



D8.3– IPR Management Plan

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Abstract

This deliverable discloses the guidelines for Intellectual Property Rights (IPR) management as derived from the FLOTANT Grant Agreement and Consortium Agreement. A procedure is presented covering identification of potential innovations, documentation, tracking and protection of Intellectual Property derived from the FLOTANT project.



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1. INTRODUCTION

Based on the FLOTANT Consortium Agreement and as stated in the project's Grant Agreement, this document is aimed at providing guidelines on how Intellectual Property Rights will be managed by the FLOTANT consortium. More specifically, the objective of this task, started in M1 and to be carried out until the end of the project in M36, is to provide FLOTANT members with a clear identification and fair allocation of intellectual rights and patent contributions.

Additionally, this document establishes rules for the use of foreground, side ground and background knowledge and its distribution within the project as well as the rules for handling sensitive and confidential information.

It is also important to mention that this document will monitor the protection of IPR within and outside the Consortium and will be integrated in FLOTANT overall Communication, Dissemination and Exploitation Plan (CDEP).

The present document is organized as follows:

INTRODUCTION:

It describes the task related to IPR Management in FLOTANT project and provides the document scheme.

INTELLECTUAL PROPERTY RIGHTS MANAGEMENT IN FLOTANT PROJECT:

It provides details on how to deal with IPR issues.

THE FLOTANT IP MANAGEMENT GROUP:

This section details Esteyco's responsibilities as manager of the IP Management Group.

IPR management strategy:

This section presents a complete view for FLOTANT IPR strategy throughout different stages in the project, including proposal preparation and post project.

MONITORING IP PROTECTION:

It provides different tools and resources to be used to manage IPR issues during the project development.

CONCLUSIONS:

It summarizes the main conclusions of the document and proposes next steps.

2. Intellectual Property Rights Management in FLOTANT project

As agreed on the Grant and Consortium agreement documents, one of the main objectives of the IPR management is to control knowledge transfer and IP rights from the onset of the project. For this purpose, this document includes a well-defined strategy as well as the main mechanisms and procedures to be designed and controlled by ESTEYCO, as the project's IPR manager, and implemented by all partners.

2.1 Definitions

Background: means information, in hard copy or in electronic form, including, without limitation, documents, drawings, models, designs, data memoranda, tapes, records, and databases developed before or independent of performance under the project that is necessary for the performance of Project Work and exploitation of its results.

Foreground: means the results, including information, materials and knowledge, generated in a given project, whether or not they can be protected. It includes Intellectual property rights, similar forms of protection and unprotected know-how. Thus, foreground includes the tangible and intangible results of the project. Results generated outside a project do not constitute foreground.

Intellectual Property: means technical information, Inventions, developments, discoveries, know-how, methods, techniques, formulae, algorithms, data, processes and other proprietary ideas (whether or not patentable or copyrightable). Intellectual Property also includes patent applications, patents, copyrights, trademarks, mask works, trade secrets, and any other legally protectable information, including computer software. It is the rights of the background and the rights of the foreground.

Owner: means a party, public or private, holding legal title to Intellectual Property, consistent with national or international laws and regulations

Beneficiary: means a Recipient who contributes to the execution of Award Work as part of a Project Team.

Project Intellectual Property: means and includes all Intellectual Property first conceived, discovered, developed, reduced to practice and/or generated in the performance of the project.

2.2 Management of Intellectual Property Rights

FLOTANT project is committed to providing free open access to new research data resulting from the project being one of H2020's main objectives. Therefore, the FLOTANT Consortium will openly make available the content and data produced within the project through a gold model and FAIR (Findable, Accessible, Interoperable and Reusable) data principles.

In this sense, all partners will be encouraged to share their knowledge in order to improve the

quality of FLOTANT work. Most of this sharing will normally be unproblematic, but sometimes the knowledge may represent a significant value for the owner and in these cases, one needs to consider the IP ownership issues.

