



European IP Helpdesk

Stay ahead of the innovation game.

European IP Helpdesk Webinar:
FTO

Dr. Christian Hackl
Senior IP Advisor

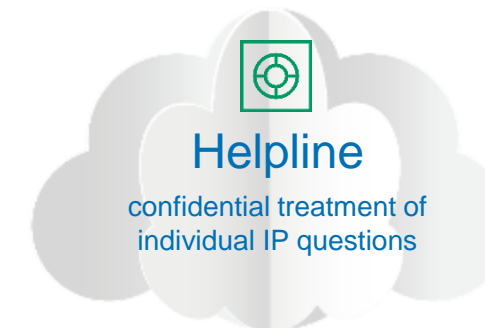
April 28, 2022





European IP Helpdesk

- Service initiative of the European Commission
- Addressing **current and potential beneficiaries of EU-funded projects, researchers and EU SMEs**
- Free-of-charge first-line support on intellectual property (IP)
- Hands-on IP and innovation management support
- International pool of IP experts from various thematic fields
- Unique cooperation scheme with the Enterprise Europe Network: 48 ambassadors from 28 EU countries



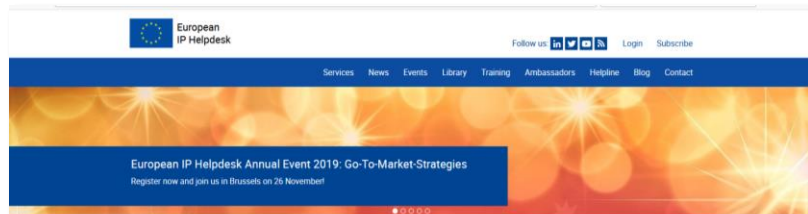


The EC IP Helpdesks





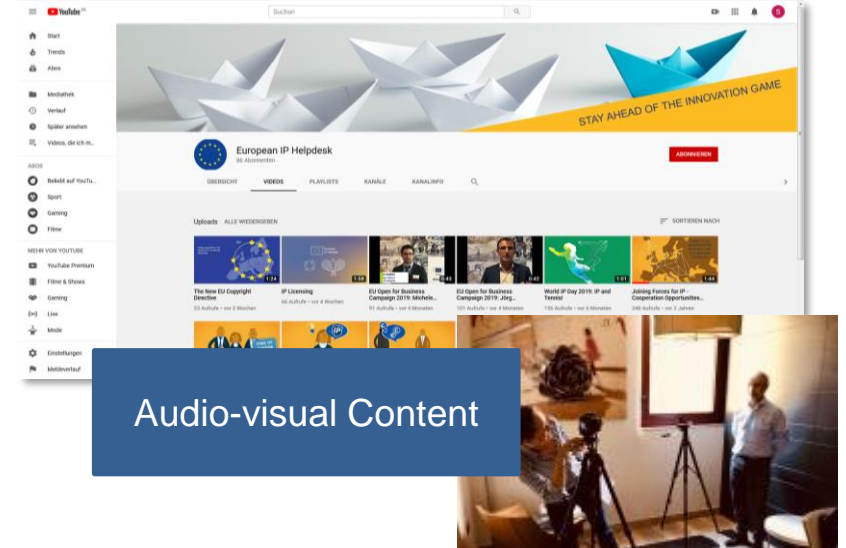
Communication Formats & Outreach Tools



Website



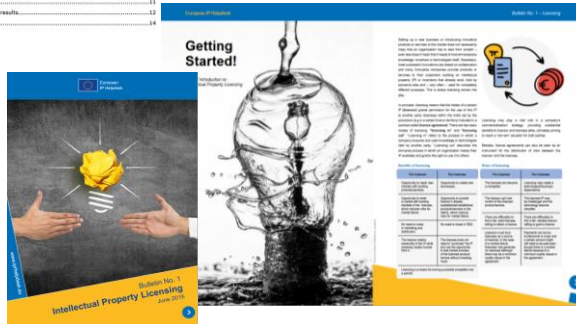
Publications



Audio-visual Content



Training



Social Media





New Bulletin! Green Deal!

