

No. 31699

MULTILATERAL

Budapest Treaty on the international recognition of the deposit of microorganisms for the purposes of patent procedure (with regulations). Concluded at Budapest on 28 April 1977

Amendments of the Regulations to the above-mentioned Treaty

Amendment to the above-mentioned Treaty

Authentic texts: English and French.

The Treaty and the certified statements were registered by the Director-General of the World Intellectual Property Organization, acting on behalf of the Parties, on 28 March 1995.

MULTILATÉRAL

Traité de Budapest sur la reconnaissance internationale du dépôt des micro-organismes aux fins de la procédure en matière de brevets (avec règlement d'exécution). Conclu à Budapest le 28 avril 1977

Amendements du Règlement d'exécution au Traité susmentionné

Amendement au Traité susmentionné

Textes authentiques : anglais et français.

Le Traité et les déclarations certifiées ont été enregistrés par le Directeur général de l'Organisation mondiale de la propriété intellectuelle, agissant au nom des Parties, le 28 mars 1995.

BUDAPEST TREATY¹ ON THE INTERNATIONAL RECOGNITION
OF THE DEPOSIT OF MICROORGANISMS FOR THE PUR-
POSES OF PATENT PROCEDURE

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* This Table of Contents does not appear in the original text.

¹ Came into force on 19 August 1980, i.e., three months after the date of deposit with the Director-General of the World Intellectual Property Organization of the fifth instrument of ratification or accession by a member State of the International (Paris) Union for the Protection of Industrial Property, in accordance with article 16 (1):

Date of deposit of the instrument of ratification or accession (a)			Date of deposit of the instrument of ratification or accession (a)		
Participant			Participant		
Bulgaria.....	19 July	1978	Japan	19 May	1980 a
France	21 February	1980	United States of America	24 September	1979
Hungary	11 July	1978			

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Subsequently, the Treaty came into force for the following States three months after the date of deposit with the Director-General of the World Intellectual Property Organization of their instrument of ratification or accession, in accordance with article 16 (2):

<i>Participant</i>	<i>Date of deposit of the instrument of ratification or accession (a)</i>	<i>Participant</i>	<i>Date of deposit of the instrument of ratification or accession (a)</i>
United Kingdom of Great Britain and Northern Ireland.....	29 September 1980	Netherlands	2 April 1987
(With effect from 29 December 1980.)		(For the Kingdom in Europe, the Netherlands Antilles and Aruba. With effect from 2 July 1987.)	
Germany, Federal Republic of.....	20 October 1980	Australia	7 April 1987 <i>a</i>
(With effect from 20 January 1981. With a declaration of application to Berlin (West).)		(With effect from 7 July 1987.)	
Spain.....	19 December 1980	Republic of Korea	28 December 1987 <i>a</i>
(With effect from 19 March 1981.)		(With effect from 28 March 1988.)	
Union of Soviet Socialist Republics*	22 January 1981	German Democratic Republic**	27 April 1989 <i>a</i>
(With effect from 22 April 1981.)		(With effect from 27 July 1989.)	
Switzerland.....	19 May 1981	Czechoslovakia	5 May 1989 <i>a</i>
(With effect from 19 August 1981.)		(With effect from 5 August 1989.)	
Liechtenstein.....	19 May 1981 <i>a</i>	Poland	22 June 1993 <i>a</i>
(With effect from 19 August 1981.)		(With effect from 22 September 1993.)	
Philippines	21 July 1981 <i>a</i>	Greece	30 July 1993 <i>a</i>
(With effect from 21 October 1981.)		(With effect from 30 October 1993.)	
Sweden.....	23 June 1983	Cuba	19 November 1993 <i>a</i>
(With effect from 1 October 1983.)		(With effect from 19 February 1994.)	
Belgium	15 September 1983 <i>a</i>	Yugoslavia.....	25 November 1993 <i>a</i>
(With effect from 15 December 1983.)		(With effect from 25 February 1994.)	
Austria	26 January 1984	Trinidad and Tobago	10 December 1993 <i>a</i>
(With effect from 26 April 1984.)		(With effect from 10 March 1994.)	
Denmark	1 April 1985	Latvia	29 September 1994 <i>a</i>
(With effect from 1 July 1985.)		(With effect from 29 December 1994.)	
Finland	1 June 1985	Singapore	23 November 1994 <i>a</i>
(With effect from 1 September 1985.)		(With effect from 23 February 1995.)	
Norway	1 October 1985	Iceland.....	23 December 1994 <i>a</i>
(With effect from 1 January 1986.)		(With effect from 23 March 1995.)	
Italy	23 December 1985		
(With effect from 23 March 1986.)			

