

IPR in European Projects

Dr. Petra Püchner

Steinbeis-Europa-Zentrum Stuttgart

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Topics and discussions

- General introduction to Intellectual Property Rights (IPR)
- IPR in European research and innovation projects
- Scenarios in EU projects in regard to IPR
- Practical issues for a EU RTD

General introduction to IPR

Intellectual Property Rights

“Exclusive rights granted by the State for inventions, new and original designs, trademarks, new plant varieties and artistic and literary works”.

IPR = The right to prevent others from

- using
- manufacturing
- distributing
 - products
 - processes
 - applications
 - trade names
 - geographical names
 - ideas
 - designs

What is IP? How can be IP protected?

IP = Any form of knowledge or expression created with one's intellect

Inventions
→ patents



Products
&
materials



Processes



Methods



Techniques



Machines & instruments

Computer software
→ Licences
→ USA: also patents



Brand, name, logo
→ trademark



Literary, artistic works
→ copyright



Know-how
→ trade secret



Source: 6th FP, Exploitation strategy seminar

	PATENT	TRADE MARK
Validity of protection	when and where registered	when and where registered
Refers to	products processes applications	names, logo, shape, symbol, color, domain
Criteria	novelty, level of inventiveness	no confusion, generic name
EU registration	EU patent office Munich, Germany	OHIM Alicante Spain
Website	www.epo.org	http://oami.europa.eu
Duration	20 years, not renewable	6-10 years, renewable

Duration of protection

	YEARS	RENEWABLE
Patents	20 (6)	No
Trade marks	6-10	Yes
Designs	6-10	Yes
Copyright	70 after death	No

Trade marks



Name

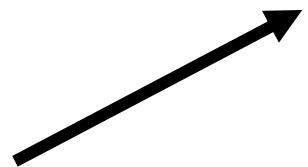
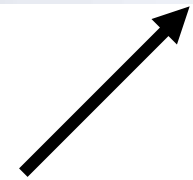
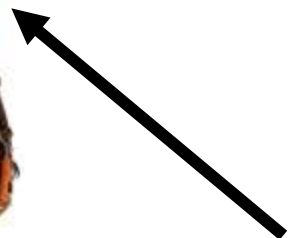
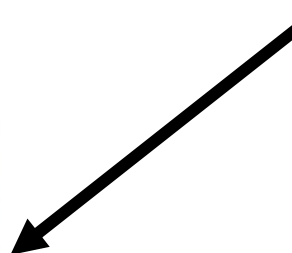
Logotype

Symbol

Slogan

Shape

Color



Registration of trade marks

	NATIONAL	REGIONAL	INTERNATIONAL
WHERE	Each country where you seek protection	EU: OHIM, Alicante, Spain	WIPO system for 77 countries
FEES	National fees for each country	National fees for each country or EU fees	One fee
LANGUAGE	Translation into national languages	One language	One language
WHEN	May be convenient if limited number of countries or no alternative	For EU market	If protection in more countries is needed.

Patents

“The right to exclusively produce, use and/or market a

- Product
- Process
- Application

Registration in EU :

Patent office, Munich, Germany

<http://www.epo.org>

In a nut shell

- Patents
 - product, process, applications
 - Registration :difficult to prove “novelty”
 - limited duration

- Trade mark
 - name, symbol, shape
 - Registration : do not create confusion
 - renewable

- IPR : only protection when registered (excl. copyrights)

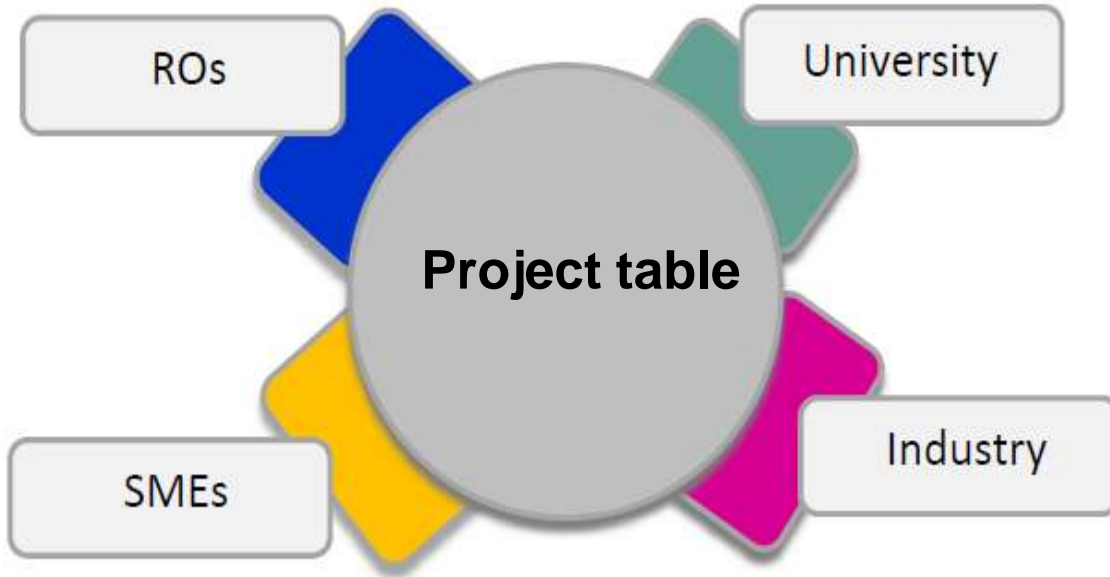
Unitary Patent (EU Patent)

- On 11 December 2012 the European Parliament voted positively in a first reading on the EU Council's compromise proposals for two draft EU regulations on a unitary patent for Europe. The first draft regulation concerns **unitary patent protection**, and the second sets out the **translation arrangements** for such protection.
- The draft regulations were accepted under the EU's legislative procedure of "enhanced co-operation":
 - With the exception of Italy and Spain, 25 EU member states have embarked on enhanced co-operation with a view to creating unitary patent protection for their territories.
- The regulations entered into force on 20 January 2013. However, they will only apply from 1 January 2014 or the date of entry into force of the Agreement on a Unified Patent Court, whichever is the later.

