

SIMPLIFYING THE COMPLEX: FTO Workflow Technology Delivers Multi-Faceted Efficiency Gains While Enriching Claims Analysis

“It’s not often that you come across new technology that is a game changer for an in-house IP department. But Clearstone’s FTO Platform is that. It provides a framework that enables us to work much more efficiently across our outside counsel, internal legal, and technical teams. At the same time, it brings more context, confidence and clarity to our freedom-to-operate assessments that inform critical business decisions.”

– Patrick Traister, Chief Intellectual Property Counsel, Braskem

BACKGROUND & CHALLENGE:

In anticipation of a strategic development project, Osha Liang was commissioned by Braskem to conduct an early-stage freedom-to-operate (FTO) analysis to assess the project’s feasibility. Given the crowded patent landscape around polyolefins and the layers of technical complexity in the project, the objective of the risk analysis was to identify and assess the scope of patent infringement risk if Braskem were to proceed.

Delivering on a risk assessment of this scale was challenging due to the intricacies of the project requiring 15+ different patent searches, and making claim determinations on thousands of patents and patent families. The project required a highly organized approach to manage multiple FTO reviews, the means to easily collaborate with Braskem’s IP, Technical and Product teams, and was to be delivered on an aggressive timeline with a finite budget.

With those project requirements in mind **Carlyn Burton, Partner** at Osha Liang, knew Braskem, their **Chief IP Counsel, Patrick Traister**, and her intermediary point-of-contact, **Patent Engineer, Ingrid Nakamura** would benefit from technology-enabled workflows and project management versus the traditional approach that can be error-prone and inefficient: spreadsheets, manual tagging, searching and pulling claims from multiple databases not built for claims analysis.

Through her search provider, **Global Patent Solutions**, she was introduced to the Clearstone FTO Platform and made the recommendation to Braskem to invest in a subscription to support the life of the project.



Braskem is the largest petrochemical company in the Americas and the world’s leading biopolymer producer. Braskem produces polyethylene (PE), polypropylene (PP) and polyvinyl chloride (PVC) resins, as well as basic petrochemicals including ethylene, propylene, butadiene, chlorine, benzene and toluene. The company also plays a significant role in other production chains that are essential to economic development.

Founded in 1998, Osha Liang is full-service intellectual property law firm with a global presence. The firm has broad experience in worldwide patent and trademark procurement, portfolio management, licensing, acquisition, due diligence, opinions of counsel, litigation, and strategic IP counseling, among other areas. With offices in Houston, Austin, Boulder, Washington, D.C., Paris, Hangzhou, and Tokyo, the firm prides itself in being one of the most technically and legally proficient intellectual property law firms in the world.

THE SOLUTION:

The Clearstone FTO Platform is the only workflow technology in the market specifically built for freedom-to-operate assessment and individual claims analysis. This intuitive workflow platform brings project management principles tailored to the patent clearance process and enables focused and efficient collaboration with technical product teams. The platform served as a real-time communication bridge and a virtual data room that delivered a wealth of benefits to both Braskem and Osha Liang during and after the project:

- Improved Project Organization & Efficiency
- Attorney-Client Collaboration & Communication
- Creation of a Historical Claim Analysis Library
- Control Scope of Attorney-Client Privilege
- Confidence in Complete & Enriched Claims Analysis
- Faster Response Times Reporting Back to Leadership

The Clearstone FTO Platform markedly improved how the project was executed by both Braskem and Osha Liang. At a high level, both client and outside counsel were able to work faster and smarter in a more organized and intuitive manner leading to more confident results and deriving better value from Braskem's risk assessment budget. It is estimated that the platform **saved approximately 100 attorney hours**, approximately 25% of total hours billed against the project, and improved the depth of the analysis. There was greater confidence with the thoroughness of the review and that no claims were missed. Qualitative advantages well beyond expectations were achieved with the ability to consider foreign counterparts due to the platform's unique functionality to query and connect patent families. Finally, the burden on Braskem's patent and technical teams providing answers and clarification was also significantly reduced allowing them to report back to leadership on the risk assessment faster and allow them to focus on other important initiatives outside of the project.

REVIEW & RECALL

In complex FTO analysis with multiple searches, the ability to analyze search results from different angles and make different determinations is table stakes, yet an arduous process.

The burden of FTO analysis caused by working in and managing claims and determinations across multiple spreadsheets was eliminated. This allowed the Osha Liang Team to focus on the substantive elements of analysis through purpose-built, intuitive technology. In particular, through the "Review History" functionality, they could easily reference previously reviewed patent claims. "The Clearstone FTO Platform makes this process easy and intuitive", said Burton. "It enabled us to easily recall our notes, comments and earlier determinations regarding a previously searched reference which helped to ensure analysis

quality and reduced the chance of missing a claim while saving considerable time in completing the analysis."