* Continued by the Russian Federation as from 25 December 1991.

** Through the accession of the German Democratic Republic to the Federal Republic of Germany effective 3 October 1990, the German Democratic Republic ceased to be a Party to the above-mentioned Treaty.

In addition, the following notifications of succession were effected with the Director-General of the World Intellectual Property Organization on the dates indicated hereafter:

18 December 1992

Czech Republic
(With effect from 1 January 1993.)

30 December 1992

Slovakia
(With effect from 1 January 1993.)

14 February 1994

Republic of Moldova
Tajikistan
(With effect from 25 December 1991.)

Furthermore, the following declaration of acceptance under article 9(1) (a) was received by the Director-General of the World Intellectual Property Organization on the date indicated hereafter:

26 August 1980

European Patent Organization
(With effect from 26 November 1980.)

INTRODUCTORY PROVISIONS

Article 1**Establishment of a Union**

The States party to this Treaty (hereinafter called "the Contracting States") constitute a Union for the international recognition of the deposit of microorganisms for the purposes of patent procedure.

Article 2**Definitions**

For the purposes of this Treaty and the Regulations:

(i) references to a "patent" shall be construed as references to patents for inventions, inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, and utility certificates of addition;

(ii) "deposit of a microorganism" means, according to the context in which these words appear, the following acts effected in accordance with this Treaty and the Regulations; the transmittal of a microorganism to an international depositary authority, which receives and accepts it, or the storage of such a microorganism by the international depositary authority, or both the said transmittal and the said storage;

(iii) "patent procedure" means any administrative or judicial procedure relating to a patent application or a patent;

(iv) "publication for the purposes of patent procedure" means the official publication, or the official laying open for public inspection, of a patent application or a patent;

(v) "intergovernmental industrial property organization" means an organization that has filed a declaration under Article 9(1);

(vi) "industrial property office" means an authority of a Contracting State or an intergovernmental industrial property organization competent for the grant of patents;

(vii) "depositary institution" means an institution which provides for the receipt, acceptance and storage of microorganisms and the furnishing of samples thereof;

(viii) "international depositary authority" means a depositary institution which has acquired the status of international depositary authority as provided in Article 7;

(ix) "depositor" means the natural person or legal entity transmitting a microorganism to an international depositary authority, which receives and accepts it, and any successor in title of the said natural person or legal entity;

(x) "Union" means the Union referred to in Article 1;

(xi) "Assembly" means the Assembly referred to in Article 10;

(xii) "Organization" means the World Intellectual Property Organization;

(xiii) "International Bureau" means the International Bureau of the Organization and, as long as it subsists, the United International Bureaux for the Protection of Intellectual Property (BIRPI);

(xiv) "Director General" means the Director General of the Organization;

(xv) "Regulations" means the Regulations referred to in Article 12.

CHAPTER 1

SUBSTANTIVE PROVISIONS

Article 3**Recognition and Effect of the Deposit of Microorganisms**

(1) (a) Contracting States which allow or require the deposit of microorganisms for the purposes of patent procedure shall recognize, for such purposes, the deposit of a microorganism with any international depositary authority. Such recognition shall include the recognition of the fact and date of the deposit as indicated by the international depositary authority as well as the recognition of the fact that what is furnished as a sample is a sample of the deposited microorganism.