IPR in a joined RTD-I Project

General but important thoughts

General situation in FP7 collaborative projects



- Different partners: research, companies, developers, users
- IP has different strategic meaning for the individual partners
- Exploitation has different strategic meaning for the individual partners



Process to handle IPR started

Source: S. Albrecht; www.iprhelpdesk.eu
(modified)

Characterisation of typical project partners

Fundamental research e.g. universities

- Goal: publication of research results (e.g. journal, PhD thesis)
- Using results for future research and teaching activities
- Insufficient exploitation strategy
- Lacking legal/ IPR expertise
- Theoretical approach, final stage: prototype

Applied research e.g. industry

- Goal: commercialisation of results (product, patent)
- Short “time-to-market“
- Strong in-house legal/ IPR expertise
- Application-oriented approach

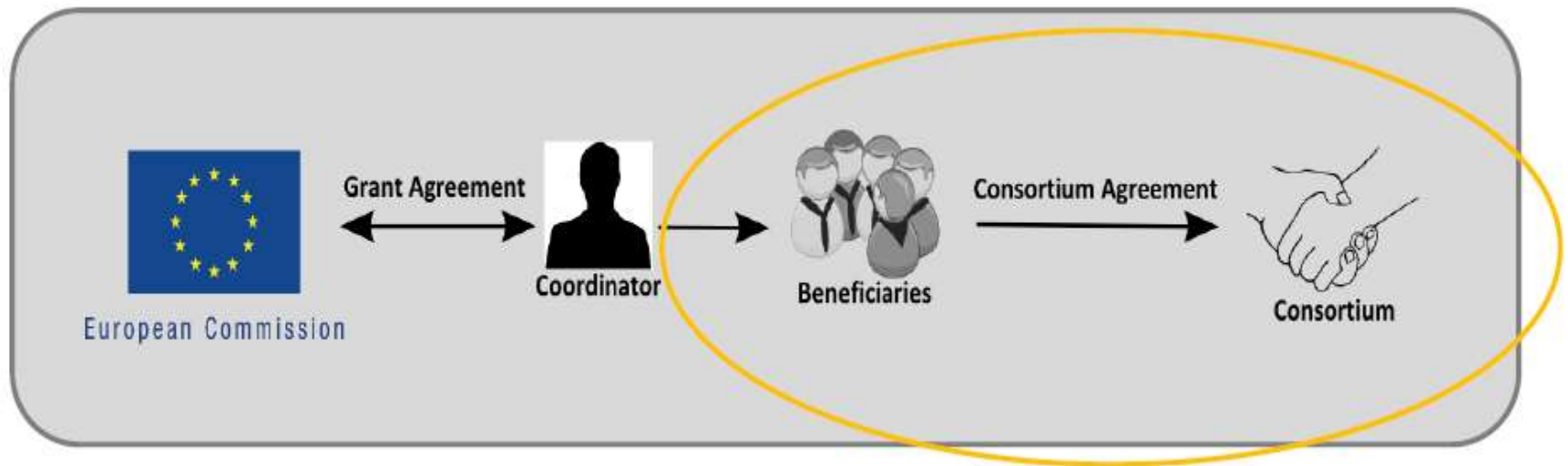
SMEs

- Goal: keeping control over own research results
- Strong protection of existing know-how
- Project activities close to existing know-how
- Lacking legal/ IPR expertise

Source: S. Albrecht; www.iprhelppdesk.eu
(modified)

IP Rules in FP7

- **Protection of IP in FP7 projects is dealt with in**
 - Grant Agreement (Annex II- General conditions)
 - Consortium Agreement
 - Bilateral Agreement among concerned partners