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Towards a greener and more sustainable future

The European Green Deal: Is Plant IP Part of the Solution?__ 5

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JRC study explores challenges linked to the deployment of green technologies through technology transfer

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Supporting green innovation and technology transfer

Patents for Tomorrow's Plastics_13

EPO study reveals that Europe and US are leading innovation in plastic recycling and alternative plastics

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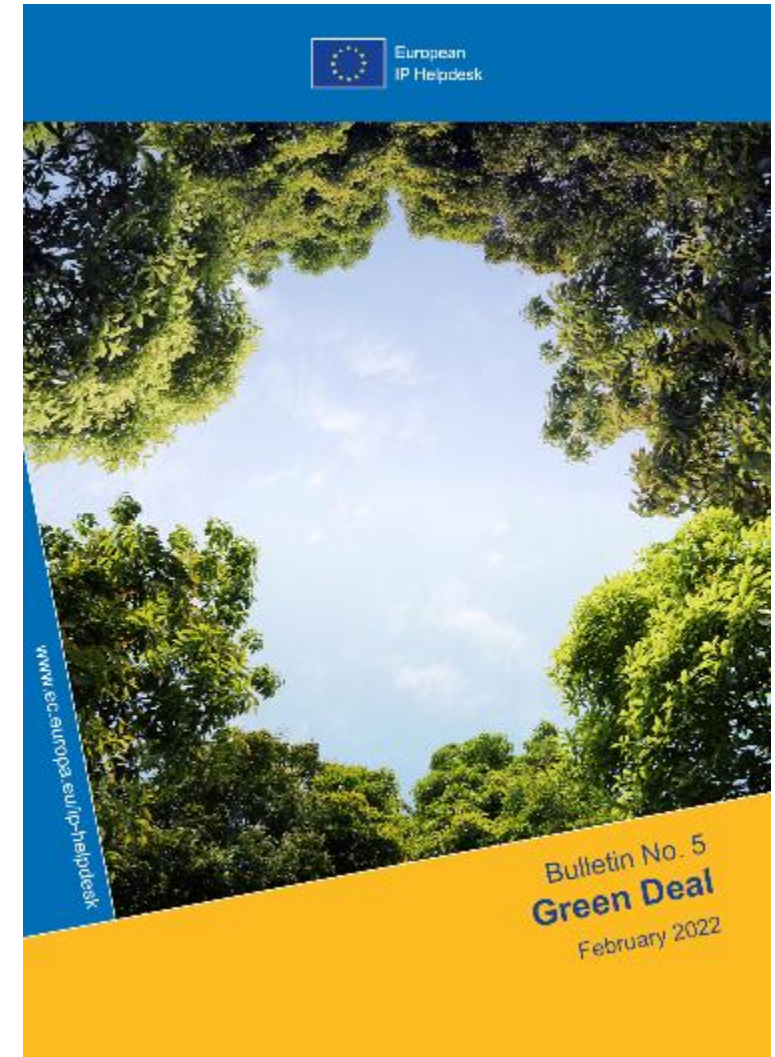
How a young circular bioeconomy start-up creates sustainable materials for a future without plastic

Green EU Trade Marks _____ 16

Study by the EUIPO shows increased filing of "green" EU trade marks

News from the European IP Helpdesk Team _____ 17

Publications, training and other activities





Ambassador Scheme

- **Cooperation scheme** with the Enterprise Europe Network (EEN): 47 ambassadors – 28 countries
- **Building IP capacities** among European SMEs
- **Overcoming language barriers**
- Making the topic **more accessible**
- Exchange and feedback from ambassadors on **needs of SMEs**
- **Local awareness and training events**





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EU Knowledge Valorisation Week 2022: Join, Discuss, Exchange!</p> |
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2022</p> | <p>TRAINING AND WORKSHOPS
EU - Webinar: Copyright in collaborative projects</p> <p> Live streaming available</p> |





Further learning opportunities:

1. [European IP Helpdesk Ambassadors and EEN](#)
2. [EUIPO learning portal](#)
3. [EUIPO – Ideas Powered for business website](#)
4. [WIPO Academy / Diagnostics](#)
5. [The Ideas Powered for business SME Fund](#)
6. [IPA4SME](#)
7. [Horizon IP Scan](#)
8. [\(IP Booster\)](#)
9. [Horizon Results Booster](#)
10. [Leadership4SMEs](#)
11. [EPO Academy](#)
12. [4IPCouncil](#)





Thank you!

