

Revocations by the Board of Appeal – statistics and analysis

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1. Introduction

Deliberately, the European Patent Convention (EPC) was designed to have opposition proceedings after grant. The reason was to ensure that the granting of a European patent would not be delayed endlessly, and the patent proprietor should wait in the meanwhile for the grant.² This “early grant” entails the risk that invalid patents are granted. The profound technical knowledge of examiners³ is to be a guarantee that the examination is sufficiently strict and that the percentage of unjustified granted patents is kept at a minimum, so as to set a gold standard for examination. Furthermore, the patent attorneys are tested in the EQE on their procedural knowledge and basic skills in claim drafting, prosecution and opposition.

The EPO refers in its annual reports to the low and constant rate of oppositions, between 4 and 5%⁴, which could imply that this is an indicator of high quality. However, this rate is dependent on much more factors than the examination quality. First, the grant of a patent does not at all imply that the protected invention is commercially valuable. Secondly, the filing of an opposition provides the proprietor with commercially relevant (and new) information, i. e. that he holds an important patent that the opponent likely infringes now or in future. This indicator function seems one of the reasons for the very low numbers of oppositions in physics and electricity. Thirdly, the opposition rate varies significantly over the technical fields.⁵

The practice of opposition proceedings indicates deviation from the gold standard. In opposition, 31 % of the patents is maintained as granted, while 40 % is upheld in amended form and 29 % is revoked.⁶ But after appeal, the percentage of patents that are maintained as granted is reduced to 13 %, whereas the total revocation rate is more than 52 %. The remaining 35 % is main-

tained in amended form.⁷ The revocation rate in appeal is particularly large. In 2013, one in four decisions (25 %) of the Boards was such a revocation “at appeal level only”.⁸

This high revocation rate at appeal level is a problem, both from the perspective of the proprietor and of a third party interested in the patent. A revocation at appeal level occurs between 8 and 15 years after filing⁹ the application. It is hard to explain to a patent proprietor with a genuine invention, that his patent is revoked in its entirety so long after the filing and long after grant. The explanation to the public is equally hard (or even harder): how to justify that so many patent proprietors have had a privilege of a patent protected monopoly for a patent that turns out to be invalid?

Four potential reasons for the high revocation rate are:

- (a) The proprietor – or his representative – made mistakes or did not see, how to maintain the patent;
- (b) The opposition division should have revoked the patent, because it was inherently weak;
- (c) The opponent presented new evidence and/or new arguments at the appeal stage, and/or the proprietor presented new requests that changed the case;
- (d) The boards of appeal are unreasonably strict.

This article provides an overview and analysis of the revocations at appeal level¹⁰ only, and will discuss whether those potential reasons appear true. The article is based on a review of the 175 revocation decisions of the Board¹¹ published in 2014¹² (20 % of the total), and further related statistical data.

7 O. Randl, K’s blog, „Looking back on 2012 (part 2)”, 25 May 2013, <http://k-slaw.blogspot.be/2013/05/looking-back-on-2012-part-2.html>. Please note that these percentages relate to decisions in the opposition appeal proceedings. The 2013 EPO annual report mentions 2176 decisions in opposition in 2013. 1315 appeals are filed in opposition appeal (60 %), and 1124 opposition appeals are settled. 747 decisions were given and 377 appeals were settled otherwise. Hence, the number of decisions in opposition appeal is about one third of the decisions in opposition.

8 M. Müller & C. Mulder, *reader epi/EPO seminar „Opposition & Appeal”*, Eindhoven 21-11-2014. These data will also be part of the forthcoming book of these authors, *Proceedings before the European Patent Office, a practical guide to success in Opposition and Appeal* (Cheltenham UK: Edward Elgar, 2015), pages 96–102.

9 Based on quick review of the application numbers (indicating filing year) of the 2014 decisions in appeal to revoke a patent.

10 To be clear: the term „revocation at appeal level” is used for a decision of the Boards of Appeal in opposition proceedings, wherein the decision of the Opposition Division (to maintain the patent in some form) is set aside and the patent is revoked.

11 Here and in the following, the ‘Board’ refers to the Technical Boards of Appeal. Ex parte appeals (examination) are left outside consideration, also if this is not mentioned explicitly.

