

# **The UPC's role in global patent litigation.**

*A closer look at the strategic use of the UPC – taken both under a claimant's and a defendant's perspective.*

By **JUVE PATENT** and **BARDEHLE PAGENBERG**

# Welcome | *Introduction*



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Editor  
JUVE PATENT



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Keynote

*How does the UPC  
understand the concept  
of obviousness?*



**Prof. Dr. Peter Meier-Beck**

Presiding Judge (ret.)

German Bundesgerichtshof (Federal Court of Justice)

Panel 1

*UPC assertion strategies in a  
global litigation landscape*



**Dr. Tilman Müller**  
Attorney-at-Law  
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**Armin Schwitulla**  
Lead Litigation Counsel (EU)  
Nokia



**Craig Burnett**  
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Litigation Counsel  
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**Dr. Thomas Dreiser**  
Chief EU IP Litigation Counsel  
Huawei



**Dr. Tobias Wuttke**  
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Panel 2

*Invalidity proceedings and  
defense strategies at the UPC*



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**Ceren Pala-Okat**  
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Grooming & Beauty, Director  
Philips



**Alexander Haertel**  
Cluster Lead Patent  
Deutsche Telekom AG



**Dr. Anne Julia Meinel**  
Lead Patent Counsel Strategic  
IP Solutions  
Roche Diagnostics



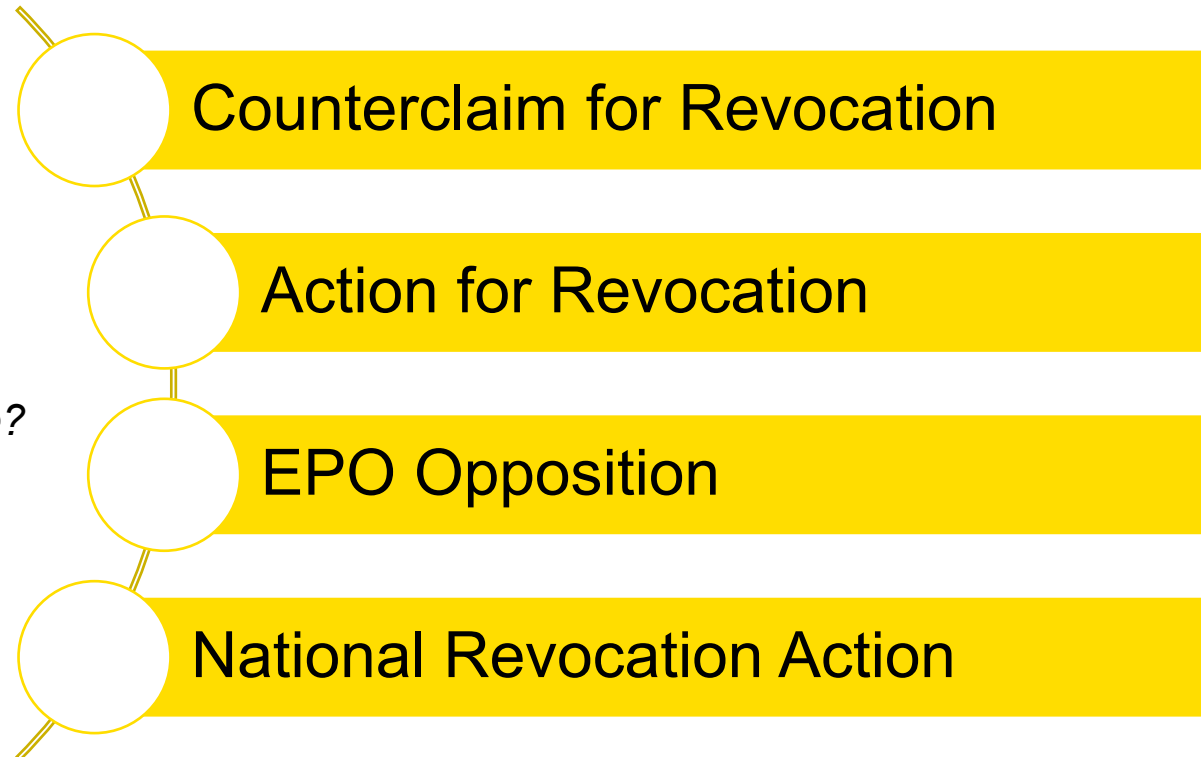
**Sabrina Hütt**  
Patent Attorney  
BARDEHLE PAGENBERG

