



MEMBERS RIGHTS & OBLIGATIONS

LICENSE AGREEMENT - ART. 5

2 July 2026, 9:15h

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Making Patents Available

- ▶ Members commit relevant patents of the whole group (broad definition of Affiliates)
- ▶ Patents become available to other members
- ▶ Licenses apply also to subsidiaries (narrow definition of Affiliates)

When is a license needed?

When you register a commercial variety?

When you start breeding?

When you trial a new variety?

When you commercialize a Licensed Product?

When you obtain Source Material?

When you start producing a commercial variety?

When is a license needed?

- ▶ License is required when Member starts producing propagating material of a variety that would fall under a Committed Patent (8.2.3)

License Agreement

► Structured Licensing Process

- Article 5 defines clear steps for Members to request and obtain licenses for Committed Patents.

► Negotiation and Timelines

- Members negotiate max. 3 months

► MFN (Most Favoured Nations) percentage (5.3) - NOT existing so far

consists of the lowest Royalty Percentage included in one or more SLA regarding the same Committed Patent or the Royalty Percentage adjusted for a specific Committee patent (6.12)

STEP 1 - request a license

- ▶ Formal Written Request (5.1)
- ▶ Identification of specific Committed Patent
- ▶ Request triggers negotiations (5.2)

STEP 2 - negotiation

- ▶ Defined Negotiation Period of max. 3 months (5.2)
- ▶ Flexible Agreement Terms (bilaterally, not necessarily SLA!)
 - Parties can tailor agreements to address specific needs and unique circumstances during negotiations.
 - Extent scope, specific territory etc.

SLA

- Royalty based or lump sum payment

[SLA Annex 1, December 2023.docx](#)

[SLA Annex 2, December 2023.pdf](#)



Scope of License under SLA (1.1 definition “License”)

- ▶ Global scope of license
- ▶ Non-exclusive
- ▶ Non-assignable
- ▶ Sublicensing only allowed for researching, developing, producing and/or treating Licensed Products solely for the benefit of Licensee and/or its Affiliates

Can patented technology be used under ILP?

Scope of License under SLA

- ▶ License to use biological material (Source Material) (*1.1 definition “License”*) to breed, develop, produce, keep in stock, treat, market, sell and/or deliver Licensed Products
- ▶ Along with of use of generic methods and processes of breeding and of seed production as well as random mutagenesis
- ▶ NOT included: use of technology, markers, [...] with exception of molecular markers or DNA sequences necessary to carry out random mutagenesis

Source Material & Licensed Products

Source Material (1.1)

- ▶ Any vegetable biological material, including but not limited to vegetable plants and seeds, that
 - (i) falls under the scope of a Patent and
 - (ii) is commercially available, or otherwise legally available for breeding purposes

Licensed Products (1.1)

- ▶ Any vegetable biological material, including but not limited to vegetable plants and seeds, which is exclusively owned by Licensee or co-owned
 - and falls under the scope of a Patent
 - with the exclusion of plant varieties developed by Licensor

Patent under SLA

- ▶ Patent (application) no....., titled “.....” and all patents and applications claiming priority thereof, any divisional patent (application) thereof, national patents resulting therefrom, and/or any foreign counterpart (1.1)
 - ▶ Annex I lists Patents existing at the moment of signing

Valid Claim under SLA Annex 1 - Royalty

- ▶ Valid Claim: a claim of any unexpired Patent, that would without a License be infringed by the use of biological material for breeding new varieties of vegetable plants and/or by the use and exploitation of such newly developed varieties, which is not withdrawn, canceled, or disclaimed by the Licensor, nor finally refused, held invalid or revoked by a court of competent jurisdiction or any administrative body in an un-appealable decision. (1.1)

SLA

- ▶ Maintenance & enforcement (5)
- ▶ Representations and warranties (6)
- ▶ Limitation of Liability & indemnities (7)
- ▶ Termination (13)

Maintenance and enforcement

- ▶ Licensors aim at maintaining the Patents (5.1)
 - ▶ In case of abandonment,
Licensor notifies Licensee two months prior to abandonment
No royalties due any longer in country where Patent has been abandoned.
- ▶ Licensor and Licensee shall inform each other of each allegation made by a third party that the Licensed Products infringe any third party patent (5.2)
- ▶ Licensee undertakes to notify Licensor on each activity of third parties that infringes or could infringe any Patent as soon as Licensee is informed about such an activity (5.3)
 - ▶ Licensor is the Party to decide upon any action against infringement.

Representations and Warranties

- ▶ Licensor does not warrant that the Patents do not infringe any rights of other parties than Licensor (6.2)
- ▶ No warranty of fitness for purpose of patents, of merchantability of Licensed Products, and of effectiveness and endurance of properties described in the patents (6.2)



Limitation of Liability & Indemnities

- ▶ Licenser is not liable (7.1)
- ▶ Licensee must indemnify Licenser (7.2)

Termination and expiration (1/3)

- ▶ This Agreement enters into force on the Effective Date and remains in full force and effect until the last Patent has expired (13.1)

- ▶ General termination provisions
 - ▶ Agreement terminates with immediate effect at the moment of bankruptcy etc. (13.2)
 - ▶ License terminates with immediate effect at the moment the Agreement terminates, Affiliate loses the status of Affiliate, bankruptcy etc. (13.3)
 - ▶ Licensor may terminate this Agreement and therefore the License by giving notice in writing if Licensee fails to make payment (>60 days after written summon) (13.4i)
 - ▶ Either Party may terminate by giving notice in writing if the other Party constitutes a material breach (60 reparation term) (13.5)
 - ▶ Licensee may terminate without stating reasons, subject to two months notice (13.5)
 - ▶ In the event of a change in Control of Licensee, this Agreement can be terminated immediately by the Licensor upon written notice of the Licensor in case the new owner is not a Member of the International Licensing Platform (13.6)

Termination and expiration (2/3)

Specific termination clauses:

- ▶ End of Licensee's ILP-membership. Licensor needs to notify within two months of Membership termination (*13.4.ii*)
- ▶ If trait is classified as Special Trait after the Effective Date (*13.7*)

Termination and expiration (3/3)

- ▶ Upon termination of this Agreement Licensee and its Affiliates shall immediately cease all acts that are covered by the License. (13.8)
- ▶ Right to sell or deliver remainder stock for 12 months using the same commercial conditions as up till then, unless the Licensee was terminated because of material breach (13.8)

MFN Percentage

- ▶ Once set, Requesting Member is at all times entitled to obtain a Standard License Agreement (SLA) including the MFN Percentage

If the Patentee Member refuses such a request, a Binding License Agreement upon request of the Requesting Member, be prepared by the Secretary and qualifies as binding advice (bindend advies), setting out the rights and obligations of both parties vis-à-vis each other with respect to the relevant Committed Patent.

- ▶ Secretary shall promptly prepare execution versions of the Binding License Agreement in twofold.

both parties shall sign and exchange between themselves execution versions

- ▶ Patentee Member shall provide the Secretary with a copy of the executed Binding License Agreement.

The Secretary shall keep the copies of the executed Binding Standard License Agreement with the books and records of the Association.