

Freedom to Operate (FTO) Request Template (India)

Structured request and scoping template for commissioning a patent FTO analysis

HOW TO USE THIS TEMPLATE

1.	Commission an FTO analysis BEFORE launching a new product feature or entering a new market.
2.	An FTO analysis tells you whether your product infringes any existing third-party patents.
3.	FTO is different from patentability — a product can be novel (patentable) but still infringe an existing patent.
4.	FTO analyses are expensive — scope them carefully to focus on the most relevant claims and geographies.
5.	Document all FTO analyses — they demonstrate good faith if you are accused of wilful infringement.

SECTION 1 — REQUEST DETAILS

Company Name and CIN	[Company name and CIN]
FTO Request Reference Number	[FTO-YYYY-NNN]
Date of Request	[DD Month YYYY]
Requested by	[Name and designation of requester]
Approved by (IP Manager / CTO)	[Name, designation, and date of approval]
External Patent Attorney / FTO Firm	[Firm name and lead attorney]
Target Completion Date	[DD Month YYYY]
Budget Approved	[Rs. X — approved by [Name] on [Date]]

SECTION 2 — PRODUCT / FEATURE DESCRIPTION

Product / Feature Name	[Name of the product, feature, or technology to be analysed]
Brief Description	[Describe what the product or feature does in plain language]
Technical Description	[Describe the key technical steps, components, or mechanisms — as specific as possible]
Technology Domain / Field	[e.g. 'Natural language processing / SaaS invoice software / Mobile health monitoring']
Key Technical Features to be Cleared	[List the specific technical elements you are most concerned about — these drive the search]
Alternative Implementation Approaches (if any)	[List any design alternatives the FTO analysis should also cover]
Planned Launch Date	[DD Month YYYY — drives urgency of the FTO]
Target Markets for Launch	[India / USA / EU / UK / Other — specify]

SECTION 3 — SCOPE OF THE FTO ANALYSIS

3.1 Patent Databases to Search. Confirm scope with the patent attorney:

India (mandatory)	■ Indian Patent Office database (ipindiaonline.gov.in)
USA	■ USPTO database — required if US market launch planned
European Patent Office	■ Espacenet / Unified Patent Court — required for EU market
China	■ CNIPA database — required if China market planned
International (PCT published apps)	■ WIPO PatentScope — covers 150+ countries
Keyword and classification search	■ Google Patents / PatSeer / Derwent Innovation

3.2 Time Period for Search: Focus on patents filed in the last 20 years (patent term) that are still in force. Include pending applications (published after 18 months from filing) as they may be granted and cover your product by launch date.

3.3 Key Patent Holders to Check: List known competitors and their patent portfolios to search specifically:

Known competitors with relevant patents	[List company names — e.g. 'TechCo Ltd', 'GlobalSoft Inc']
Known patent families of concern (if any)	[Patent numbers or publication numbers if known]

SECTION 4 — FTO ANALYSIS OUTPUT REQUIRED

The FTO report should deliver the following outputs:

1. A list of all potentially relevant patents and published applications identified in the search, with brief summaries.
2. A claim-by-claim analysis of each identified patent that appears relevant to the product, mapping the patent claims to the product's technical features.
3. A risk assessment for each relevant patent: RED (high risk — product likely infringes an in-force patent claim), AMBER (moderate risk — may infringe depending on claim interpretation), GREEN (low risk — no infringement or patent expired/lapsed).
4. Specific design-around recommendations for any RED or AMBER patents — practical technical alternatives that avoid infringement.
5. An assessment of whether any identified patents could be challenged for invalidity.
6. Overall FTO clearance conclusion for each target market.
7. Attorney's opinion letter — for wilful infringement defence purposes.

SECTION 5 — POST-FTO ACTIONS

Overall FTO result	[Green — clear to proceed / Amber — proceed with design-arounds / Red — do not launch without legal advice]
RED flag patents identified (if any)	[Patent numbers and risk description]
Design-arounds implemented (if applicable)	[Describe technical changes made to avoid identified patents]
Patents recommended for invalidity challenge	[Patent numbers and basis for challenge]
Licences recommended (if applicable)	[Patents where a licence may be commercially more efficient than design-around]

Date FTO analysis completed	[DD Month YYYY]
Date FTO conclusions communicated to product team	[DD Month YYYY]
Date of next FTO review (if product evolves)	[DD Month YYYY]

IMPORTANT NOTE

An FTO analysis provides a snapshot — patents are filed and published daily. An FTO from 12+ months ago may not cover recently published applications. Refresh FTO analyses before major launches, when adding significant new features, or when entering new geographic markets. Template only — not legal advice.

