



EPO Oppositions newsletter

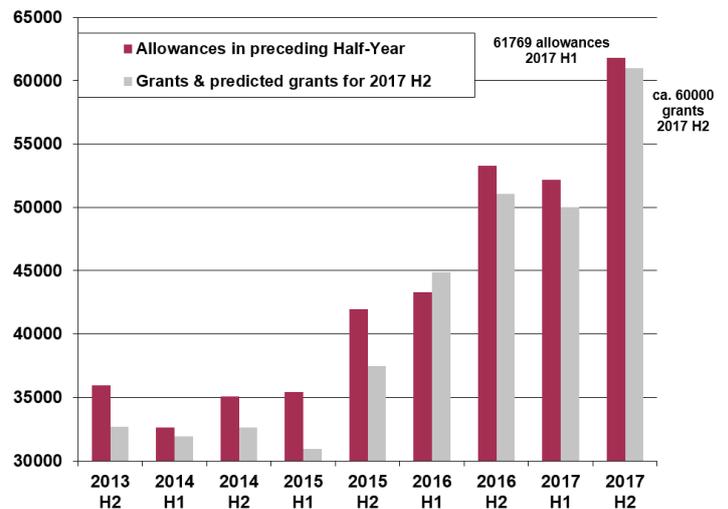
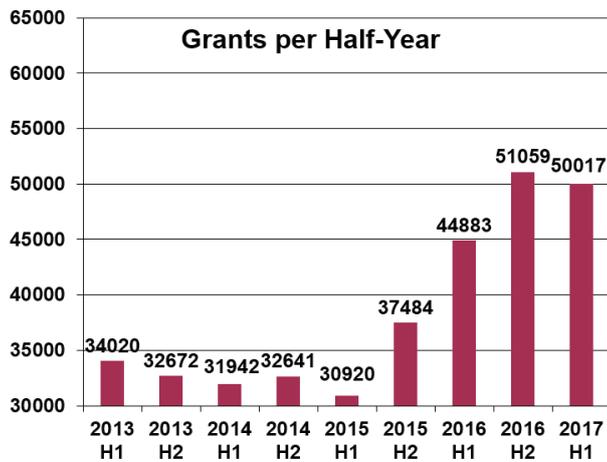
Haseltine Lake
celebrating
40 years in
Munich!

EPO and Oppositions round-up for 2017

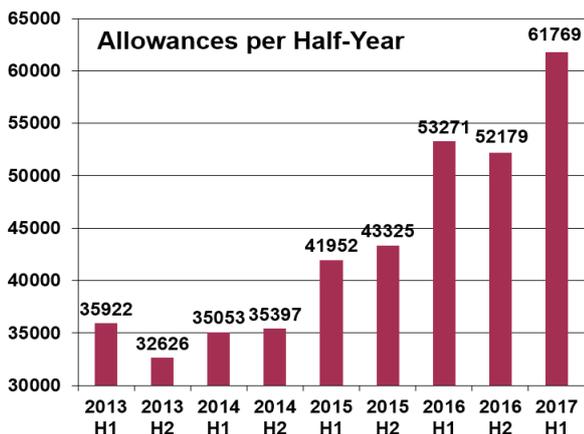
Yet More Grants!

The number of patents granted by the EPO in 2016 was much higher than in any previous year and a high level of grants was maintained in the first half of 2017.

Based on the number of allowances in the first half of 2017, it seems likely that the level of grants will be even higher in the second half of 2017, with around 60,000 grants likely.



EPO grants are preceded by notices of allowance which, generally speaking, are issued about six months before grant takes place.



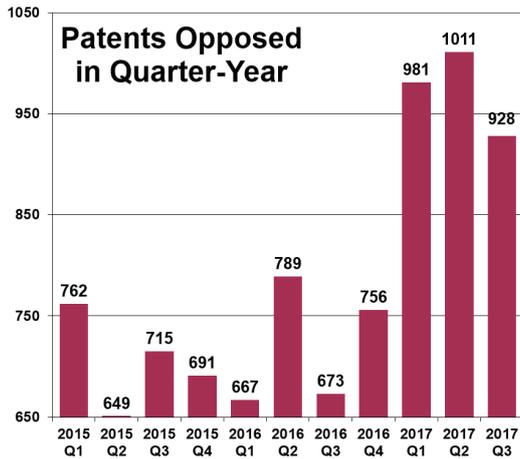
This means that the total number of grants in 2017 will probably exceed 100,000.

