



Netherlands Enterprise Agency

Looking to market an innovation? Avoid risks and check to see if someone else has already patented your product

You have invented something and plan to market it. But you want to avoid infringing on the rights of others. You may prevent this by investigating whether or not you have Freedom to Operate (FTO). Also important: potential investors will often enquire about FTO. In this document, you can read about the FTO Analysis for patents.

An FTO Analysis will reveal whether or not you would be infringing on the rights of others if you decide to market your product. That is important, because someone else may already have intellectual property rights to the same innovation, which limits your freedom to operate.

An FTO Analysis is a risk analysis

An FTO Analysis is a risk analysis, in which you estimate the risk of infringing on the intellectual property rights of others. In addition to the rights to the technology used in a product or process, this risk can also exist for software, brands or designs. There is no guarantee for FTO. This is because an analysis is never exhaustive. In the case of patents there are various reasons for this, for example because patent applications remain a secret for 18 months.

An FTO Analysis is not a novelty search

FTO Analyses are different from novelty searches. A novelty search is mandatory in a patent application and compares the invention to the publicly-known 'state of the art'. A novelty search is conducted to find out if you would be eligible for a patent for a technological innovation. With an

FTO Analysis, you intend to make sure that your product does not infringe on the rights of others. This means that an FTO Analysis considers every aspect of a product rather than only the technological invention; it pertains to your complete product.

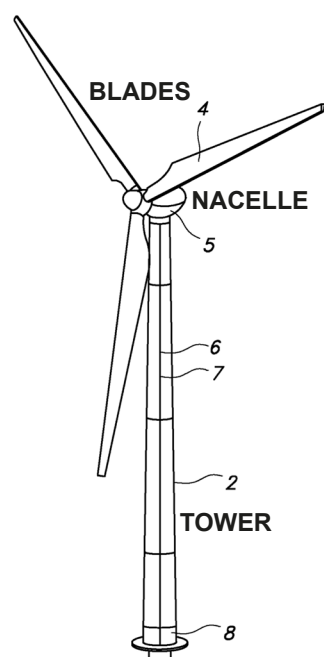
Focus on subjects with a competitive advantage and risk

FTO Analyses are a recurring task, and are aimed at staying abreast of the latest developments regarding patents. But it is impossible to comb through thousands of new patents all the time. So it is important to create focus in the topics you are following:

- Divide your product into various technologies that each require their own FTO approach.
- Focus mainly on subjects that yield the best competitive advantage and the highest infringement risk.

Example: wind turbines

For wind turbines you need towers, blades and nacelles. If you wish to sell complete wind turbines, then you must estimate the risk for each component. Find out how to do this in this table:



Component	Is this your competitive advantage?	Risk	Approach to FTO Analysis
You can purchase towers from various suppliers	No	Low	There are plenty of alternative suppliers, so no FTO Analysis is necessary
For nacelles, you work with a fixed supplier that has an interest in your success	No, but you are dependent on a specific supplier	Controllable	Agree that the supplier ensures FTO on this topic
New technology in the blades is where you get your advantage. You have applied for a patent in this area	Yes: your focus is on this proprietary technology	High: the novelty search in the patent application is not an FTO Analysis	You have commissioned a preliminary patent investigation and a novelty search for a technological innovation. An additional FTO Analysis is also required for the entire blade
The attachment of the newly-developed blades to the nacelle. This is R&D without a patent application	Yes, the focus is on the blades, but this requires a properly-functioning attachment	High	FTO Analysis is required in this specific area

Figure 1: A wind turbine consists of blades, a nacelle and a mast. Do you not sell complete wind turbines, but only blades? Or would you like to delve deeper into specific components of the blades? Then create a similar table for these components.

Systematic FTO Analysis

Many companies outsource FTO Analyses to specialised commercial parties. In order to make a solid risk analysis, it is important to know exactly which steps have led to the

research result. Below you can find the choices a researcher makes in the analysis. Check to see whether the choices made are suitable for the risks you wish to investigate.

Step	Question		Explanatory notes
1. Select patents	Which specific technological aspects were the focus of the search?		FTO Analysis often includes more subjects than a novelty search. Selection is necessary to limit the number of patents you will have to review. What was the focus of the selection? What has NOT been reviewed, and is the risk acceptable that this was not investigated?
2. Check the patent selection	What has been investigated?	Using which classification codes	You can search for patents internationally using codes for the technical design. These classification codes (IPC/CPC) consist of combinations of letters and numbers. The longer the code, the more specific; A47C1/03266, for example, is more specific than A47C1. Tip: ask for codes of at least seven characters.
		With which keywords in combination with one or more classification codes	Which keywords have been used in addition to the classification codes? Pay attention to synonyms and 'truncation' (abbreviation with symbol). Check whether the used keywords are relevant in combination with classification codes. The keyword <i>wind turbine</i> is not useful in a classification about wind turbines. Keywords about the construction of materials, for example, are a good addition in the classification about wind turbines.
3. Check the countries or regions	Have the patents been applied for in countries or regions that are important for your trade? (Think about production, import, transit and export market.)		Patents are frequently applied for in multiple countries. Check the country codes of these publication numbers, for example NL 0123456C. Also think of international procedures (for example EP and WO). Sometimes more information is available in patent registers than in patent databases such as Espacenet. The Netherlands Patent Office offers free support with these efforts.
4. Check the status	Check the status of the patents in the relevant countries and regions. That is to say, are they in force or have they expired?		The status of a patent can change; for example if you have not paid the maintenance fee in a country. The Netherlands Patent Office provides support free of charge in helping you search patent registers for up-to-date information.
5. Read the contents	Does the technology in the relevant patents show similarities to your innovation? Please look at the claims specifically for this purpose.		Does the research specify for each mentioned patent which relevant technological aspects are described in which claim? Interpreting claims is work for professionals. For this purpose, we recommend hiring a patent attorney.

More information about the Netherlands Patent Office

FTO is about more than just patents; it also involves other intellectual property rights, such as trademarks and copyrights. Contracts and trade secrets can also be a factor. Would you like to know more about this? The patent consultants from the Netherlands Patent Office provide free advice, on the following:

- getting to the core of the intellectual property that gives you a competitive position;
- help you think about a sustainable competitive advantage and value creation based on intellectual property;
- discuss what would be useful to mention in patents and what should remain a secret;
- take a look together at what you would like to look up in databases yourself, and what you would prefer to outsource to commercial parties (such as an FTO Analysis and the interpretation of claims);
- support in patent databases searches based on your specific technological developments;
- look up current information in patent registers. Where is a specific patent in force?

If you have any questions, send an email to the Netherlands Patent Office at octrooicentrum@rvo.nl, call +31 (0)88 042 4002, go to www.rvo.nl/octrooien or [schedule a consultation with a patent advisor](#).



This is a publication of:

Netherlands Enterprise Agency
Prinses Beatrixlaan 2
PO Box 93144 | 2509 AC The Hague
T +31 (0) 88 042 42 42
E klantcontact@rvo.nl
www.rvo.nl

This publication was commissioned by the ministry of Economic Affairs and Climate Policy.

© Netherlands Enterprise Agency | May 2024

Publication number: RVO-094-2024/BR-INNO

NL Enterprise Agency is a department of the Dutch ministry of Economic Affairs and Climate Policy that implements government policy for agricultural, sustainability, innovation, and international business and cooperation. NL Enterprise Agency is the contact point for businesses, educational institutions and government bodies for information and advice, financing, networking and regulatory matters.

Netherlands Enterprise Agency is part of the ministry of Economic Affairs and Climate Policy.