ENCOURAGEMENT OF INDUSTRIAL RESEARCH AND DEVELOPMENT REGULATIONS (RATE OF ROYALTIES AND RULES FOR THEIR PAYMENT) 5756-1996

By our authority under sections 3, 21(c) and 52 of the Encouragement of Industrial Research and Development Law 5744-1984 (hereafter: the Law) and after consultation with the Research Committee, we make these regulations:

CHAPTER ONE: INTERPRETATION

Definitions

1. In these regulations -
"the product" - within its meaning in section 4 of the Law, including a part of that product and a substantive improvement of an existing product, and including knowhow developed according to the program or as the direct or indirect result of the implementation of the program, whether it was developed entirely or partly with financing from the Administration;
"royalty payment arrangements" - an arrangement between the Office of the Chief Scientist and the company for payment of the final payable debt according to these regulations;
"linkage differentials and interest" - within their meaning in the Interest and Linkage Adjudication Law 5721-1961;
"Research Committee" - as said in section 9 of the Law;
"company" - the approval holder or an affiliated person or company, within their meaning in section 21(a) of the Law;
"large R&D intensive company" - a company that meets the following two conditions:
(1) it has more than 200 employees in research and development in Israel or its research and development budget in Israel exceeds US$20 million a year, according to the company's last financial report;
(2) its sales from production activities in Israel exceeded US$100 million in the year before the year in which the application was submitted;
"startup company" - within its meaning in section 1 of the Schedule to the Law;
"final payable debt" - the amount obtained by multiplying the revalued royalties debt by the rate of repayment, less royalties paid by the company up to the date on which royalty payment arrangements made, as recorded on the books of the Administration;
"revalued royalties debt" - the total of the amounts of linked grants received by the company in all files of the program, plus linkage differentials and interest; if an increased royalties ceiling, as defined in regulation 4, was set for part of the program files, then the amount of royalties in those files shall be calculated as the product of the amounts
of grants, multiplied by the increased royalties ceiling;
"index" - the consumer price index published by the Central Bureau of Statistics;
"date of sale" - the date of the product's actual delivery to the customer;
in respect of a sale of rights - the date of their transfer to the customer;
in respect of ongoing work - according to the progress of the work; all as entered in the company's books and audited reports;
"sale price" - the amount of any kind whatsoever entered or credited by the company for the sale of the product in its books or in its audited financial reports as part of its income, calculated and stated in dollars at the dollar exchange rate last published before the date of the sale, including agents' commissions, marketing commissions, transportation costs, travel, brokerage fees and the like, and exclusive of purchase tax, value added tax and exchange rate insurance; in special cases, when the company sold for a consideration that is not monetary or when the price is affected by special relationships, the Committee shall set the value of the consideration at the value accepted for it in the industry;
"sale of the product" - a contractual undertaking for the vesting, transfer, lease, rental and assignment of rights to produce, market or use the product itself and for its development when the product is used as a part of other goods, as well as the creation of an undertaking to provide services for maintenance, installation, instruction, consultation, the performance of applications and any other service connected with the product;
"value added tax" - value added tax within its meaning in the Value Added Tax Law 5736-1975;
"approval holder" - the person who received approval of a program under section 17(d) of the Law, and received a grant under the Law;
"linked amount of the grant" - the amount of the grant received by the approval holder in new shekels, as recorded on the books of the Administration, calculated and stated in dollars at the dollar exchange rate last published before the date of its payment;
"annual interest" - variable rate interest at the LIBOR rate for dollar deposits for a period of twelve months, as published on the first trading day of each year on Reuters' FRBD page at 11:00 GMT, or in an alternate publication which, according to an announcement from the Bank of Israel to the public, sets the said interest;
"rate of repayment" - the percentage of the revalued royalties debt, which the company will be required to repay to the Chief Scientist's Office within the royalty payment arrangement;
"dollar exchange rate" - the representative exchange rate of the U.S. dollar, as published by the Bank of Israel;
"file" - an application for the support of a research and development program, which the Research Committee approved;
"program" - an annual or multi-annual research and development program, composed of one or several files, in consequence of which will be discovered the knowhow, the processes or the methods for the production of a new product, for the substantial improvement of an existing products, for the development of a new process or for the substantial improvement of an existing processes; for this purpose, "multi-annual program" - all the files approved from time to time as part
CHAPTER TWO: RATE OF ROYALTIES

Royalties on the sale of the product

2. (a) The approval holder shall pay the State Treasury royalties on the sale of the product, up to an aggregate amount equal to the linked amount of grant, which he received in respect of the entire program, or up to the increased royalty ceiling, within its meaning in regulation 4, plus annual interest; the annual interest shall be determined for each application at the time of its approval, in accordance with the annual interest rate in effect at that time, and it shall apply to all the grant monies that will be received in respect of the said approval.