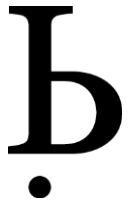
# Options to attack the validity of a patent



*Which option is the right one to take?*

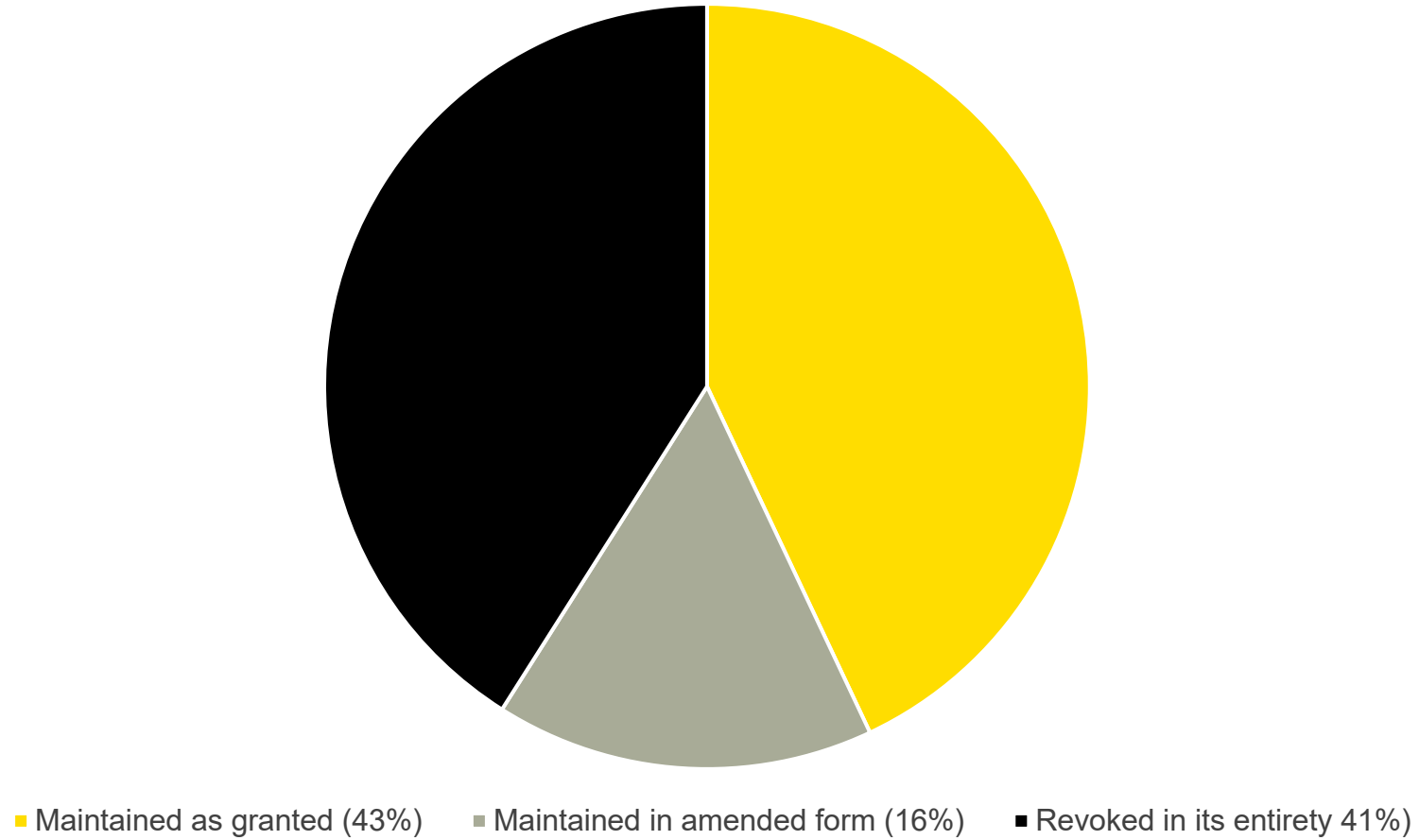
*Why not choose more than one?*

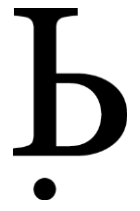




# UPC revocation rates

44 cases (Counterclaim + Central Revocation Action)





