



Managing IP for Access


*Access to Medicines,
Patent Information &
Freedom to Operate*

WHO-WIPO-WTO
Geneva, February 18, 2011

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Freedom to Operate

- The “missing link” !



Freedom to Operate

- The “missing link” !

encouraging
INNOVATION



enabling
ACCESS



WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

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Innovation: IP as a principal driver

- An incentive: for risk taking
- A tool: to encourage investments in product development
- A mechanism: to make scientific advances widely available

Access: IP as an instrumental driver

- An incentive: for effective and useful partnerships
- A tool: to share valuable data, know how, etc.
- A mechanism: to make innovations faster available



What is Freedom To Operate?

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From a legal perspective:

To have “assembled” all the IP rights for a
specific **product** for a specific **market** and specific **use**.

What is Freedom To Operate?

From a business perspective:

A **product development** and **risk** management strategy.

What is Freedom To Operate?

Whether a patent is issued in a certain country is

NOT a barrier *per se* to FTO.

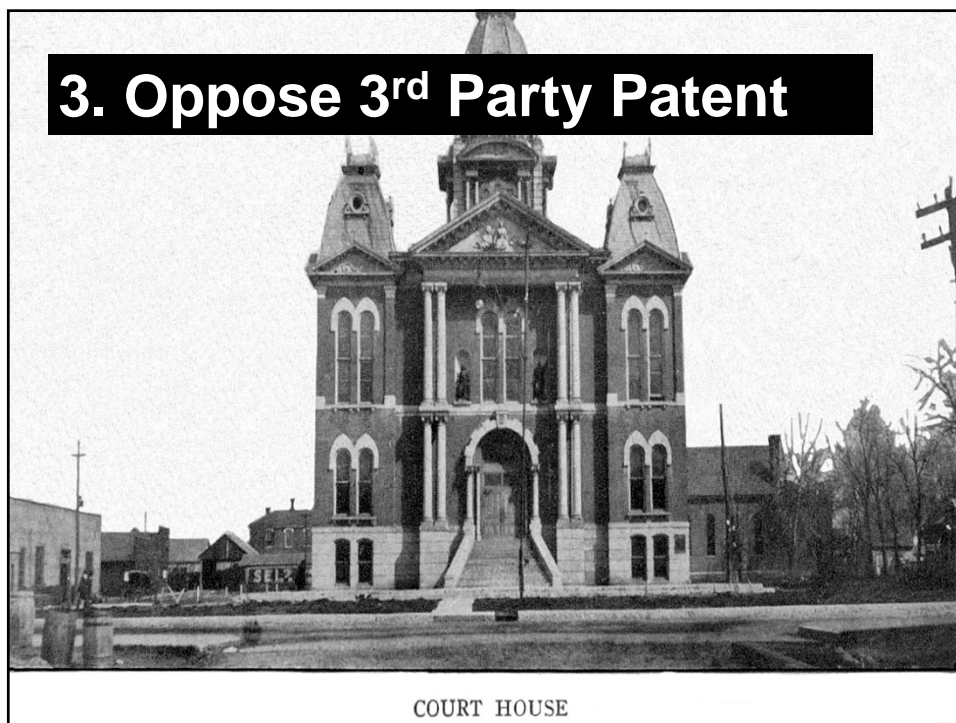
How do I obtain FTO?

A. Legal and/or IP management strategies

- 1. License
- 2. Cross-license



- 3. Oppose 3rd Party Patent



4. Non-assertion Covenant

Box 1 : NONASSERTION COVENANT FROM THE SOFTWARE INDUSTRY: MICROSOFT OPEN-SPECIFICATION PROMISE

Published: September 12, 2006 | Updated: February 15, 2007

Microsoft irrevocably promises not to assert any Microsoft Necessary Claims against you for making, using, selling, offering for sale, importing or distributing any implementation to the extent it conforms to a Covered Specification ("Covered Implementation"), subject to the following. This is a personal promise directly from Microsoft to you, and you acknowledge as a condition of benefiting from it that no Microsoft rights are received from suppliers, distributors, or otherwise in connection with this promise. If you file, maintain or voluntarily participate in a patent infringement lawsuit against a Microsoft implementation of such Covered Specification, then this personal promise does not apply with respect to any Covered Implementation of the same Covered Specification made or used by you. To clarify, "Microsoft Necessary Claims" are those claims of Microsoft-owned or Microsoft-controlled patents that are necessary to implement only the required portions of the Covered Specification that are described in detail and not merely referenced in such Specification. "Covered Specifications" are listed below.

This promise is not an assurance either (i) that any of Microsoft's issued patent claims covers a Covered Implementation or are enforceable or (ii) that a Covered Implementation would not infringe patents or other intellectual property rights of any third party. No other rights except those expressly stated in this promise shall be deemed granted, waived or received by implication, exhaustion, estoppel, or otherwise.

5. Seek compulsory license



WORLD TRADE
ORGANIZATION

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WORLD
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How do I obtain FTO?

