Topic 5
Practices of the IDAs under the Budapest Treaty

Dr. Felizitas Bajerski & Dr. Kathrin Felsch

Meeting of Member States and International Depositary Authorities under the Budapest Treaty
Geneva, November 13 to 14, 2023
DSMZ - German Collection of Microorganisms and Cell Cultures GmbH

- DSMZ = both
  - Research infrastructure (active collection) used by science and industry for non-commercial purposes
  - Research institution in the field of microbial biodiversity research
- The most diverse biological resource center in the world
- One of the largest collections of microorganisms and cell cultures worldwide
- DSMZ was the first "Registered Collection" under the EU Regulation 511/2014 for the Nagoya Protocol
- The only recognized international depositary in Germany under the Budapest Treaty
DSMZ as Patent Depositary

- > 45 years
- First patent strain in 1972
- Recognized as **International Depositary Authority (IDA)** according to the Budapest Treaty since 1981
- Total > 9000 patent deposits
Providing Safe Storage & Controlled Access

1. Accession Form (BP1)
2. Arrival of the biological material
3. Viability testing and purity checking
4. Assigning of the deposition number
5. Statements of receipt (BP4) & viability (BP9)
6. Preservation of the biological material
7. Depositor check
8. Storage for at least 30 years
9. Release of samples on request

Topic 5
30 years of storage and beyond

Budapest Treaty Rule 9.1

- **What?**
  - Any microorganism deposited with an IDA

- **How?**
  - Stored to keep it **viable and uncontaminated**

- **Period?**
  - At least **5 years after the most recent request** for the furnishing
  - At least **30 years** after the date of the deposit
30 years of storage and beyond

Situation

• > 2200 old (>30 years+5) deposits at DSMZ
  – Old deposits: no agreement
  – Interim period: destruction/transfer in public collection/send back/prolong deposit offered in BP1
  – Recently (after the Mexico IDA 2018 meeting and according the code of practice): transfer to open collection/prolong deposit
• Working on a procedure that would allow transfer to open collection
  – Considering regulations such as the Nagoya Protocol, but this has not yet been put into practice
• Prolongation against a fee (35€ per year on request) and confirms such in an official letter
• So far, no material has been destroyed
• Furnishing of samples following rules (rule 11) of the BT
30 years of storage and beyond

Challenges

• Contact depositors
• Space and financing
• Different national laws
• No clear regulations

Requirements

• Disclosure of patents
  – Information on connection **patent - deposit**
• (Open?) availability of the material
• Feasibility for IDA collections
➢ Important for scientific research and new biotechnological applications
30 years of storage and beyond

Aims & Action

• Discussion on several IDA meetings
• Working Group with IDA representatives
• Discussion and meetings with stakeholders (IDAs, the World Intellectual Property Organization, lawyers, patent offices, government representatives)
• Official Meeting
• Definition of clear, legally secure rules
  ➢ Update of the Budapest Treaty rules?
Nagoya

Current Situation

- Information during deposit procedure
- Deposit itself not problematic
  - Storage/Transfer not Nagoya relevant
  - Depositor is in charge to take care of usage of the sample during patenting process
- Furnishing of samples - Requesting Party
  - Requesting Party may not aware of the problem
  - Requesting Party may assume that material is "safe" (DSMZ Open Collection as registered collection)
  - Requesters have no possibility to get information
    - contact to depositor difficult
    - Information is not available
Nagoya

To be implemented

• Inclusion in BP1
  – Request information (country of origin, access date (depending on country = sampling or export date, usage)
  – Request documents
  – Mandatory? What happens if information/documents are not provided?

• Check Nagoya relevance during patenting process via patent offices?
• After 30 +5 years: Feasibility of transfer to open collection?
  – For registered collections: deposition without information not possible
For Discussion

- Definition of clear, legally secure rules on the fate of deposits
- Destruction?
- Check relevance for society/ patent status
  - Who? Communication IPO-IDA (Topic 3 und 4)
  - + Depositor can actively decide (by when must notification be made?)
- Continue deposit in IDA or transfer to open collection
  - How is the open collection selected?
  - Transfer to open collection possible?
    - Nagoya, registered collection, deposition without information not possible
    - Availability of an open collection
    - Feasability for open collection
- Inclusion in collection catalogue, incl. reference to patent?
- Obligations of the IDA
The DSMZ IDA Team

Technical Assistance:
Lisa Schröder,
Carola Henze, Anna Barheine

Head Tandem:
Dr. Felizitas Bajerski, Dr. Kathrin Felsch

Office Assistance:
Isabelle Müller

patentdeposit@dsmz.de
https://www.dsmz.de/collection/deposit/patent-deposit