Ownership can then be established as one of the following types:

- Background knowledge is brought into the project from other activities. In these cases, the background should be registered in the annex of the CA. Further background can be communicated to the IP Management Group (see section 2.1). The owners of the IP are registered together with the IP. It is normally a good idea to register the background knowledge as such before it is disclosed to anyone in the project. Note also that registration as background can be denied if it is thought that its ownership is unclear or that the knowledge is not necessary for the project. Registration of background knowledge should be denied for knowledge that can be proven to be already part of the public domain.
- Results are produced in the project, alone or in cooperation with other partners. As a general rule, the partners that have contributed to the development will have joint ownership to the IP. The IP should be communicated to the IP Management Group (see section 2.2) to prevent misunderstandings regarding ownership.

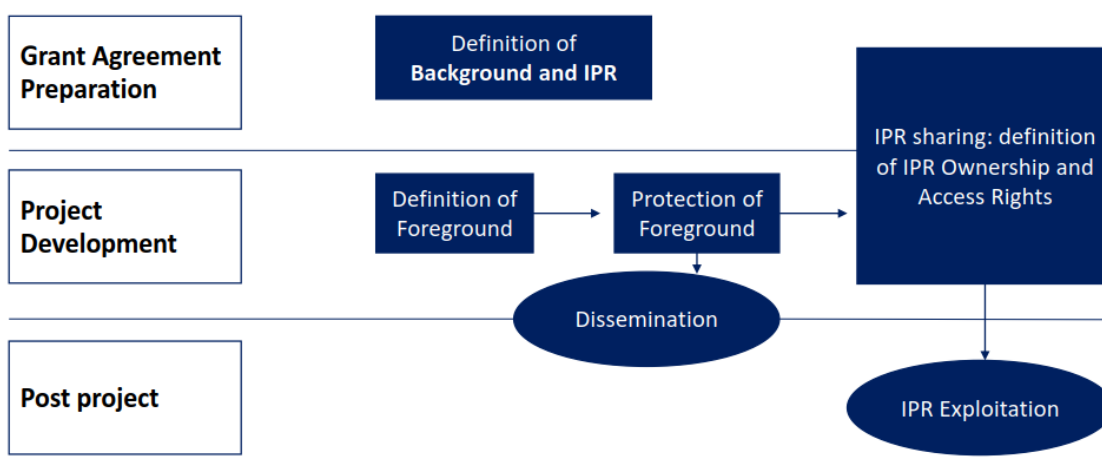


FIGURE 2.2.1. IPR MANAGEMENT OVERVIEW

The IPR Management focuses on the careful handling of IPR issues in FLOTANT project, those that are of strategic importance in order to facilitate the exploitation of its solutions. It is aimed at creating a favourable environment for respecting intellectual property rights (IPR) and guaranteeing a sound approach by the FLOTANT participants, together with a permanent IP monitoring during the project. The IP-related management structure, workflows and tools will be designed with the protection and exploitation of knowledge in mind, but also in order to be able to satisfy multiple IPR objectives (for instance, to balance the need to protect IPR assets – and thus to avoid premature disclosure- with the wish to release as many research outcomes as possible into the public domain - as fast as possible).

Therefore, IPR plans will mainly move towards: maintaining a schedule of innovation produced in the course of project development and exploring the opportunity for applying for patents or declaring copyrights; creating and updating a living IPR management database to be revised and extended with new pieces of knowledge (foreground) as project implementation advances; conceiving and executing an optimal patent/IP search and filing strategy.

A specific consideration will be paid to FLOTANT dissemination. Thus, for the disclosure of project results partners will select the appropriate means (e.g. scientific publications, publication on web sites, conferences, open access, etc.) according to the conditions set forth in the CA and in other specific confidentiality agreements, in order to maintain confidentiality during and even after the end of the project when opportune. At this end, WP8 will work closely with WP9 Communication, Dissemination and exploitation Activities.

As agreed, a Plan for the Communication, Dissemination and Exploitation of the project Results (CDEP) will be elaborated to help beneficiaries to establish the bases for their intellectual property strategy, dissemination and exploitation activities.