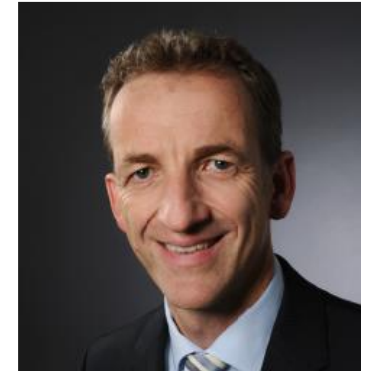
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Today's speaker

Dr. Christian Hackl



- Managing Director of TUM-Tech GmbH
- Assistant Professor at the Chair for Technology and Innovation Management (Technical University of Munich: TUM)
- Regular lecturer for the European Patent Office (EPO) / European Patent Academy and the EU-IP Helpdesk
- Author of several publications, e.g. case studies on usage of IPR by companies
- Co-Founder and Managing Director of a start-up (renewable energy)



FTO

Freedom to Operate



“The ability to perform a commercial activity without infringing 3rd party’s IP rights.”





Different Types of IP?

Registered IP

Patents

Utility models

Registered trade marks

Registered designs

Unregistered IP

Copyright

Database right

Unregistered trade marks

Unregistered designs

Soft IP

Know-how

Trade secrets

Confidential information



What is a patent?

- *A patent is a negative right*
- *A patent is the right to exclude others from*
 - *making*
 - *using*
 - *offering for sale*
 - *selling*
 - *or importing*

the patented invention for a limited period of time in a certain geography

FTO-analysis: search for 3rd party IP which can block your activities



Let's assume:

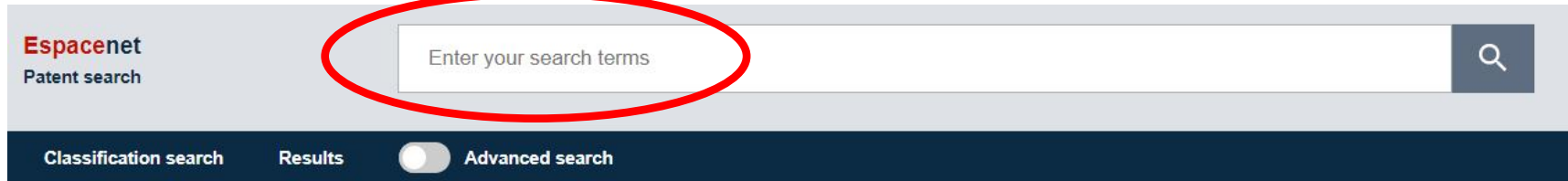
You are in an ongoing R&D-project and would like to do a first FTO-analysis

- What would you do?
- Where would you search for 3rd party patents?



The Espacenet database (over 110 million docs)

<https://worldwide.espacenet.com>



Espacenet: free access to over 110 million patent documents





The Espacenet database (over 110 million docs)

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 European Patent Office
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 Patent search

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Title or abstract: [i](#) hair

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Publication number: [i](#) WO2008014520

Application number: [i](#) DE19971031696

Priority number: [i](#) WO1995US15925

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Enter name of one or more persons/organisations

Applicant(s): [i](#) Institut Pasteur

Inventor(s): [i](#) Smith

Quick access

Discussion forum

Classic Espacenet



The Espacenet (on docs)

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- Description Proximity → Group
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- Description Any → Group



The Espacenet database (over 110 million docs)

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Espacenet: free access to over 110 million patent documents

Also for identifying
potential partners





Let's assume:

You are during a R&D-project and would like to do a first FTO-analysis

- What would you do?
- Where would you search?
- You found a patent with very similar claims

Is this the end?

Not necessarily!