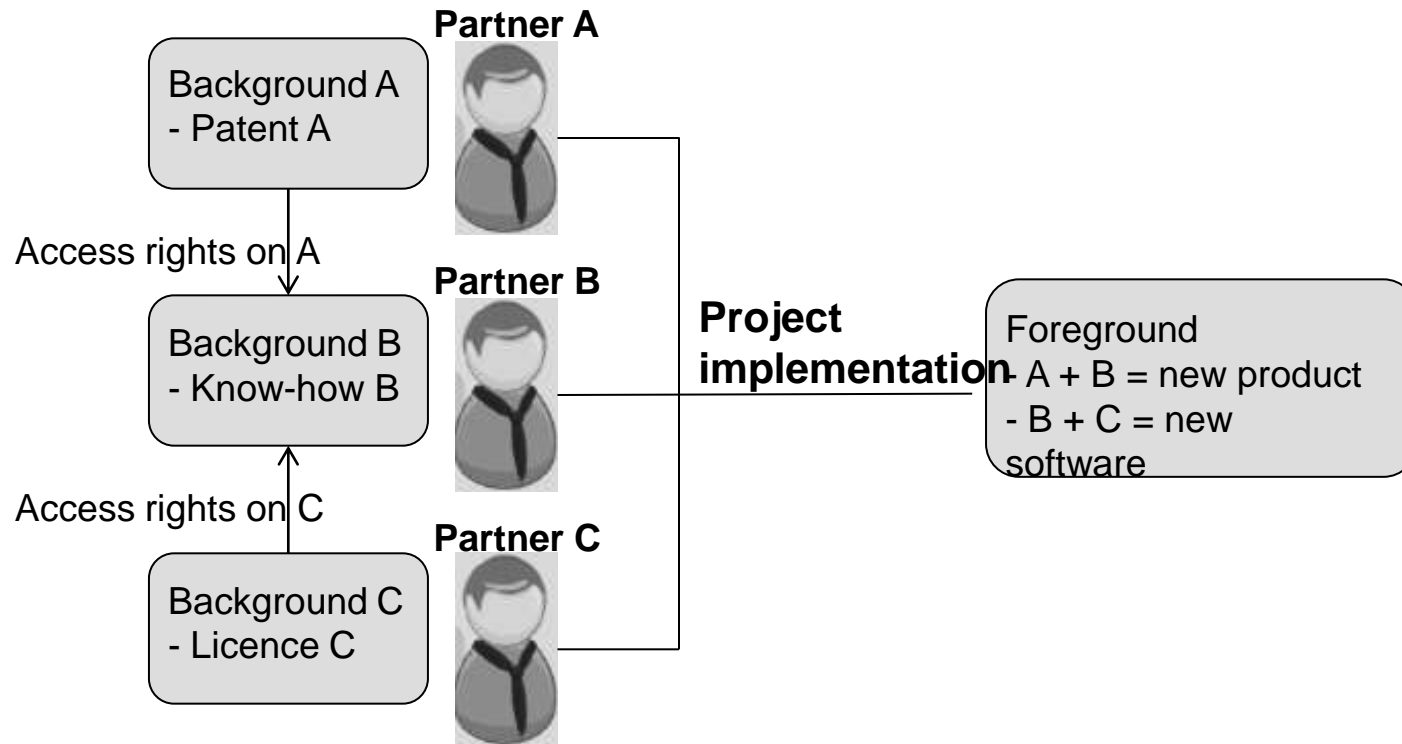


Source: S. Albrecht; www.iprhelppdesk.eu

IPR related sections in the Consortium Agreement

- **Section 8:** Foreground
- **Section 9:** Access rights (inclusive Section: Specific software provisions)
- **Attachement 1:** Background included to access rights (“positive list“)
- **Attachement 2:** Background excluded from access rights (“negative list“)

Definitions: Background, Foreground, Access Rights



Source: S. Albrecht; www.iprhelphdesk.eu
(modified)

Background

- Pre-existing know-how, any information before entering the project
- Information which is needed for the project (including IP rights)
- Project partners should identify the background at the beginning of the project
- This should be done in writing and attached to the Consortium Agreement
 - Attachment 1: Background included to access rights
 - Attachment 2: Background excluded from access rights

Source: S. Albrecht; www.iprhelppdesk.eu

Foreground (CA template, section 8)

- The results, which are generated under the project
- Who owns the project results?
 - Partner who generated the work
 - Foreground generated jointly: ownership agreement
- Each partner may transfer ownership of its foreground → approval by other partners required
- **Exception: SMEs specific actions (e.g. Research for SME & SME associations)**
 - SMEs get ownership (even if the results generated by other partners)

Access rights (CA template, section 9)

	Access rights to background	Access rights to foreground	Timing (to request access rights)
For project implementation	Yes, if a participant needs them for carrying out its own project work Royalty-free		Until the end of the project
For use purposes (exploitation and/or further research)	Yes, if a participant needs them for using its own foreground Fair conditions (or - if for research- royalty free)		Until 1 year after the end of the project

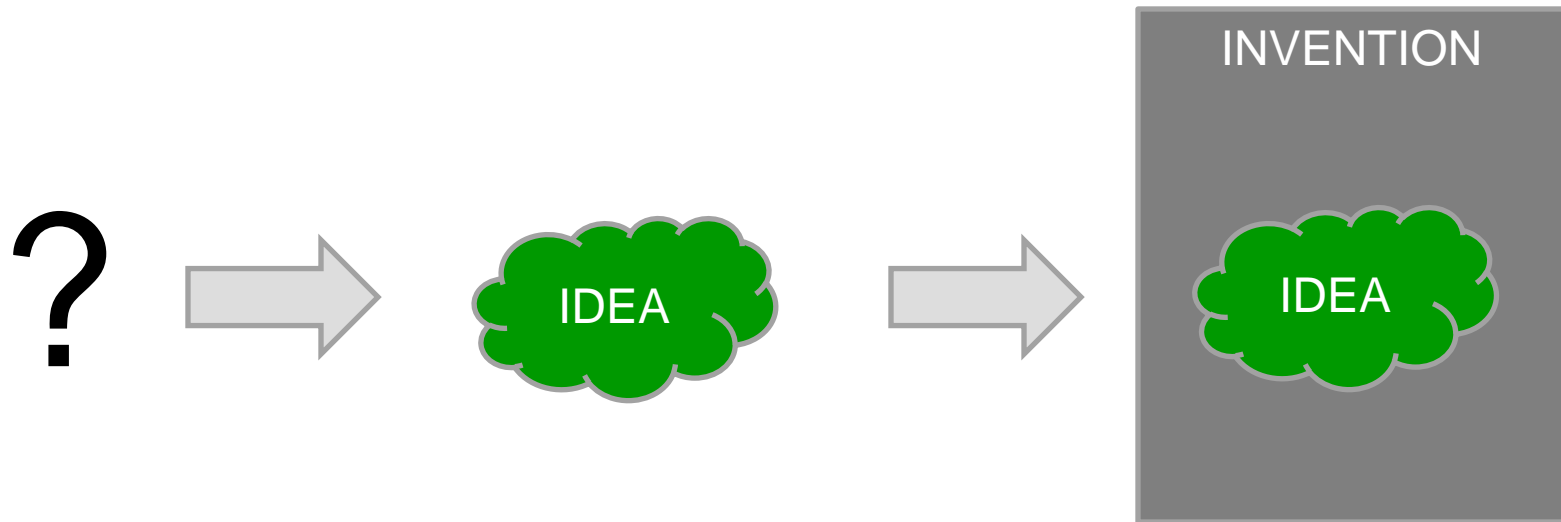
IPR – IDEAS – INVENTIONS - SOLUTIONS

Why / What do we talk about IPR ?

