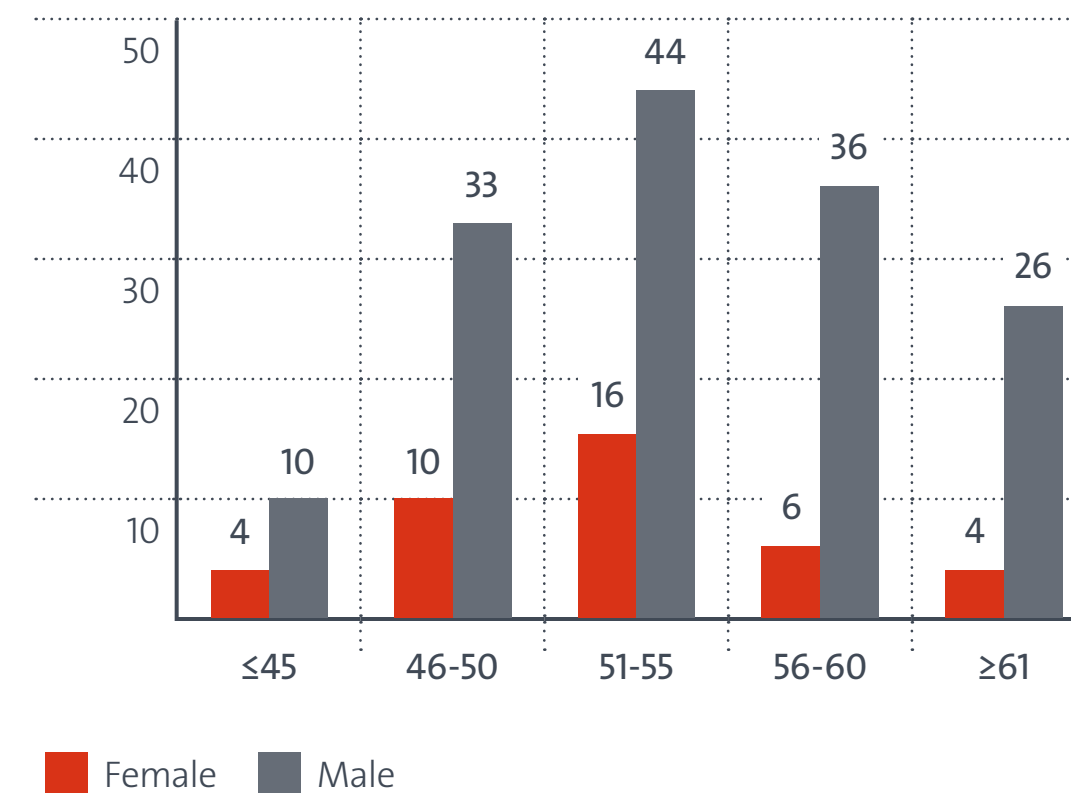