12 Year of publication at the website of the EPO. No other sources of information were used for the analysis. Use has been made of keywords searches in French, English and German. The search was further limited by advanced search options of 2014, selected boards (mechanics/chemistry/physics/electricity), and T-decision. The keywords were „opposition”, „is set aside” and „is revoked” in English, „Einspruch”, „wird aufgehoben”, „wird

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2 Singer/Stauder (eds.), *Europäisches Patentübereinkommen* (2. Auflage, 2000), page 451–452.

3 The EPO hires examiners with the message: „Are you an engineer or scientist interested in joining an international team at the forefront of technology?” According to the EPO, „[t]he job of a European patent examiner demands a unique combination of scientific expertise, analytical thinking, language skills and an interest in intellectual property law. <http://www.epo.org/about-us/jobs/examiners/profile.html>.

4 Annual report of the EPO, 2013, section “Searches, examinations, oppositions”, opposition rate in 2012 was 4.7 % and in 2013 4.5 %.

5 G Scellato et al., *Study on the quality of the patent system in Europe*, March 2011, there in Table 35, page 67–68, available at http://ec.europa.eu/internal_market/indprop/docs/patent/patqual02032011_en.pdf

6 Annual report of the EPO2013

2. The overall statistics

2.1 year-to-year comparison

The overall statistics for opposition appeal (OA) proceedings in 2012–2014 are presented in Table 1.

Year ¹³	No of decisions in opposition appeal (OA)	No with outcome: „OD ¹⁴ decision is set aside“	No with outcome: „OD 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 %)

Table 1 – overall statistics in opposition appeal in 2012–2014¹⁵

The table shows a positive trend, in that the revocation rate at appeal level is reduced from 2012 to 2014. The percentage of decisions that are overturned remains the same, and the number of decisions has strongly increased. This increase seems exaggerated and may partially be due to the data set as used (i. e. based on publication date of the decision). A comparison with other data reported elsewhere was made to test the reliability. The number of decisions for 2012 and 2013 turned out slightly lower than reported elsewhere¹⁶. The percentages of decisions set aside and revoked at appeal level are well in agreement with data reported elsewhere.¹⁷

Table 2 indicates the duration of the OA proceedings, for the 175 cases resulting in revocation in 2014.¹⁸ The average duration is about three and a half years, up to publication of the decision on the EPO website. In about 10 % of the cases, the appeal proceedings took five years or more.¹⁹

Year in which appeal was filed	No	%
2008 or earlier	12	7 %
2009	21	12 %
2010	65	37 %
2011	43	25 %
2012	29	16 %
2013	5	3 %

Table 2 – duration of opposition appeal (OA) proceedings, for the cases in which the decision to revoke the patent was published in 2014.

widerrufen“ in German, and „opposition“ „est annulée“ „est révoqué“.

These are the key terms in the revocation decisions of the Boards.

13 This is the year of publication of the decision on the EPO website. This publication date (rather than the date of the decision) is offered by the EPO website as a search tool.

14 OD = Opposition Division

15 For sake of completeness: the other possible outcomes are dismissal of the appeal, rejection of the appeal as inadmissible and termination of the appeal.

16 According to the annual reports of the EPO, 750 decisions were taken in opposition appeal proceedings in 2012 and 2013, rather than 720. This difference seems to indicate a delay in publication. It was seen that the decision date in the register for some of the revocations published in 2014 was years earlier. A specific example was T36/95, with a decision date in 1999. This decision was excluded from the statistics.

17 Mulder & Müller mention a revocation rate in 2013 of 25.6 % rather than 24 %. This corresponds to 192 revocations out of 749 decisions in total. The rate of setting aside a decision was 57 % (426 decisions) rather than 54 %.

18 The filing year is indicated in the case number. For sake of simplicity, the phrases „2014 decision“, „revocation in 2014“ are used hereinafter, but it actually refers to the decisions with a publication date in 2014.

19 Many of the 21 appeals filed in 2009 (such as T2370/09) were filed in late 2009. Since the publication date of their decision was anytime in 2014, the duration up to publication is often less than five years.

2.2 Distribution over the Boards

The distribution of the OA decisions over the Boards is shown in Table 3. Most decisions are taken by the Boards in Mechanics and Chemistry (each 45 % of the total). A single board in Mechanics has thus taken on average 47 decisions in opposition appeal, and in Chemistry 40. The total number of such decisions in Physics (3 Boards) and Electricity (5 Boards) is roughly the same as that of a single Board in mechanics. In view thereof, physics and electricity are hereinafter dealt with as a single category²⁰.