(a1) Every royalties payment said in subregulation (a) shall be credited to the approval holder in respect of all grant amounts received by the entire program, in the order of their receipt.

(b) The royalties shall be paid from the beginning of sales of the first product produced in accordance with the program (hereafter: time for beginning of repayment).

(c) Repealed

(d) When the product is sold to an affiliated person or company, royalties shall be calculated according to the sale price; however, when the product is sold through an affiliated person or body corporate, then the date of the first sale to the affiliated person or body corporate shall be deemed the date of sale that requires royalties to be paid under the Law, and the highest sale price obtained by the company for the sale of the product shall be the sale price on which royalties are calculated.

(e) The approval holder shall pay royalties to the State Treasury at varying rates, calculated as percentages of the sale price, as specified below:

1. during the first three years after repayment begins - 3%, and in respect of programs enumerated in regulation 3 - 4%;
2. from the beginning of the fourth year until the end of the sixth year after repayment begins - 4%, and in respect of programs enumerated in regulation 3 - 5%;
3. from the beginning of the seventh year after repayment begins and thereafter - 5%, and in respect of programs enumerated in regulation 3 - 6%;
4. notwithstanding the provisions of paragraphs (2) and (3), (a) during the period from January 1, 1997, until December 31, 1999, the approval holder shall pay the State Treasury royalties at the rate specified in paragraph (1), even if three or more years have passed since the beginning of repayment, within its
meaning in regulation 2(b) or 10(c), as the case may be;

(b) during the period from January 1, 2000, until December 31, 2000, the approval holder shall pay the State Treasury royalties at the rate of 3.5%, and in respect of programs enumerated in regulation 3 - 4.5%, even if three or more years have passed since the beginning of repayment, within its meaning in regulation 2(b) or in regulation 10(c), as the case may be.

(e1) Notwithstanding the provisions of subregulation (e), an approval holder who is a large R&D intensive company shall pay the State Treasury royalties at the rate of 5% per year, which shall be calculated on the sale price of the product.

(f) If the Research Committee determined that the product was sold as part of another product or as part of a set of products (hereafter: complete product), then the approval holder shall pay royalties to the State Treasury as follows:

1. if the product is also sold in the open market - at the rates set in subregulation (e), based on the price obtained in the open market;

2. if the product is not sold in the open market - at the rates set in subregulation (e) of the price of the complete product, multiplied by the cost of production of the product and divided by the cost of production of the complete product.

(g) If the approval holder receives an additional approval for the same program, then the obligation to pay royalties shall apply to him in respect of the entire program, on the terms set under the Law at the time of the last approval; however, the obligation to pay interest, as said in subregulations (a) and (a1), shall not apply to the amount of grant received by the approval holder in respect of approvals given before January 1, 1999; and the obligation of an approval holder who is a large R&D intensive company, to pay royalties at the rate of 5%, as said in subregulation (e1), shall not apply to the amount of grant the approval holder received in respect of approvals granted before December 1, 2001.

**Charging royalties at a higher rate**

3. The programs specified below shall be charged royalties at a higher rate, as said in regulation 2(e):

1. programs for the development of products which - in the Research Committee's opinion - are based on basic knowhow developed as part of a program which was accorded benefits under the Law or other benefits from the Administration;

2. programs for the development of products which - in the Research Committee's opinion - will have a limited market life;

3. programs for the development of products identical with or similar to products, programs for the development of which received or are about to receive approval from the Administration under the Law or under any statute, on condition that - in the opinion of the Research Committee - there is or will be marketing competition between the applicants for approval.
CHAPTER THREE: ROYALTY PAYMENT ARRANGEMENTS FOR LARGE R&D INTENSIVE COMPANIES

Royalties arrangement committee
3A. (a) A royalties arrangement committee for large R&D intensive companies (hereafter: the Committee) is hereby set up, and its members shall be:
(1) the Accountant General in the Ministry of Finance or one of his deputies whom he shall appoint, and he shall be the Committee’s chairman;
(2) the head of the Industrial Research and Development Administration in the Ministry of Industry and Trade;
(3) the director of the counterpart fund in the Chief Scientist's Office;
(4) the Deputy Budgets Commissioner in the Ministry of Finance who is responsible for the sphere of industry and commerce, or the industry and trade referent in the Budget Division in the Ministry of Finance.

(b) Three members of the Committee shall constitute a quorum at Committee meetings.