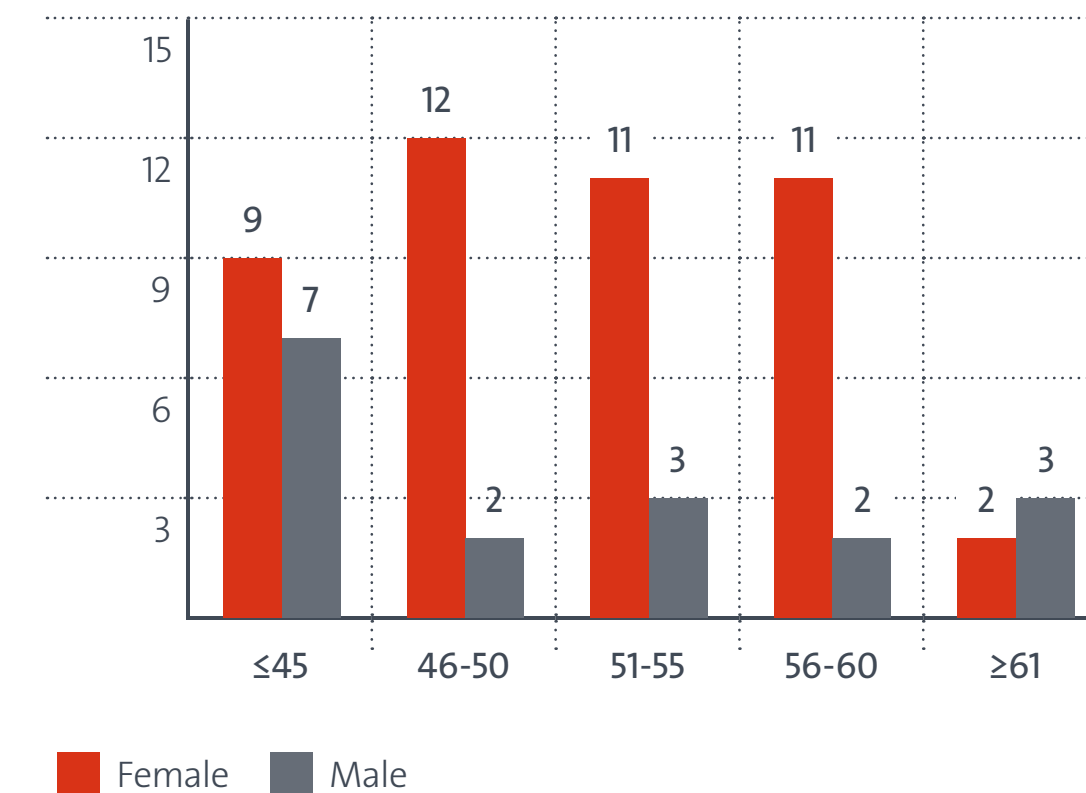