This approach has a significant business orientation, placing great emphasis on turning FLOTANT expected research outcomes and technological developments into value creating products and/or services. In order to be able to move towards turning IP into business the FLOTANT Consortium will explore the whole environment in which project solutions are to be employed: the market (size, growth, segments and regions), the technologies (other solutions to the same problem) and potential competitors or partners.

3. THE FLOTANT IP MANAGEMENT GROUP

As agreed in the Consortium Agreement, Esteyco will be responsible for the IP Management Plan in order to protect intellectual rights through strong IPR strategy. More specifically, Esteyco's responsibilities will be:

- IP management includes ensuring partners are made aware of the procedures designed to record IP, maintain its patentability and confidentiality; making sure that IPR is exploited where possible; keeping a track of potential patents; and ensuring access to Results and Background if necessary.
- Maintain a register of any IP identified as Results or Background.
- Act as the first point of contact with regard to queries over IPR and ownership offering guidance regarding interpretations of the rules and regulations stated in the GA and CA.

4. IPR MANAGEMENT STRATEGY

Key practical procedures will be adopted in the project to ensure that the security and integrity of IP is maintained:

- **Invention Disclosure Forms (IDF):** a standard IDF will be adopted for the project and issued to all participants. The PMT will provide instructions on completion of the IDF at the initial meeting of the partners and respond to related queries as they arise during the project.
- **Non-Disclosure Agreement (NDA):** during the development of this proposal, all participants were requested to sign a 'Confidentiality Agreement' and/or a "Letter of Intent" Form. The CA will establish the confidential framework of FLOTANT among its partners during its execution.
- **Publication:** any draft of a scientific publication, conference paper or poster, article or other intention to present project information in the public domain (via an interview, news brief, internet posting, etc.) will be communicated to the Project Management Team in advance of any submission to a publishing body or instrument. The PMT will advise on the appropriateness of such a publication and recommend suitable amendments to the information where it deems necessary.
- **Open access to peer-reviewed scientific publications:** FLOTANT Consortium agrees with the following principles of the Europe 2020 Strategy for a smart, sustainable and inclusive economy, as well as, with the EC Guidelines on Open Access to Scientific Publications and Research Data in Horizon 2020:
 - a) Modern research builds on extensive scientific dialogue and advances by improving earlier work.
 - b) Knowledge and Innovation are crucial in generating growth.
 - c) A broader access to scientific publications and data therefore helps to: (1) build on previous research results (improved quality of results); (2) encourage collaboration and avoid duplication of effort (greater efficiency); (3) speed up innovation (faster progress to market means faster growth); (4) involve citizens and society (improved transparency of the scientific process).

Furthermore, in line with FLOTANT's vision, the strategy followed by the IPR Management will be divided into the different phases of the project.

4.1 Proposal phase

At this stage of the process, the main issues of the IP and innovation management aspects were discussed by FLOTANT Consortium in order to achieve a common understanding on such aspects as background, foreground, ownership, transfer of knowledge, dissemination and access rights during and after the project both for research and for commercial use.

Resulting decisions were clearly expressed in the FLOTANT Consortium proposal which included a specific section for the Strategy for Knowledge Management and Protection (2.2.2.4). According to this section, a consortium agreement (CA) has been drawn up, based on

the H2020 DESCA model. The CA clarifies Access rights to background or foreground IP given by consortium IP owners to other parties (project participants or third parties). It also clarifies access rights to IP upon and after project completion. The CA establishes a detailed procedure to control partner’s rights with respect to the dissemination process within FLOTANT, aligned with the activities foreseen in WP9.

4.2 Development phase

During this stage, the Consortium will define and execute the IP handling systems and procedures.