The Review History functionality also optimized and accelerated the attorney-client feedback loop. "Throughout the project, as individual claims were evaluated, we were able to easily identify claims requiring Braskem's input and then make that input request for a specific claim," said Burton. "Only having to put a reference in front of Braskem once versus multiple times...this alone provided a significant efficiency gain." In turn, comments from the technical team were easily captured and provided back in real-time via the platform, keeping the project contained and in motion.

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Nakamura added, "if we were managing FTO the normal way, outside counsel would have to bill a lot of time for drafting emails to the technical team regarding the same claim. That time spent is now reallocated to more analysis." She went on to explain, "compared to our old process of managing the analysis in spreadsheets through to reporting out to the business, we are saving a significant amount of time. As the IP team is often the intermediary between outside counsel and the technical team, we are no longer spending time connecting the technical team with outside counsel. All of our interactions are contained within the platform and we are not losing any vital information along the way."

HISTORICAL CLAIMS ANALYSIS LIBRARY

Because the FTO platform has the ability to store and recall patent claims along with comments from previous searches, claim determinations for future FTO assessments outside of this project can happen faster. Braskem can now easily preserve and review their technical inputs and rationale on claims as well as who authored them in the Platform. With every search project completed, the historical claims analysis library grows with more insight.

Additionally, because FTO related insight is managed and contained in the Platform, the team no longer runs the risk of losing valuable technical inputs after the project is complete. "We now have considerable efficiency gains recycling technical rationale and arguments from previously reviewed patents," added Nakamura. "This not only supports Braskem's future FTO objectives, it also gives the technical team organized access to their insights to consider for future technology development."

REVIEW SHARING & ACCESS LEVEL PROFILES

With Review Sharing and Access Level Profile capabilities, Braskem was able to configure access on a review-by-review basis and further partition access to individual patent documents for the purposes of seeking feedback from technical team members. The benefits of managing access within the platform is two-fold. First, input requests could be focused to a single patent document and are conducive to quicker response times and less drag on the technical teams. "Our engineers have been amazed at the simplicity of providing input through the platform compared to the previous spreadsheet approach, while the IP team has a very clear picture of the risks we need to be aware of" Nakamura added.

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Additionally, the IP team could better contain communications in the system to ensure attorney-client privilege is maintained. Nakamura explained, "while the platform is highly collaborative, we can still share information without creating email communications that might be forwarded, risking loss of privilege."

COLLABORATIVE WORKFLOW CAPABILITIES

Braskem was able to extend the value out of their project budget and complete the project faster with workflow capabilities that supported a collaborative yet cost-effective team approach. "This was important to project success as we assembled a group of associate attorneys to complete much of the initial claims analysis and the platform enabled this work to be done in tandem. Working in the platform ensured a consistent approach across the team making it easy for me to review, edit and approve their work before sending it to Braskem", explained Burton. Additionally, multiple members of the Osha Liang team

could work on the project in the platform at the same time, without having to piece together versioning from spreadsheets and while they waited on answers from Braskem, further progressing the project in a timely manner.

INTUITIVE ANALYSIS FUNCTIONALITY

The ability to easily and clearly view independent claims has delivered significant time-savings and quality assurance to FTO analysis at Braskem. There are a number of analysis capabilities in the platform that bring efficiency, transparency and completeness to the FTO process ranging from conducting analysis by patent family, commenting on and highlighting claims, and reviewing corresponding foreign patents simultaneously. "The FTO analysis we make almost always has a global scope. So, easily accessing just the independent claims in European and US documents, without the need to see every claim one-by-one, saves a lot of time" explained Nakamura. "It also helps ensure we don't overlook independent claims inside those documents."

LOOKING TO THE FUTURE

Since Braskem was first introduced and began using the Clearstone FTO Platform approximately a year ago, they have used the system for the large project described here as well as in support of at least eleven additional FTO projects they manage internally. "We are in the platform every day and use it for more straightforward FTO clearance assessments as well as more complex projects. It has become a formidable resource with the patent team." Nakamura concluded, "I am not aware of any other system that can support us with claims assessments like the Clearstone FTO Platform can. The efficiency gains are numerous, it provides a clear view of potential risks and makes it easier to confidently communicate those risks to leadership".

"Over time, we envision using the Clearstone FTO Platform to build a historical database of Braskem's patent clearance assessments that will provide a head start on every future freedom-to-operate analysis we perform."

– Patrick Traister, Chief Intellectual Property Counsel, Braskem
