

1983-84

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

Presented and read a first time, 28 March 1984

(*Minister for Science and Technology*)

**A BILL**

FOR

**An Act to amend the *Patents Act 1952***

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**Short title, &c.**

1. (1) This Act may be cited as the *Patents Amendment Act 1984*.

5 (2) The *Patents Act 1952*<sup>1</sup> is in this Act referred to as the Principal Act.

**Commencement**

2. This Act shall come into operation on a date to be fixed by Proclamation.

**Interpretation**

3. Section 6 of the Principal Act is amended—

10 (a) by inserting after the definition of “Australia” the following definition:

“ ‘Budapest Treaty’ means the Budapest Treaty on the International Recognition of the Deposit of Micro Organisms for the purposes of Patent Procedure done at Budapest on 28 April 1977 (a copy of the English text of which is set out in Schedule 3), together with the Regulations annexed to that Treaty (a

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copy of the English text of which is also set out in Schedule 3) as affected by any amendments made under Article 12 of that Treaty;”;

- (b) by inserting after the definitions of “date of application” and “date of the application” the following definition: 5
- “ ‘depository institution’ means a body or institution that receives, accepts and stores micro-organisms and furnishes samples of micro-organisms;”;
- (c) by inserting after the definition of “exclusive licensee” the following definition: 10
- “ ‘international depository authority’ has the same meaning as in the Budapest Treaty;” and
- (d) by inserting after the definition of “prescribed court” the following definitions: 15
- “ ‘prescribed depository institution’ means—
- (a) an international depository authority, whether in or outside Australia; or
- (b) any other depository institution in Australia that is prescribed for the purposes of this paragraph;
- ‘rules relating to micro-organisms’ means such provisions of the Budapest Treaty, and such provisions made by or under regulations made in pursuance of paragraph 177 (1) (ae), as are applicable;” 20

### **Form of application**

4. Section 35 of the Principal Act is amended by adding at the end thereof the following sub-section: 25

“(5) Where, in relation to an application for a patent, a micro-organism is deposited with a prescribed depository institution for the purposes of section 40, there shall be lodged in accordance with the regulations such documents as are prescribed.” 30

### **Contents of specification**

5. (1) Section 40 of the Principal Act is amended by adding at the end thereof the following sub-sections:

- “(3) Where—
- (a) the invention involves the use, modification or cultivation of a micro-organism other than a micro-organism referred to in sub-section (4); 35
- (b) a person skilled in the art could not reasonably be expected to be able to perform the invention without having a sample of the micro-organism before commencing to perform the invention; and 40

(c) the micro-organism is not reasonably available to a person skilled in the art,

the requirements of sub-section (5) shall be satisfied in relation to the micro-organism, and if, and only if, those requirements are satisfied, the specification shall, for the purposes of this Act, be taken to comply with paragraph (1) (a) or (1A) (a), as the case may be, to the extent that it is required by that paragraph to describe the micro-organism.

“(4) To the extent that the invention is a micro-organism, then, if the requirements of sub-section (5) are satisfied in relation to the micro-organism, the specification shall, for the purposes of this Act, be taken to comply with paragraph (1) (a) or (1A) (a), as the case may be, to the extent that it is required by that paragraph to describe the micro-organism.

“(5) The requirements of this sub-section shall be taken to be satisfied in relation to a micro-organism to which a specification relates if, and only if—

- (a) the micro-organism was, on or before the date of lodgment of the specification, deposited with a prescribed depository institution in accordance with the rules relating to micro-organisms;
- (b) the specification includes, at that date, such relevant information on the characteristics of the micro-organism as is known to the applicant;
- (c) at all times since the expiration of the prescribed period commencing on that date, the specification has included the name of a prescribed depository institution from which samples of the micro-organism are obtainable as provided by the rules relating to micro-organisms, the date on which the relevant deposit was made and the file, accession or registration number of the deposit given by the institution;
- (d) at all times since the date of lodgment of the specification, authority by the applicant or the patentee, as the case may be, has been in force for the furnishing of samples of the micro-organism in accordance with those rules; and
- (e) at all times since the date of lodgment of the specification, samples of the micro-organism have been obtainable from a prescribed depository institution as provided by those rules.

“(6) For the purposes of sub-section (3), a micro-organism shall not be taken not to be reasonably available to a person by reason only that it is not so available in Australia.