(b) Any Contracting State may require a copy of the receipt of the deposit referred to in subparagraph (a), issued by the international depositary authority.

(2) As far as matters regulated in this Treaty and the Regulations are concerned, no Contracting State may require compliance with requirements different from or additional to those which are provided in this Treaty and the Regulations.

Article 4**New Deposit**

(1) (a) Where the international depositary authority cannot furnish samples of the deposited microorganism for any reason, in particular,

(i) where such microorganism is no longer viable, or

(ii) where the furnishing of samples would require that they be sent abroad and the sending or the receipt of the samples abroad is prevented by export or import restrictions,

that authority shall, promptly after having noted its

inability to furnish samples, notify the depositor of such inability, indicating the cause thereof, and the depositor, subject to paragraph (2) and as provided in this paragraph, shall have the right to make a new deposit of the microorganism which was originally deposited.

(b) The new deposit shall be made with the international depositary authority with which the original deposit was made, provided that:

(i) it shall be made with another international depositary authority where the institution with which the original deposit was made has ceased to have the status of international depositary authority, either entirely or in respect of the kind of microorganism to which the deposited microorganism belongs, or where the international depositary authority with which the original deposit was made discontinues, temporarily or definitively, the performance of its functions in respect of deposited microorganisms;

(ii) it may be made with another international depositary authority in the case referred to in subparagraph (a) (ii).

(c) Any new deposit shall be accompanied by a statement signed by the depositor alleging that the newly deposited microorganism is the same as that originally deposited. If the allegation of the depositor is contested, the burden of proof shall be governed by the applicable law.

(d) Subject to subparagraphs (a) to (c) and (e), the new deposit shall be treated as if it had been made on the date on which the original deposit was made where all the preceding statements concerning the viability of the originally deposited microorganism indicated that the microorganism was viable and where the new deposit was made within three months after the date on which the depositor received the notification referred to in subparagraph (a).

(e) Where subparagraph (b) (i) applies and the depositor does not receive the notification referred to in subparagraph (a) within six months after the date on which the termination, limitation or discontinuance referred to in subparagraph (b) (i) was published by the International Bureau, the three-month time limit referred to in subparagraph (d) shall be counted from the date of the said publication.

(2) The right referred to in paragraph (1) (a) shall not exist where the deposited microorganism has been transferred to another international depositary authority as long as that authority is in a position to furnish samples of such microorganism.

Article 5

Export and Import Restrictions

Each Contracting State recognizes that it is highly desirable that, if and to the extent to which the export from or import into its territory of certain kinds of microorganisms is restricted, such restriction should apply to microorganisms deposited, or destined for deposit, under this Treaty only where the restriction is necessary in view of national security or the dangers for health or the environment.

Article 6

Status of International Depositary Authority

(1) In order to qualify for the status of international depositary authority, any depositary institution must be located on the territory of a Contracting State and must benefit from assurances furnished by that State to the effect that the said institution complies and will continue to comply with the requirements specified in paragraph (2). The said assurances may be furnished also by an intergovernmental industrial property organization; in that case, the depositary institution must be located on the territory of a State member of the said organization.

(2) The depositary institution must, in its capacity of international depositary authority:

(i) have a continuous existence;

(ii) have the necessary staff and facilities, as prescribed in the Regulations, to perform its scientific and administrative tasks under this Treaty;

(iii) be impartial and objective;

(iv) be available, for the purposes of deposit, to any depositor under the same conditions;

(v) accept for deposit any or certain kinds of microorganisms, examine their viability and store them, as prescribed in the Regulations;

(vi) issue a receipt to the depositor, and any required viability statement, as prescribed in the Regulations;

(vii) comply, in respect of the deposited microorganisms, with the requirement of secrecy, as prescribed in the Regulations;

(viii) furnish samples of any deposited microorganism under the conditions and in conformity with the procedure prescribed in the Regulations.