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1. Requirements for Deposit

Section 17, paragraph 1, subparagraph 2 of the Patent Law of March 28, 1984, as amended by the Law of April 28, 2005 amending the Patent Law of March 28, 1984 on the patentability of biotechnological inventions:

“Where an invention involves the use of or concerns biological material which is not available to the public and which cannot be described in a patent application in such a manner as to enable the invention to be reproduced by a person skilled in the art, the description shall be considered inadequate for the purpose of patent law unless the biological material is deposited not later than the day of filing the patent application with a recognized depositary institution and the requirements laid down by the King are fulfilled.”

Section 10, paragraph 1 of the Royal Decree of December 2, 1986 on patent applications, grants and maintenance, as amended by Section 1 of the Royal Decree of February 27, 2007:

“Paragraph 1. In the case provided for in Section 17, paragraph 1, subparagraph 2 of the law, the description shall be considered inadequate unless the patent application contains such relevant information as is available to the applicant on the characteristics of the biological material deposited, as well as information on the depositary institution and the number of the deposit.

International depositary institutions are recognized as depositary institutions following acquisition of such status in accordance with Article 7 of the Budapest Treaty of April 28, 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

Information on the depositary institution and the number of the deposit shall be communicated:

- (a) within a period of 16 months as from the filing date or, if a priority is claimed, as from the date of priority;
- (b) up to the date of submission of a request to bring forward the granting of the patent under Section 22, paragraph 2, subparagraph 2 of the law.”¹

1 Section 22, paragraph 2 of the law of March 28, 1984: “paragraph 2. The decision shall be issued as soon as possible following expiry of a period of 18 months as from the filing date of the patent application or, if the priority right under the Paris Convention has been claimed in accordance with Section 19, as from the earliest priority stated in the priority declaration”.

Section 10bis of the Royal Decree of December 2, 1986 on the application, grant and maintenance of patents, as amended by Section 1 of the Royal Decree of February 27, 2007, introduced by Section 2 of the Royal Decree of February 27, 2007:

“Paragraph 1. Where the biological material deposited, in accordance with Section 10, ceases to be available from the recognized depositary institution, a new deposit of the material shall be permitted within a period of three months as from the date on which the interruption was notified to the applicant or to the owner of the patent, either by the recognized depositary institution or by the Office.

A copy of the receipt for the new deposit issued by the recognized depositary institution, accompanied by the number of the patent application, or the patent itself, shall be communicated to the Office within four months as from the date of the new deposit.

Paragraph 2. Where the interruption is due to the non-viability of the culture, the new deposit shall be made with the recognized depositary institution with which the original deposit was made. In other cases, it may be made with another recognized depositary institution.

Paragraph 3. Any new deposit shall be accompanied by a statement signed by the applicant certifying that the newly deposited biological material is the same as that originally deposited”.

2. Time of Deposit

The deposit must be made on the date of filing the patent application.

(Section 17, paragraph 1, subparagraph 2 of the Patent Law of March 28, 1984 and Section 10, paragraph 1, subparagraph 1 of the Royal Decree of December 2, 1986 on the application, grant and maintenance of patents, *in fine*)

3. Duration of Storage

No provision.

4. Conditions for the Furnishing of Samples

(i) Time of Availability of Samples

Section 10, paragraphs 2, 5 and 6 of the Royal Decree of December 2, 1986 on the application, grant and maintenance of patents, as amended by Section 1 of the Royal Decree of February 27, 2007:

“Paragraph 2. Access to the material shall be provided by the furnishing of a sample:

- (a) up to the first publication of the patent application, only to the applicant or his representatives;
- (b) between the first publication of the patent application and the granting of the patent, to anyone requesting it or, if the applicant so requests, only to an independent expert;
- (c) after the patent has been granted, and notwithstanding revocation or cancellation of the patent, to anyone requesting it.

Paragraph 5. Requests from the applicant under paragraph 2(b) and paragraph 4 may only be brought up to the date on which the technical preparations for publication of the patent application are deemed to have been completed.

Paragraph 6. Failing such designation by agreement between the applicant and the person requiring access to the deposited biological material, the independent expert referred to in paragraph 2(b) and paragraph 4 shall be designated by the competent judge”.

(ii) Restrictions Concerning the Furnishing of Samples

Section 10, paragraphs 3 and 4 of the Royal Decree of December 2, 1986 on the application, grant and maintenance of patents, as amended by Section 1 of the Royal Decree of February 27, 2007:

“Paragraph 3. The furnishing of a sample shall be made only if the person requesting it undertakes, for the term during which the patent is in force:

- (a) not to make the biological material or any material derived from it available to third parties; and
- (b) not to use the biological material or any material derived from it except for experimental purposes, unless the patent applicant or proprietor expressly waives such an undertaking.

Paragraph 4. At the applicant’s request, where an application is refused or withdrawn, access to the deposited material shall be limited to an independent expert for 20 years from the date on which the patent application was filed. In that case, paragraph 3 shall apply.”