

Hep C settlement pays Merck's Idenix bill



Jacob Plieth

The \$3.9bn Merck & Co spent to buy the antiviral specialist Idenix Pharmaceuticals might not be dead money after all. A US jury has decided in favour of the New Jersey big pharma and against Gilead Sciences in a patent lawsuit over the hepatitis C medications Sovaldi and Harvoni.

If affirmed by an appeals court, Gilead would owe Merck \$2.5bn immediately and might be liable for damages that would inflate the settlement up to more than \$7bn in up-front cash, with royalties potentially on the table (see table below). The award is likely to be lowered on appeal – however, even halving the amount would result in at least a break-even scenario for Merck, and would make Gilead's \$11bn takeout of Pharmasset look even more expensive.

Break even?

The agents at the centre of the patent dispute are Gilead's sofosbuvir, originated by Pharmasset, and Merck's MK-3682, which now has the generic name uprifosbuvir. Sofosbuvir is the active ingredient in Sovaldi and Harvoni – which registered \$23bn between them in sales through the end of 2015 – while MK-3682 has only made it as far as phase II in combination with Merck's dual-acting hep C pill Zepatier.

The jury in the Delaware federal district court awarded Merck \$2.54bn based on a 10% royalty for all sales through the end of August 2016, and the jury's determination that the Gilead violation was wilful makes it possible that triple damages will be paid.

Gilead will appeal against the jury's decision, and this could take up to two years to resolve. That raises the likelihood of a lower award, either declared in court or settled privately between the two companies.

Assuming that a triple-damages award is halved on appeal or in the out-of-court settlement, and adding in the NPV of the royalty stream, Merck still comes away making a profit – even without ever launching MK-3682.

Valuing the total payable by Gilead to Merck

	2016 (Aug-Dec)	2017	2018	2019	2020	2021
US Sovaldi sales (\$m)	666	542	260	174	151	121
US Harvoni sales (\$m)	1,742	3,671	2,877	2,485	2,254	1,986
10% royalty on combined net profits (\$m)	149	234	160	134	121	102
WACC	7.50%					
NPV (\$m)	721					
Jury award (\$m)	2,540					
Triple damages (\$m)	7,620					
Total payable by Gilead in base case (\$m)	8,341					
Total payable by Gilead if jury award is halved (\$m)	4,531					

Bizdev balm

The hep C space has shifted rapidly since Merck's Idenix takeout, of course, and it would not be surprising if

MK-3682 is not launched – *EvaluatePharma's* consensus forecasts just \$67m in sales for the triple combination in 2022.

US hep C sales peaked at \$13.9bn in 2015 and will shrink to \$6bn in 2022, making it a less attractive space than it appeared to pharma companies and investors when Merck splashed out for Idenix. In any case, Merck investors' attention is now firmly on the cancer immunotherapy Keytruda, and its work in antivirals is much more of a sideshow.

Still, in buying Idenix Merck had the good luck also to purchase an active lawsuit against the biggest player in hep C. A profitable outcome is probably more luck than strategic thinking, but it makes the modest commercial promise of MK-3682 look a little bit better in the long view.

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