

WHAT IS

Freedom to Operate

Before you market and sell a finished product, you should ensure you have the **Freedom to Operate (FTO)**.

Without the FTO, you may not be able to make, use or sell your invention. The FTO is especially important in industries like biopharmaceuticals, biotechnology, manufacturing industries, chemical products, and companies entering foreign markets.

PATENTABILITY VS. FREEDOM TO OPERATE

When you patent an invention, you obtain the **right to exclude others from making, using, and selling your invention**. Owning a patent enables you to sue others that infringe your patent rights. A patent **doesn't protect you from getting sued for infringement of a patent owned by someone else**, however.

THE AUTOMOTIVE INDUSTRY

The **automotive industry** is rapidly converging with the **tech industry** to create automated, self-driving vehicles chock full of high-tech inventions.

While a tech company may hold a patent for a specific software component necessary for a self-driving vehicle, there will inevitably be thousands of other patents involved in the vehicle's final form.

Google's patent alone will not be sufficient for them to manufacture and sell automated vehicles unless they work with the other patent holders who have a stake in the final product. In this case, parties involved should consider **Freedom to Operate**.



ADDITIONAL FTO EXAMPLES

Another way companies secure the FTO is by **cross-licensing entire portfolios of patents**. In this case, all the companies have enough patents that other companies entering the market will inevitably infringe.

Since it typically does not benefit patent-holders to start a war of mutual destruction, often the companies will not sue for infringement but rather work out an arrangement whereby entire portfolios of patents are licensed between the companies.

This practice is referred to as **cross-licensing**. A cross-licensing strategy is common in industries where there are hundreds of thousands of patents related to each product, like smartphones or automobiles.

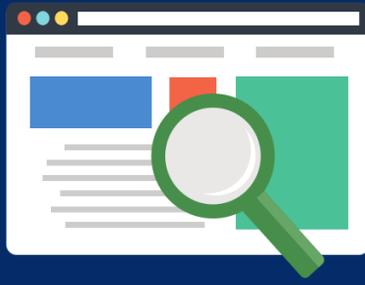


Conducting FTO Analyses

Naturally, most entrepreneurs and startups do not have the patent portfolios to cross-license with companies like Apple, Microsoft, and Google. But there are still ways to mitigate infringement risks.

1. Conduct an FTO search (or analysis)

The best way to start an FTO search is by listing the countries where you anticipate making, using, selling, or importing your product.



2. FTO analyses should be ongoing

Each major stage of the process, from R&D to securing investments, often necessitates a new patent search and analysis.



3. Other Options

There are other options such as joining patent pools or aggregates. At the end of the day, the option that works best for you will depend on many factors. These include your industry, patent portfolio, and your goals for your invention.



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