(c) Committee decisions shall be adopted by a majority of Committee members; if votes in Committee are tied, then the Chairman of the Committee shall have a casting vote.

(d) The Committee shall prescribe the procedure for its deliberations and work.

Conditions for making a royalty payments arrangement
3B. An approval holder may apply to the Committee for a royalty payment arrangement to be made, if the conditions specified below hold true for it:
(1) it is a large R&D intensive company;
(2) its average rate of repayment on all its approved programs is not lower than 65% of the revalued royalties debt.

Application for making a royalty payments arrangement
3C. The approval holder said in regulation 3B, who applied for a royalty payments arrangement to be made, shall submit to the Committee a detailed forecast of sales and income in respect of all the products the company developed under all the approved programs; the said sales and income forecast shall include particulars for each of the products.

Revaluation of the royalties debt and making the royalty payments arrangement
3D. When the Committee hears an application for a royalty payments arrangement, it shall -
(1) check and make certain that the company meets the condition in
regulation 3B(1);
(2) examine the sales and income forecast submitted by the company and determine an estimate of sales and income for the company’s products; in order to make the said estimate the Committee shall be assisted by professional examiners, whom it shall appoint, in respect of the sales and income forecasts submitted by the company;
(3) prepare a capitalized calculation of the company’s revalued royalties debt, as of the day on which the arrangement is made;
(4) calculate and set the rate of the applicant company’s repayment rate for each of the programs;
(5) check and make certain that the company meets the condition said in regulation 3B(2);
(6) calculate the final debt for payment, including linkage differentials and interest;
(7) decide to spread the payments over a period of not more than five years;
(8) inform the applicant company of the particulars of the royalty payments arrangement and its conditions.

Approval of the royalty payments arrangement by the company
3E. A company, for which a royalty payments arrangement was made as said in section 3D, shall inform the Committee within 21 days after it received the Committee’ notification, whether it will pay the royalties according to the royalty payments arrangement made by the Committee or according to the rules set in Chapter Two; if, within the aforesaid period, the Company did not give notice that it will pay the royalties according to the royalty payments arrangement made for it, then it shall be deemed to have waived that arrangement.

Status of a royalty payments arrangement
3F. If a royalty payments arrangement was approved for a company, then the company shall - as long as it complies with the conditions of the arrangement - be exempt of paying additional royalties in respect of programs approved until the royalty payments arrangement was made.
CHAPTER FOUR: MISCELLANEOUS PROVISIONS

Transfer abroad of production rights
4. (a) If the Research Committee approved a transfer abroad of production rights or of part of them, then the approval holder shall have to pay royalties up to the increased royalty ceiling; for this purpose, “increased royalty ceiling” - the ceiling of royalties, calculated as a percentage of the program's linked amount of grant, as specified below:
   (1) when 90% or more of the production activity is intended to take place abroad - 300%;
   (2) when 50% or more of the production activity is intended to take place abroad - 150%;
   (3) when up to 50% of the production activity is intended to take place abroad - 120%.
(b) The royalties said in subregulation (a) shall be paid at the following rates:
   (1) when the production abroad is to be carried out by the company - as said in subregulation 2(e), plus 1%;
   (2) when the production abroad is to be carried out not by the company - royalties on all of the company's income derived from the product, at a rate equal to the ratio between the linked amounts of grant, and the linked amounts of grant plus the company's investments in the program, as determined by an auditor on behalf of the Administration.
(c) The provisions of regulation 2(e) shall continue to apply to the part of the product's production in Israel.
(d) Notwithstanding the provisions of this regulation, in respect of a large R&D intensive company for which a royalty payments arrangement was made -
   (1) the increased royalties ceiling, as said in subregulation (a), shall be calculated as a percentage of the company's revalued royalties debt;
   (2) the provisions of subregulations (b) and (c) shall not apply and the Committee shall calculate and set the company's final debt for payment on the basis of the increased royalties ceiling, and accordingly it shall update the royalty payments arrangement that was made for the company.

Sale of prototype
5. The sale of a prototype, approved as part of the research and development program, shall obligate the approval holder to pay royalties on the sale price of the prototype, at a rate identical with the rate of the grant for the program, under which the prototype was approved; royalties under this regulation shall be paid up to the linked amount of grant or up to the increased royalty ceiling, as the case may be.

Obligation to report
6.  (a) An approval holder shall report to the Administration once every half year the volume of sales of the product (hereafter: semiannual report), beginning with the end of the period approved for the program's implementation and until the payment of all the royalties for which he is liable.

