

# WIPO



DMO/II/ 17

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WORLD INTELLECTUAL PROPERTY ORGANIZATION  
GENEVA

**COMMITTEE OF EXPERTS  
ON  
THE DEPOSIT OF MICROORGANISMS  
FOR THE PURPOSES OF PATENT PROCEDURE**

**(April 23 to 26, 1974)**

SECOND SUPPLEMENT TO DOCUMENT DMO/II/2

(SURVEY OF THE SYSTEMS EXISTING AT THE NATIONAL LEVEL WITH RESPECT  
TO THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE)

prepared by the International Bureau

1. This document constitutes a supplement to documents DMO/II/2 and DMO/II/4; it contains information received from Canada and the Ivory Coast with respect to the deposit of microorganisms for the purposes of patent procedure.
2. Annex A to this document reproduces a letter, dated April 29, 1974, received by the International Bureau from the Department of Consumer and Corporate Affairs, Bureau of Intellectual Property, Canada.
3. Annex B to this document reproduces a letter, dated May 17, 1974, received by the International Bureau from the Permanent Representative of the Ivory Coast to the Office of the United Nations and the Specialized Agencies in Geneva.

/Annexes follow/

Consumer and  
Corporate Affairs

Intellectual Property

Research and International Affairs

Consommation et  
Corporations

Propriété intellectuelle

Recherche et affaires internationales

*Your file* *Votre référence**Our file* *Notre référence*

April 29 1974

1465-77/WP-16

Mr K Pfanner  
Director Industrial Property Division  
WIPO  
32 chemin des Colombettes  
1211 Genève 20 (Suisse)

Dear Mr Pfanner

The Report of Microorganisms for the Purposes of Patent Procedure

First of all I would like to apologize for not forwarding to you  
--- earlier the attached information which represents our present policy  
and views on the question of deposits of microorganisms.

With regard to this subject our principle concern remains that  
deposit offices be maintained on a regional basis with freedom of  
access by all interested parties.

I trust you will find the information useful for your next meetings.

Sincerely

for Jacques Corbeil  
Director  
Research & International Affairs

The Deposit of Microorganisms for the Purposes of Patent Procedurea) CANADIAN PATENT OFFICE PRACTICE

Several Canadian classes contain applications and patents in which microorganisms are used. These include classes 53, 99, 195, 196, and 362 with the main class being 195.

The present Canadian Patent Office policy is informal and has not been set forth specifically in the Act, Rules or in Office Notice. Applications have been allowed in Canada containing references to deposits made in the Depositories listed on page 15 of Annex III of DMO/II/2 with the exception of the National Chemical Laboratory, Teddington, U.K. No copy of the technical or administrative conditions under which any of the more widely known Depositories operate nor a copy of any of their fee schedules are available.

b) CULTURE COLLECTIONS

There are 53 culture collections in Canada. None of the Canadian collections are what are called 'service' collections in that they are only for the use of the organization maintaining them. In other words there is no central national or service culture collection in Canada.

There are no service or national culture collection for the French-speaking countries. It was noted, that on page 16 of Annex III of DMO/II/2 it is stated that recently the Natural History Museum of Paris (Cryptogram Dept.) did accept a deposit of microorganisms in connection with a patent application in France.

Maintenance of culture collections is expensive and what is needed is several culture collections in the world which are internationally recognized (there are none now) with deposits at least duplicated to avoid loss by fire or loss of vitality. At the present time no group in Canada would be able to maintain microorganisms deposited for patent purposes as the budgets of any existing ones are not large enough but arrangements could be worked out. ATCC charges \$25 to supply a culture but it is not known what fees the depositor might be charged on deposit or for maintenance.

c) NOMENCLATURE

With regard to nomenclature the Patent Office has Bergeys "Manual of Determinative Bacteriology" and Ainsworth and Bisby's "Dictionary of the Fungi".

