

INFRINGEMENT

Enforcing patent rights

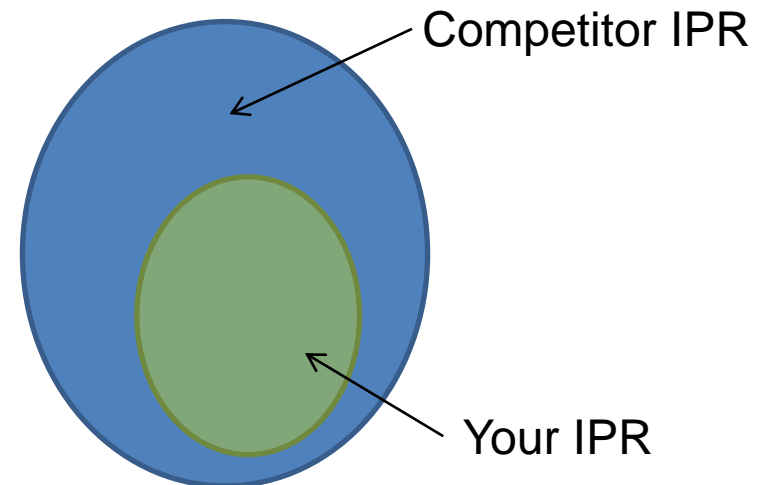
Andreas F. Tycho

COMMON MISCONCEPTION

“We have a patent so we have the rights to market the invention”

WRONG !!

Feature	Competitor	Your company
1	X	X
2	X	X
3	X	X
4		X



PATENT

A patent is a small law.

“..a patent provides the right to exclude others from making, using, selling, offering for sale, or importing the patented invention.”

DEFENDING YOUR RIGHTS



Patent
Police

MOTIVATORS FOR NON-INFRINGEMENT

Small business

- Fear
- Credibility
- Investor relations

Large business

- Reputation
- Reputation
- Reputation
- Defocus, cost, credibility, investor relations.

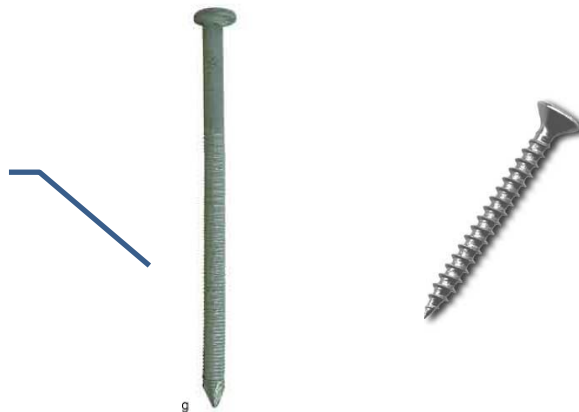
INFRINGEMENT STRATEGIES: PATENTEE

Infringer Patentee	Large business	Large start-up	Small start-up	Sales business
Large business	Truce	License (controlled competitor)/ buy them	Don't care.	Crush
Large start-up	Seek license/use public/trade licenses	License (control them)/trade/ crush	Don't care	Crush
Small start-up	Buy us?/use public/trade licenses	Trade licenses/seek licenses	Wait	Irrelevant
"Patent shark"	Crush	Crush	Crush	Crush

INFRINGEMENT: *MAKING, USING, SELLING, OFFERING FOR SALE, OR IMPORTING* OF WHAT?

Literal infringement

Hanging means,
such as nails or
screws



Equivalent infringement?



WHY ARE PATENT-CASES SO EXPENSIVE?

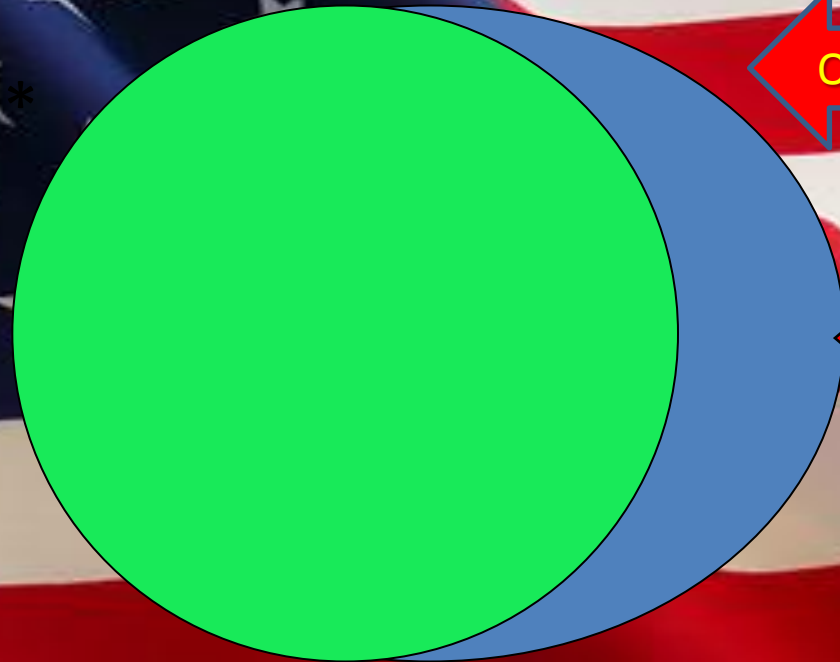
Interpretation:



INTERPRETATION/EQUIVALENCE DIFFERS AROUND THE WORLD

USA: Each feature alone and "out of context"

US flag



Ordinary meaning

Description

What you have said.

