

AT – AUSTRIA

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1. Requirements for Deposit

If an invention relates to a biological material that is not accessible to the public, nor can be described in the application in a manner that a person skilled in the art is able to carry out the invention accordance therewith, of if the invention contains the use of such a biological material, the invention shall be regarded as disclosed only if

1. the biological material has been deposited at a place of deposit under the Budapest Treaty not later than on the day of filing,
2. the application contains the pertinent information on the characteristic features of the deposited biological material, that is known to the applicant, and
3. the place of deposit and the file number of the deposit have been specified in the application.

The information mentioned in subparagraph 3 can be filed subsequently either

1. within 16 months after the application date or, if a priority has been claimed, after the priority date, or
2. up to date of the filing of a request for publication of the application ahead of schedule, or
3. within one month after the Patent Office has informed the applicant that a right of inspection under to Section 81, paragraph (3), exists,

wherein it is relevant which term expires first.

(Patent Act of 1970, as amended in 2005, Section 87a (2) and (3))

2. Time of Deposit

The biological material must be deposited not later than the filing date of the patent application.

(Patent Law, Section 87a (2)1)

3. Duration of Storage

No provision.

4. Conditions for the Furnishing of Samples

Section 81a (1) Before the date of publication of the application any person who has the right of inspection of files shall be entitled to get a sample of a biological material deposited under Section 87a, paragraph (2), subparagraph 1. From the date of publication of the application any person who makes a respective request has this right. The access is granted being subject to paragraphs (2) and (3) by handing out a sample of the deposited biological material to the requesting party or an independent expert.

(2) The handing out only takes place if the requesting party obliges itself for the duration of the effect of the patent or until the application is withdrawn or rejected.

1. not to make available to third parties a sample of the biological material deposited or a material derived therefrom and
2. not to use a sample of the deposited biological material or a material derived therefrom for anything else but experimental purposes unless the applicant or the patentee explicitly renounces such an obligation.

(3) Until the completion of the technical preparation for the publication of the application the applicant may request that the access designated in paragraph (1) shall be granted only by handing out a sample to an independent expert.

1. until the grant of the patent or
2. in case of a withdrawal or rejection of the application for the duration of 20 years beginning with the application date.

- (4) As an expert as defined by paragraph (3)
1. any natural person, as far as the requestor proves, that the appointment happens with approval of the applicant,
 2. any natural person, who is acknowledged by the President of the Patent Office as expert and is registered in the expert register, which is maintained by the Patent Office

can be appointed. With the appointment a declaration of the expert shall be presented, in which he undertakes the obligations to the applicant under paragraph (2).

(Patent Act, Section 81a)