Collection of ideas on
the blackboard

- What is your intention/expectation to be here today
- IPR – why do we talk about it in the context of EU RTD-I
- What do you know about it ?
- What are your experiences

From the Idea to an Invention (Result)



What is the difference between Idea and Invention?

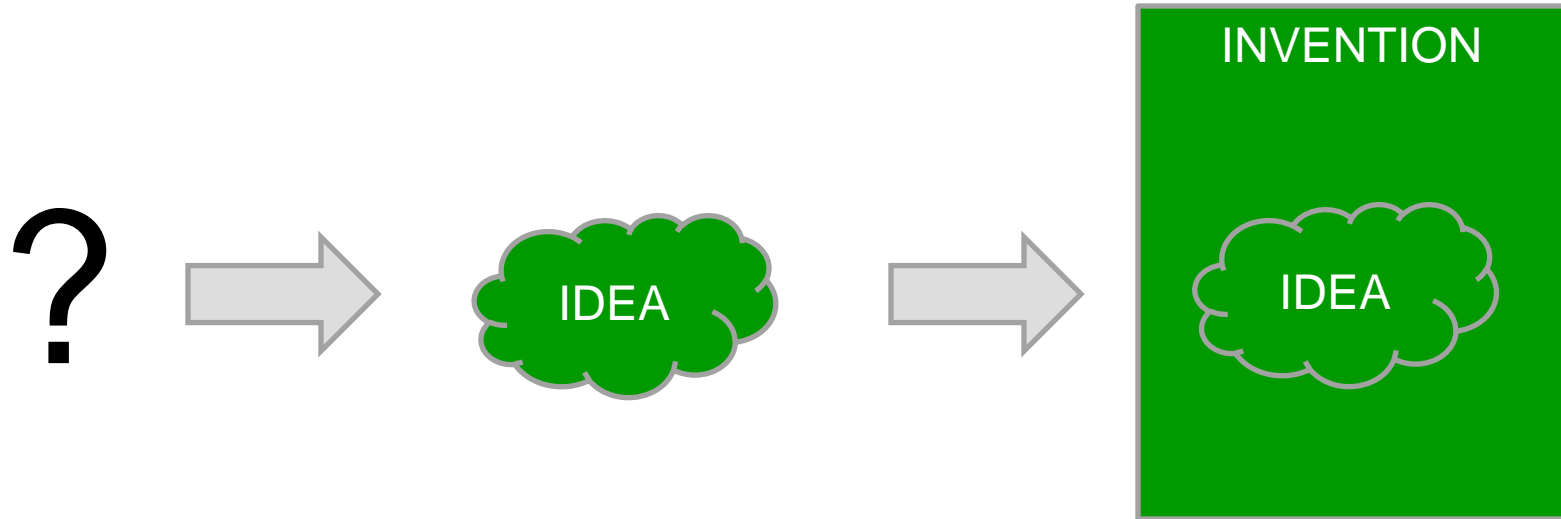
Difference between Idea and Invention



- **Idea:** First approach of how to solve the problem
- **Invention:** Solution to problem obtained from one or more ideas by contributing more ideas and investing efforts, money,...

Who is the owner of the Invention?