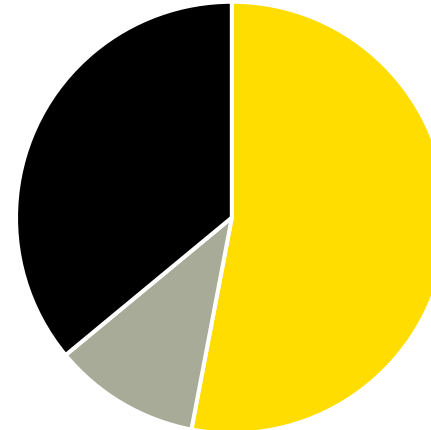
# UPC revocation rates - Central Revocation Action vs. Counterclaim for Revocation

Total (**Central Revocation Action**): 16 cases



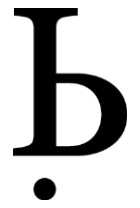
- Maintained as granted (25%)
- Maintained in amended form (25%)
- Revoked in its entirety (50%)

Total (**Counterclaim for Revocation**): 28 cases



- Maintained as granted (53%)
- Maintained in amended form (11%)
- Revoked in its entirety (36%)





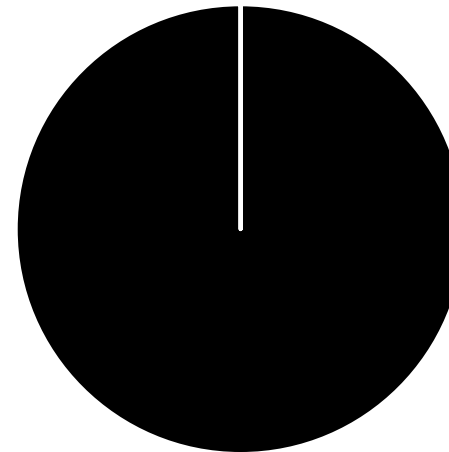
# UPC revocation rates for **Central Revocation Actions**

CD Paris: 14 cases

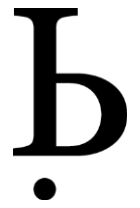


- Maintained as granted (29%)
- Maintained in amended form (29%)
- Revoked in its entirety (42%)

CD Munich: 2 cases



- Maintained as granted (0%)
- Maintained in amended form (0%)
- Revoked in its entirety (100%)



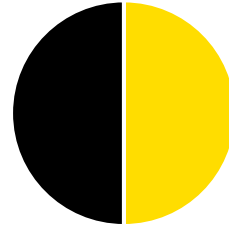
# UPC revocation rates for **Counterclaims for Revocation**

LD Munich: 6 cases



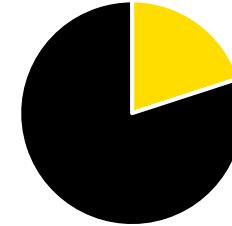
- Maintained as granted (50%)
- Maintained in amended form (17%)
- Revoked in its entirety (33%)

LD Mannheim: 4 cases



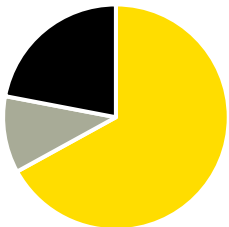
- Maintained as granted (50%)
- Maintained in amended form (0%)
- Revoked in its entirety (50%)

LD Paris: 5 cases



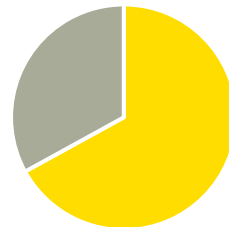
- Maintained as granted (25%)
- Maintained in amended form (0%)
- Revoked in its entirety (80%)

LD Düsseldorf: 9 cases



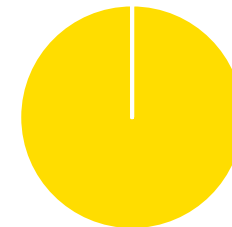
- Maintained as granted (67%)
- Maintained in amended form (11%)
- Revoked in its entirety (22%)

