

Memorandum on Freedom to Operate (FTO)

An FTO-analysis reveals whether and to what extent third party-rights interfere with your company's market intentions for specific products or processes. Even patent proprietors cannot assume – based on their own protective rights – that the marketing of their patented products or processes will not infringe other protective rights. Moreover, an FTO-analysis can serve for monitoring competition and possibly for identifying new markets for the company (field analysis). This, in turn, can provide information for the company's own R&D and assist in gaining specific know-how.

We structure an FTO-analysis into 5 phases:

Phase 1 Together with you we develop a search strategy for existing protective rights and draft suitable search terms. We regularly entrust the Swiss Patent Office (IGE) with the database search (advantages: quality, costs, official character).

- Search strategy: products, processes, competitors, search terms
- Relevant countries or regions: EP, DE, CH, US, ...?
- Searches at the IGE cost about 3000-5000 CHF, in progress-feedback from IGE

Phase 2 Depending on the number of search results, we preselect either on our own, or together with you, a first preliminary list of relevant results. The preselection at a round table with our clients offers a cost-effective approach for a large number of search results.

- Preselection/first screen of possibly relevant search results, optionally in consultation with you (round table)
- Presentation of results in table form
- Summary of relevant main claims of the search results and optionally preliminary information on the corresponding legal status by us

Phase 3 You select the relevant search results in close cooperation with us (on your part, employees from R&D, sales and marketing contribute to the selection process).

- Selection of verified relevant search results and presentation together with verified legal status
- Brief comment on the relevance of specific protective rights for your company

Phase 4 Risk assessment and recommendation for future action: detailed FTO-analysis according to Swiss, European and German legal practice for selected protective rights (German or English).

Phase 5 Regular update of the search and the legal status of relevant protective rights as well as assessment of new protective rights.