Amendments

Prior Art

INTERPRETATION/EQUIVALENCE DIFFERS AROUND THE WORLD

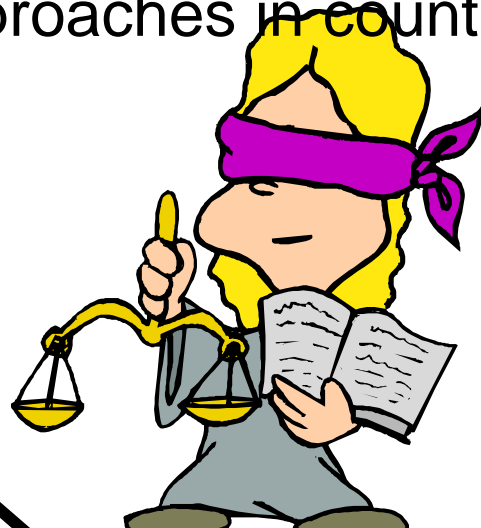
*Article 69 of the European patent convention:
provide a middle road between the various approaches in
Europe:*

The very strict in UK

The more liberal approach in Germany and The Netherlands &

The very broad approaches in countries such as France

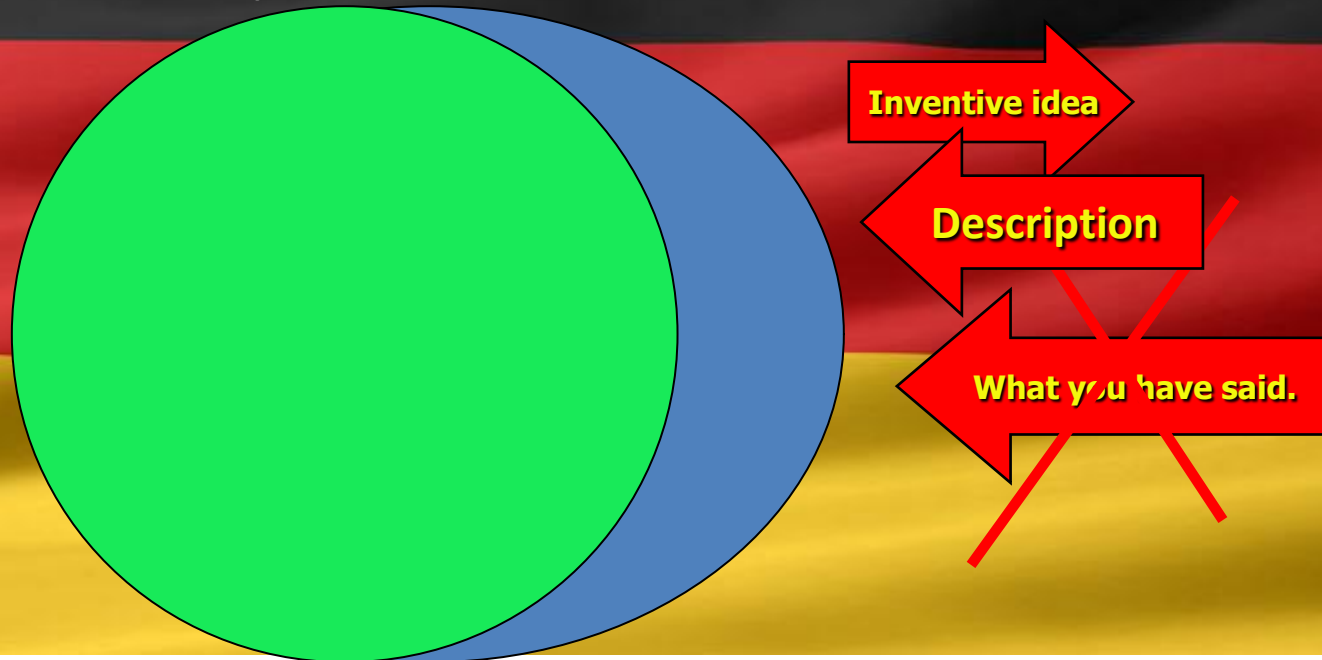
The interests of
the patentee



The interests of
3. parties

INTERPRETATION/EQUIVALENCE DIFFERS AROUND THE WORLD

Germany: What skilled person understands in light of the entire patent rather than a literal meaning. (the inventive idea)



INTERPRETATION/EQUIVALENCE DIFFERS AROUND THE WORLD



UK: In between US and Germany (~mainland Europe)