LD Hamburg: 3 cases

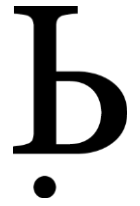


- Maintained as granted (67%)
- Maintained in amended form (33%)
- Revoked in its entirety (0%)

LD The Hague: 1 case

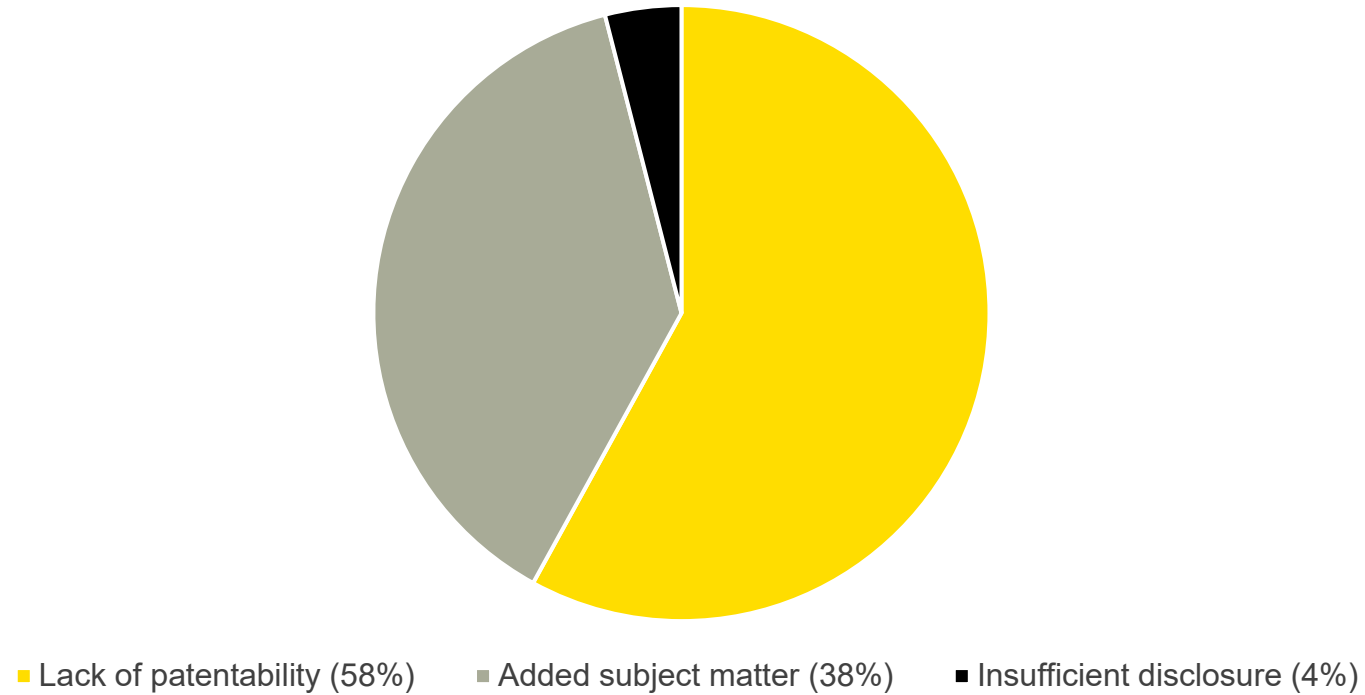


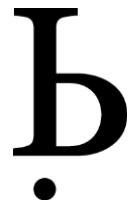
- Maintained as granted (100%)
- Maintained in amended form (0%)
- Revoked in its entirety (0%)



# UPC – grounds for revocation

24 revocations (Counterclaim + Central Revocation Action)