More Grants = More Patents Opposed?

Given the EPO opposition term of nine months from grant and given that by far the greater proportion of oppositions are filed towards the very end of the opposition term, increased grants could be expected to be followed nine months – three quarters of a year – later by an increase in the number of patents opposed.

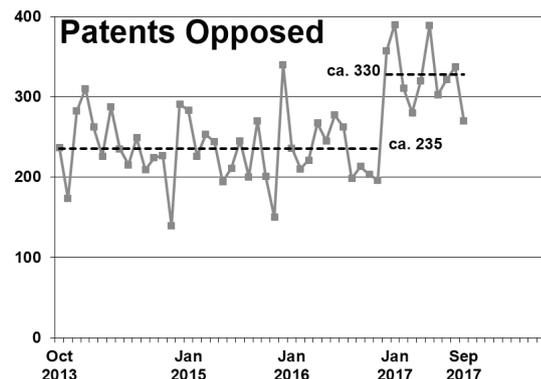
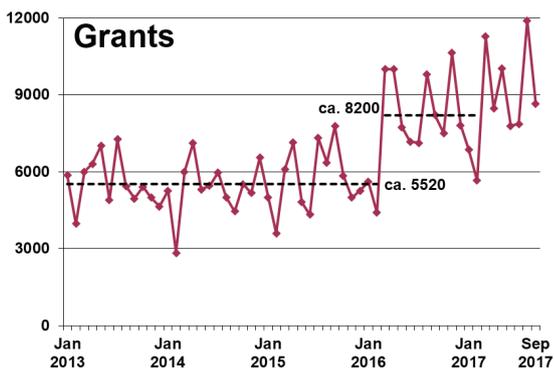
Though the record of the number of patents opposed in the third quarter of 2017 is not yet finalized, it seems clear that this expected “more patents opposed” effect has occurred.

At the latest from the first quarter of 2017 there has been a marked increase in the number of patents opposed.



It is clear that increased numbers of patent grants have been followed by increased numbers of patents opposed, but it is not yet clear whether the proportion of patents opposed is changing.

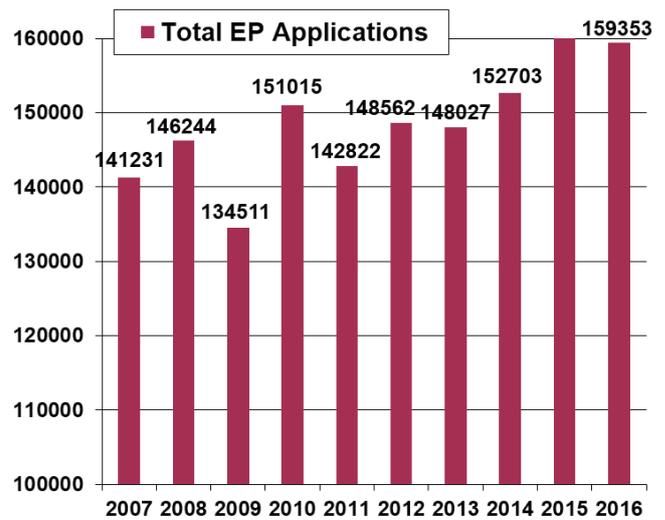
Based on averages of numbers of patents granted and opposed (see the charts below) preliminary indications are that the proportion of granted patents which are opposed may have fallen from 4.25% to 4.00%.



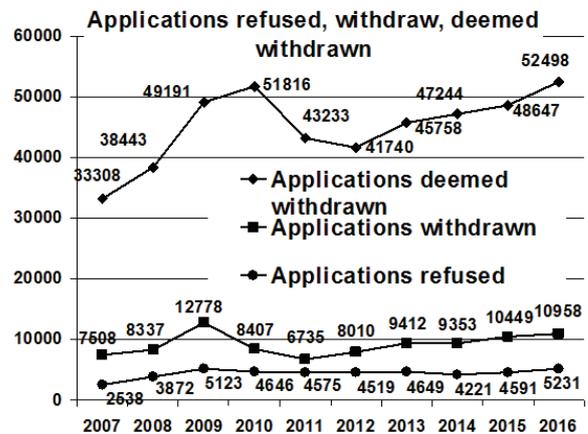
A Continuing Trend?