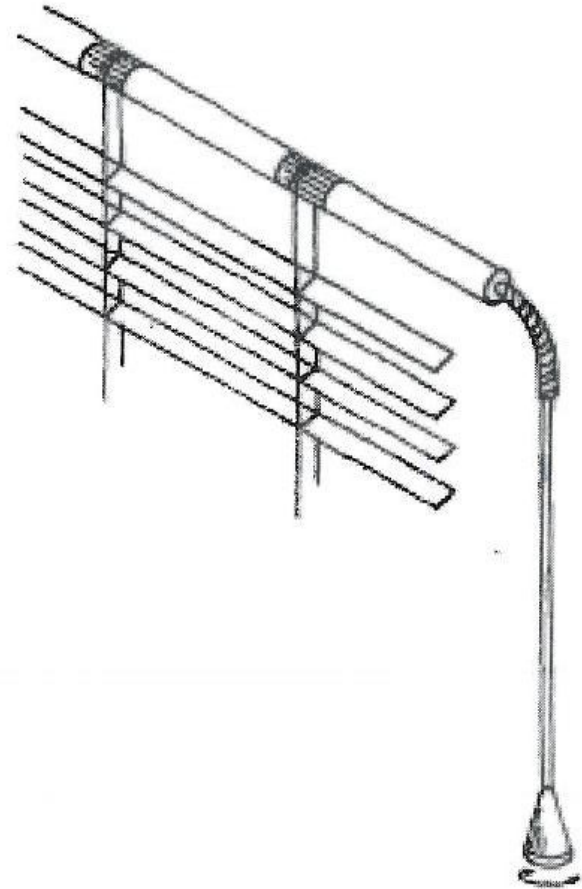


DK: Going forth and back (mostly like Germany)

A DANISH EXAMPLE: THE FABER CASE (1)

Claim 1 (freely translated):

A device for adjusting of a blind ***characterized in that*** the adjustment mechanism is directly attached to a freely hanging adjustment bar



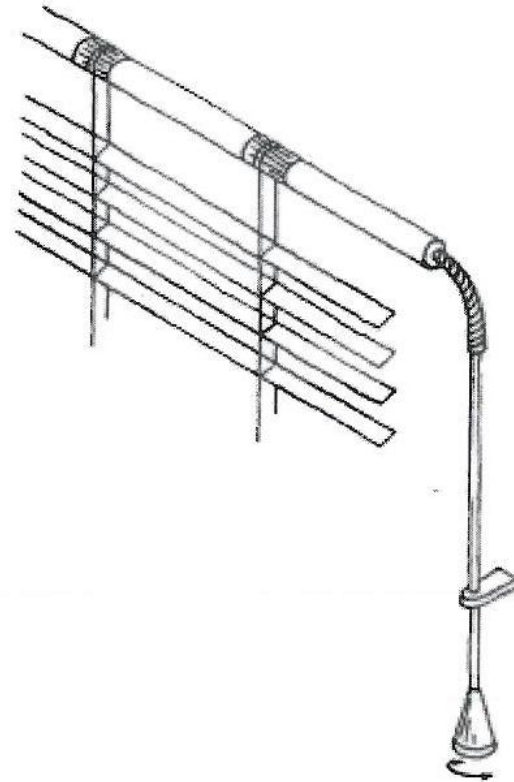
A DANISH EXAMPLE: THE FABER CASE (1).

Infringer:

Not hanging freely

The feature was added in
an argument before the
Patent Office

Infringement?



A DANISH EXAMPLE: THE FABER CASE (2).

Court rules: YES

The holder has no bearing on the function of the adjustment bar.

Damages (1962): Kr. 30.000

This ruling is consistent with extending the scope to encompass the "inventive idea".

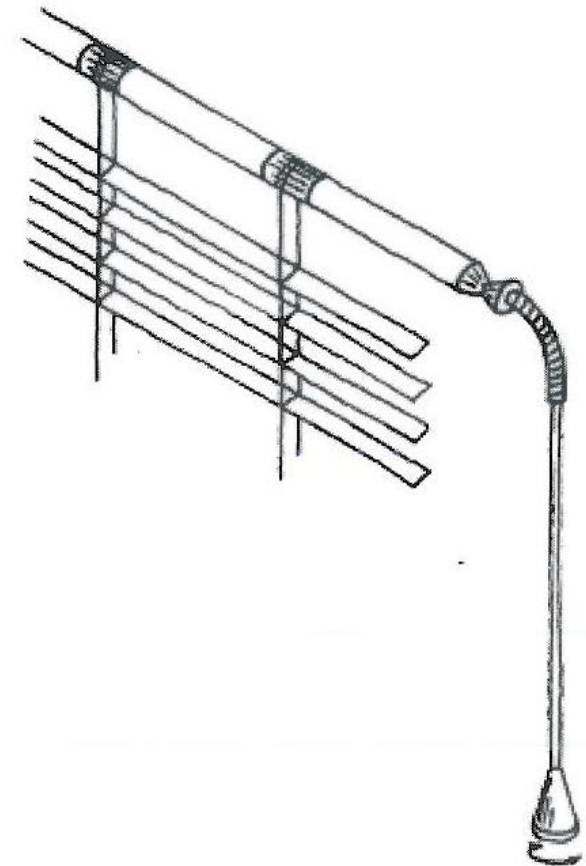
A DANISH EXAMPLE: THE FABER CASE (2).

Infringer:

A gear is added:

Not directly connected

The feature was added in
an argument before the
Patent Office
Infringement?



A DANISH EXAMPLE: THE FABER CASE (2).

Court rules: NO

The adding of "directly" must have meant that the patentee specified the lack of a gear.

This ruling is less (?) consistent with extending the scope to encompass the "inventive idea".