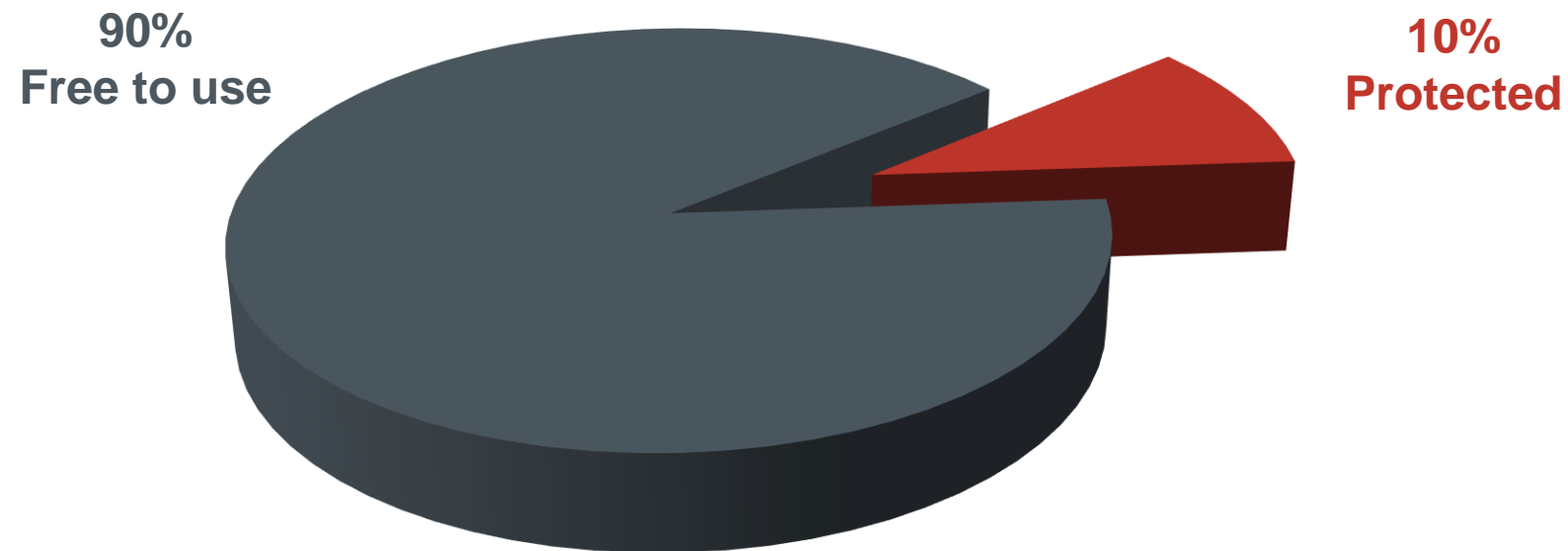
A patent

- Has to be applied for
- Has to be granted
- Has to be valid (max. lifetime 20 years, renewal fees)
- Has to be valid in a certain territory

18 months after filing, a patent (application) will be made public (appear in databases, such as Espacenet) – regardless of the legal status (if not withdrawn before)



Off all solutions found in patent documents



You can find many great solutions for free!



FTO-analysis

Before: search for any 3rd party IP-rights which can block your commercial activities

More precisely: search for any valid 3rd party IP-rights which can block your commercial activities in a certain geography

Business Strategy!



When would you do a FTO-analysis?

- Eg. before the start of a R&D-project (investment)

Remember: Patent protection for a new product



When can a patent be granted?

- **New**
- **Inventive**
- **Commercially applicable**



FTO versus Patentability Ia

Let's assume:

- You conducted a FTO-search before the start of a R&D-project
- You found a patent with very similar claims (valid in Japan only)
- Your business strategy: doing business in Europe

FTO



Patentability



Strategic question: Would you start the R&D-project, already knowing that you cannot get IP protection?



FTO versus Patentability I_b

Let's assume:

- You conducted a FTO-search before the start of a R&D-project
- You found a patent with very similar claims (expired patent, was valid in Japan only)
- Your business strategy: doing business in Europe

FTO



Patentability



Strategic question: Would you start the R&D-project, already knowing that you cannot get IP protection?