Key IP related issues in project development phase include, as showed in Figure 2:

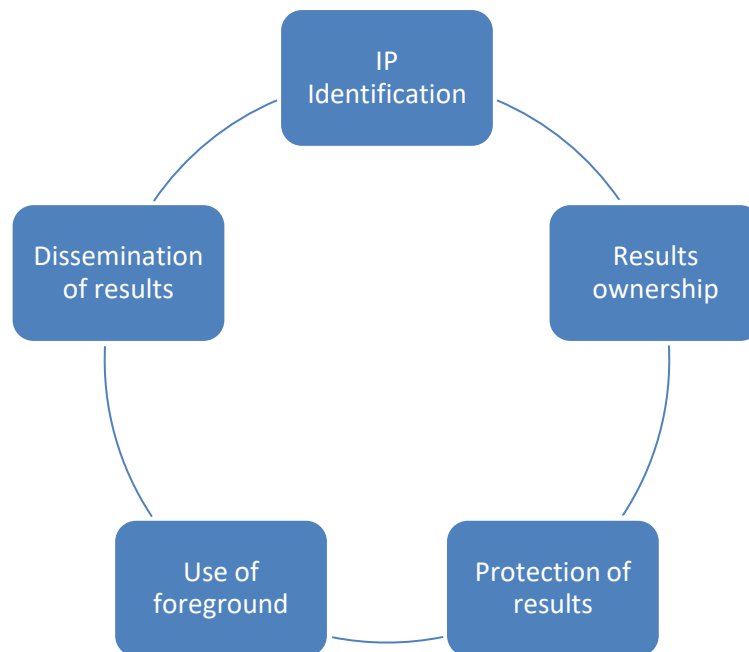


FIGURE 4.2.1. IPR MANAGEMENT – DEVELOPMENT PHASE

IP Identification: this means that all IP values within the project will be identified, listed, named and analyzed in a systematic manner to obtain a project IP portfolio and map.

Results ownership: that is, FLOTANT partners will be kindly asked to improve those provisions of the CA that may not foresee any relevant aspect, for instance, joint ownership.

Protection of results: every partner has to select the most appropriate and effective IP protection tool for every piece of foreground, in accordance with the other partners’ legitimate interests and with the future planned use, in particular if direct commercial exploitation or further research will be preferred. Partners are recommended to inform other partners about their individual protection activities plans, especially where dealing with potentially joint IP.

Use of foreground: there may be direct use, when the partners will industrially or commercially exploit the results (production and marketing of new products and services), or indirect use, when they will transfer the foreground to other project partners or third parties, that will exploit such results (e.g. by means of licenses). Use will also consist in the utilization of foreground in further research initiatives, aiming at the further enhancement of the developed outputs.

Dissemination of results: for the disclosure of project results partners are selecting the appropriate means (e.g. scientific publications, publication on web sites, conferences, open access, etc.) according to the conditions set forth in the CA and in other specific confidentiality agreements, in order to maintain confidentiality during and even after the end of the project when opportune.

4.3 Post project phase

At project termination, D9.7 FLOTANT’s Final Development and track of the Communication, Dissemination and Exploitation Plan (CDEP) will be submitted, including the targeted audience of FLOTANT and the members of the project Advisory and Stakeholders Board; the selected measures for communication, dissemination and exploitation activities; the overall business plan of the consortium and each of its partners, highlighting the innovation and commercialization potential; and will include the mechanisms for data management and publications. In addition, the CDEP will also present the main procedures for knowledge protection and intellectual property rights (IPRs) to be applied during the lifetime of the project and beyond.

In the same, the Consortium partners will also update the final findings concerning IP issues, as well as the final update of the IPR Repository, detailing the intellectual property rights applied for and registered.

The main steps for IPR Management at this stage in the project are detailed in Figure 3 and described in detail in the following sub-sections.



FIGURE 4.3.1. IPR MANAGEMENT – POST PROJECT PHASE

IP Assessment: A detailed business plan will be developed within WP8 and integrate into the project Communication, Dissemination and Exploitation Plan (CDEP) produced in WP9. The exploitation of FLOTANT results addresses a chain of value ranging from technological innovations (upstream) for the benefit of a number of technology-based user segments, to innovations on products and services (downstream) that foster the FOW business sustainability through better risk management, decision-making and overall business assessment.