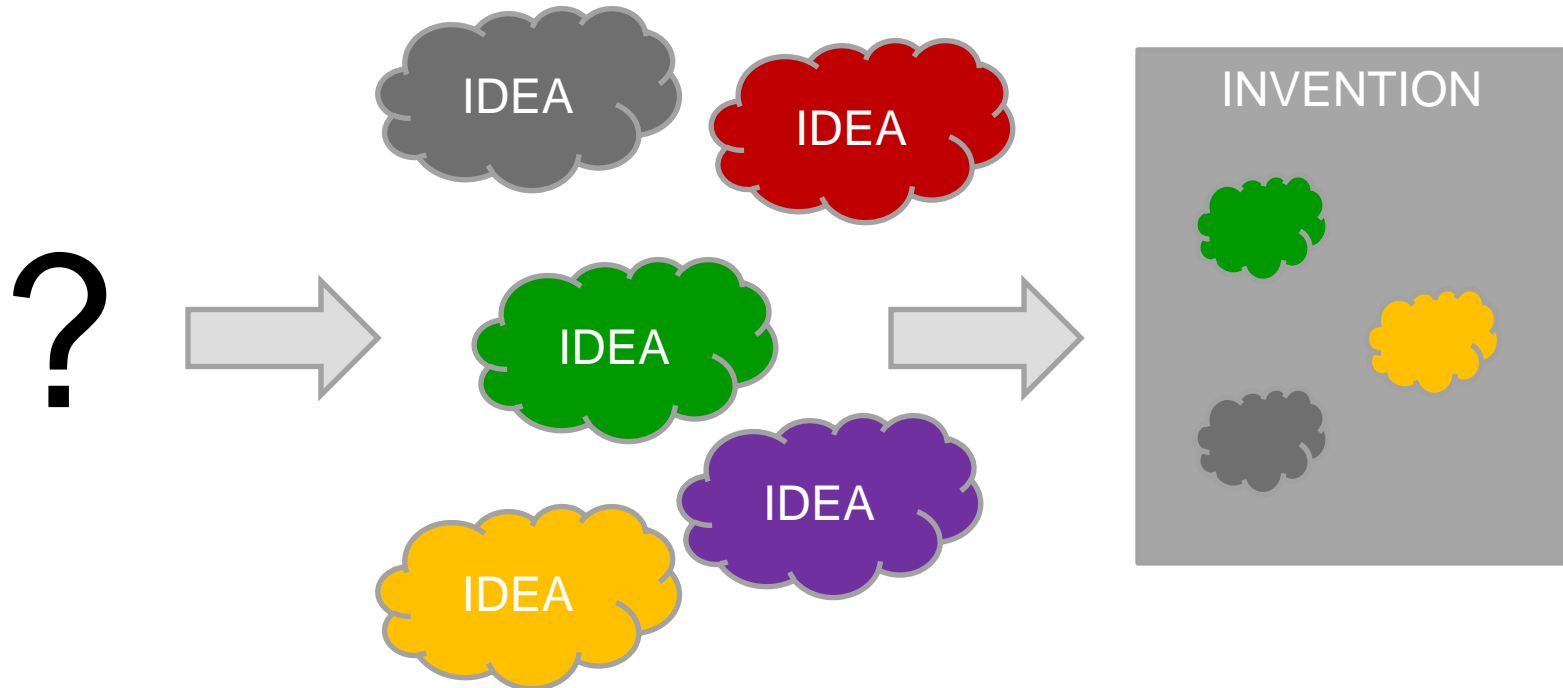
Ownership of Invention



- **Owner:** The partner who has contributed many more ideas and invested efforts, money, etc. to turn the Idea into the Invention

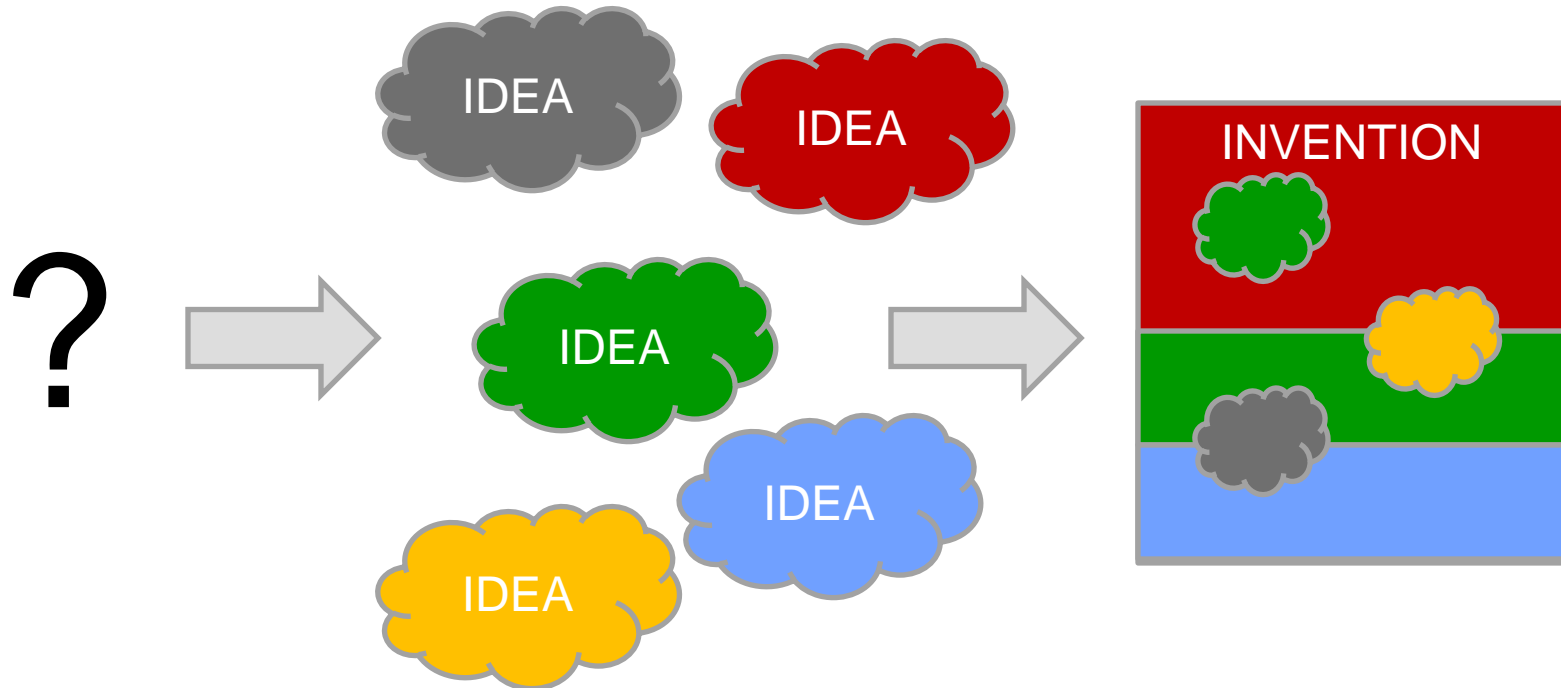
The usual situation in EU RTD

Joint Inventions



Who are the owners of the Invention?