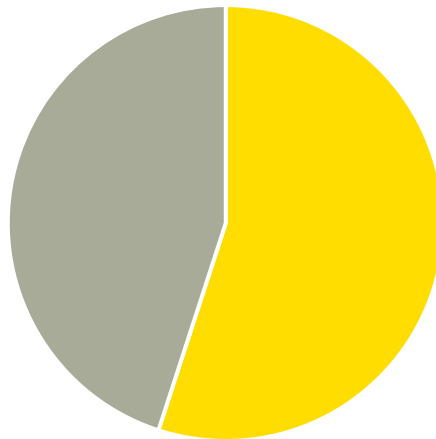


## UPC – grounds for revocation

### Central Revocation Action vs. Counterclaim for Revocation

#### Central Revocation Action (CD):

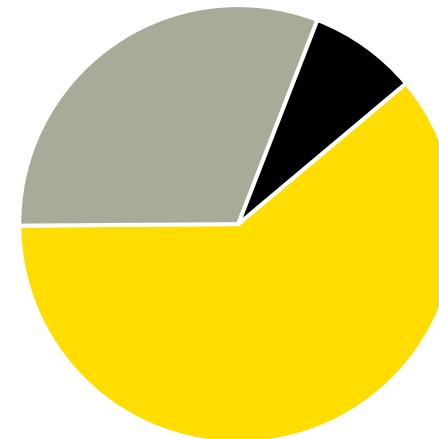
11 (partial) revocations



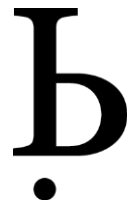
■ Lack of patentability (55%) ■ Added subject matter (45%)

#### Counterclaim for Revocation (LD):

13 (partial) revocations

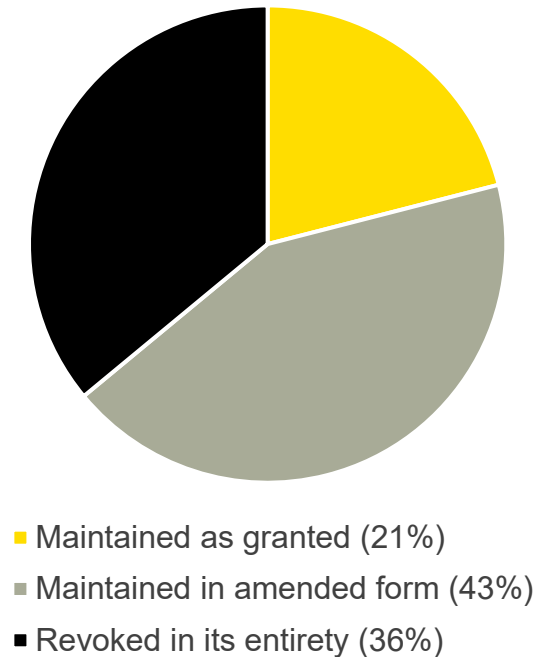


■ Lack of patentability (61%) ■ Added subject matter (31%)  
■ Insufficient disclosure (8%)

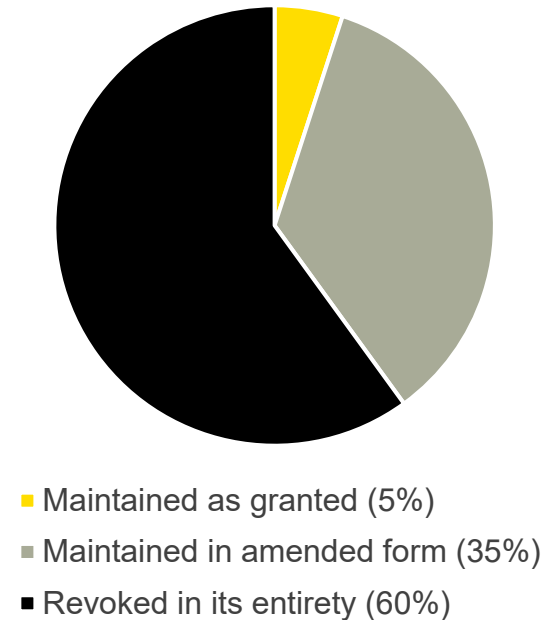


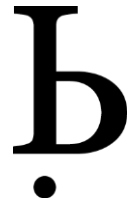
# EPO revocation rates

Opposition Division (first instance) in 2023



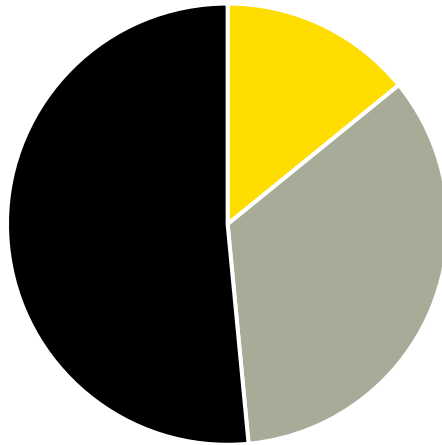
696 opposition appeal proceedings in 2024  
*(in which the Board of Appeal made a substantive decision)*





