

The facts about CRISPR/Cas9 licensing

When it comes to the CRISPR/Cas9 patent licensing landscape there is a lot of misinformation in circulation. Here, we provide straightforward answers to some of the most common misperceptions.



Misperception



Reality

"The Broad Institute won the U.S. patent battle so there is no need for a CVC license in the U.S."*

1

Categorically false. While the most recent decision favored the Broad Institute, the reality is that nothing has changed in the US. The CVC group still has over 50 issued patents in the US claiming, among other things, use of CRISPR/Cas9 in **ALL CELLS**. This includes eukaryotic cells, which was the focus of the recent decision. The patent office ruling means that groups using CRISPR in eukaryotic cells in the US will need to take a license from both the Broad and the CVC group. This goes against the concept that an invention should only be covered by a single patent, but in this case the use in eukaryotes is considered a sub-category of 'all cells' and so both sets of patents apply. The situation is still not finally settled as the CVC group has appealed the most recent decision and hopes to reverse the decision to make it more in line with how the scientific community (and the rest of the world) see the situation.

"I only need one license if I am using CRISPR/Cas9 technology because one license should cover any and all uses of CRISPR/Cas9."

2

Unfortunately, not true. Depending on your specific use of CRISPR, you may require additional licenses from 3rd parties. Virtually any use of CRISPR will require a license to the foundational CVC patents (which ERS makes available). But other uses, including specific improvements or applications of CRISPR may require additional licenses. As noted in #1 above, use of CRISPR in eukaryotes in the US currently requires at least a CVC and a Broad license.

"There is no point getting a license to CRISPR/Cas9 until the patent battle is fully resolved."

3

Very risky. The ongoing battle may still take a few years to resolve, but the CVC group already has over 50 US patents which are not affected by the current dispute. So any use of CRISPR will still require access to this foundational intellectual property. Securing a license now ensures the legitimacy of your commercial research work and eliminates the risk that obtaining a license 'down the road' covering work which has been ongoing will come at a much higher cost.

"I do not need a license to CRISPR/Cas9 because I am only doing research and am therefore covered by the 'research exemption'."

4

Incorrect. The research exemption in the US only allows for use of patented technology for the express purpose of obtaining data for regulatory purposes related to active pharmaceutical ingredients or medical devices. The exemption cannot be applied to discovery activities or other research uses. Using CRISPR without an appropriate license jeopardizes your research and potentially any commercial aspirations you might have. Reach out to ERS and we can help clarify your specific situation.

To sum up:

Freedom to operate with CRISPR/Cas9 technology begins with a license to the foundational CVC patents available from ERS. Despite the confusion in the US, the CVC patent position in the rest of the world is clearly dominant, including in Europe, Japan, China, and India.

*CVC stands for University of California, University of Vienna, and Emmanuelle Charpentier and is the acronym used to describe the owners of the foundational CRISPR patents.