Board	No of Boards	Field	No of decisions in OA	No with outcome: „OD decision is set aside“	No with outcome: „OD decision is set aside and patent is revoked“
3.2	8	Mechanics	379	198 (52 %)	68 (34 %) ²¹
3.3	10	Chemistry	397	222 (56 %)	88 (40 %)
3.4	3	Physics	46	28 (61 %)	4 (14 %)
3.5	5	Electricity	53	33 (62 %)	15 (45 %)

Table 3 – distribution of the 2014 decisions in OA proceedings over the Boards

Roughly 55 % of the decisions of the Opposition Division is set aside, regardless of the technical field. The revocation rate appears to vary more between the technical fields. This variation in revocation rate is much stronger at the level of the individual Boards.

The “top 6” in revocation is shown in Table 4. The six Boards listed in Table 4 are responsible for nearly 50 % of the revocations at appeal level in 2014. All of them have taken more than 45 decisions in opposition appeal, i. e. at least one per week. Together, they are responsible for 38 % of the decisions in OA proceedings. In short, these Boards, which are more than average productive and/or more active in OA proceedings, have a more than average revocation rate.

Board	Technical area ²²	No of decisions in OA	No with outcome: „OD decision is set aside and patent is revoked“
3.2.07	Performing operations & metallurgy	57	21 ²³
3.3.07	Dentistry, cosmetics	48	14
3.3.01	Pharma	45	14
3.2.04	Engines	50	13
3.2.06	Equipment and other	79	12
3.3.09	Various	58	12

Table 4 – Top 6 of Boards w.r.t. revocation of patents at appeal level in 2014.

20 I observe that the number of revocations on appeal level in physics and electricity after combination (19) is actually too small for reliable statistics.

21 The % indicates the percentage relative to the corresponding „OD decision set aside“, i. e. 68/198

22 The EPO identifies the technical areas of the Boards by means of IPC classifications, with one Board being active in various IPC classes or IPC subclasses. The specified technical area is a rough summary of the author

23 Percentages are here not given, because the correct comparison is with the number of „OD decision set aside“.

Three of the six Boards are in mechanics, the three other in chemistry. Within the chemistry area, the fields of pharma and cosmetics are present. These are highly competitive areas, wherein a patent typically identifies a real monopoly with high value. The higher revocation rate may indicate that the opponents put more effort into the proceedings, for instance by means of the submission of additional evidence. Within mechanics, no clear technical or business background is apparent for the high rate of revocations, other than that Board 3.2.07 appears to work close to the chemistry field.

3. Non-admission of late filed requests

As stated in the Rules of Procedure of the Boards of Appeal, parties should set out their case in the grounds of appeal or the response thereto²⁴. This also applies to auxiliary requests, which thereafter will be considered at the Board's discretion²⁵. The Boards' intention is to ensure that proceedings are fair and that parties do not have a chance to use tactics to surprise the Boards and the other party²⁶.

3.1 Late filing of requests

Analysis of the decisions clearly signals that late filing of auxiliary requests remains a major issue. Admission after late filing is a topic in nearly 50% of the decisions resulting in revocations at appeal level, as shown in Table 5. Typically, in 62% of the cases, none of the late-filed requests is admitted into the proceedings. In 18% of the cases, some of the late filed requests are admitted, while some are not. And only in 20% of the cases, the late-filed request(s) are admitted into the proceedings.

Filing and admittance of Auxiliary Requests (AR)	No	% of revocations in appeal	% of decisions with late filed AR
Revocation decisions in which no AR was late filed	86	52 %	–
Revocation decisions with one or more late filed AR	79	48 %	–
No late filed requests admitted	49	28 %	62 %
Some admitted and some not	14	8 %	18 %
All late filed requests admitted	16	10 %	20 %
Submission of AR during Oral Proceedings	20	12 %	25 %
No substantiation for late-filed requests	3	2 %	4 %

Table 5 – late filed requests and admission for the 175 revocations at appeal level

24 Art. 12 (2) of these Rules (RPBA) reads: „The statement of grounds of appeal and the reply shall contain a party's complete case. They shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the facts, arguments and evidence relied on”.

25 Art. 12 (4), 13 (1) and 13(3) RPBA. Art. 13 (3) relates to submissions after summons to Oral Proceedings have been sent out. It is most strict and the practical implementation is prima facie allowability. See for instance T2164/10, T1713/10, T1247/11.

