

HU – HUNGARY

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1. Requirements for Deposit

If an invention involving the use of or concerning biological material which is not available to the public cannot be disclosed in the patent application as required in Article 60(1) of Act XXXIII of 1995 on the Protection of Inventions by Patents (herein after referred to as: Patents Act), it must be proved that the biological material has been deposited no later than the date of filing of the patent application under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

(Article 63(1) Patents Act)

2. Time of Deposit

The biological material shall be deposited no later than the date of filing of the patent application.

The proof that the biological material has been deposited shall be submitted within a period of 16 months after the date of the earliest priority.

(Article 63(1) and 63(3) Patents Act)

3. Duration of Storage

The National Collection of Agricultural and Industrial Microorganisms stores biological material for a period of at least five years after the most recent request for the furnishing of a sample of the deposited biological material was received by the said authority and, in any case, for a period of at least 30 years after the date of the deposit.

(Article 1(2) of the Government Decree 61/2006 (III. 23) in conjunction with Rule 9.1 of the Regulations under the Budapest Treaty)

4. Conditions for the Furnishing of Samples

(i) Time of Availability of Samples

Access to the deposited biological material shall be provided through the supply of a sample:

1. up to the publication of the patent application, to those persons who are authorized to inspect the files under the provisions of Article 53(1) Patents Act;
2. between the publication of the application and the granting of the patent, to anyone requesting it or, if the applicant so requests, only to an independent expert;
3. after the patent has been granted, and notwithstanding revocation or cancellation thereof, to anyone requesting it.

(Article 63(4) Patents Act)

(ii) Restrictions Concerning the Furnishing of Samples

The person to whom a sample has been supplied may not make the sample or any material derived from it available to third parties before the termination of the patent granting procedure or before the lapse of the definitive patent protection and, with the exception of a holder of a compulsory license, he may use the sample or any material derived from it only for experimental purposes, unless the applicant or the patentee expressly waives the prescription of such obligation. A material is deemed to be derived if it has those characteristics of the deposited biological material, which are essential to carry out the invention.

(Article 63(5) Patents Act)