

CN – CHINA

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1. Requirements for Deposit

Where an invention for which a patent is applied for concerns a new biological material which is not available to the public and which cannot be described in the application in such a manner as to enable the invention to be carried out by a person skilled in the art, the applicant shall deposit a sample of the biological material with a depositary institution designed by the Patent Administration Department under the State Council.

The applicant shall be given, in the application document, relevant information of the characteristics of the biological material.

Where the application relates to the deposit of the biological material, the applicant shall indicate in the request and in the description the scientific name (with its Latin name) and the title and address of the depositary institution, the date on which the sample of the biological material was deposited and the accession number of the deposit; where, at the time of filing, they are not indicated, they shall be supplied within four months from the date of filing; where after the expiration of the time limit they are not supplied, the sample of the biological material shall be deemed not to have been deposited.

(Implementing Regulations of the Patent Law of 2001, Rule 25)

2. Time of Deposit

The deposit of a sample of the biological material with a depositary institution designated by the Patent Administration Department under the State Council shall be made before, or, at the latest, on the date of filing (or the priority date where priority is claimed). The applicant shall submit, at the time of filing, or at the latest, within four months from the filing date, a receipt of deposit and the viability proof from the depositary institution. Where the said information is not submitted within the specified time limit, the sample of the biological material shall be deemed not to have been deposited.

(Implementing Regulations of the Patent Law, Rule 25(1))

3. Duration of Storage

The biological material shall be stored for a period of at least 30 years from the date of deposit.

(Regulations on the Deposit of the Biological Material for the Purposes of Patent Procedure, Section 9; the Budapest Treaty, Rule 9(1))

4. Conditions for the Furnishing of Samples

Where the application for a patent for invention has deposited a sample of the biological material in accordance with the provision of Rule 25 of the Implementing Regulations, and after the application for patent for invention is published, any entity or individual that intends to make use of the biological material to which the application relates, for the purpose of experiment, shall make a request to the Patent Administration Department under the State Council, containing the following items:

1. the name and address of the requesting person;
2. an undertaking not to make the biological material available to any other person;
3. an undertaking to use the biological material for experimental purpose only before the grant of the patent right.

(Implementing Regulations, Rule 26)