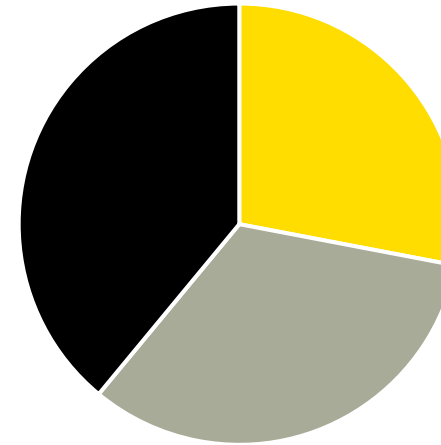
# German National Revocation Action - revocation rates

**Federal Patent Court**  
567 cases between 2019 - 2024



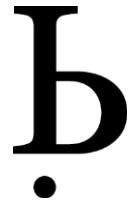
- Maintained as granted (14%)
- Maintained in amended form (34%)
- Revoked in its entirety (51%)

**Federal Court of Justice**  
255 cases between 2019 - 2024

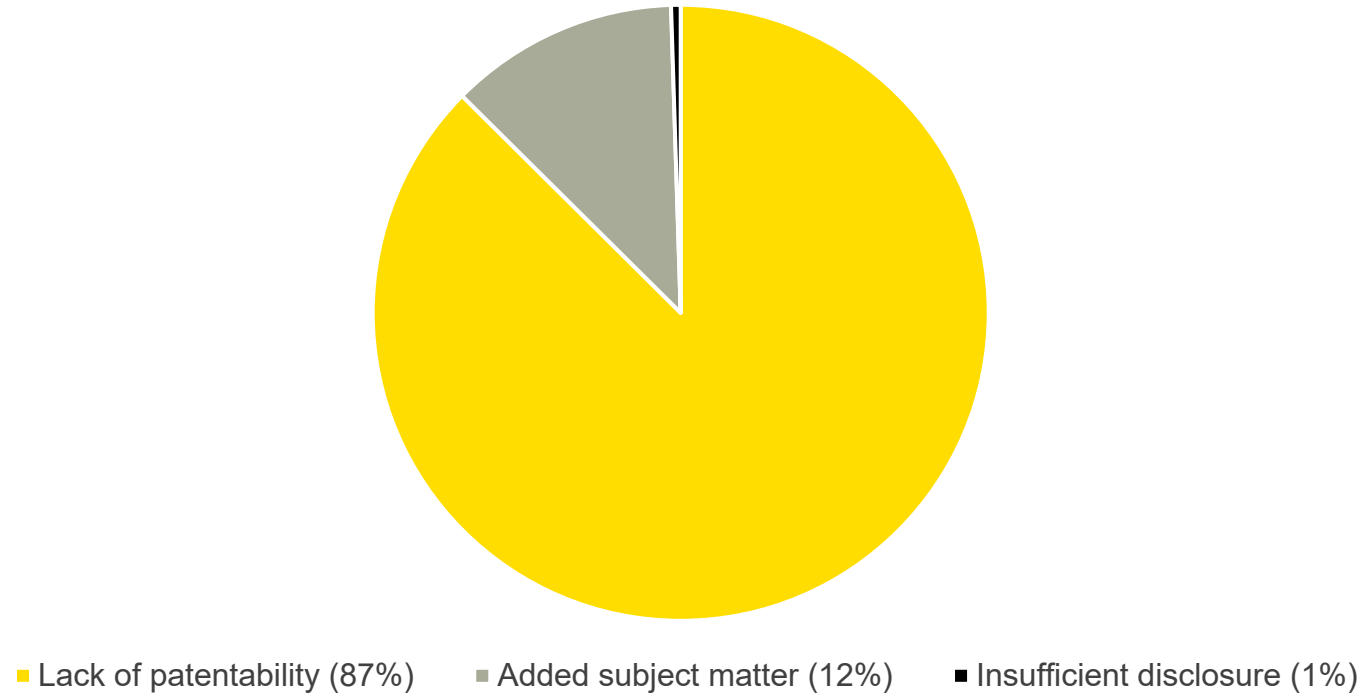


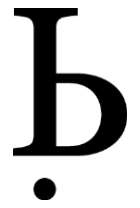
- Maintained as granted (28%)
- Maintained in amended form (33%)
- Revoked in its entirety (39%)