FTO versus Patentability II

Let's assume:

- You have a new idea: computer mouse which needs no cable or battery – it generates its electricity by the movement of the mouse
- Search: let's assume: you found no patent on this specific idea
- (valid or invalid / no application)

Patentability



Check non-patent
literature as well

FTO



Many existing patents on basic
mouse – you build upon



(19)
Bundesrepublik Deutschland
Deutsches Patent- und Markenamt

(10) **DE 10 2008 017 546 A1** 2009.10.15

(12)

Offenlegungsschrift

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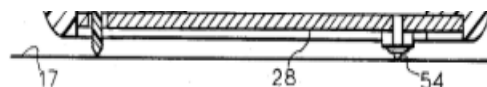
(74) Vertreter:

**Epping Hermann Fischer,
Patentanwalts-gesellschaft mbH, 80339 München**

(56) Für die Beurteilung der Patentfähigkeit in Betracht
gezogene Druckschriften:

**DE 10 2005 016293 A1
EP 07 86 849 A1
US 2004/01 96 262 A1**

The invention relates to a computer mouse (1) for wireless operation of a computer system. A power supply for the computer mouse (1) is provided without the use of rechargeable batteries or batteries. For this purpose, the computer mouse (1) has a dynamo (2) and an energy storage device (3). By actuating the dynamo (2), energy is generated which is temporarily stored in the energy storage device (3).

