

Licensing Basics for Life Sciences: Getting Paid Through License Fees

Feb 28, 2013

Author: [Noel Courage](#)

In life sciences, licensing fees are often upfront payments, ongoing royalties (usually a percentage of net sales) or milestone payments after a certain event in product development. Examples of typical events would be synthesizing a humanized antibody, finishing a Phase II clinical trial successfully, or first commercial sale.

The milestone payment can be an incentive to work diligently to achieve an endpoint, such as overcoming the production hurdles to produce a commercial grade product. Milestone payments are also an interim payment that helps pay for R&D and other expenses, since royalty-based license fees will not have kicked in yet. If the company has not yet finished the manufacturing process, there would be no product made, no regulatory approval, no sales, and no ongoing royalty from sales revenue.

The licensing fees are often tied to the existence of an unexpired patent covering a product or process. When the patents eventually expire, the license may terminate, since with no patent in place any competitor can use the invention without concern about infringement. If the license stays in effect, a patent expiry will often dramatically reduce the royalty flow. For example, think what would happen to royalties to an inventor when a brand name drug goes generic and the brand name sales dive. Patent expiry can be less critical for inventions that are hard for competitors to copy or where there are regulatory or other barriers to competitors. In some cases, a company can license a trade secret, which will not expire (as long as the secret is kept). A particular license can even take both patents and trade secrets into account.

A license can also have a fixed term, like five years. It can also terminate when a certain event happens (e.g., sales fall below \$500,000/year) or even when one party gives notice of termination to the other, no reasons required.

License agreements are quite flexible. There is no "standard form license" to deal with complex commercialization arrangements. Each license must be carefully customized to the particular situation. Take advice from an experienced lawyer that knows your industry before you sign on the dotted line.