26 See f.i. headnote of T1732/10: *Not reacting in substance to the appeal of the opponent, but waiting for the Board's preliminary opinion before any substantive reaction is filed, is regarded as an abuse of procedure. It is contrary to the equal distribution of rights and obligations upon both sides in inter-partes proceedings and to the principle that both sides should set out their complete case at the outset of the proceedings. (...)*

It is easily alleged that the Boards would be too strict, but the data seem to indicate otherwise. In fact, in 25% of the cases, the late-filed requests were filed during Oral Proceedings before the Board of Appeal. This is on average 3.5 years after the filing of the appeal (see Table 2), which constitutes second instance proceedings. That is very late, and it cannot be a surprise that the Boards object to this practice. In three cases, the Boards refused the admission of all requests, including the main request. This unfortunate situation for the patentee was due to lacking substantiation of the requests.²⁷

3.2 Number of requests and effect of non-admission

It is highly probable that the non-admission of late filed requests results in more revocations. However, the number of requests on file is in many cases rather low, and lower than expected. In 13% of the cases, no auxiliary request has been submitted at all. In 16% of the cases, only 1 auxiliary request was submitted. The statistics indicate that such low number of requests occurs less frequently in chemistry than in mechanics, physics or electricity.

No of Auxiliary Requests (AR) submitted	No	%	Mechanics	Chemistry	Physics + Electricity
Total number	175		68	88	19
No Main Request ²⁸	11	6 %			
0 AR	23	13 %	19 %	7 %	28 %
1 AR	28	16 %	13 %	18 %	28 %
2 AR	23	13 %	16 %	9 %	17 %
3 AR	23	13 %	17 %	14 %	5 %
4 or more AR	67	39 %	35 %	52 %	22 %

Table 6 – number of admitted auxiliary requests for the revocations at the appeal level in 2014²⁹

The effect of the non-admission of late-filed requests is clear from Table 7. This Table shows the number of auxiliary requests that are admitted into the proceedings. In half of the cases, this number is less than two³⁰. Where late-filing was an issue, this percentage is as high as 62%.

27 See T1732/10 headnote: “(...) This [abuse of proceedings] is all the more so if the substantiation for all the requests, which were filed after summons to oral proceedings have been sent, is filed only shortly before the oral proceedings before the Board. Such requests – which are not self-explanatory – are considered by the Board as submitted only on the date of their substantiation (...).”

28 These are decisions in which the appeal is terminated or wherein the decision merely states “no request on file”. They are in the following left outside consideration for the statistics

29 Please note that the underlying numbers of decisions are (relatively) low, so that the percentages are indicative only.

30 I.e. main request and 1 auxiliary request; only a main request; and no main request

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

Table 7 – number of admitted auxiliary requests for the revocations at the appeal level in 2014

3.3 Some individual decisions

Several decisions point out that the proprietor should not wait for the Boards' preliminary opinion, but set out his case himself³¹. This includes the submission of auxiliary requests for the event that the Board would decide differently than the proprietor hopes or expects. In T1150/09, the Board made explicit that the proprietor's expectation that board will follow him is no reason for not filing any auxiliary request. The late-filed auxiliary request was not admitted and the patent was revoked. Similar situations occurred in T945/10 and in T210/12, and also in explicit terms in T1674/12 (reason 4.1–4.3, French language).

The Boards particularly object to late filing in cases, wherein the opponent made an argument consistently through the appeal proceedings. One example is T1647/10 where the first auxiliary request was admitted, since the argument had only been put forward during oral proceedings, and the proprietor should be given a chance for response. The second auxiliary request was however a response to an argument discussed in the written proceedings and could have been filed earlier. It was therefore not admitted.

A reason for late-filing is however not sufficient for its admission. The late-filed request should further be prima facie allowable, not only when filed during Oral Proceedings, but also when filed one month in advance thereof, as indicated in T1713/10. An auxiliary request corresponding to the claims upheld by the Opposition Division is not prima facie allowable, when re-submitting during Oral Proceedings, as decided in T945/10. Furthermore, the requests should be converging and should clearly specify what the proprietor sees as his case and ultimately desires to have protected. Examples of non-convergence and resulting non-admission are given in T1134/11 and T926/10.