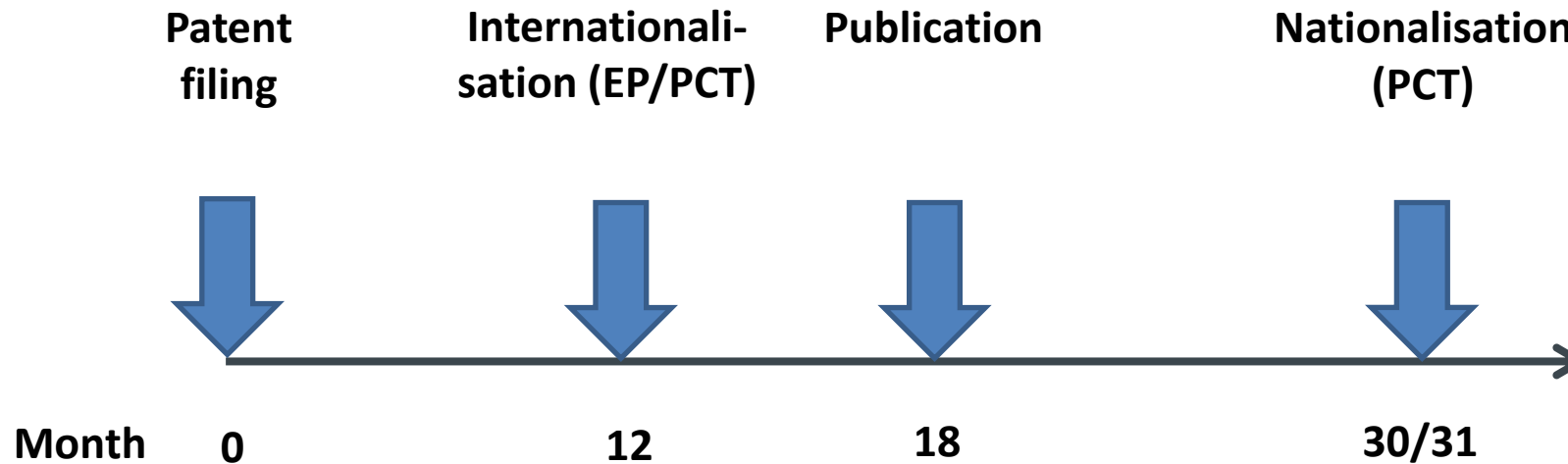


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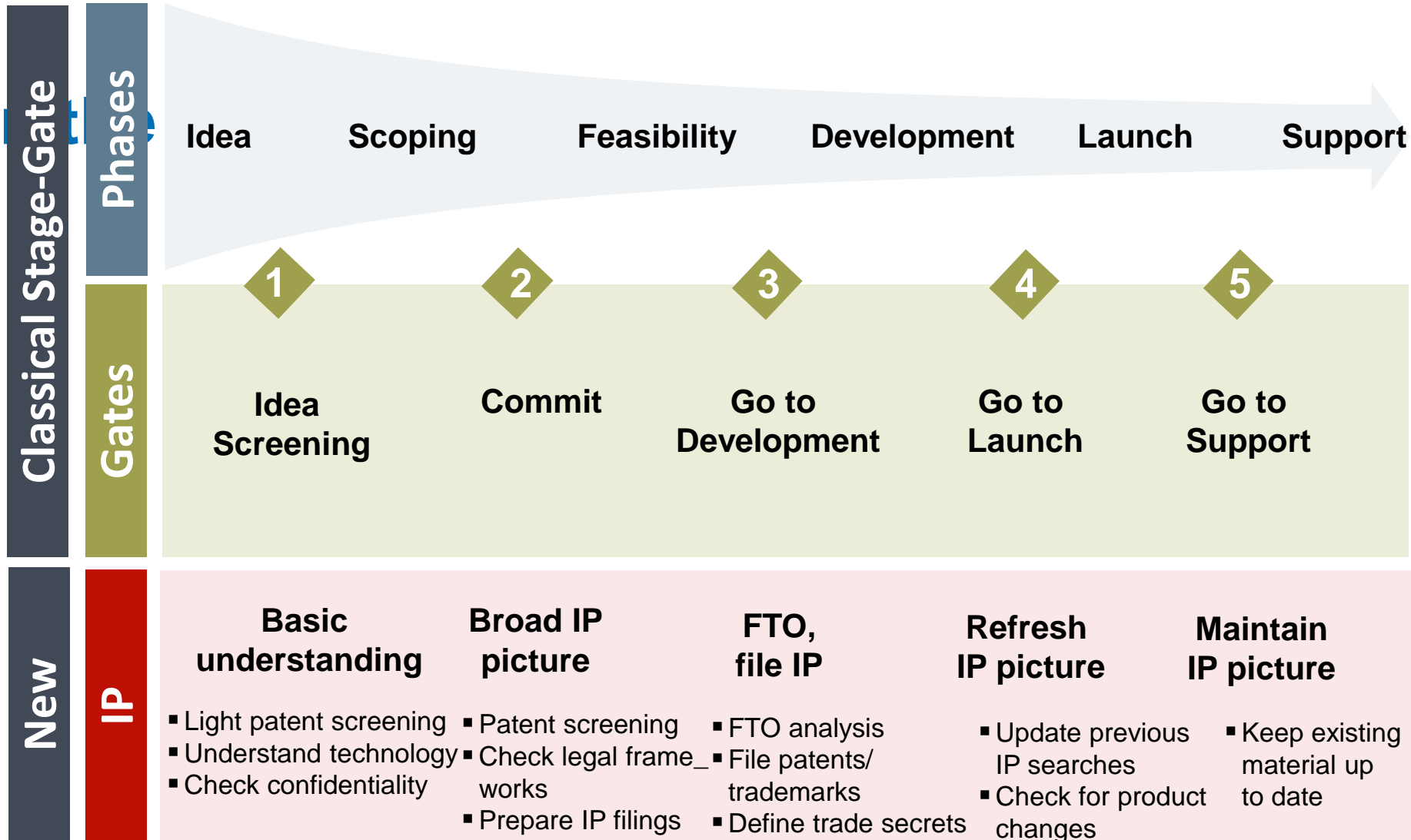
Ongoing Patent Monitoring

- Keep IP monitoring updated (FTO and technology/competitor watch)
- Keep in mind timing of events:





FTO in the





Possible Strategies

Let's assume:

- You did a FTO-search just before the end of the successful R&D-project
- You found a very similar European patent (you want to do business in EU)
- The patent is valid in main EU-member states

Your options:

- Wait for patent to expire
- Modify product / design around
- Move commercial activities (outside validated territories)
- Get a license (cross-licensing), buy patent (M&A)
- Try to invalidate 3rd party's patent
- Abandon R&D-project



Case study: FTO

https://intellectual-property-helpdesk.ec.europa.eu/regional-helpdesks/european-ip-helpdesk/europe-case-studies_en

The image shows the cover of a case study report. At the top left is the European Union flag and the text 'European IP Helpdesk'. At the top right is a green circular badge with the text 'CASE STUDY'. The main image is a traffic light with the green light illuminated. Below the traffic light, the text reads: 'Freedom to Operate. How a rather late identified third party patent almost killed an innovation project – but ultimately resulted in a significantly improved product that has innovated the protective clothing industry.' At the bottom right, the website address 'www.iprhelpdesk.eu' is visible.



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- LinkedIn [/european-ipr-helpdesk](https://www.linkedin.com/company/european-ipr-helpdesk)





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