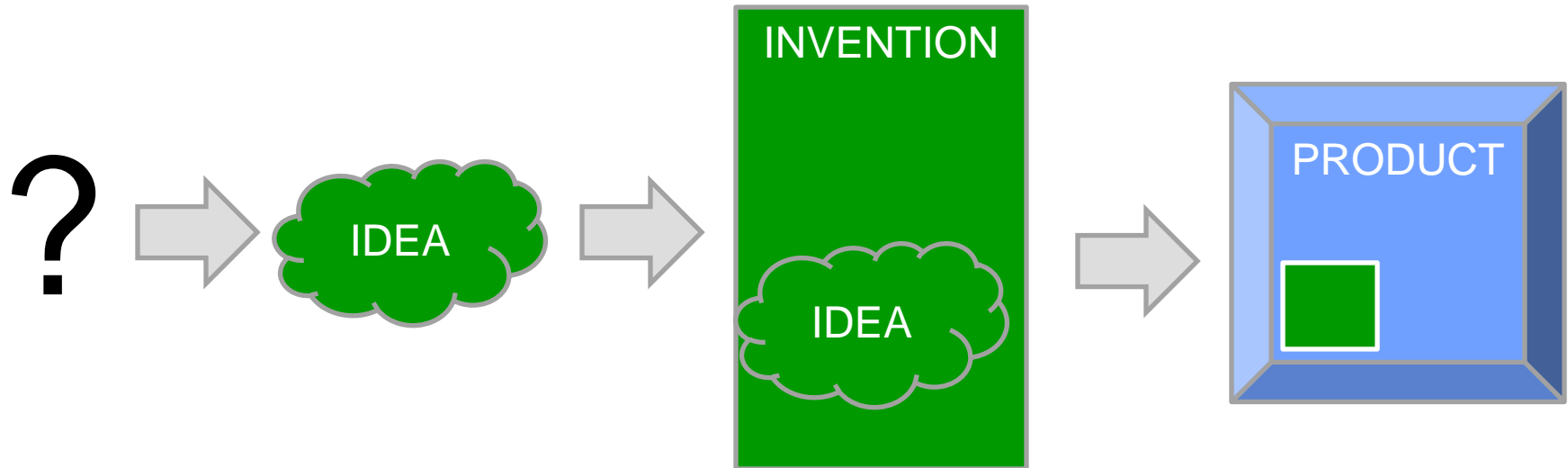
Owners of Joint Inventions



- The owners are all partners that have elaborated the ideas and that have invested efforts, money, ...

