

## NL – NETHERLANDS (KINGDOM OF THE)

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### 1. Requirements for Deposit

Where an invention involves the use of a microorganism,

(1) The specification of the invention shall:

(a) contain the data at the disposal of the applicant which are relevant to the properties of the microorganism;

(b) mention the institution with which, the number under which and the date on which the culture of the microorganism has been deposited.

(2) Together with the application shall be submitted:

(a) a declaration to the effect that the applicant, pursuant to Section 31F, irrevocably gives permission for the furnishing of samples of the culture of the microorganism deposited by him;

(b) a copy of the receipt issued by the institution with which the culture of the microorganism has been deposited;

(c) a copy of the declaration referred to in Section 31D.

(3) The number referred to in paragraph (1)(b) and the copy referred to in paragraph (2)(b) may also be furnished within a time limit of one month after the filing of the application.

(Patents Rules, as amended to 1991, Section 31B)

A deposit of a microorganism shall be accompanied by a written statement of the depositor, containing:

(a) a declaration stating the circumstances as well as the properties of the microorganism which are of interest for the cultivation, the storage, the handling and the viability of the microorganism;

(b) an indication of the method permitting the checking of the presence of the microorganism;

(c) an identification reference and, where possible, the scientific description and the proposed taxonomic designation of the microorganism.

(Patents Rules, as amended to 1991, Section 31D)

(4) The deposit of cultures of microorganisms may be effected with:

(a) an institution which, pursuant to Article 7 of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure has acquired the status of international depositary authority, or

(b) an institution designated by the Patent Office.

(Patents Rules, as amended to 1991, Section 31C(1))

## 2. Time of Deposit

The deposit of a microorganism must be made at the date of filing of the patent application.

(Patents Rules, as amended to 1991, Section 31B)

## 3. Duration of Storage

The depositary institution shall store the deposited microorganisms at least for 30 years after the date of deposit.

(Patents Rules, as amended to 1991, Section 31C(c))

## 4. Conditions for the Furnishing of Samples

### (i) Time of Availability of Samples

(1) The culture of a deposited microorganism shall be available from the date of filing of the relevant patent application for the furnishing of samples in pursuance of Section 31F until the date on which it has become certain no patent will be granted on this application or until the date on which the patent granted on that application has lost its effect.

(2) Where the culture of a microorganism ceases to be available with the institution with which the culture has been stored because the microorganism is not viable any more or the institution is not capable of furnishing samples of that culture for other reasons and the culture has not been transferred to another institution as referred to in Section 31C(1) where it remains accessible, it shall nevertheless be considered to have remained available where within a time limit of three months after the date on which the institution or the Patent Office

has notified the depositor of the fact that the culture is no longer available, a new deposit of the relative microorganism is effected and a copy of the receipt of the new deposit, issued by the relevant institution, indicating the number of the patent application or the patent, has been sent to the Patent Office.

(3) Paragraph (2) shall apply mutatis mutandis where the institution with which the culture has been stored has discontinued the performance of its functions in respect of the cultures of microorganisms deposited with it or where it does not comply any more with the specification in Section 31C(1), provided that the time limit of three months referred to in paragraph (2) shall begin on the date on which that fact has been notified in the Journal referred to in Section 38.

(4) Any new deposit as referred to in paragraph (2) shall be accompanied by a statement signed by the depositor that the culture of the microorganism deposited anew is identical to the original deposit.

(5) Where a fact as referred to in paragraph (3) presents itself, the Patent Office shall as soon as possible make notification of it in the Journal referred to in Section 38.

(Patents Rules, as amended to 1991, Section 31E)

(ii) Restrictions Concerning the Furnishing of Samples

(1) Any person who is entitled in pursuance of Section 28A of the Patents Act of the Kingdom to inspection of the documents referred to in that Section in respect of a patent application or a patent may make a request for the furnishing of a sample of the culture of a microorganism, deposited pursuant to Section 22B(2) of the Patents Act of the Kingdom, to which that application or that patent is related.

(2) The request shall be addressed to the Patent Office by means of a form prescribed by the Patent Office. It shall be accompanied by a statement written by the person who makes the request declaring that he commits himself in respect of the deposited culture or a culture derived from it vis-à-vis the person who filed the patent application or the proprietor of the patent until the date on which it has become certain no patent will be granted on that patent application or, where a patent has been granted, for the period it remains in force:

(a) not to make it available to third parties;

(b) to use it exclusively for tests, unless the person who made the request uses the culture as the proprietor of a license ensuing from the provisions of Section 34 or Section 34B of the Patents Act of the Kingdom or as a person entitled to do so pursuant to Section 34A of the Patents Act of the Kingdom.

(3) The applicant for a patent may until the date on which the application is laid open to public inspection pursuant to Section 22C of the Patents Act of the Kingdom or, where this takes place on an earlier date, until the date of publication of the application pursuant to Section 25 of that Act of the Kingdom, notify the Patent Office on a form prescribed for the purpose by the Patent Office that until the date on which the patent is granted or until the date on which it is certain that no patent will be granted on the application, furnishing of samples

of the culture of a microorganism deposited by him in pursuance of paragraph (1) may only be performed to an expert designated by the person who made the request. The statement referred to in paragraph (2), second sentence shall be co-signed in that case by the relative expert.

(4) As an expert may be designated:

(a) any natural person relative to whom the person who makes the request proves on filing the request that the applicant for the patent has approved of his designation;

(b) any natural person acknowledged as an expert by the President of the Patent Office.

(5) By a derived culture shall be meant for the application of paragraph (2) any culture preserving the properties of the deposited culture essential for the carrying out of the invention. The commitments referred to in paragraph (2) shall not form an impediment for the deposit of a derived culture necessary for the procedure for the grant of a patent.

(6) The Patent Office shall send the request to the institution. At the same time the Patent Office shall mention whether a patent application containing notification of the deposit of the microorganism has been filed and whether the person who made the request is entitled to being furnished with a sample of that microorganism. The Patent Office shall send a copy of the request to the applicant for a patent or the proprietor of the patent.

(Patents Rules, as amended to 1991, Section 31F)