



93 05 8870

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D. C. 20549

**FORM 10-K**

RECD S.E.C.  
MAR 1 1993  
FEB 31

(Mark One)

Annual Report Pursuant To Section 13 Or 15(d) Of The Securities Exchange Act Of 1934

For the fiscal year ended December 31, 1992.

OR

Transition Report Pursuant to Section 13 or 15(d) Of The Securities Exchange Act Of 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission File Number 0-19091.

**Applied Immune Sciences, Inc.**

(Exact name of registrant as specified in its charter)

**DELAWARE**

(State or other jurisdiction of incorporation or organization)

**06-1063065**

(I.R.S. Employer Identification No.)

**5301 Patrick Henry Drive, Santa Clara, California 95054-1114**

(Address of principal executive offices)

**(408) 492-9200**

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, \$.01 par value	NASDAQ National Market System

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [  ]

The aggregate market value of the Common Stock of the registrant held by non-affiliates as of February 24, 1993 was \$126,990,516.75.

The number of shares of Common Stock outstanding at February 24, 1993 was 10,215,583 shares.

L 42

**PROCESSED BY**

MAR 3 1993

**DISCLOSURE  
INCORPORATED**

227  
58.P

EXHIBIT 10.20

**NON-EXCLUSIVE LICENSE AGREEMENT**

THIS AGREEMENT, effective as of DECEMBER 23, 1992, is between BAXTER HEALTHCARE CORPORATION a corporation of the State of Delaware (BAXTER) having its principal place of business at One Baxter Parkway, Deerfield, IL. and Applied Immune Sciences, Inc. (LICENSEE) (LICENSEE), a corporation of the State of DELAWARE having its principal place of business at 5301 Patrick Henry Drive, Santa Clara, California, 95052.

**RECITALS**

BAXTER has acquired certain rights under PATENTS (as defined herein) concerning a

\*

FIELD, as defined herein, from Becton Dickenson and Company (BECTON) pursuant to a separate License Agreement effective August 24, 1990, (Hereinafter "PRIOR LICENSE");

LICENSEE has an interest in acquiring a non-exclusive license under such PATENTS for use in the FIELD;

BAXTER is interested in licensing said PATENTS;

NOW, THEREFORE, in consideration of the premises and of the performance of the covenants herein contained, the parties agree as follows:

**Article I. DEFINITIONS**

1.1 "EFFECTIVE DATE" shall mean the date first written above.

1.2 "PATENTS" shall mean the following U.S. Patents:

- 4,714,680, HUMAN STEM CELLS, issued 12/22/87
- 4,965,204, HUMAN STEM CELLS AND MONOCLONAL ANTIBODIES, issued 12/23/90.
- 5,035,994, HUMAN STEM CELLS AND MONOCLONAL ANTIBODIES, issued 7/30/91.
- 5,130,144, HUMAN STEM CELLS AND MONOCLONAL ANTIBODIES, issued 7/14/92.

1.3 "LICENSED PRODUCT(S)" shall mean: (1) a biological product, including, without limitation, (i) a whole antibody, fragments or portions thereof and recombinant and single chain antibodies, (ii) a hybridoma for producing such antibody, including the hybridoma itself, and (iii) a cell or cellular composition for which the making, having made, using or selling of the same would infringe one or more claims of one or more PATENTS; and (2) a device, kit or system useful for the selection or separation of a biological product, which device, kit or system may include without limitation, biological products, separation devices, or other reagents, for which the making, having made, using or selling of the same would infringe one or more claims of one or more PATENTS: all of the foregoing nevertheless being restricted to their relation to or application in the \* FIELD and

\*

1.4 FIELD" shall mean that field

\*

(\*) This portion has been omitted and filed separately with the Commission.

1.5 "FIRST COMMERCIAL SALE" shall mean the first sale of any LICENSED PRODUCT by LICENSEE.

1.6 "Net Sales Price" shall mean the gross selling price, less the following items but only insofar as they actually pertain to the sale of such LICENSED PRODUCT by LICENSEE and are included in such gross selling price, to the extent such items (except items (a) and (d) below) are separately billed:

(a) usual trade and cash discounts actually allowed other than advertising allowances;

(b) import, export, excise, sales and/or use taxes, and custom duties;

(c) cost of insurance and transportation from the place of manufacture to the customer's premises or point of distribution; and

(d) credit for returns, allowances, or trades and retroactive price reductions.

