

## PATENT CLEARANCE (FREEDOM TO OPERATE) FOR PRODUCT DEVELOPMENT

### When to use:

- Conduct a Freedom to Operate (FTO) study after initial feature set or design concept is identified and before the prototype/initial design is adopted
- Repeat before production design is finalized

### PATENT CLEARANCE

A company should be committed to respecting the valid patents of its competitors and third parties. A patent clearance study, also known as a patent freedom to operate analysis, identifies patents held by competitors and others that the company needs to consider in the design process.

The process below should be used to perform a patent clearance study in the product development process.

#### Schwegman's Proprietary FTO Process

Title	Potential Relevance	Expandable spinal implant and surgical method	Mobile expandable intervertebral disk implants	Artificial vertebrae body
Patent #		5,009,189	5,171,278	5,295,832
Assignee Name		Spine-Tech, Inc. (Minneapolis, MN)		Alphatec (Palm Desert, CA)
Filing Date		Apr 15, 1990	Feb 22, 1991	Sep 18, 1991
Class # (Independent)		25	25	25
Potential Relevance: 1=High (Red), 2=Med (Yel), 3=Low (Green)		1 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100
Scope Concept Index	Relevance (1-3)	Claims Mapped		
Planning or creating human	1	18		
Including a plurality of ribs, each rib expandable in response to a deformation force	2	11		
Including a plurality of ribs, each rib expandable in response to a deformation force	2	12		
Including means for applying a deforming force to a plurality of deformable ribs	1	11		
Including a ribless frame or hollow body configuration	2	3		
Including an intermediate portion of a longitudinal implant to expand radially outward	1	3		
Including a cylindrically shaped or substantially cylindrically shaped member	1	1		
Introducing cancellous bone particles into a disk space between two adjacent vertebrae	2	3		
Including two hollow components adjacent and stably engaged with each other	1	3		

Schwegman has invested significant resources to develop an efficient and cost effective FTO charting software, ClaimScape®. These claim charts are easily updatable, allowing patent matters to be added as needed, providing a strategic FTO knowledge base that can grow with your business and technology. With Schwegman's FTO process, you may be able to:

- ✓ Provide Pathways to Commercialization
- ✓ Reduce Infringement Risks by Performing FTO Early and Often
- ✓ Visualize Your Own Patent Coverage and Needs
- ✓ Reveal Product Options Not Otherwise Readily Apparent
- ✓ Save Time and Money

### CHECKLIST

- ☐ During the preliminary/exploratory phase of a new product design, a preliminary feature set or proposed design concept ("proposed design") should undergo a patent clearance study with guidance of your legal counsel.
- ☐ With the guidance of your legal counsel, all possible competitors should be identified. Using the proposed design and the competitor list, all patents and pending applications that may possibly apply to the proposed product should be gathered for analysis.
- ☐ All possible applicable patents and pending applications should be reviewed for applicability to the proposed design.
- ☐ Possible applicable patents or applications should be designed around or licensed if necessary.
- ☐ If it is determined that the possible applicable patents or applications are overly broad and invalid, such determination should be obtained in the form of an invalidity/non-infringement analysis with the guidance of your legal counsel.