(b) The semiannual report in respect of the first half of each year shall be delivered by August 31 of that year, and in respect of the second half of that year by February 28 of the following year.

(c) The approval holder shall deliver to the Council - once a year and shortly after his and of his affiliated companies' financial reports have been approved - an auditor's certification of his semiannual reports.

(d) The Director of the Administration or a person authorized by him may, after consultation with the Research Committee, exempt an approval holder from submitting semiannual reports said in subsections (a) to (c), either in general or for a certain period, if one of the following applies to him:

1. the company is inactive;
2. the research and development program has failed;
3. the company is not selling the product.

(e) Semiannual reports and auditors' certifications shall be drawn up in a manner prescribed by the Director of the Administration or by a person authorized by him.

Times and manner of paying royalties
7. Royalties on the price of sales reported in semiannual reports shall be paid to the State Treasury, through the Administration, at the time the semiannual report is submitted; the payment shall be in new shekels, according to the dollar exchange rate last published before the day of payment.

Unpaid royalties, shortfalls and excess payments
8.  (a) If any amount of royalties is not paid on time, or if there is a shortfall in the amount of royalties, then linkage differentials and interest shall be added from the payment date until the actual payment.

(b) Royalties paid in excess shall be refunded with the addition of linkage differentials and interest from the date of payment until their actual refund.

Repeal
9. The Encouragement of Industrial Research and Development Regulations (Rate of Royalties and Rules for their Payment) 5747-1987 (hereafter: the previous regulations) are repealed.

Effect and transitional provisions
10. (a) These regulations are in effect from January 1, 1994 (hereafter: day of effect), but the royalty rates set in them shall be in effect from January 1, 1996 (hereafter: determining date).

(b) The royalty rates set in the previous regulations shall apply until the determining date, but if a research program of a category
enumerated in the Second Schedule of the previous regulations was approved during the period between the day of effect and the determining date, then the total amount of royalties to which the approval holder shall be liable shall not exceed the linked amount of the grant.

(c) For the purpose of the number of years under regulation 2(e), in respect of the sale of a product that began before the day of effect and continued thereafter, the day of effect shall be deemed the time to begin repayment, notwithstanding the provisions of regulation 2(b).
ENCOURAGEMENT OF INDUSTRIAL RESEARCH AND DEVELOPMENT REGULATIONS (RULES FOR INCREASING GRANT RATES IN PRIORITY AREAS) 
5763-2003

By our authority under section 28(c) of the Encouragement of Industrial Research and Development Law 5744-1984 (hereafter: the Law), and with approval by the Knesset Finance Committee, we make the following regulations:

Definitions
1. In these regulations -
   "other areas" - areas to which benefits by virtue of the Encouragement of Capital Investments Law 5719-1959 apply, according to Government decisions from time to time;
   "approval holder" - as defined in section 17(a) of the Law;

Increasing grant rates
2. When the Research Committee decided in accordance with section 28(a) of the Law to approve a grant for an approval holder, then 10% shall be added to that grant, if the approval holder carries out the program in Development Area "A", and 25% if in other areas.

Effect
3. These regulations shall go into effect on April 1, 2003.
ENCOURAGEMENT OF INDUSTRIAL RESEARCH AND DEVELOPMENT REGULATIONS (PROCEDURES OF THE TECHNOLOGICAL ADVANCEMENT FUND) 5748-1988

By our authority under sections 3 and 52 of the Encouragement of Industrial Research and Development Law 5744-1984 we make these regulations:

Meeting of the Directorate
1. Meetings of the Directorate of the Technological Advancement Fund (hereafter: the Directorate) shall be called by the Directorate's chairman whenever he finds it appropriate to do so, but not less than once every three months.

Invitations
2. Directorate meetings shall be called by the delivery or by the dispatch of written invitations or by telephone notifications to all members of the Directorate, so that they reach them at least seven days before its date; the invitation shall be accompanied by the agenda of the meeting and background material for the subjects included in the agenda.

Agenda
3. The chairman shall set the agenda of the Directorate meeting.

Quorum
4. The quorum for Directorate meetings is at least half the number of its members.

Running the meeting
5. The chairman shall run Directorate meetings; if the chairman is absent, the Directorate shall choose one of the other present members to run the meeting.

Minutes
6. Minutes shall be kept during the meeting, including the names of those present, the main points of the discussion and the text of decisions; the chairman of the meeting shall sign the minutes, indicating the contents to be correct; a copy of the minutes shall be delivered to every member of the Directorate as soon as possible, and in any case before the next meeting.

Majority
7. Directorate decisions shall be adopted by a majority of members participating in the meeting.