Perhaps at least with regard to a possible need to plan for more opposed patents and more oppositions, it could be of interest to understand the cause of the significant increase in grants in 2016 and 2017.

It seems safe to say that the increase in grants has not been driven by increases in the numbers of applications filed in prior years, which are indicated in the chart below (based on EPO Annual Reports).



It also seems safe to say that the increase in grants is not the result of decreases in the numbers of applications refused, withdrawn or deemed withdrawn. In general those numbers have not decreased over time, as can be seen from the chart below.



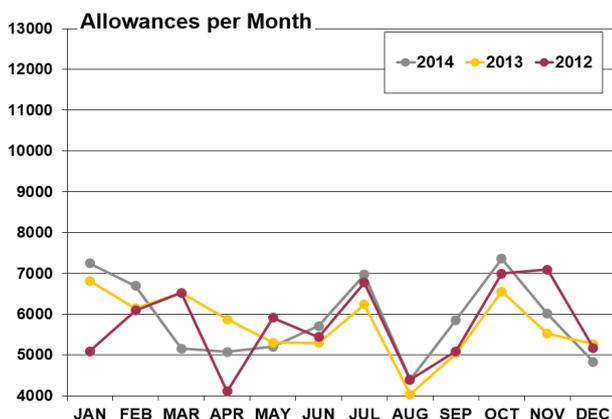
The information in the chart is based on the EPO Online Bulletin (accessed in November 2017) as is all other information given unless a different source is indicated.

The EPO may have had available increased resources to process applications in recent years, at least in terms of the numbers of examiners available. According to EPO Annual Reports, Examiner numbers have increased as indicated in the table below.

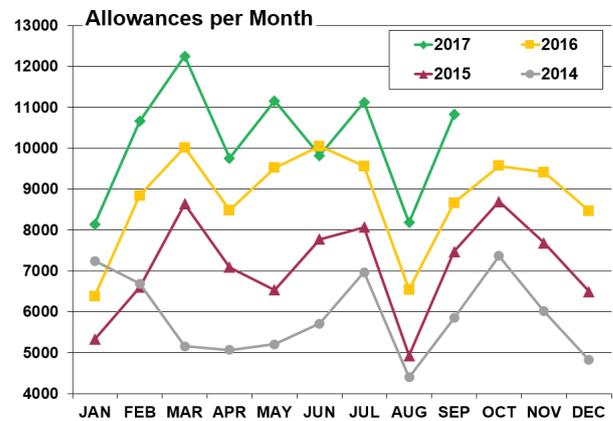
No. of EPO Examiner	
2007	3664
2008	3856
2009	3965
2010	3952
2011	3949
2012	3994
2013	4112
2014	4221
2015	4227
2016	4310

It is doubtful that such a relatively slight and progressive increase in numbers of examiners could alone account for the increase in the numbers of applications processed to allowance, and hence to grant, which has occurred. It seems evident that Examiner productivity increases caused by the various measures introduced by the EPO have resulted in this significant increase in the numbers of applications processed to allowance and to grant. The question remains as to whether these measures have had a knock-on effect on quality of examination.

