



# The Budapest Treaty



on the International Recognition of  
the Deposit of Microorganisms  
for the Purposes of  
Patent Procedure

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## Why a specific treaty ?

- Requirement of sufficient disclosure of the invention
- How to disclose a microorganism?
- Requirement of the deposit of the microorganism
- Usefulness of a single internationally recognized deposit

# What is a microorganism? (1)

- Microorganisms are microscopic organisms (e.g., bacteria, fungi, viruses and yeasts) which are used in the production of food (e.g., yogurt, beer), pharmaceuticals (e.g. antibiotics) and other products (e.g., washing powder)

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## What is a microorganism? (2)

- Definition in Concise Oxford Dictionary:  
« an organism not visible to the naked eye, e.g., bacterium or virus »

# Disclosure requirement

- Patent law protection requires the disclosure of inventions, usually by the publication of a description
- The public may use the information for experimental purposes (depending on the national patent law) and, once the patent has lapsed, for commercial purposes

# Disclosure of a microorganism

- Where an invention involves the use of or concerns a new microorganism which is not yet publicly available and which cannot be fully disclosed in the description, it is necessary to deposit a sample of that microorganism with a culture collection

# Multiplicity of deposits

- Many national laws require the deposit of microorganisms
- Complex and costly procedures for distinct deposits in various countries
- Necessity of rationalization at international level



# The Budapest Treaty

- Proposal by the United Kingdom to the Executive Committee of the Paris Union that WIPO study the possibilities of international treaty on deposits of microorganisms
- Decision to establish a Committee of Experts







## Committee of Experts

- The Committee held three sessions (in 1974, 1975 and 1976) and prepared a draft of a Treaty and Regulations to be submitted to a Diplomatic Conference



## Adoption and signature

- Diplomatic Conference, held in Budapest, April 14 to 28, 1977
- Adoption of the Treaty on April 28, 1977
- Signature by 18 States: AT, BG, CH, DE, DK, ES, FI, FR, HU, IT, LU, NL, NO, SE, SN, SU, UK, US

## Entry into force

- Ratification by Hungary, Bulgaria, the United States and France
- Entry into force on August 19, 1980, after the accession of Japan
- Today:
  - 73 Contracting States
  - 39 International Depositary Authorities (IDA)

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# Contracting States (1)

Albania, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, China, Costa Rica, Croatia, Cuba, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominican Republic, El Salvador, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxemburg, Mexico, Monaco,



## Declarations of acceptance (1)

have been deposited by the following intergovernmental industrial property organizations:

- European Patent Organisation (OEB)
- Eurasian Patent Organization (EAPO)
- African Regional Intellectual Property Organization (ARIPO)

## Declarations of acceptance (2)

- Article 9(1)(a):
  - recognition of deposit with any IDA (Art. 3(1)(a))
  - no additional requirements than those provided in the Budapest Treaty (Art. 3(2))
  - possibility to require a copy of the receipt of the deposit (Art. 3(1)(b))

# Principal characteristics of the Treaty

- All Contracting States recognize the deposit of a microorganism with any IDA
- Any deposit of a microorganism with an IDA shall be accepted for the purposes of patent procedure by the patent offices of the Contracting States and by any regional office who filed a declaration of acceptance



# International Depository Authority (1)

- A scientific institution
  - located on the territory of a Contracting State
  - accepting deposits of microorganisms
  - storage of microorganisms
  - furnishing samples of any deposited microorganism

## International Depository Authority (2)

- Status acquired after acceptance of communication from the Contracting State to the Director General of WIPO (Art. 7)

# IDA World Map



# The subject matter of the deposit

- The Treaty does not define the term microorganism thus allowing a broad interpretation of the term
- It includes unicellular and multicellular organisms, bacteria, fungi, plant, animal and human cell cultures, murine embryos, plasmids, DNA sequences, enzymes, seeds, etc.
- Today, the term « biological material » is more commonly used

# Deposit procedure

- Mandatory acceptance of the microorganism by the IDA when requirements for deposit are met
- Delivery of a receipt
- Time limit for the deposit: depends on the national law, in general, the filing date of the patent application
- Storage during at least 30 years

## Rule 11: Access to deposited biological material

- Any interested industrial property office
- The depositor or third parties authorized by the depositor
- Any parties legally entitled under the applicable legislation, with the prescribed form and certified by the industrial property office

## Some Statistical Data

- 69,546 microorganisms stored by IDAs from 1981 to 2009
- 3,114 deposits made in 2009
- 1,628 samples furnished in 2009

# Advantages of the Budapest Treaty (1)

- Simplification and cost reduction of patent procedures
- Prevention of certain risks in the field of biotechnology
- Promotion of R&D through access to deposited biological material
- Promotion of cooperation and exchange between IDAs



## Advantages of the Budapest Treaty (2)

- The Contracting States
  - must recognize the deposit with any IDA
  - must give the assurances that the IDAs fulfill the requirements of the Treaty
  - are not obliged to establish an IDA on their own territory
  - do not have to pay any financial contribution to WIPO

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# Documentation on the Treaty

- Budapest Treaty and its Regulations
- Guide to the Deposit of Microorganisms under the Budapest Treaty
- ([www.wipo.int/budapest](http://www.wipo.int/budapest))

## Some other useful texts

- Patent Cooperation Treaty (PCT), Rule 13bis
- European Patent Convention (EPC), Rules 31 - 34
- European Directive on the legal protection of biotechnological inventions (Directive 98/44/EC)
- TRIPS Agreement, Art. 27.3

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# Where to get information?

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