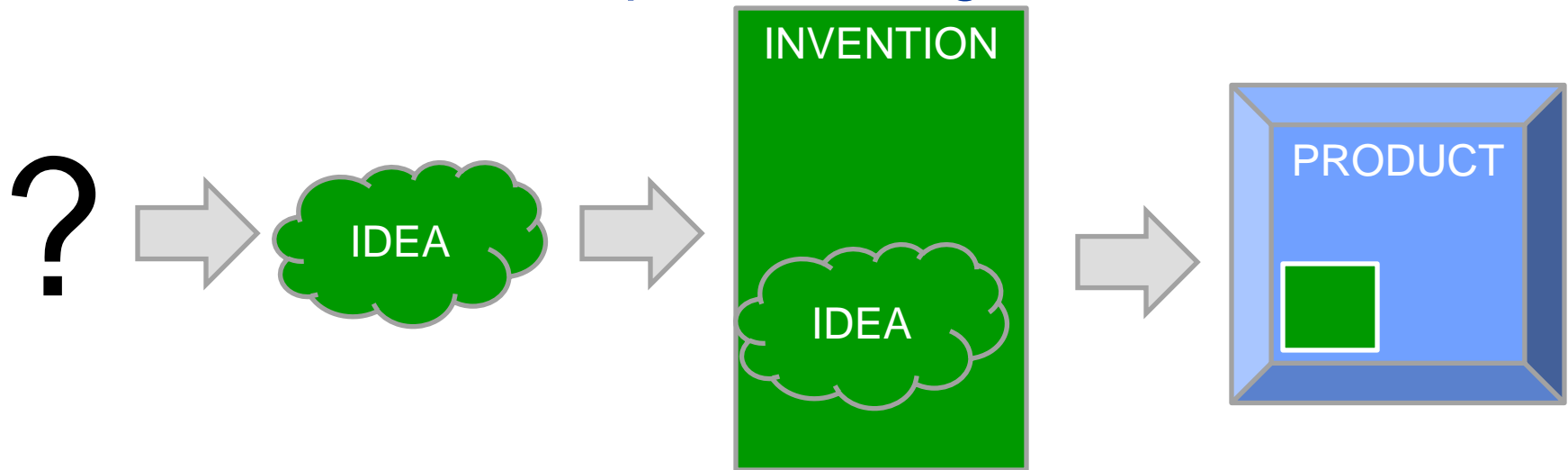
Partner BLUE has a Product

Partner Blue's Product



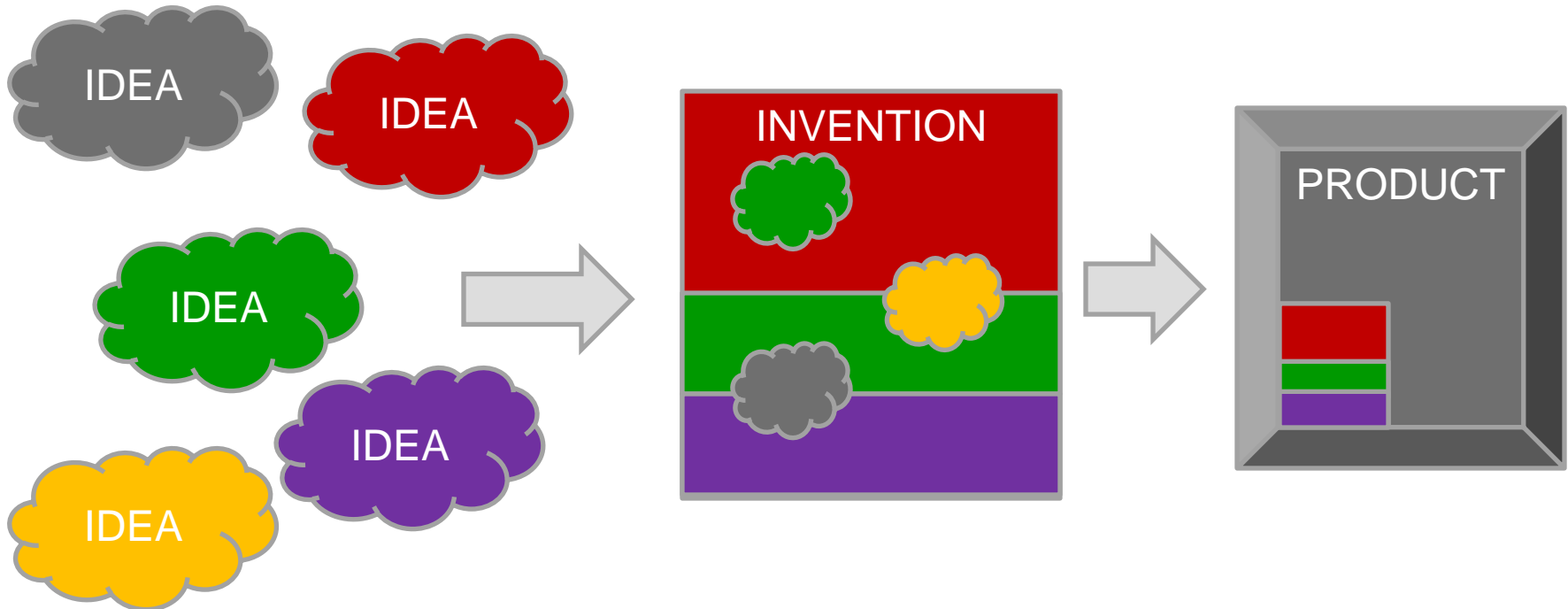
What has Partner Blue to observe before selling his product?

Important things



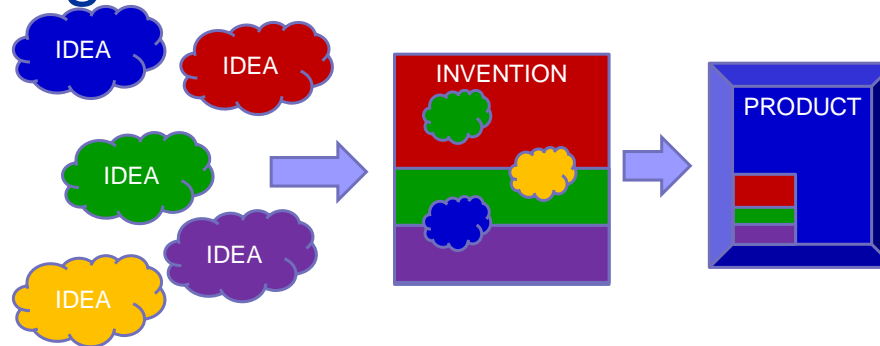
- Partner Green's invention is not a substantial part of Partner Blue's Product
- Partner Green's invention is necessary for Partner Blue to offer his product
- Partner Green has to grant access rights to his invention to fair and non-discriminatory conditions

Exploitation of a Joint Invention

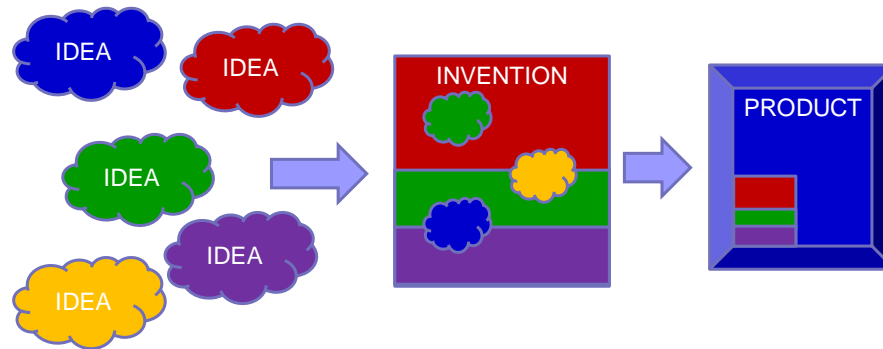


How does it work with the licensing now?

Using a Joint Invention in a Product



- The joint invention is not a substantial part of Partner Blue's Product
- Owner's of the Joint Invention are Partner Red, Partner Green and Partner Purple
- The owners have to grant access rights to their invention to fair and non-discriminatory conditions



Partner Blue licenses
the invention

- Partner Blue is not owner
- License fees are distributed among owner's of invention

Partner Blue buys the exploitation
rights for the Invention

- Partner Blue becomes owner of invention
- As owner Partner Blue has to grant access to other Consortium Partners who need this invention for their product

IPR in joint RTD-I Projects is all about defining the results as

- INVENTIONS

- PRODUCTS / SERVICES

AND

WHO OWNS, WHO SELLS AND HOW

Reality: no body takes care before or during...

- How many rtd projects define in their proposal their ipr strategy?
- When to start thinking of it?

General Situation

- Different partners: research, companies, developers, users
- Intellectual Property has different strategic meaning for the individual partners
- Exploitation has different strategic meaning for the individual partners
- Open and productive collaboration requires motivation and trust in each other



Process to handle Intellectual Property Rights (IPR) started

Phases of IPR Handling in RTD Collaboration

1.

- Partner Internal Discussions
- IPR Questionnaires

2.