Figure 19  
Age groups, support staff





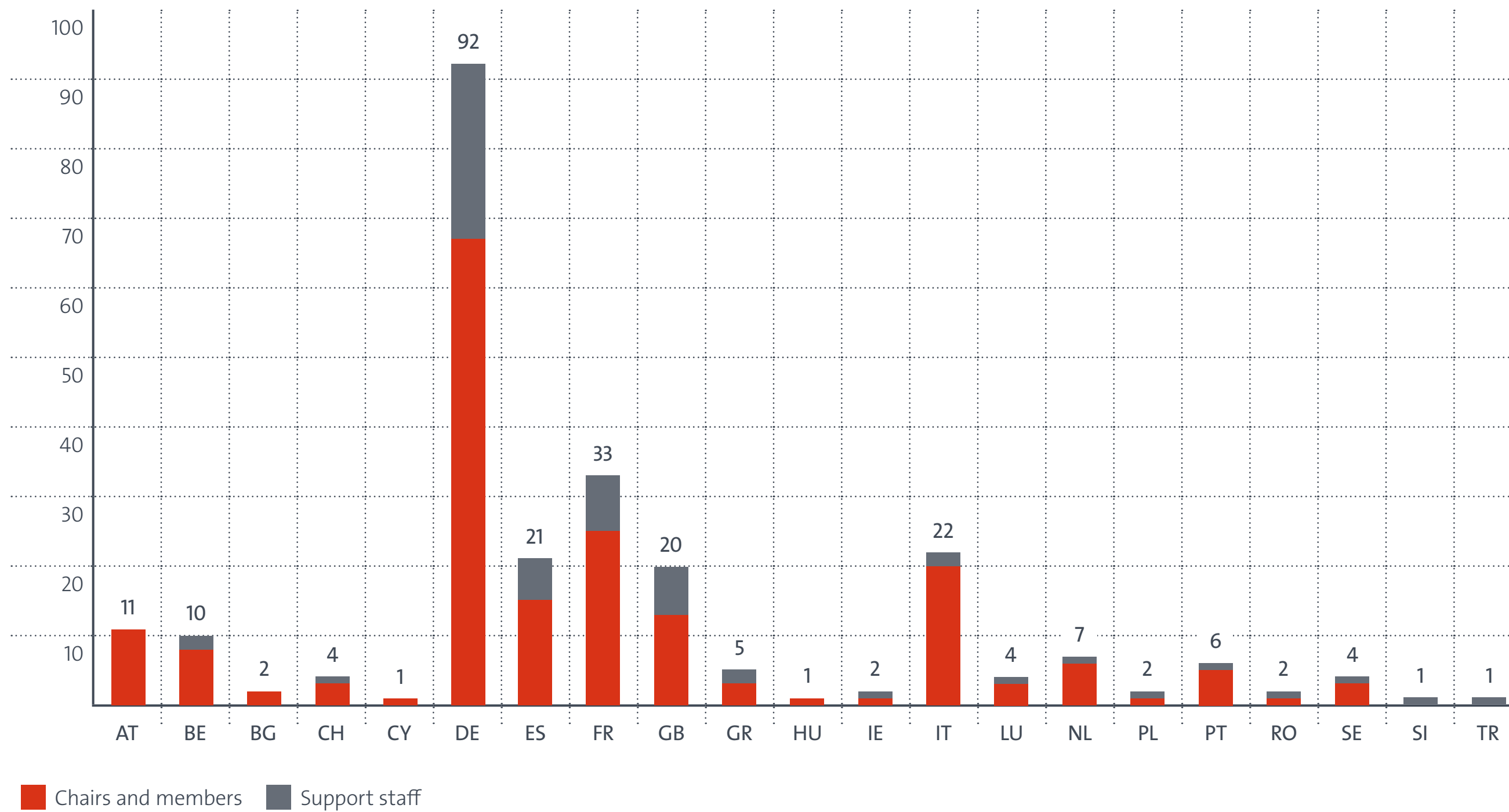
## 11.5.4 Breakdown of staff by nationality (first nationality)

As at 31 December 2022, chairs and members came from 19 different member states. Out of these 35% were German, 13% French, 11% Italian and 8% Spanish. Support staff came from 17 different member states.