Director of Fund
8. The Directorate shall choose the Director of the Technological Advancement Fund (hereafter: the Fund) from among the employees of
the Ministry of Industry and Trade; the Director of the Fund shall carry out the Directorate's decisions and shall be responsible for the Fund's day to day operations.

Report
10. The Director of the Fund shall prepare an annual report of the Fund's activities, income and expenditures, and he shall present it to the Directorate at the first meeting of each year.
ENCOURAGEMENT OF INDUSTRIAL RESEARCH AND DEVELOPMENT REGULATIONS (PROCEDURE BEFORE THE APPEALS COMMITTEE) 5748-1988

By our authority under sections 3 and 25 of the Encouragement of Industrial Research and Development Law 5744-1984 (hereafter: the Law) and under other authority vested in us under any enactment, we make these regulations:

Definitions
1. In these regulations -
   "Committee" - an Appeals Committee appointed under section 24(a) of the Law, the address of which is the Ministry of Industry and Trade, Jerusalem;
   "Research Committee" - a committee appointed under section 9 of the Law;
   "Director of the Administration" - the chairman of the Research Committee;
   "decision" - a decision of the Research Committee under sections 17, 22 or 45 of the Law.

Submission of appeal
2. The appeal shall be delivered to the Committee or sent to it by registered mail in seven copies.

Writ of appeal
3. The appeal shall be signed by the appellant, and it shall specify the following:
   (1) the appellant's name and address;
   (2) the date on which the decision was delivered to the appellant;
   (3) the facts on which the appellant bases himself;
   (4) the grounds on which the appellant bases his appeal;
   (5) the requested relief.

Attachments
4. The following shall be attached to the appeal:
   (1) a copy of the decision against which appeal is made;
   (2) an affidavit in support of the facts on which the appellant bases himself;
   (3) documents on which the appellant bases his appeal; (hereafter: writ of appeal).

Faulty writ of appeal
5. If the writ of appeal does not comply with any of the provisions of regulations 3 or 4, then it shall not be accepted for registration; however, once a writ of appeal has been registered in the Committee's books, the Committee shall not admit any argument on formal faults in it.
Delivery to respondent
6. The Committee shall deliver a copy of the writ of appeal to the Director of the Administration.

Response of the Director of Administration
7. The Director of the Administration shall deliver to the Committee - within 30 days after the day on which a copy of the writ of appeal was delivered to him - a response to the writ of appeal, and he shall attach to it the decision of the Research Committee and the opinion of the professional examiner said in section 17(a) of the Law (hereafter: writ of response); the provisions of regulation 2 shall apply to this matter.

Delivery to appellant
8. The Committee shall deliver a copy of the writ of response to the appellant.

Appellant's response
9. The appellant may - within seven days after the day on which the writ of response was delivered to him - submit his objections to the writ of response to the Committee; the provisions of regulation 2 shall apply to this matter; the Committee shall deliver a copy of the objections to the Director of the Administration.

Hearing the appeal
10. (a) Appeals shall be based on the written material submitted to the Committee, without oral arguments, unless the Committee decides otherwise for a certain matter.

(b) In an appeal submitted against a decision under section 17 of the Law, the Committee shall refer only to the facts and particulars submitted by the appellant to the Research Committee as part of his application for approval of the program, as said in section 16(a) of the Law.

Additional particulars
11. The Committee may, at any time, require the appellant and the Director of the Administration to provide additional particulars on any argument included in the written material before the Committee, which it needs in order to hear the appeal; said additional particulars shall be delivered to the Committee within 14 days after the day on which the request was received.

Failure to comply with the Committee’s orders
12. (a) If the appellant did not provide additional particulars, as said in regulation 11, the Committee may quash the appeal.

(b) If the Director of the Administration failed to respond, as said in regulation 7, or if he failed to provide additional particulars, as said in regulation 11, then the Committee may hear and decide the appeal on the basis of the material before it.

Change in composition of Committee
13. The Committee shall continue to hear an appeal, even if its composition has changed, unless it decides otherwise.

Withdraw appeal
14. The appellant may, at any time, withdraw his appeal; if he has done so, notification thereof shall be delivered to the Director of the Administration.

Delivery of documents
15. Any document, which under these regulations must be delivered or sent to the appellant or to the Director of the Administration, shall be delivered in person or by registered mail; the appellant's address shall be as specified in the writ of appeal, and that of the Director of the Administration - Office of the Chief Scientist, Ministry of Industry and Trade, Jerusalem.

Delivery of Committee decision
17. A copy of the Committee's decision shall be sent to the appellant and the Director of the Administration within seven days after its adoption.