# Federal Patent Court – **grounds for revocation**



177 (partial) revocations (2018-2020)





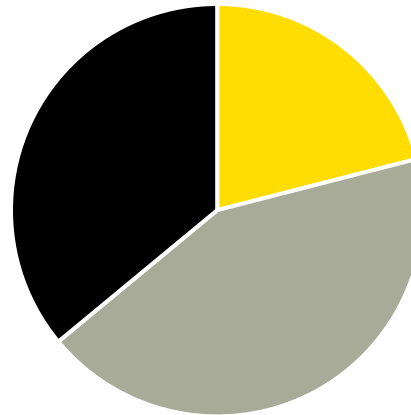
# Comparison of **revocation rates** at UPC, EPO and FPC

UPC



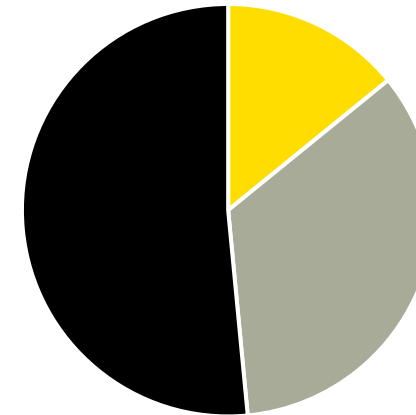
- Maintained as granted (43%)
- Maintained in amended form (16%)
- Revoked in its entirety (41%)

EPO



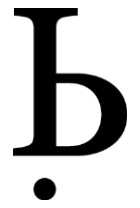
- Maintained as granted (21%)
- Maintained in amended form (43%)
- Revoked in its entirety (36%)

FPC

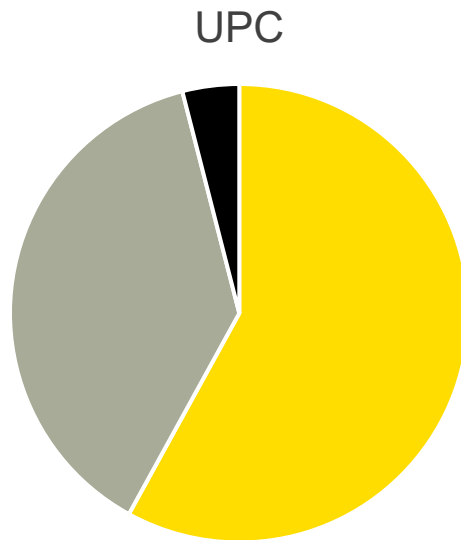


- Maintained as granted (14%)
- Maintained in amended form (34%)
- Revoked in its entirety (51%)

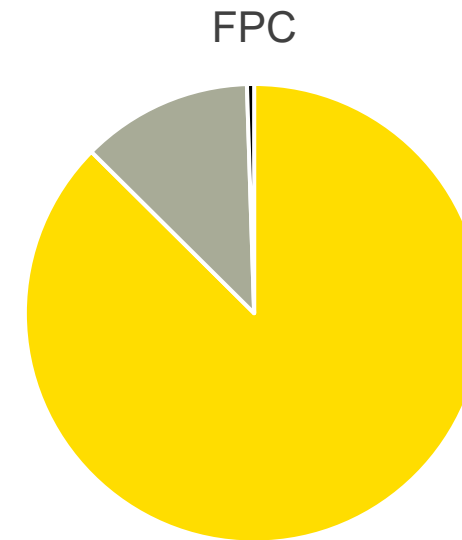




# Comparison of **grounds for revocation** at UPC and FPC



- Lack of patentability (58%)
- Added subject matter (38%)
- Insufficient disclosure (4%)



- Lack of patentability (87%)
- Added subject matter (12%)
- Insufficient disclosure (1%)

**Thank you  
for joining us!**