1.7 "LICENSEE" and "BAXTER" shall include their respective affiliates. Affiliate shall mean a corporation of which a party has direct or indirect ownership of at least fifty percent (50%) of the voting stock.

(\*) This portion has been omitted and filed separately with the Commission.

Article II. LICENSE GRANTS

As of the EFFECTIVE DATE of this Agreement, BAXTER hereby grants to LICENSEE a non-exclusive, non-transferable, worldwide license under PATENTS to make, have made, use, and sell LICENSED PRODUCTS in the \* FIELD, with no right to grant any sublicense under this Agreement.

Article III. Government Rights

3.1 All rights granted by BAXTER to LICENSEE under this Agreement are subject to the requirements of Public Law 96-517, as amended, and any applicable implementing regulations. LICENSEE acknowledges that, if a conflict arises between the conditions of this Agreement and the rights of the Federal Government, LICENSEE's rights may be subordinate to the legitimate rights of the Federal Government.

3.2 Notwithstanding any provisions in this Agreement, BAXTER disclaims any and all obligations or liabilities arising under the provisions of this Agreement if LICENSEE is charged in a governmental action for not complying with or failing to comply with governmental regulations in the course of taking steps to bring any LICENSED PRODUCT to a point of practical application.

3.3 LICENSEE shall comply with all reasonable governmental requests directed to either LICENSEE or BAXTER and provide all information and assistance necessary to comply with said reasonable requests. Failure of LICENSEE to comply with this provision shall be considered a material breach of this Agreement.

3.4 LICENSEE agrees that all of its research, development and marketing activities under this Agreement shall comply with all governmental regulations in force and effect including, but not limited to, federal, state and municipal legislation.

Article IV. PATENT MAINTENANCE

4.1 Costs. All future patent costs pertaining to PATENTS whether or not such PATENTS are pending on the EFFECTIVE DATE, including preparation, filing, and prosecution of patent applications, issuance, taxation, and maintenance costs shall be borne by \* in accordance with the terms of the \* .

4.2 Control. All control over PATENTS will be in \* \* in accordance with the terms of the \* .

Article V. PAYMENT BY LICENSEE

5.1 Cash. Within Thirty (30) days of the EFFECTIVE DATE of this Agreement, LICENSEE shall pay BAXTER the sum of \* \* .

5.2 Royalties. LICENSEE shall pay to BAXTER the following running royalty until \* \* : \*

5.2.1 \* royalty on NET SALES for each LICENSED PRODUCT sold by LICENSEE for USE, when the making, having made, using or selling or such LICENSED PRODUCT would infringe one or more claims of one or more PATENTS if not for this license regardless of where the product is sold.

5.2.2 \* royalty on NET SALES for each LICENSED PRODUCT sold by LICENSEE for USE, when

(\* This portion has been omitted and filed separately with the Commission.

the making, having made, using or selling or such LICENSED PRODUCT would infringe one or more claims of one or more PATENTS if not for this license regardless of where the product is sold.

5.2.3 Where LICENSED PRODUCT being sold is used for either THERAPEUTIC USE and RESEARCH USE then the higher of the two royalty rates shall apply for such LICENSED PRODUCTS.

5.3

(\* This portion has been omitted and filed separately with the Commission.



\*

5.4. Currency Conversion. All amounts payable hereunder by LICENSEE shall be payable in United States dollars; provided, however, that if any payment on account of Net Sales Price is received by LICENSEE in a currency other than United States dollars, such amount shall be converted to United States dollars at the average daily rate set by Citibank in New York City for the quarterly reporting period and the payment shall be computed on the net amount of United States dollars received by LICENSEE after payment of the costs of conversion. LICENSEE may further deduct any taxes required by a governmental agency to be withheld in respect of royalties payable.

5.5 Currency Restrictions. If restrictions on the transfer of currency exist in any country such as to prevent LICENSEE from making payments in the United States, LICENSEE shall take all reasonable steps to obtain a waiver of such restrictions or otherwise to enable LICENSEE to make such payments, failing which LICENSEE shall make the royalty payments due upon sales in such country in local currency and deposit such payments in a local bank or other depository designated by BAXTER.