Figure 20

Breakdown of chairs and members, and support staff by nationality



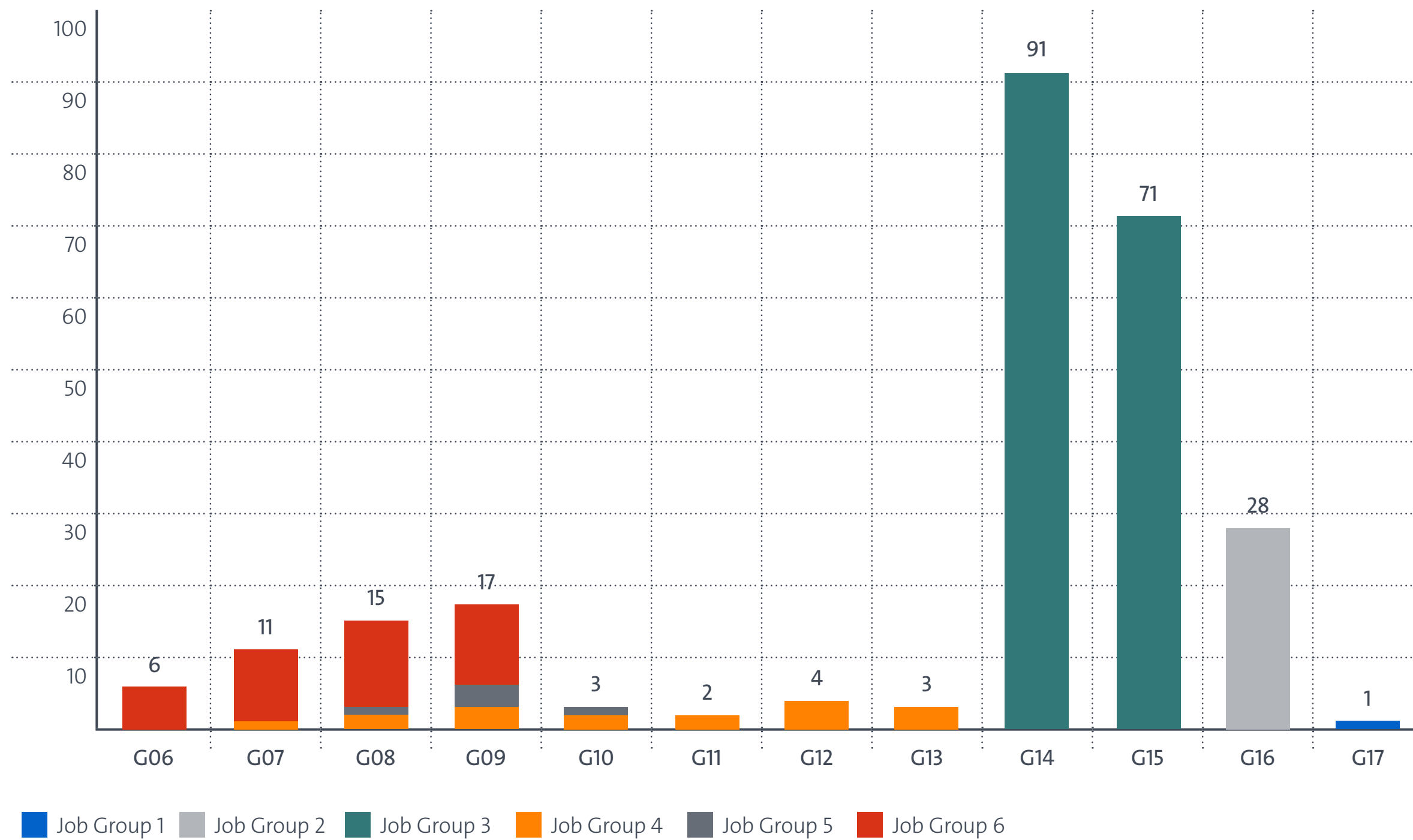


### 11.5.5. Breakdown of staff by job group and grade

In 2022, 162 staff were in job group 3. Of these, 91 were in grade 14 and 71 in grade 15.

Figure 21

Breakdown of staff by job group and grade





## 11.5.6. Job opportunities, recruitment, nationality and gender

### (a) Vacancies and applications

The BoA published seven vacancy notices in 2022. Two vacancy notices were published for chairs – one for mechanics and one for the Legal Board of Appeal. One vacancy notice was published for legally qualified members and four vacancy notices for support services. For the published vacancies the percentage of female and external applicants were as follows:

Table 6  
Percentage of female and external applicants

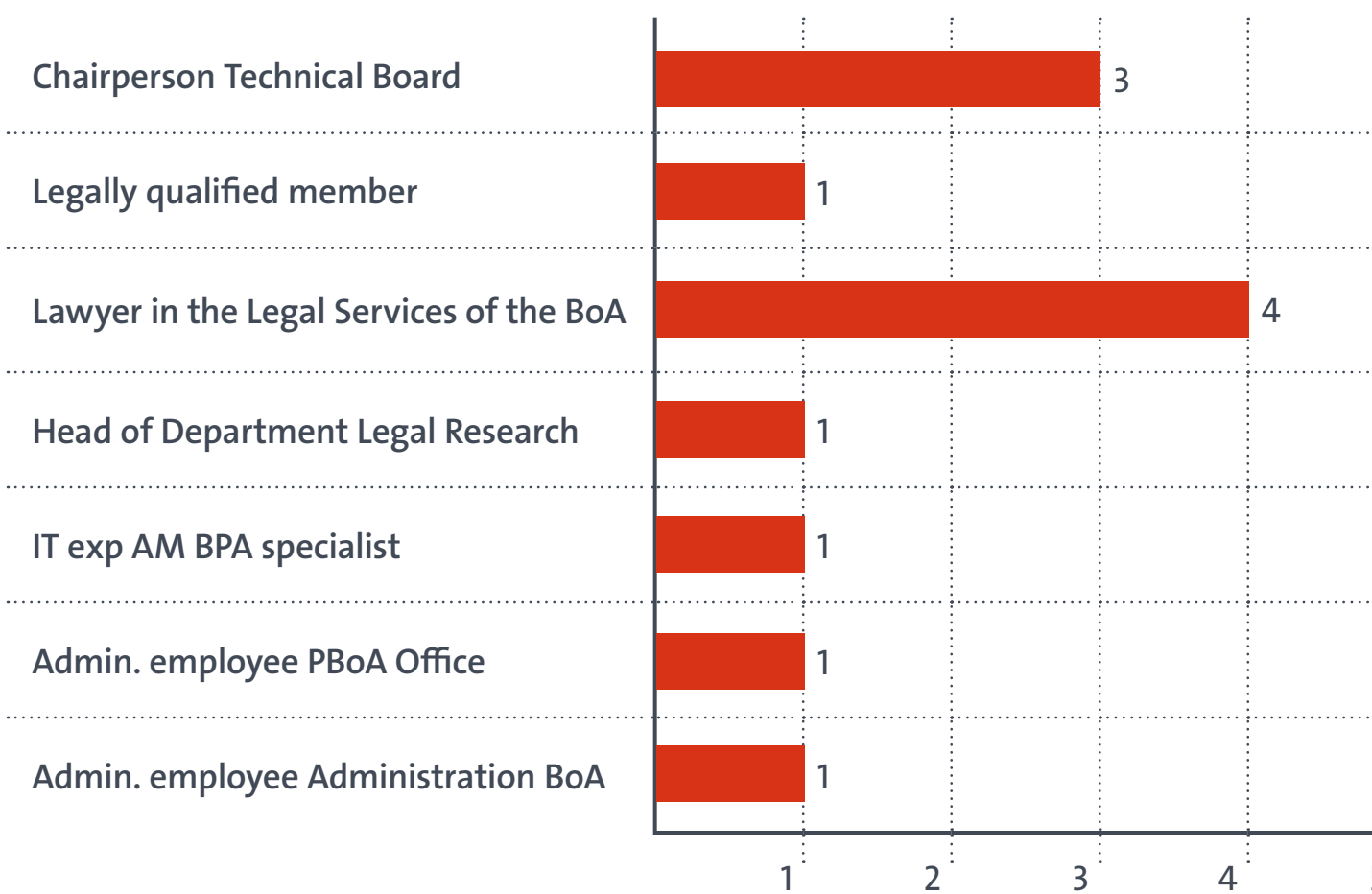
Published vacancy	% of female applicants	% of external applicants
Chairperson of the Legal Board	0%	published internally only
Chairperson of a technical board	20%	published internally only
Legally qualified member	35%	62%
Lawyer in the Legal Services of the BoA	61%	98%
IT exp AM BPA specialist	39%	100%
Admin. employee in Admin & Business Processes	100%	published internally only
Admin. employee in Legal Research Service	100%	published internally only

### (b) Recruitment by function

In 2022, 12 people were recruited to the BoA.

Figure 22

#### Breakdown of recruitments by function



### (c) Breakdown of newly recruited staff by nationality

Among the eight recruited support staff in 2022, five different nationalities were represented. Three had German nationality, two Spanish, one Italian, one British and one Greek. The newly recruited legally qualified member had French nationality.

### (d) Gender of newly recruited staff

Of the newly recruited staff, eight were female and one was male.



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