

## Licensing

### Patent Pool Seeks to Ease Gene-Editing Tech Licensing

A patent-licensing tool used to popularize the video format used in DVDs may help bring gene-editing products with revolutionary medical potential to market, even though one research giant won't take part.

CRISPR, which stands for Clustered Regularly Interspaced Short Palindromic Repeats, technology allows scientists to edit genomes precisely and could lead to cures for inherited diseases and cancer. Analysts say it's worth potentially billions of dollars.

In July, the Broad Institute of the Massachusetts Institute of Technology and Harvard University announced that they are in discussions to submit their patents related to the CRISPR-Cas-9 system to a patent pool, which makes bundles of related patents available for licensing.

Pools are supposed to lower transaction costs by taking away the need to negotiate and get licenses from many different patent owners but, for the time being, at least one important CRISPR patent holder won't be participating.

The University of California at Berkeley—currently in a dispute with Broad over the inventorship of some of the most important CRISPR-related patents—told Bloomberg BNA it has no plans to join a CRISPR pool because of potential conflicts with licensing deals it has already made.

That would undermine the goal of making the pool a one-stop shop for CRISPR-related patent licensees. However, even if Berkeley or other patent owners hold out, a sufficiently large pool could still simplify licensing issues by reducing the number of deals that need to be made to bring a product to market.

**Invitation to the Pool Party** Broad's announcement was in response to MPEG LA LLC's call for patent submissions back in April. The company has formed and administered several patent pools, including, as the name suggests, a patent pool for MPEG-2, which includes the video-encoding format used in DVDs.

The pool is not active yet, as patent holders are still submitting their patents, which MPEG LA will review to determine how and if they fit. After that, the patent holders will meet to set out licensing terms, including rates and how licensing fees will be apportioned among the pool members. Kristin Neuman, executive director of biotech licensing for MPEG LA, told Bloomberg BNA that, in her experience, it typically takes from six months to two years to finalize pool-license terms.

"The process will go at the speed the patent holders will drive it," she said.

MPEG LA's plan is for the pool to cover as many CRISPR patents as possible from all around the world. The company will be responsible for administering the royalties once the pool launches.

The CRISPR pool won't be MPEG LA's first foray into biotechnology. It ran another program, Librassay, a marketplace for gene therapy patents.

Neuman says that the patents may be further bundled into smaller packages. One possible approach is to form bundles of complementary patents, with each bundle addressing different major commercial applications. Licensees, such as drug companies, could then pick which bundles they need for their planned products.

The prepackaged bundling of patents within the pool reflects the nature of the technology. CRISPR potentially has many different applications and a licensee, generally, won't need every patent in the pool. That is different from MPEG LA's typical patent pools covering consumer technologies, which routinely tried to license out entire pooled portfolios covering a particular technology standard, Neuman said.

Licensees need to be aware of the differences, Eldora L. Ellison, a patent partner at Sterne, Kessler, Goldstein & Fox PLLC, told Bloomberg BNA. A company usually takes a consumer tech patent pool license in order to use a standard, so the typical nonexclusive license will often suffice. However, potential licensees for the CRISPR pool are likely trying to bring a new product, like a therapeutic treatment, to market, and need to remember that a nonexclusive license won't block competitors, she said.

Licensees will need to look for other ways to protect their market, such as patenting the innovations built upon the licensed patents, she said.

**Not Jumping In** Edward Penhoet, Berkeley's associate dean of biology, told Bloomberg BNA that Berkeley has granted an exclusive license to Caribou Biosciences, Inc., which, in turn, granted sublicenses to others, and joining a pool would conflict with those licenses, he said.

At the same time, Penhoet said that dissemination of CRISPR technology is important for Berkeley. The school retained the research rights related to its patents and will not assert those rights against nonprofits doing CRISPR-related research, he said.

"We believe in widespread and effective usage and the freedom of people to do research," he said, adding that Berkeley's approach achieves that goal without the loss of patent control that a pool would entail.

A spokesman for Broad referred Bloomberg BNA to its public statement when reached for comment. In that statement, Broad also stressed the importance of widespread dissemination of its technologies, noting that it has mostly granted nonexclusive licenses to its CRISPR human therapeutics patents, except for a few licenses with two-year exclusivity periods.

Unlike Berkeley, the nonexclusive terms mean Broad is free to give licenses to new companies coming into the market.

Neuman of MPEG LA said that while the goal is to be a one-stop shop, pools can start without all the major patent holders participating.

“Virtually every MPEG LA license has grown to include new patent holders and more patents after launch without a corresponding increase in royalties,” Neuman said. “For example, MPEG-2 grew from eight patent holders to 27 and from 102 patents to more than 1,000, yet royalties decreased despite the dramatic growth.”

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