#### Article VI. ACCOUNTING

6.1 Reports. LICENSEE shall report in writing to BAXTER within sixty (60) days after the end of each calendar quarter the quantities of LICENSED PRODUCT subject to royalties hereunder that were sold by LICENSEE during said quarter, and the calculation of the royalties thereon. Such report shall also specify whether such LICENSED PRODUCTS were sold for THERAPEUTIC USE or RESEARCH USE, or both. With said report LICENSEE shall pay to BAXTER the total amount of said royalties that have not been paid in advance. If no LICENSED PRODUCT subject to royal-

ties hereunder has been sold by LICENSEE during any such period, LICENSEE shall so report in writing to BAXTER within sixty (60) days after the end of such period. Reports, notices, royalty payments, and other communications hereunder shall be sent to the appropriate party at the following address:

For BAXTER:  
President  
Baxter Biotech Group  
Immunotherapy Division  
3015 S. Daimler Ave.  
Santa Ana, California

6.2 Records. LICENSEE shall keep adequate records in sufficient detail to enable the royalties payable by LICENSEE hereunder to be determined, and permit said records to be inspected at any time during regular business hours by an independent auditor appointed by BAXTER for this purpose, who shall report to BAXTER only the amount of the royalties payable hereunder.

Article VII. INFRINGEMENT

7.1 Infringement by LICENSEE. In the event that LICENSEE is sued for infringement by reason of making, using, or selling LICENSED PRODUCT, LICENSEE shall notify BAXTER in writing of the suit and shall defend such suit at LICENSEE's own expense; provided, however, that if such suit alleges invalidity or unenforceability of PATENTS, then BAXTER, at its sole discretion, may request joinder in the suit for the purposes of defending the PATENTS. BAXTER shall have the right to provide advice and assistance in any such litigation at its expense, unless such advice and assistance is requested by LICENSEE, then it shall be at LICENSEE's expense. In the event BAXTER is joined in such litigation, BAXTER shall have the right to defend itself with counsel of its choice, at its expense.

7.2 Infringement by Third Party.

- (a) LICENSEE shall notify BAXTER of any infringement by a third party of any PATENTS and shall provide BAXTER with the available evidence, if any, of such infringement.
- (b) BAXTER shall have the exclusive right and sole discretion during the term of this Agreement, subject to BAXTER's obligations and rights under the PRIOR LICENSE, to bring suit or other proceeding against the infringer in its own name and LICENSEE shall be kept informed at all times of all such proceedings taken by BAXTER. If BAXTER requests, LICENSEE may, in LICENSEE's discretion, join BAXTER as a party to lawsuit or other proceeding at LICENSEE's expense; however, BAXTER shall retain control of the prosecution of such suit or proceedings, as the case may be pursuant to BAXTER's rights and obligations under the PRIOR AGREEMENT.
- (c) Nothing in this Agreement shall be construed as obligating BAXTER, or giving LICENSEE the right, to proceed against a third party infringer of one or more PATENTS.

Article VIII. NEGATION OF WARRANTIES AND INDEMNIFICATION

8.1. BAXTER warrants and represents that it is a licensee under, with the right to grant this sublicense to LICENSEE under the PATENTS.

8.2 Nothing in this Agreement shall be construed as:

- (a) a warranty or representation by BAXTER as to the validity or scope of any of the PATENTS; or
- (b) a warranty or representation by BAXTER that anything made, used, sold or otherwise disposed of under any

license or sublicense granted in this Agreement is or will be free from infringement of patents or other rights of third parties; or

(c) an obligation of either party to bring, prosecute or defend actions or suits, or to assist the other party in bringing, prosecuting or defending, against third parties for infringement, subject to and except as provided in Article VII hereof; or

(d) conferring the right to use in advertising, publicity or otherwise any trademark, trade name, or names, or any contraction, abbreviation, simulation or adaptation thereof, of either party; or the name of \* or any contraction thereof or the name of any of its employees, faculty, students, inventors, officers, and trustees in any advertising, promotional, or sales literature without the prior written consent of \* or

(e) conferring by implication, estoppel or otherwise any license or rights under any patents of BAXTER other than the PATENTS, regardless of whether such patents of BAXTER other than the PATENTS, regardless of whether such patents are dominant or subordinate to the PATENTS.