A US EXAMPLE: CHEF AMERICA, INC VS. LAMB-WESTON, INC

Chef America (United States Patent No. 4,761,290):

Dough products convertible by heating to light, flaky, crispy dough products are produced by applying shortening flakes to a dough, coating a light batter upon the dough product and heating the batter-coated dough to first set the batter and then subsequently melt the shortening flakes, thereby forming air cells within the batter and at the surface of the dough



A US EXAMPLE: CHEF AMERICA, INC VS. LAMB-WESTON, INC

Discussed feature of the claim:

“heating the resulting batter-coated dough to a temperature in the range of about 400° F. to 850° F.”

Infringement?

A US EXAMPLE: CHEF AMERICA, INC VS. LAMB-WESTON, INC

Court ruled: NO

Court refused to rewrite the claims, instead construing the claim as written, and “not as the patentees wish they had written it...” Court affirmed the district court finding that “the claim means what it says.”

INFRINGEMENT: CONSEQUENCES?

- Activities are stopped
 - May/may not be costly

- Damages
 - US: Extremely high (punitive)
 - Germany/Denmark: Lost profits or reasonable royalty (low)

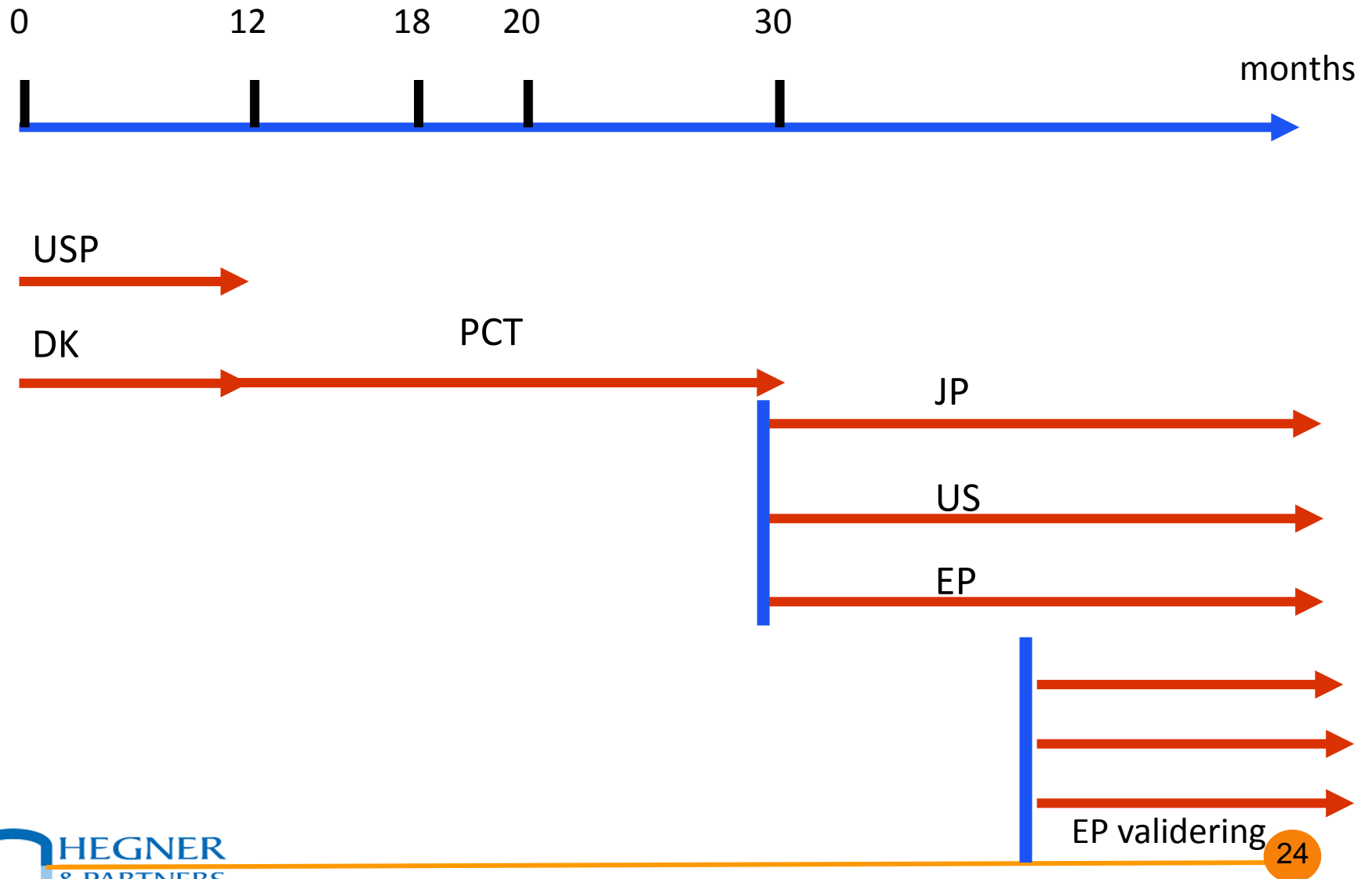
PATENT STRATEGIES

STRATEGIES

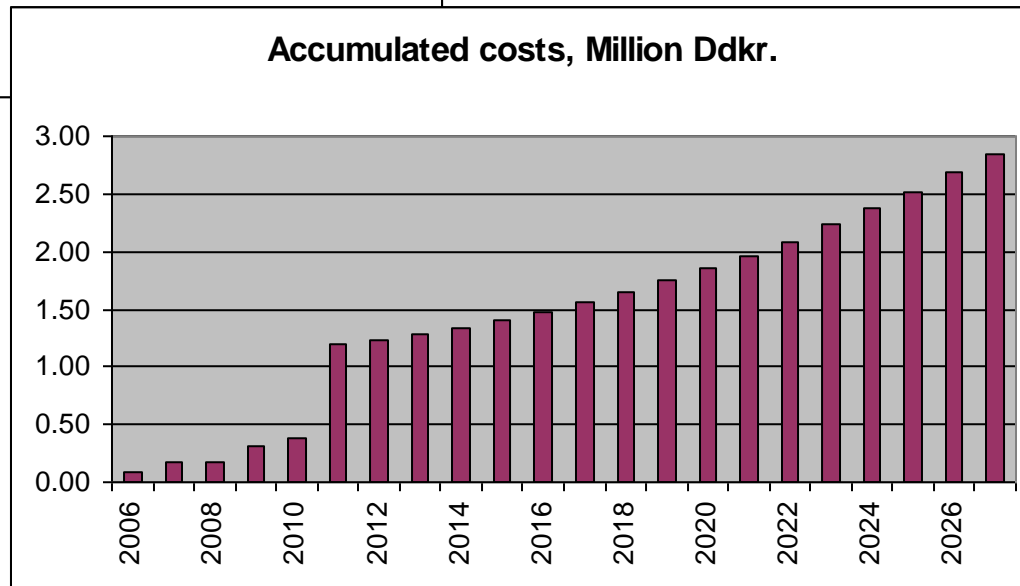
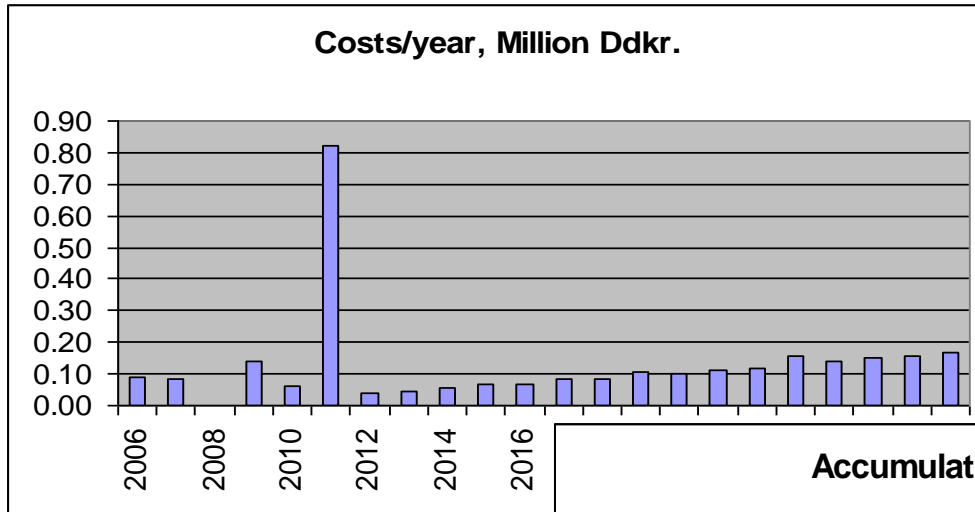
When to file and cost strategy