The most important Canadian Court case in which the patents being considered contained claims to processes using microorganisms is American Cyanamid v Frosst, 2 Ex. C.R. (1965) 355. The reasons for judgment state at the top of page 374 that "The question of speciation which I am now called upon to examine and determine occupied the major part of the evidence at the trial and as already mentioned is one on which I have heard divergent opinions". This question also occupied the majority of the pages of the reasons and the judgment as to whether two microorganisms were of the same species had to be a subjective one.

d) IMPORT - EXPORT RESTRICTIONS OF MICROORGANISMS

There are no custom restrictions, at the present time, re importing of microorganisms.

There is some interest in Canada by the competent authorities in microorganisms which are pathogenic to animals or to man and the establishment of new regulations is being examined. Restrictions may be imposed in areas such as importing, transporting and handling of microorganisms. Requirements for the inspection of premises and qualifications of staff handling the microorganisms may be established. It is possible regulations would go as far as to prevent the importation of certain microorganisms.

(Original)

/End of Annex A; Annex B follows/

Letter, dated May 17, 1974, received by the International Bureau from the Permanent Representative of the Ivory Coast to the Office of the United Nations and the Specialized Agencies in Geneva

In reply to your Circular No. 1795 of August 16, 1973, which was accompanied by a questionnaire on patent procedure at the national level with respect to inventions concerning microbiological processes or products thereof, I have the honor to inform you that, in general, the Ivory Coast has no specific legislation of its own in the field of patents.

Industrial property protection in the Ivory Coast has been ensured since January 1, 1964, by the African and Malagasy Industrial Property Office (OAMPI).

OAMPI was created by the Libreville Agreement of September 13, 1962, and the Annexes to that Agreement and its Regulations were made applicable to the Ivory Coast by Decree No. 64-209 of May 23, 1964.

The patent system is therefore the one provided for in Annex I to the Libreville Agreement, which was confirmed by a text adopted by the Governing Body of OAMPI on July 20, 1963.

Moreover, the Ivory Coast has confirmed its membership of the International (Paris) Union for the Protection of Industrial Property and declared its accession to the Paris Convention of March 20, 1883, as revised at Lisbon on October 31, 1958.

Its accession became effective on October 23, 1963.

Pursuant to the provisions of Article 58 of the Agreement concerning the establishment of an African and Malagasy Industrial Property Office, nationals may claim application in their favor of the provisions of the above-mentioned Convention, including any Agreements, Additional Acts and Protocols that have amended or will amend it, whenever its provisions are more favorable than those of the Annexes to the Libreville Agreement.

In order therefore to reply to the questionnaire submitted by WIPO, reference should be made both to the Libreville Agreement and to the Paris Convention, and to the provisions of those texts which relate to patent procedure.

Question I, "Patentability of Inventions Involving Microorganisms," may be answered by stating that, as the texts referred to above are general in scope and do not contain any particular restrictive provisions, there is nothing to prevent patents from being validly obtained for inventions concerning microbiological processes or products thereof, especially since Article 1 of the text adopted at Lisbon provides that: "Industrial property shall be understood in the broadest sense and shall apply ... to all manufactured or natural products."

With regard to Question II, "Disclosure and Making Available to the Public," particularly the part concerning the formalities to be complied with for the grant of patents, the only details given are those in Article 6(4) of Annex I to the Libreville Agreement, which are reproduced in Article 3(2)(b) of the OAMPI Regulations of July 20, 1963; these provide for the mandatory presentation "of a sealed envelope containing, in duplicate:

"(a) a description of the invention forming the subject of the patent applied for;

"(b) the drawings necessary for the understanding of the description."

It may be deduced from those provisions that, when a patent application is filed in respect of inventions concerning microbiological processes or products thereof, a written description of the microorganism would be sufficient, and that it would not be necessary to make a deposit of the new microorganism in a culture collection and to refer to that deposit in the description.

(Translation)

/End of document/