**8.3 DISCLAIMER OF WARRANTIES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, BAXTER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

8.4 LICENSEE shall defend, indemnify and hold BAXTER and its Affiliates harmless from and against any and all claims, suits and expenses, including reasonable attorney expenses, based on LICENSEE's and its Affiliates' manufacture, use and sale of the Licensed Product.

8.5 LICENSEE shall defend, indemnify, and hold BAXTER harmless from and against any and all claims, suits, and expenses including attorney expenses based on any act or omission of LICENSEE in the manufacture, use, or distribution of LICENSED PRODUCT.

8.6. Each of the parties represents to each other that it has the full right to enter into this Agreement, that there are no agreements or commitments which would prevent either from satisfying each and every responsibility, obligation and covenant it has assumed under this Agreement.

Article IX. TERM AND TERMINATION

9.1 Default. If either party shall fail to perform any of its obligations under this Agreement, the non-defaulting party may give written notice of the default to the defaulting party. Unless such default is corrected within sixty (60) days after receipt of such notice, the notifying party may terminate this Agreement upon thirty (30) days' prior written notice.

9.2 Term. Unless otherwise terminated, as provided for in this Agreement, this Agreement will continue on a basis until the

\*

9.3 Survivability. Articles 3 and 7 shall survive the termination of this Agreement.

Article X. GRANT BACKS

10.1 Improvements LICENSEE agrees to grant to BAXTER

\*

. Following such request, the parties shall enter into discussions concerning such

\*

10.2 Orphan Drug License LICENSEE and BAXTER agree to grant each other a non-exclusive right to practice, free of any royalty, under the terms of an Orphan Drug License, or other regulation pertaining to drugs or devices which provide the holder an exclusive right to practice a therapy, which either party obtains

\*

. However, nothing contained in this Article X shall require or confer upon either party the right to obtain a license, or other right to practice, under the patents, know-how or technology of that party which obtained the Orphan Drug License.

#### Article XI. MISCELLANEOUS

11.1 Integration. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, and supersedes and replaces all prior agreements, understandings, writings, and discussions between the parties relating to said subject matter.

11.2 Amendments. This Agreement may be amended only by a written instrument executed by the parties. The failure of either party

at any time or times to require performance of any provision hereof shall in no manner affect its rights at a later time to enforce the same. No waiver by either party of any condition or term in any one or more instances shall be construed as a further or continuing waiver of such condition or term or any other condition or term.

11.3 Successors. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

11.4 Assignability. This Agreement shall not be assignable by either party without the other party's prior written consent, except for BAXTER's right to receive royalties payable hereunder, and except by BAXTER as part of a sale or transfer of substantially the entire business relating to operations pursuant to this Agreement. LICENSEE shall only be able to assign this Agreement as part of a sale or transfer of substantially the entire business relating to operations pursuant to this Agreement after obtaining BAXTER's written consent, which consent shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective business of BAXTER and LICENSEE to which this Agreement relates.

11.5 Notices. Any notice and payment of royalties required or permitted to be given hereunder shall be deemed sufficient if mailed by registered or certified mail (return receipt requested), or delivered by hand to the party to whom such notice is required.

11.6. If any part of this Agreement is found to infringe any applicable law or regulation or is otherwise unenforceable or ineffective then this Agreement shall thereafter be construed and have effect as if the part of the Agreement that is unenforceable

or ineffective was deleted therefrom provided that either party shall be entitled at any time thereafter to serve notice upon the other requiring that the parties shall seek to negotiate alternative terms to replace the terms that are infringing, unenforceable or ineffective and the parties shall in good faith seek to negotiate such terms but if such alternative terms are not agreed within four (4) months of the date of the required notice then either party shall be entitled to give not less than two (2) months notice to terminate this Agreement.

11.7 Titles. All titles and subtitles used in this Agreement are for purposes of illustration or organization and are not legally binding on the Parties.

11.8 Relationship of the Parties. Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee, or joint venture relationship between the Parties.

11.9 Further Acts and Instruments. Each Party hereto agrees to execute, acknowledge, and deliver such further instruments and to do all such other acts as may be necessary or appropriate to effect the purpose and intent of this Agreement.