The global business strategy of this project is to develop a set of innovative technologies in the fields of mooring, anchoring, dynamic cable and O&M strategies for floating offshore wind energy (main target market of the project). Potential markets will be carefully explored (target markets of the project), analysing these sectors and how technological solutions developed within the project can be applied to these and finally commercialised by the individual project partners.

Risk Management: With the aim of minimizing the exposure to risks and in view of commercializing FLOTANT IP, the preventive identification, assessment and management of IP risks should be realized. The likelihood of the event occurrence (e.g. ownership disputes, third party' IP infringement) and the level of importance of related consequences (e.g. irrelevant, moderate or important) should be analyzed through the risk assessment. On the basis of the findings, the proper risk management actions should be taken (e.g. insurance, revise relevant clauses within contracts, etc.) or, at least, discussed.

IP Commercialization and Exploitation: To get a protected IP resulting from FLOTANT into the marketplace there are several common practices that that partners can take into consideration at project end:

- a) Internal Product Development: this form requires that the organization has necessary skills and resources for manufacturing and supplying the products/services and may lead to its possible business growth;
- b) License agreement: the organization allows a third party to have access and utilize its IP for a certain time period in return for financial compensation (e.g. royalties on products sales or payment of a lump sum), under specific conditions and terms (exclusivity or non-exclusivity of the licensed technology, restriction to a particular purpose, like development or selling purposes, etc.). This instrument is usually used when the partner has not the necessary financial or technical capability to directly exploit the IP asset.
- c) Transfer of ownership of the IP asset or assignment: the ownership of the IP asset is permanently transferred to an assignee in return for a payment of a lump sum, royalties, or a combination of both. The assignee acquires the full rights to dispose of it. It may also happen that the assignor is licensed back.
- d) Spin-off Company, in the meaning of separate legal entities created to exploit IP assets, which are transferred or licensed to the spin-off company to commercialize them.
- e) Joint Venture, in the general meaning of model of business association between two or more partners to undertake a common project or to achieve a certain goal. IP assets are usually brought by the partners for further R&D advancements, production, marketing and commercialization.

IP Enforcement: In case an IP allocated to a new service/product successfully marked is infringed by competitors, partners have to defend their IP by the proper means existing in the juridical system (e.g. letter of demand, custom notice, alternative dispute resolution mechanisms, court actions, etc.). Those enforcement possibilities can preserve the efforts used for developing intangible assets, as well as protect the investment made to commercialize the

same. It is important to underline that IP enforcement could be time-consuming and expensive.

Lightweight methods of asserting IP make it easier to identify who claims a given IPR, but they do not eliminate the costs of enforcing IP.

5. MONITORING IP PROTECTION

This section includes the main features of the tools and processes that will be used for implementing IPR monitoring and surveillance.

5.1 IPR Repository

Drawing a concrete IP mapping and planning of exploitation activities first of all requires the identification of the FLOTANT IP assets: all expected IP values within the project, as above mentioned, have to be identified, listed, named and analyzed, in a systematic way, in order to have a sort of project IP portfolio.

For this purpose, FLOTANT Consortium will create the IPR Repository. This repository will represent the living IPR database during the project's implementation. It will basically identify project intangibles and retrace their ownership, being also functional to help the partners to recognize their IP assets and ascertain the existence of third parties' rights (e.g., relevant pre-existing patents).

For each project result, key elements should be identified, like partners directly contributing to its development, background needed and owner, rights to use such result and license scheme. This will pave the way to a further identification to those really exploitable results and will allow the partners to have the most complete information in order to decide about their sustainability once the project is finished.

In order to ensure that FLOTANT results/development activities do not infringe existing third parties' rights and to provide the Consortium with a strong basis for IP protection decisions for making the exploitation of the results convenient (e.g. technology transfer, spin-off creation), the Consortium is expected to conduct in-depth searches for IP rights and "Freedom to Operate" searches (or "infringement clearance" searches), including patent searches and the existence and check for validity of third parties' IP. These searches are aimed at taking care not to infringe existing third parties' rights, since they allow users to identify third parties' patents, trademarks or other IP rights, both in force and pending applications. In FLOTANT it is expected that this assessment will be done for all countries in which commercial exploitation or use is considered.

