

The Budapest Treaty and its importance for biotechnological inventions

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The main feature of the Treaty⁽¹⁾ that a contracting State which allows or requires the deposit of microorganisms for the purposes of patent procedure must recognize, for such purposes, the deposit of a microorganism with any "international depositary authority", irrespective of whether such authority is on or outside the territory of the said State.

Disclosure of the invention is a requirement for the grant of patents. Normally, an invention is disclosed by means of a written description. Where an invention involves a microorganism or the use of a microorganism, disclosure is not possible in writing but can only be effected by the deposit, with a specialized institution, of a sample of the microorganism. In practice, the term "microorganism" is interpreted in a broad sense, covering biological material the deposit of which is necessary for the purposes of disclosure, in particular regarding inventions relating to the food and pharmaceutical fields.

It is in order to eliminate the need to deposit in each country in which protection is sought, that the Treaty provides that the deposit of a microorganism with any "international depositary authority" suffices for the purposes of patent procedure before the national patent offices of all of the contracting States and before any regional patent office (if such a regional office declares that it recognizes the effects of the Treaty). The European Patent Office (EPO), the Eurasian Patent Organization (EAPO) and the African Regional Intellectual Property Organization (ARIPO) have made such declarations.

What the Treaty calls an "international depositary authority" is a scientific institution - typically a "culture collection" - which is capable of storing microorganisms. Such an institution acquires the status of "international depositary authority" through the furnishing by the contracting State in the territory of which it is located of assurances to the Director General of WIPO to the effect that the said institution complies and will continue to comply with certain requirements of the Treaty.

On August 1, 2010, there were 38 such authorities: seven in the United Kingdom, three in the Russian Federation and in the Republic of Korea, two each in Australia, China, Italy, Japan, Poland, Spain and the United States of America, and one each in Belgium, Bulgaria, Canada, the Czech Republic, France, Germany, Hungary, Latvia, India, the Netherlands and Slovakia.

The Treaty makes the patent system of the contracting State more attractive because it is primarily advantageous to the depositor if he is an applicant for patents in several contracting States; the deposit of a microorganism under the procedures provided for in the Treaty will save him money and increase his security. It will save him money because, instead of depositing the microorganism in each and every contracting State in which he files a patent application referring to that microorganism, he will deposit it only once, with one depositary authority. The Treaty increases the security of the depositor because it establishes a uniform system of deposit, recognition and furnishing of samples of microorganisms.

The Treaty does not provide for the institution of a budget but it does create a Union and an Assembly whose members are the States which are party to the Treaty. The main task of the Assembly is the amendment of the Regulations issued under the Treaty. No State can be requested to pay contributions to the International Bureau of WIPO on account of its membership in the Budapest Union or to establish an "international depositary authority".

The Budapest Treaty was concluded in 1977.

Key words: Budapest Treaty, Budapest Union, international depositary authority

References

- (1) Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. World Intellectual Property Organization, Geneva.
<http://www.wipo.int/treaties/en/registration/budapest/>