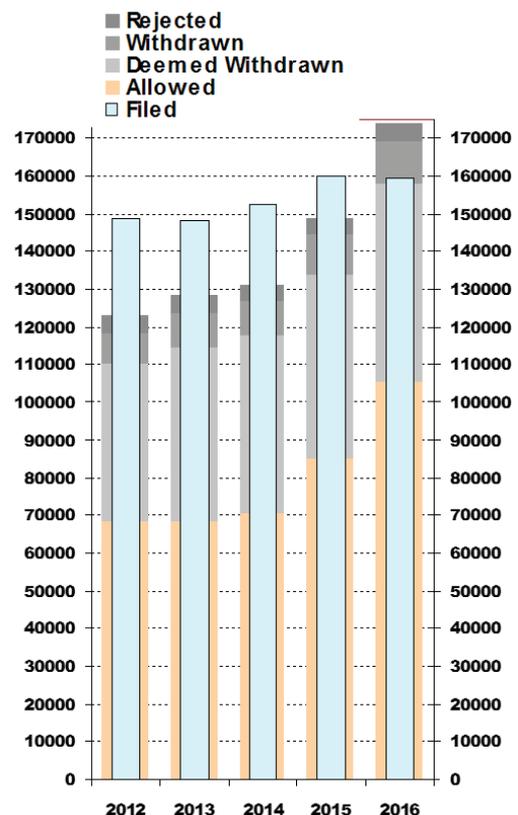
The chart below shows month-by-month numbers of allowances in the years 2012, 2013 and 2014. Although the number of allowances varies from month to month and is even subject to “seasonal” variations (EPO activity seems to fall around the August and December holiday periods), the general level of allowances was more or less constant.

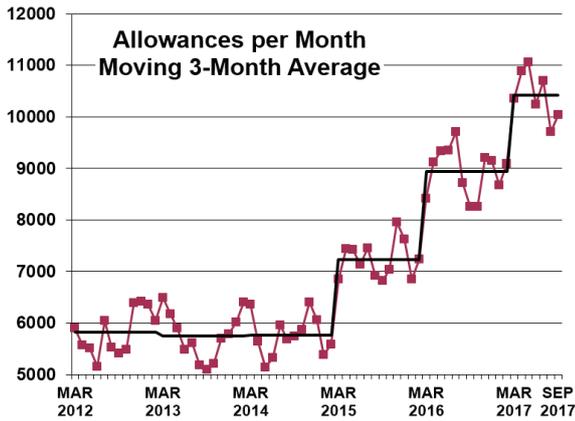


The following years, 2015, 2016 and 2017 differ significantly from the earlier years, as illustrated by the following chart. From year to year, allowances have stepped up in number.



With a degree of smoothing out of the monthly and seasonal variations in the number of allowances per month, year-by-year upward steps in allowance numbers are more apparent. The chart on page 4 shows the 3-month moving average of allowances per month with an indication of the upward steps, which seem to take place in the Spring, perhaps following new policy, such as new Examiner targets, implemented in January.





Clearing the Examination Backlog?

The total size of the backlog of applications not yet processed to a conclusion is not known. A crude estimate is that it may be around four to five years in terms of numbers of applications filed per year. In 2016 the number of applications processed to a conclusion (allowed, deemed withdrawn, withdrawn or rejected) exceeded the number of new applications in that year, as illustrated in the chart on page 3. This was a rare event, though it seems likely that this will also be the case in 2017. It seems that the Examination backlog is diminishing in size.

Clearing the Opposition Backlog?

The 2015 and 2016 EPO Annual Reports included this information on oppositions:

	Patents opposed	Decisions on Opposition Cases
2012	2994	3270
2013	2963	3167
2014	3063	3157
2015	2898	3713
2016	2938	4102

	Patent Revoked	Patent Upheld in Amended Form	Patent Upheld as Granted
2014 3157 Decisions	30%	39%	31%
2015 3713 Decisions	31%	38%	31%
2016 4102 Decisions	28%	40%	32%

The EPO has confirmed that this information relates only to first instance decisions, which may not be legally final. According to this information, in each of the five years 2012 to 2016 more opposition cases were decided in the first instance than the number of patents newly opposed, with a thousand more first instance decisions in 2016 than in 2014.

Final Results of Opposition

According to the official record as represented by the EPO Online Bulletin (accessed in November 2017), which records outcomes which become legally final (without or after appeal), the picture is not the same either in terms of numbers of decisions or in terms of the relative percentages with which different possible outcomes occur. It seems that for final decisions, there has been a higher chance of revocation than for first instance decisions, arguing a tougher stance of the Boards of Appeal on granted patents than the Opposition Divisions:

	Patent Revoked %	Patent Upheld in Amended Form %	Patent Upheld as Granted (Opposition(s) Rejected) %
2014 2486 Decisions	44%	35%	20%
2015 2602 Decisions	43%	33%	23%
2016 2972 Decisions	40%	36%	24%
2017 H1 1370 Decisions	37%	41%	22%

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