What (not) to file

COST: A PATENT FAMILY GRANTED IN EUROPE (ALL), JAPE, CHINA, US

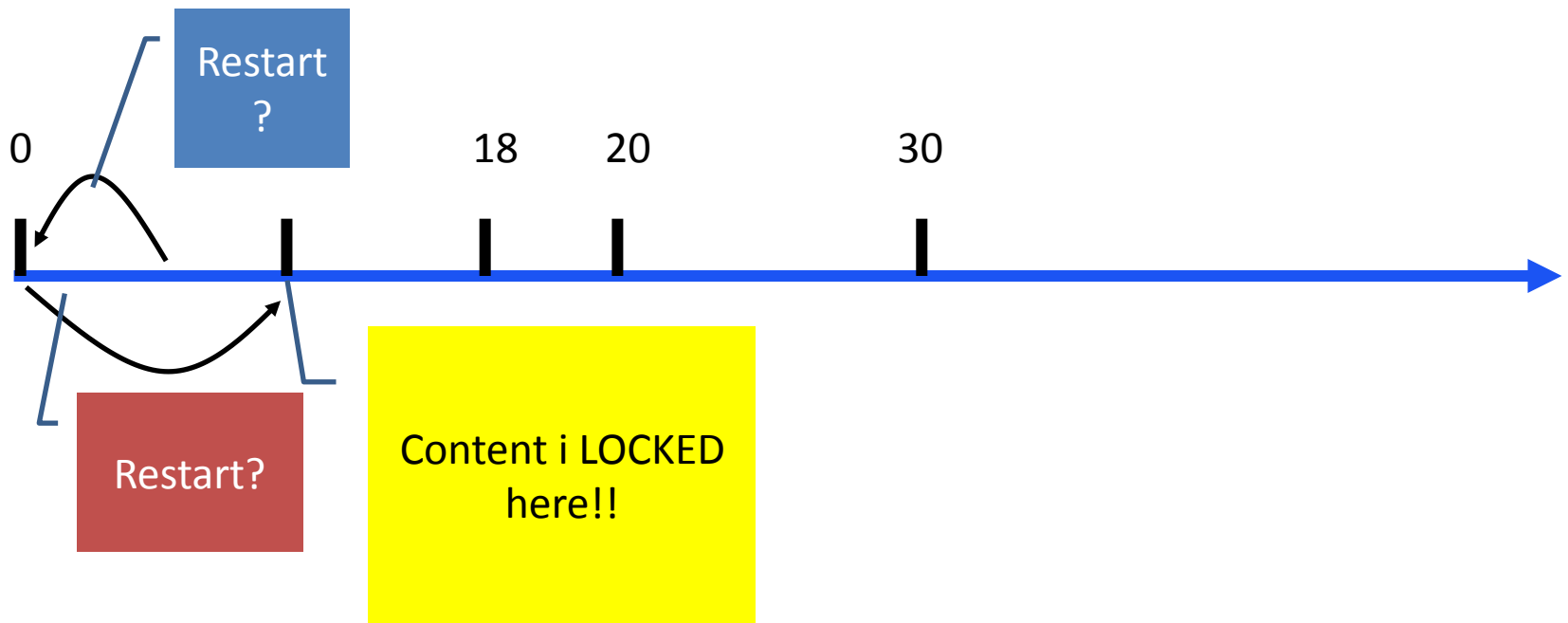


COST: A PATENT FAMILY GRANTED IN EUROPE (ALL), JAPAN, CHINA, US

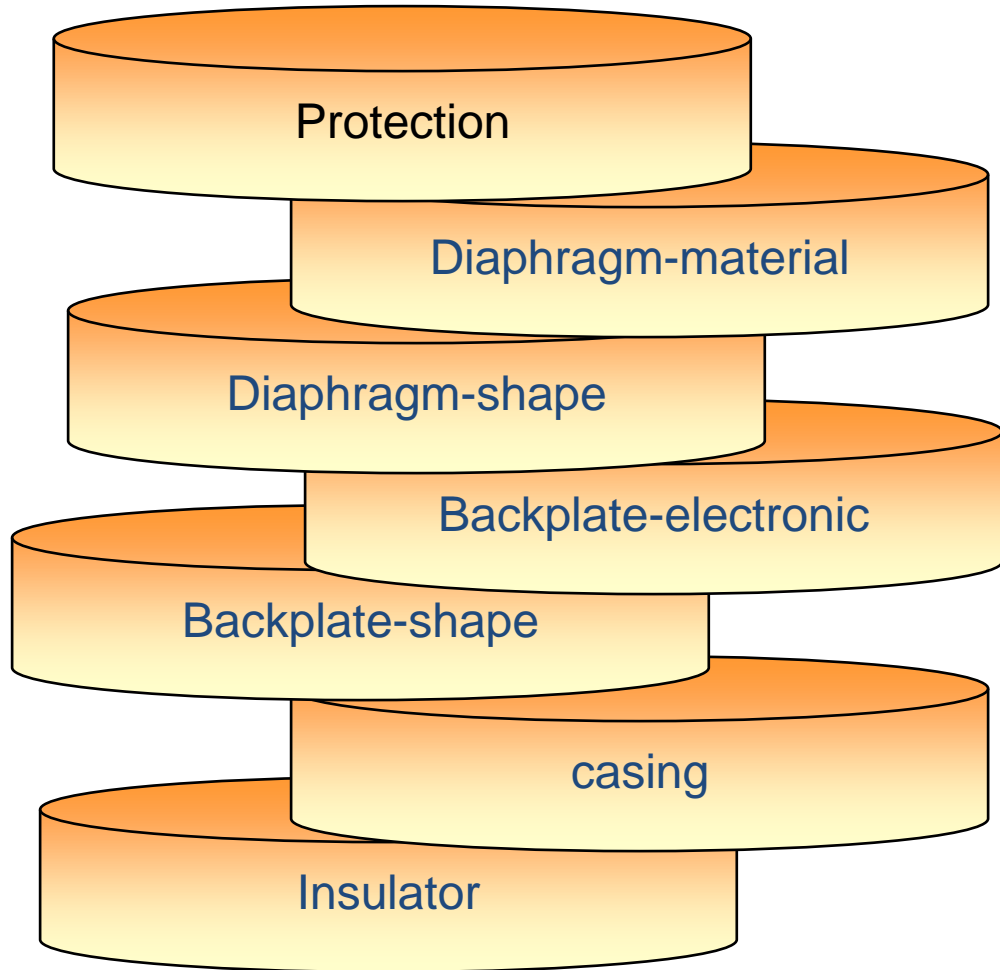
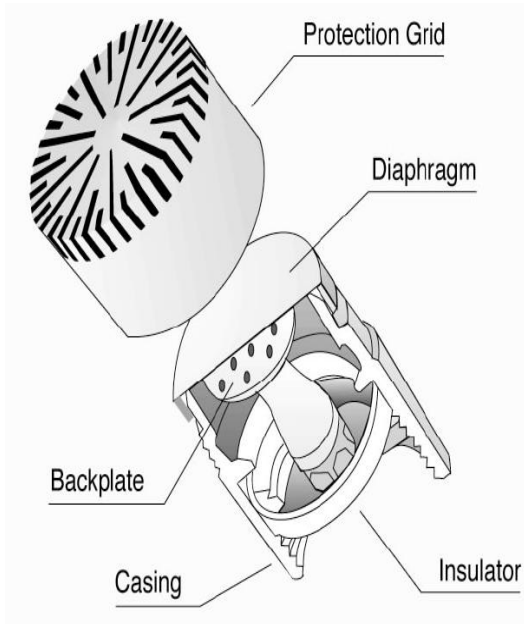