11.10 Export Restrictions. This Agreement is made subject to any restrictions concerning the export of products or technical data from the United States of America that may be imposed upon BAXTER or LICENSEE from time to time by the Government of the United States of America. Furthermore, LICENSEE agrees that at no time, either during the term of this Agreement or thereafter, will it export, directly or indirectly, any United States source technical data acquired from BAXTER under this Agreement or any direct products of that technical data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval,



without first obtaining that license or approval when required by applicable United States law.

11.11 Choice of Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Illinois.

11.12 Notices. Any and all reports, notices, and other communications hereunder, except as provided under Article ~~XI~~<sup>VI</sup>, shall be sent to the appropriate party at the following address:

For BAXTER:

John Osth, President  
Baxter Biotech Group  
Immunotherapy Division  
3015 S. Daimler Ave.  
Santa Ana, California

Michael Schiffer, Esq.  
Assistant General Counsel  
Baxter Healthcare Corporation  
2132 Michelson Drive  
Irvine, California

For LICENSEE:

James G. Smith, COO  
Applied Immune Sciences, Inc.  
5301 Patrick Henry Drive  
Santa Clara, CA 95052

11.13 BAXTER'S Obligations. Nothing in this Agreement shall be construed to prohibit or limit in any manner BAXTER's right to grant licenses for PATENTS to any third party. BAXTER may issue public announcements or press releases relating to the existence and/or subject matter of this Agreement and to the identity of LICENSEE.

11.14 LICENSEE's Rights. LICENSEE may not issue public announcements or press releases relating to the existence of this Agreement and to the identity of BAXTER as licensor without the prior written approval of BAXTER. Further, LICENSEE shall not include in announcements or releases any mention or indication that BAXTER endorses the manufacture, use, or sale of any LICENSED PRODUCT by LICENSEE. If LICENSEE is obligated to issue a public announcement or press release relating to the existence of this Agreement pursuant to United States Security laws or regulations, LICENSEE agrees not to make such announcement or release without BAXTER's prior review, and further agrees to cooperate with BAXTER in the defining the content of such announcement or release; provided that LICENSEE shall remain free to make an announcement required under the United States Security laws or regulations without prior review by BAXTER, if LICENSEE is informed by its legal counsel that such announcement is legally required to be made prior to the closing of the stock market on the same day LICENSEE is informed by legal counsel.

11.15 LICENSEE shall maintain in confidence, not disclose to others and use only for the purposes of making, having made, using and/or selling LICENSED PRODUCT any information that it receives from BAXTER pursuant to this Agreement, and which information is marked "CONFIDENTIAL", provided that any orally or visually present information shall be marked or indicated as being CONFIDENTIAL within thirty (30) days of disclosure of the same to LICENSEE.

11.15.1. The foregoing restrictions against use and disclosure of "CONFIDENTIAL" information shall not apply to information that:

- (a) is or becomes publicly known through no fault of LICENSEE

(b) comes into possession of LICENSEE from a party not under obligation of secrecy to BAXTER or

(c) was in LICENSEE's possession prior to its receipt from BAXTER, as shown by its written records.

11.15.2 The obligation against use or disclosure of CONFIDENTIAL information shall survive for five (5) years after termination of the Agreement.

11.16. BAXTER has informed LICENSEE, and LICENSEE acknowledges the same, that BAXTER and BECTON may renegotiate some of the terms and conditions of the PRIOR LICENSE. LICENSEE agrees that this Agreement may be modified, at BAXTER's sole discretion, in accordance with any such renegotiated terms and conditions; provided that LICENSEE's rights to make, have made, use and sell LICENSED PRODUCTS within the \* FIELD is not substantially affected.

The parties have duly executed this Agreement as of the date first above written.

BAXTER HEALTHCARE CORP.

APPLIED IMMUNE SCIENCES, INC

By: [Signature]  
John Osth, President  
Immunotherapy Division

By: [Signature]  
James Smith, Senior V.P.  
and Chief Operating Officer  
FINANCIAL

ORUG JHUFFKEE

Date: 12/24/92

Date: 12-23-92

(\* This portion has been omitted and filed separately with the Commission.