4. Reasons for revocation

Table 8 provides an overview of the reasons for revocation, in the set of 175 decisions of 2014. The most frequently occurring reason for revocation is inventive step, which is not a surprise. The second most important reason is added matter. In chemistry, sufficiency is the third reason, but in mechanics this is novelty. Added matter appears a bigger issue in mechanics than in

chemistry, although the statistics are not based on very big numbers. This higher occurrence in mechanics is not a real surprise, as patenting in mechanics is an art of finding words for construction and processes that inventors tend to present primarily in drawings. That seems more delicate than the generalisation of examples into ranges and formula, that is typical for chemistry.

	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 reformation 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 step	105 (52 %)	37 (47 %)	52 (51 %)	16 (70 %)
Industrial application	1 (1 %)	0	1 (1 %)	0
TOTAL	203	79	101	23

Table 8 – reasons for revocation in the revocations at appeal level in 2014³²

4.1 Denial of inventive step

The reasons for denial of inventive step are different in chemistry than in mechanics. In chemistry, the most common reason (50 % of the cases) is that the problem is not solved, as a result of which the problem is reformulated to the provision of an alternative. The solution of this less ambitious problem is then considered obvious by the Board. This logic has been explained before by G. Raths, chairman of Board 3.3.06, in *epi-Information*.³³

Outside chemistry, the most common reason is plain obviousness. T2405/11 refers to an obvious variation. T1574/11 states that the choice of a specific known sensor for a known purpose without overcoming a prejudice and without inventive effect is obvious. In T661/09, the claim merely defined desiderata in the view of the Board, rather than a way to obtain these desiderata. In T582/12, the benefit of the distinguishing feature was clear, so that the implementation did not require inventive skill.

Not merely the problem or its solution is relevant, but also the disclosure in the closest prior art, and the scope of claim 1. The Board's interpretation is regularly broader than that of the proprietor. As a consequence, the skilled person then arrives without inventive skill at the claimed subject matter – see for instance T405/13, T672/12 and T1788/10. In some situations, the subject matter is not even novel – T1650/12, T176/11.

Overall, the Boards seem to 'deconstruct' many alleged problems and advantages. The Board do not follow the proprietor that there would be a special effect or a very demanding situation for the skilled person, and

32 note that a single decision can mention more than one reason. As a result, the total number of reasons is bigger than the total number of revocations.

33 G. Raths, "Methodology for structuring the assessment of inventive step", *Epi-information*, 2/14, page 68–76.

31 Most explicitly in T1732/10, cited above.

deny a monopoly. A large number of auxiliary requests then does not help: in T1836/11, T1643/12 and T365/11 all 7 or more requests on file were found to lack inventive step³⁴.

4.2 Changes between the opposition and the appeal?

Even though the Boards emphasize that they are a second instance body with the task to review the first instance proceedings³⁵, most decisions do not discuss the decision of the opposition division explicitly. Rather, they provide their independent judgement starting from the facts of the case. Moreover, the decisions do not facilitate to review quickly, whether the facts and the requests in appeal are identical to those in appealed opposition.

Notwithstanding, the situation is clear in 25–30 % of the cases, as shown in Table 9. Sometimes, the framework in appeal is clearly different. This occurs when new and highly relevant evidence is submitted and admitted into the appeal proceedings. Such evidence most often leads to revocation. This not only involves lack of novelty, but also lack of inventive step. In T427/11, late filed document E20 was admitted and seen as a pointer to the invention.

	nr	%
No of cases wherein admission of new documents/evidence is discussed	24	15 %
Explicit discussion of decision of the OD by the Board	19	12 %

Table 9 – specific reasons for the changed decision at appeal level

In other cases, the framework has not changed and the Board presents some observations on the decision of the Opposition Division. This is often another interpretation of a document or feature (T2111/08, T786/11, T672/12), sometimes a more critical view (T1686/10, T425/11, T532/11), but sometimes strong criticism (T427/11, T881/11).

5. Conclusions

An analysis has been made of the 175 decisions of the Boards of Appeal in 2014, wherein the Boards set aside the decision of the opposition division and revoked the patent. Although the revocation rate in 2014 is somewhat lower than in 2012 and 2013, it is still very high. Four potential reasons were indicated as possible explanations of the high revocation rate: (1) the conduct of opposition appeal proceedings by the proprietor or its representative; (2) errors by the opposition division; (3) a change in the legal and/or factual framework; (4) a too strict approach of the Boards of Appeal.

34 I observe that the cited three decisions relate to Mechanics, Chemistry and Electricity. This logic is thus not broadly applied.