Workshop for

- Consolidation of different view points
- Structuring & detailing of Foreground / Background IP / Exploitation Claims
- Identification of possible agreements

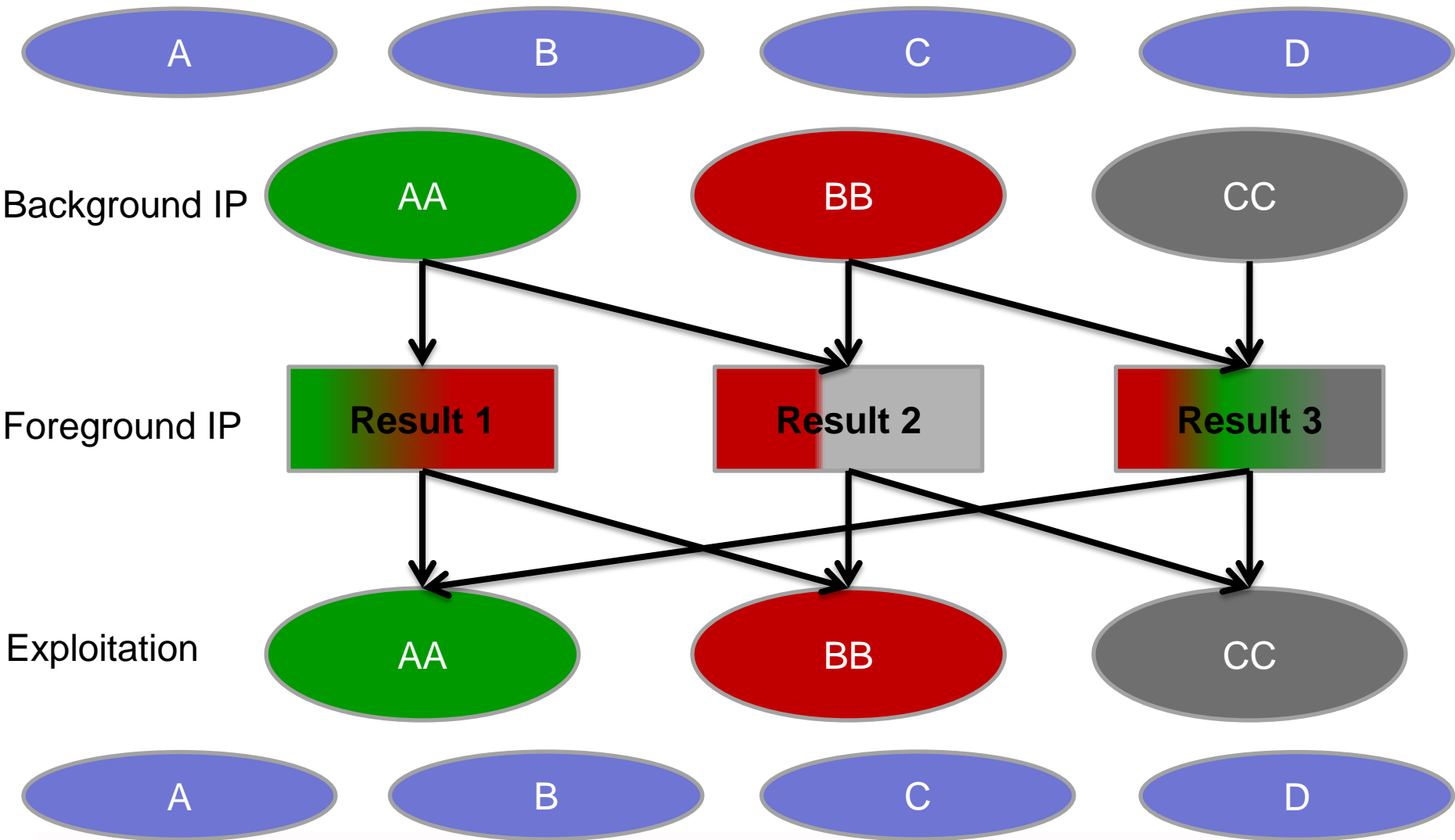
3.

- Consolidated Report on Workshop Results (SEZ)
- Integration of other partners in the process if necessary
- Bilateral Agreements by Partners
- Development of exploitation plans

Objectives of IPR Workshops

- Understanding each partner's motivation
- Identification of Intellectual Property (IP) flow
- Ensure access and protection of Background IP (BIP)
- Kick-off protection and exploitation of Foreground IP (FIP)

Identification of IP Flow



Ensure Access and Protection of BIP

Identification of

- Owners
- Users
- What Knowledge/Know-how is needed exactly
- For how long
- How the protection of the Background IP will be maintained though access is provided

Kick-off Protection and Exploitation of FIP

Identification of

- Contributors
- Exploitation Claims
- Possible means of protection
- Risks

Development of IP flow within a RTD project

First draft of “Interest in commercialization“ (InterCom) matrix (1)

	Expected result	Expected contribution					Expected benefit from the result
		P1	P2	P3	P12	
WP1-2							
WP3							
WP4							
WP5							

■ Glossar: Expected benefit

- **A:** result needed for project implementation
- **B:** result important for future activities (e.g. research or exploitation activities beyond the project time)
- **C:** public result (e.g. publication, part of PhD thesis)
- **D:** result for commercialization (e.g. spin-off, product)

First draft of “Interest in commercialization“ (InterCom) matrix (2)

- **Discussion in Working-Groups**
 - According to WP
 - According to deliverables / results
 - Combining different partner types, if possible

- **Task: Identification and characterization of expected project results**

- **Presentation of the brainstorming ideas to the consortium**

Conclusions

- First draft of the InterCom matrix completed
 - Expected results identified
 - Expected benefit identified
 - Technological synergies between partners identified
- InterCom matrix
 - basis for the European dissemination & exploitation strategy
 - basis for the formulation of the consortium/ bilateral agreements
 - method for a systematic validation of the project progress

Outlook

- Preparation of the consortium agreement ASAP
 - Definition of background included by each partner
 - Definition of background excluded by each partner

- Development of dissemination strategy on European level

- Regular updates of the InterCom matrix during project implementation
 - Update for the InterCom matrix
 - Collection of statements regarding background IPR