- A. Legal and/or IP management strategies
- B. R&D strategies**



How do I obtain FTO?

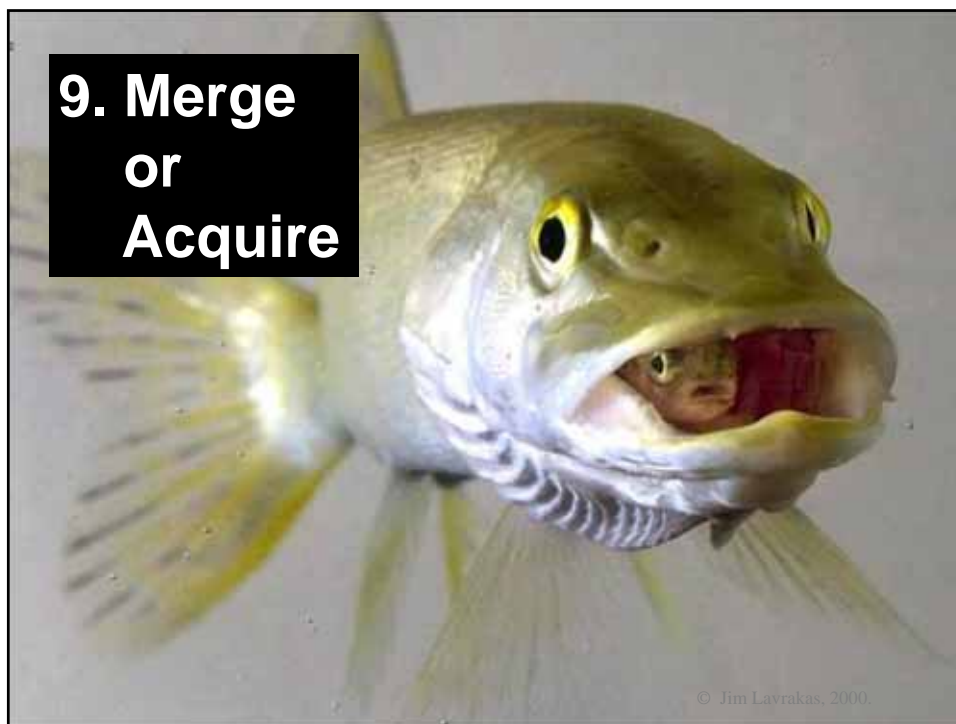
- A. Legal and/or IP management strategies
- B. R&D strategies
- C. Business strategies**

8. Wait and see (or dream on)

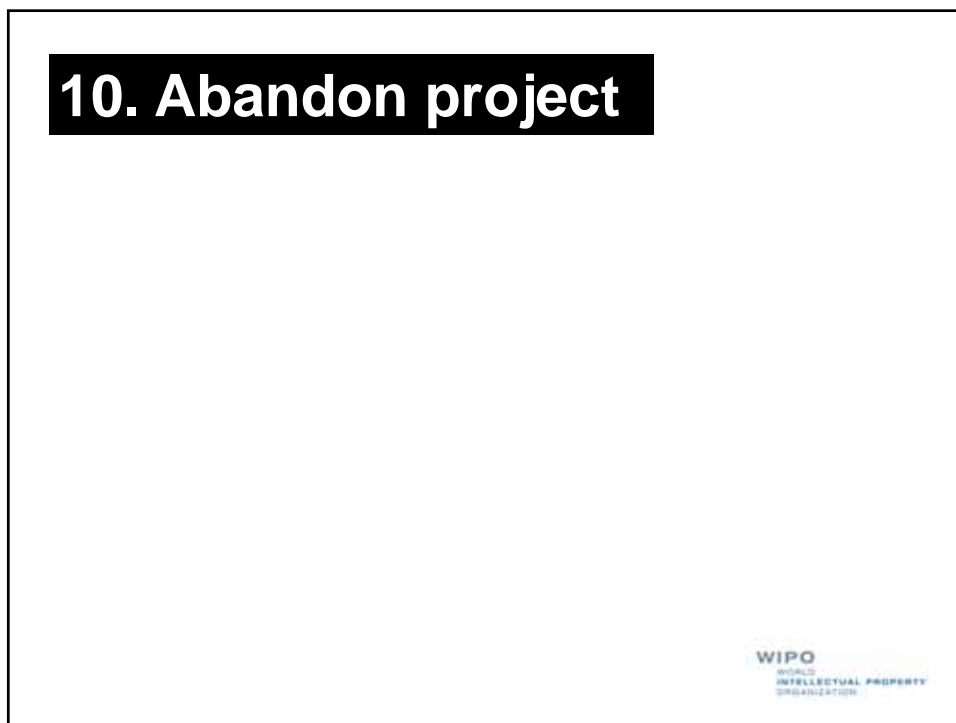




**9. Merge
or
Acquire**



10. Abandon project





→ In Practice:

**A combination of several
strategies
implemented concurrently**

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