35 See art 12 (4) RPBA, and various case law, shortly summarized in T1732/10, page 11.

Reason 1: conduct of opposition appeal proceedings

The proprietor's way of conducting opposition appeal proceedings seems open for improvement. Auxiliary requests are frequently late-filed and not admitted. Late filing of auxiliary requests is discussed in nearly 50 % of all the reviewed decisions. Typically, the late-filed request is not allowed for reasons that appear reasonable, taking into account the *inter partes* character of opposition (appeal) proceedings and the Rules of Procedure of the Boards of Appeal. Many decisions are based on zero or merely one auxiliary request. In 20 % of the cases, 0 or 1 auxiliary request was submitted. In 50 % of the cases, 0 or 1 auxiliary request remained as a consequence of non-admission of late filed requests.

It is observed, that these high numbers are likely not representative of all opposition appeals, since merely revocations were studied. However, it has been written down in several cases that the patent was revoked in the absence of an allowable request. In other words, the board saw an invention, which was however not specified in one of the admitted requests.

Reasons 2 & 3: errors by the Opposition Division and change in facts

The most frequent reason for revocation is inventive step, following by added matter. The denial of inventive step is often based on a deconstruction of the alleged advantages. The Board then arrives at the view that the problem is not solved and is to be reformulated into the provision of an alternative, or that the solution does not require inventive skill. The Boards regularly adopt a broader view on a document than the parties (or the opposition division), bringing the solution very close to the known subject matter.

The Boards criticize the opposition division explicitly in about 10 % of the cases. However, they more often disagree. Particularly, the Boards did regularly not accept the inventive step argument of the proprietor, which the opposition division apparently had accepted. In many cases, the Board's language is quite clear, so that the question turns up why the opposition division had not seen this. In 15 % of the cases, the Boards decide after admission of new evidence that changes the case.³⁶

Reason 4: strict, but not too strict or unreasonable approach by Boards

The present analysis does not provide any indication to believe that the Boards are too strict. The reasons underlying the decisions are quite consistent and indicate that the Boards fulfil their function in an adequate manner. While the Boards' approach is strict, it is not unreasonably strict, and should not be unexpected.³⁷

36 In several cases, the framework changed, because the proprietor filed new requests, so that the main requests (and/or auxiliary requests) was no longer identical to that in opposition). However, this was not investigated explicitly.

37 Many thanks to Cees Mulder (University of Maastricht) for comments on an earlier version of the manuscript.

Zusammenfassung

Dieser Beitrag handelt über die hohe Rate, in der Patente, gegen die Einspruch eingelegt worden ist, erst durch die Beschwerdekammer widerrufen werden. 20 % der Entscheidungen der Beschwerdekammer zu Einsprüchen 2014, endeten mit einer derartigen Widerrufung. Die Analyse der 175 Widerrufen zeigt, daß die Zulassung der spät eingereichten Hilfsanträge in 50 % der Fälle ein Thema war, und meistens verneint wurde. Dies führte dazu, daß der Patentinhaber in der Hälfte der Fälle sein Patent bloß mit höchstens einem Hilfsantrag verteidigte. Die Analyse zeigte außerdem, daß erfinderische Tätigkeit am häufigsten der Grund für die Widerrufung ist. Die beanspruchte Materie wird nicht als erfinderisch angesehen, weil das Problem nicht gelöst ist oder die Lösung naheliegend ist. In etwa 10 Prozent wird Kritik an der Einspruchsabteilung geäußert. In etwa

15 Prozent wurden Dokumente eingereicht und zugelassen, welche die Grundlage für die Entscheidung änderten.

Résumé

Cette contribution présente une analyse des décisions des Chambres de Recours de 2014, et plus précisément, des 175 décisions de révocation prises par les Chambres (20 %), bien que le brevet ait été maintenu par la division d'opposition – sous forme modifiée ou non. L'analyse montre que les règles des Chambres concernant l'admission de documents et requêtes soumis tardivement ne sont pas suivies dans la moitié des cas. Par conséquent, le nombre des requêtes subsidiaires admises dans la procédure est faible. En outre, souvent les Chambres ne reconnaissent pas le caractère inventif que la division d'opposition avait affirmé.

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<u>Issue</u>	<u>Deadline</u>	<u>Publication</u>
2/2015	8 May, 2015	30 June, 2015
3/2015	7 August, 2015	30 September, 2015
4/2015	6 November, 2015	31 December, 2015