FILING STRATEGY (READY TO FILE)

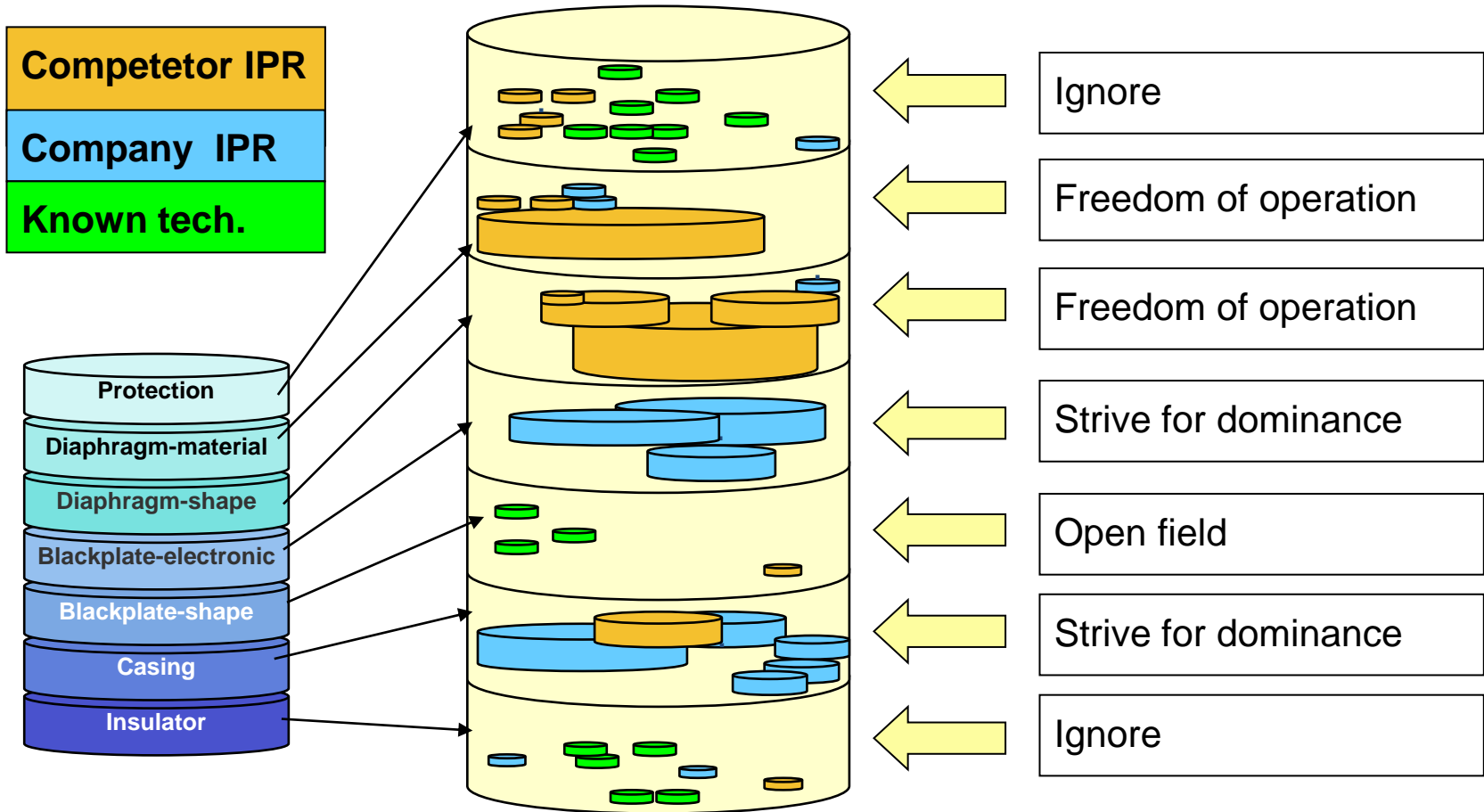
You may restart: but beware!