The Consortium plans to conduct in-depth patent searches and market surveillance for ascertaining the "current state of the art", tailored to the needs of the project, for being sure both that FLOTANT results have an innovative nature and not to infringe existing third parties' rights. In particular, these searches will be useful for:

- Orienting IP strategy definition (e.g. by identifying any barriers).
- Defining the state of the art and being updated on technology's advancements, by the regular monitoring of market.
- Assessing if the partners are not infringing a third party's rights (including check for validity of such third parties' IP and pending patent applications).
- Checking if someone is not in a position of infringing project partners' rights. The findings of the "infringement clearance search" are able to prevent or limit the exploitation of FLOTANT results by identifying potentially relevant patents and published patent applications that may cover one or the other pieces of the expected project results. In particular, the patent search is important for reducing potential problems that could arise after project end.

5.2 Market Surveillance

FLOTANT Consortium has agreed to carry out since the beginning of the project a task of market surveillance and monitoring of products and competitors that may be of interest. Market, legal barriers as well as IPR protection need to be monitored and updated during the entire lifetime of the project.

For this purpose, FLOTANT Consortium will make use of the so-called Competitive Intelligence, that is, a concept used to define the process of collecting and analyzing information about competitors' strengths and weaknesses in a legal and ethical manner to enhance business decision-making. These competitive intelligence activities can be basically grouped into two main types:

- 1) Tactical, which is shorter-term and seeks to provide input into issues such as capturing market share or increasing revenues
- 2) Strategic, which focuses on longer-term issues such as key risks and opportunities facing the enterprise.

Competitive intelligence goes way beyond merely trawling the Internet. A typical competitive intelligence study includes information and analysis from numerous sources, including the news media, customer and competitor interviews, industry experts, trade shows and conferences, government records and public filings. To find the correct information, it is necessary to detect the topics of interest and to formulate the correct assumptions (key words and relation among them) to obtain the right results.

6. CONCLUSIONS

The handling of IPR in FLOTANT will respect the H2020 IPR rules as outlined in Regulation (EU) No1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination. The project management is aware that an appropriate use of intellectual property rights is fundamental in the knowledge-based economy, having a strategic importance. IP and innovation management are at the base of the creation of commercial value both in the world of business and public research institutions.

The present document sets up the guidelines of a management of knowledge and IP plan within the FLOTANT project, with the following objectives:

- Effectively share the knowledge among partners to produce the advances on the project research objectives.
- Promote rapid dissemination of information and inventions for the public good.
- Promote patenting and licensing when the public good is best served by controlling the activities of those commercializing inventions and/or by providing economic rewards necessary to encourage commercial partners to make the investment required to move an early stage technology to the market.

In order to achieve the mentioned objectives and as described in the present IPR management plan, each Party in the project will make reasonable and good faith efforts to:

- Inform, on a periodic basis, employees, faculty, staff involved in the project of the expectation that the research is to serve the public benefit and the importance of prompt disclosure of developments and potential inventions.
- Identify documents and share the existence of any relevant Background Intellectual Property or any prior contractual agreements that may affect rights in Project Intellectual Property or Background Intellectual Property.
- Expedite disclosure and evaluation of Project Intellectual Property, Background Intellectual Property, Project Research Data and related Background Research Data and facilitate the effective dissemination of the Project Intellectual Property for the greater public good.
- Encourage researchers to disclose to the publications, including presentations, website postings, and article submissions, prior to disclosure for publication (submission or presentation), related to the project to ensure timely filing of patent, trademark or copyright applications for Project Intellectual Property.
- Promote and publicize the availability of Project Intellectual Property for licensing.

In conclusion, we have successfully established the necessary strategy for IPR management as a best practice to achieve the overall project goals. We have also outlined the dissemination policies, as well as the intended IPR foreground schemes for the FLOTANT outcome. The processes and mechanisms outlined in this document reflect the FLOTANT spirit to make the foreground as accessible and open as possible, within the restrictions of the Consortium Agreement.