UNDERSTANDING FTO ANALYSIS AND RISK MANAGEMENT

5.1 Types of FTO Opinions. Patent attorneys typically offer three levels of FTO analysis: (a) Preliminary / Screening FTO — a quick scan of the most relevant patents to identify obvious blocking patents. Takes 1–2 weeks, lower cost. Appropriate for early-stage feature decisions. (b) Standard FTO Opinion — a thorough search and claim-by-claim analysis of all relevant patents in the target jurisdiction. Takes 4–8 weeks. Appropriate before product launch. (c) Freedom to Operate Plus — includes invalidity analysis for any blocking patents and specific design-around recommendations. Takes 6–12 weeks. Appropriate for high-value products or when blocking patents are identified.

5.2 Claim Interpretation in FTO Analysis. An FTO analysis requires the attorney to interpret patent claims in light of the patent specification and prosecution history. The 'doctrine of equivalents' means that even if your product does not literally infringe a patent claim, it may infringe under the doctrine if it performs substantially the same function in substantially the same way to achieve substantially the same result. Indian courts have recognised the doctrine of equivalents in patent infringement analysis. A proper FTO must account for both literal infringement and potential equivalents.

5.3 FTO is Not a One-Time Exercise. An FTO analysis represents a snapshot. Your product evolves, competitors file new patents, and pending applications become granted patents. Best practice for FTO maintenance: (a) refresh before each major new product feature or product version launch; (b) refresh before entering each new geographic market; (c) monitor competitors' patent filings quarterly using a patent watch service; (d) review the FTO when a competitor sends a cease and desist letter or files a suit; and (e) document all FTO analyses and the business decisions made in reliance on them — this documentation supports a 'good faith' defence if infringement is alleged.

5.4 Designing Around Blocking Patents. When a blocking patent is identified, the FTO analysis should include design-around options — alternative technical approaches that achieve the same functional result without infringing the blocking patent's claims. Design-arounds typically exploit: (a) elements the patent does not claim (e.g. using a different algorithm that is not claimed); (b) claim limitations that require specific structures or steps that can be avoided; (c) claim language that can be interpreted narrowly; or (d) prosecution history estoppel that limits the patent's scope. All design-around implementations should be documented and their non-infringing basis should be verified by the patent attorney.

PRACTICAL GUIDANCE FOR COMMISSIONING AN FTO

6.1 Selecting the Right FTO Attorney. FTO quality depends entirely on the patent attorney. When selecting an FTO attorney: (a) prefer a firm with technical expertise in your specific domain — a software FTO needs a computer science background, a chemical formulation FTO needs a chemistry background; (b) ask about the search tools they use (PatSeer, Derwent Innovation, and Freedom AI are more comprehensive than a free Google Patents search alone); (c) request sample FTO opinions to assess the quality and format of their analysis; and (d) confirm that the opinion will be signed by a registered patent agent — a signed opinion is important for the 'good faith' defence in wilful infringement claims. Budget Rs. 1,00,000–5,00,000 for a thorough FTO analysis depending on complexity and scope.

6.2 FTO in the Context of Product Launch Approvals. Integrate FTO into your product launch process: all new features above a threshold of technical novelty must pass an FTO gate before entering development sprint planning; the IP Manager must be notified of all new product features at the ideation stage, not at launch; engineering and product teams must never create features intended to replicate competitor functionality without first obtaining an FTO; and the result of each FTO analysis must be documented and retained as part of the product development record. This process discipline, consistently followed, provides a strong defence against wilful infringement allegations.

6.3 FTO and Insurance. Many cyber and technology E&O; (errors and omissions) insurance policies can include IP infringement coverage. Having documented FTO analyses for key products significantly improves the Company's position in obtaining IP insurance and in claiming under such insurance if an infringement suit is filed. Insurers will ask for evidence of FTO analyses as part of the underwriting process. A Company that cannot demonstrate any FTO programme may face higher premiums or coverage exclusions.