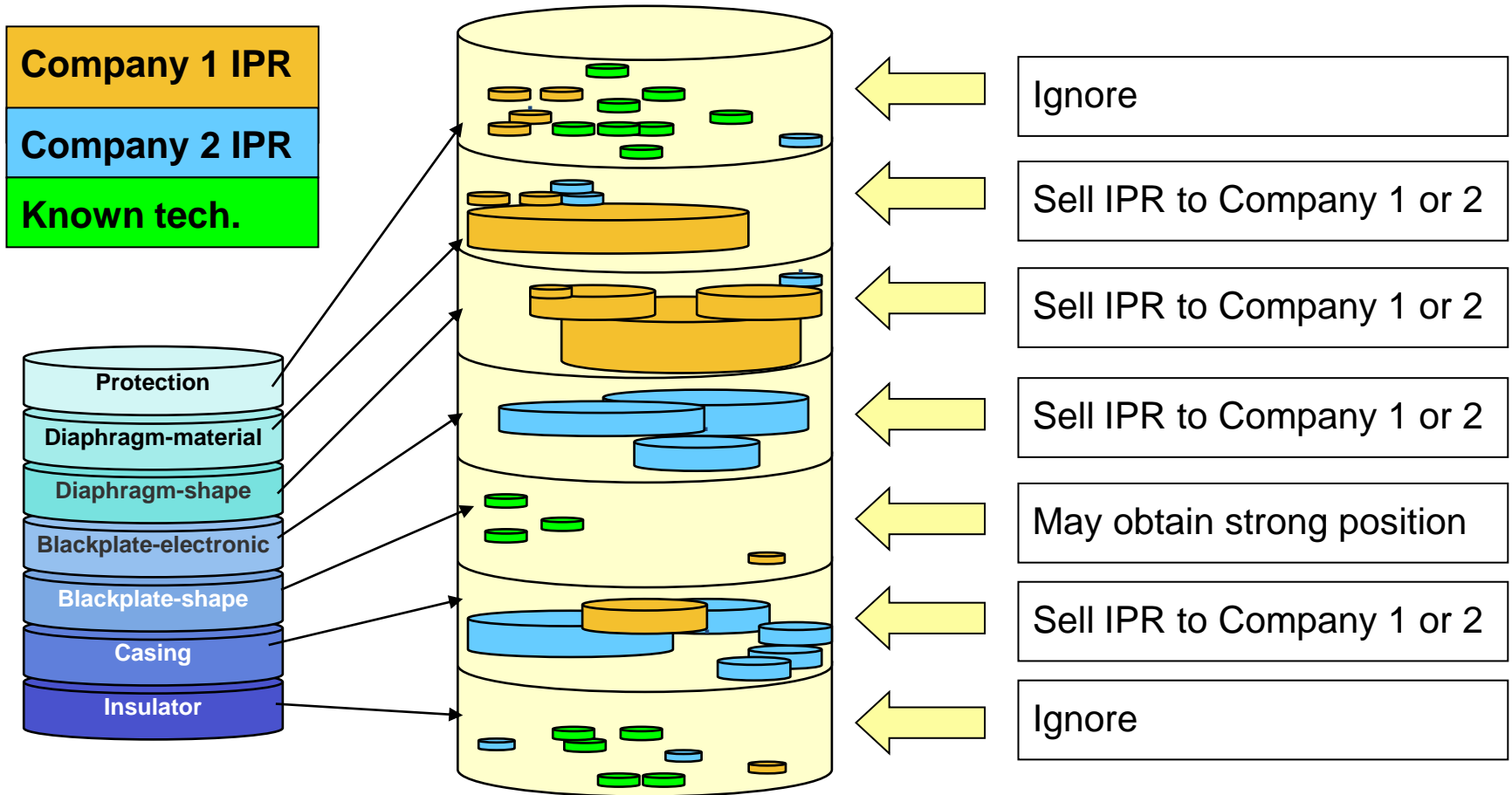
HEGNER TOWER



HEGNER TOWER – FROM A COMPANY VIEW



HEGNER TOWER – OPTIONS FOR DTU



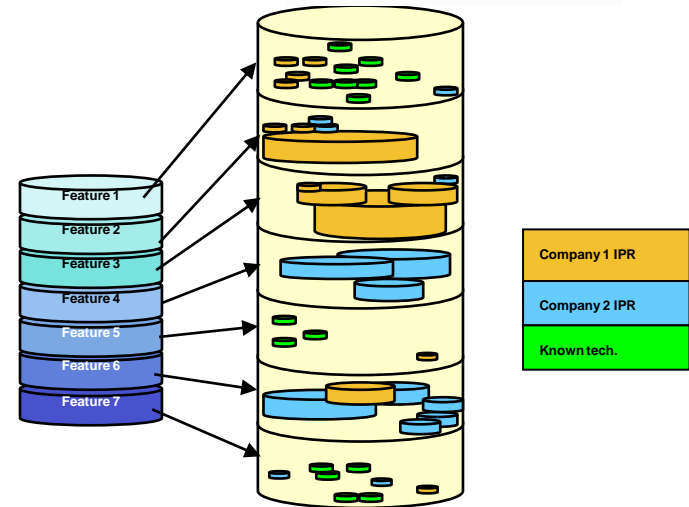
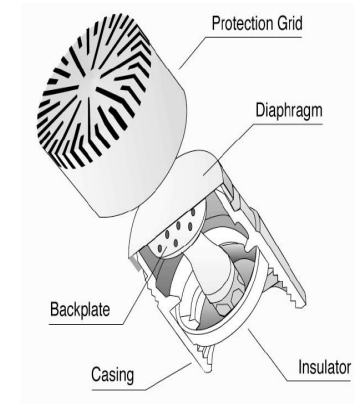
COST-BENEFIT ANALYSIS

IPR in relation to start-up company:

Essential in order to attract investors

Evaluate the IPR landscape

- FTO
- Licensing
- Work-arounds



ACADEMIC BENEFIT?

Possible alternative benefits

- Demonstrates innovation
- Fulfils project goals
- Semi-scientific publication
- Attract commercial collaborations

WHAT TO LEARN?

- Patents may be valuable or worthless
- "Small patents" may be valuable
- Should I file?

consider commercial reality!