

## MX – MEXICO

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### 1. Requirements for Deposit

The Federal Law on the Protection of Industrial Property (LFPPI) and the Regulations thereunder provide for the compulsory requirement of the deposit of biological material for the purposes of granting a patent. Mentions made in other provisions of the Industrial Property Law shall be understood to refer to the LFPPI.

The articles of the LFPPI and the Regulations thereunder, together with the requirements for deposits subject to national rules, are as follows:

#### Federal Law on the Protection of Industrial Property (LFPPI)

Article 94: The patent application shall contain:

IV.- The description, which must disclose the invention in a sufficiently clear and complete manner so that it can be carried out by a person skilled in the art, and the best method known to the applicant to put it into practice, as well as the information that supports the industrial applicability of the invention;

VIII.- The record of the deposit of the biological material at an institution recognized by the Institute, in accordance with the provisions of the International Treaties, when the invention refers to biological material not accessible to the public or to its use;

Article 98.- In the case that the invention refers to biological material not accessible to the public or to its use and it cannot be described in the patent application, it will be considered that the description is sufficiently clear and complete when the following requirements are met:

I.- The biological material has been deposited no later than the filing date of the patent application in a recognized institution, in accordance with the provisions of the International Treaties.

The international depository authorities that have acquired such a character, in terms of the International Treaties, will be considered recognized;

II.- The application, as it has been presented, contains the relevant information available to the applicant on the characteristics of the deposited biological material, and

III.- The name of the depository institution and its number be indicated.

#### Regulations under the Industrial Property Law<sup>1</sup>

Article 28: The description shall be drafted according to the following rules:

V. Where the deposit of biological material is required under the provisions of the second paragraph of Article 47.I<sup>2</sup> of the Law, it shall mention that the said deposit has been made and shall state the name and address of the depository institution, the date on which the deposit was made and the number allocated to it by the said institution, describing also, to the extent possible, the nature and characteristics of the deposited material in so far as they are relevant to the disclosure of the invention;

Article 34: The record of deposit of biological material referred to in the second paragraph of Article 47.I of the Law shall be submitted within six months following the date on which the applicant files the corresponding patent application, and the said applicant shall retain the right to the recognition by the Institute of the date and hour of the handing over of the application as the date and hour of filing, provided that the record of deposit shows that the deposit occurred prior to the date and hour of the handing over of the application, failing which the date on which the record was shown to the Institute shall be recognized as the filing date of the application

Where the applicant fails to show the record in the specified period, the application shall be considered abandoned.

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<sup>1</sup> The Regulations of the Industrial Property Law are applicable to the current LFPPI.

<sup>2</sup> Currently article 94 section IV and VIII of the LFPPI.

Article 35: For the purposes of the second paragraph of Article 47.I of the Law, the Institute shall accord recognition to institutions that have the character of international depository authorities for biological material, and also to national institutions, in accordance with internationally recognized criteria and rules.

The Institute shall publish a list of the institutions recognized under this Article in the *Diario Oficial de la Federación* (Official Journal of the Federation).

Article 37: For the purposes of the second paragraph of Article 47.I of the Law, a record of the deposit of biological material shall be required in the following cases:

- I. Where a microorganism is claimed in itself;
- II. Where the biological material referred to in the application is not publicly available, and
- III. Where a description that has been given of the biological material is insufficient for a person skilled in the art to reproduce it.

The only institutions recognized for the deposit of microorganisms for patent purposes are the international authorities for the deposit of biological material established under the Budapest Treaty.

## 2. Time of Deposit

The record of deposit of biological material must be submitted within six months of the date on which the applicant files the patent application. In such a case, the applicant retains the right to recognition by the Institute of the date and hour of handing over of the application as the date and hour of filing, provided that the deposit record establishes that said deposit was made prior to the date and hour of handing over of the patent application.

Where the deposit has not been made subject to the conditions referred to above, Article 34 of the Regulations under the Industrial Property Law states that the Institute shall recognize as the application filing date the date on which the corresponding record of deposit is shown to the Institute, i.e. that where the deposit is not handed over within six months of the application filing date, the legal application filing date changes to become the date on which the record of deposit of the biological material is shown.

Similarly, Article 34 of the Regulations under the Industrial Property Law states that where the applicant does not show the record of deposit within the prescribed deadlines, the application shall be considered abandoned.

No provisions exist in the Industrial Property Law or in the Regulations thereunder relating to the validity or lapse of the deposit during the period of validity of a patent. For such characteristics of validity or lapse the standards established by the Budapest Treaty, the Regulations thereunder and the Guides to the Deposit of Microorganisms under the Budapest Treaty therefore apply.

### 3. Duration of Storage

No provisions exist in the Industrial Property Law or in the Regulations thereunder in relation to the duration of storage of the “microorganism” deposited, for which reason the standards established by the Budapest Treaty, the Regulations thereunder and the Guides to the Deposit of Microorganisms under the Budapest Treaty shall apply for that purpose.

### 4. Conditions for the Furnishing of Samples

In order to satisfy the requirements for the furnishing of samples, information thereon and availability restrictions therefor, the standards established in the Budapest Treaty, the Regulations thereunder and the Guides to the deposit of Microorganisms under the Budapest Treaty shall apply.