“(7) Where—

- (a) at any time, the requirements of paragraph (5) (c), (d) or (e) in relation to a micro-organism cease to be satisfied (otherwise than by reason of the withdrawal of an authority referred to in paragraph (5) (d)); and
- (b) at a subsequent time, being a time within the appropriate prescribed period, steps have been taken in accordance with such provisions (if any) of the regulations as are applicable and, by reason of those steps,

if the period between those times were disregarded, those requirements would be satisfied at that subsequent time,

those requirements shall, for the purposes of this Act, be deemed to have been satisfied during the period between those times, and such provisions as are prescribed have effect for the protection or compensation of persons who availed themselves, or took definite steps by way of contract or otherwise to avail themselves, of the invention during the period between those times.”

(2) The amendments made by sub-section (1) apply in respect of a specification lodged after the commencement of this section.

### **Prohibition of publication of information with respect to inventions, &c.**

6. Section 131 of the Principal Act is amended—

(a) by inserting after sub-section (1) the following sub-section:

“(1A) Subject to any directions of the Minister, the Commissioner may, if it appears to him to be necessary or expedient to do so in the interests of the defence of the Commonwealth, by order in writing under his hand, prohibit or restrict access to a micro-organism deposited for the purposes of section 40 with a prescribed depository institution situated in Australia, whether generally or to a particular person or to the persons included in a class of persons.”;

(b) by adding at the end of sub-section (2) “or give a person access to a micro-organism in contravention of an order made under sub-section (1A)”;

(c) by inserting in sub-section (5) “, or the giving of access to a micro-organism,” after “an invention”; and

(d) by adding at the end thereof the following sub-section:

“(6) A reference in this section to giving access to a micro-organism includes a reference to furnishing a sample of the micro-organism.”.

7. After section 154 of the Principal Act the following section is inserted:

### **Micro-organisms ceasing to be reasonably available**

“154A. (1) Where—

(a) an application for a patent has been lodged, or a patent has been granted, for an invention referred to in paragraph 40 (3) (a);

(b) the micro-organism concerned was, at the date of lodgment of the complete specification or petty patent specification, as the case may be, reasonably available to a person skilled in the art, and, but for that fact, sub-section 40 (3) would have applied in relation to the invention; and

(c) the micro-organism concerned has since ceased to be so available,

a prescribed court or the Commissioner, on application made as prescribed, or the Commissioner, of his own motion, may declare that the specification does not comply with the requirements of section 40 unless the requirements of sub-section 40 (5) are satisfied in relation to the micro-organism, and this Act has effect accordingly.

5 “(2) Where a declaration is made under sub-section (1), sub-section 40 (5) applies as if the references in that sub-section to the date of lodgment of the specification were references to a date specified in the declaration for the purposes of this sub-section, but nothing in this sub-section shall be taken to limit the operation of section 160.

10 “(3) Where an application is made under sub-section (1) or the Commissioner proposes to make a declaration under that sub-section of his own motion, the applicant for the patent, or the patentee, as the case may be, shall be given notice, as prescribed, of the application or proposal, as the case may be, and is entitled to appear and be heard.

“(4) A declaration under this section by the Commissioner shall be made by notice in writing given to the applicant for the patent or to the patentee, as the case may be.

15 “(5) A person who obtains a declaration by a court under this section shall serve an office copy of the declaration on the Commissioner.”.

### Regulations

8. Section 177 of the Principal Act is amended—

(a) by inserting after paragraph (ad) the following paragraph:

“(ae) making provision for and in relation to—

20 (i) the deposit for the purposes of this Act, the Budapest Treaty, or both, of micro-organisms with prescribed depositary institutions and the storage and testing of, and furnishing of samples of, micro-organisms by those institutions;

25 (ii) the charging of fees by prescribed depositary institutions situated in Australia in relation to the matters described in sub-paragraph (i);

30 (iii) the making of reports by prescribed depositary institutions situated in Australia in relation to those matters;

(iv) the powers and functions of the Commissioner in relation to prescribed depositary institutions with respect to those matters; and

(v) otherwise giving effect to the Budapest Treaty;” and

35 (b) by adding at the end thereof the following sub-sections:

“(2) The regulations may make provision for matters referred to in paragraph (1) (ae) by empowering the Commissioner, on behalf of the Commonwealth, to enter into agreements with prescribed depositary institutions with respect to those matters.

40 “(3) Regulations made in pursuance of paragraph (1) (ae) and sub-section (2) may make different provision with respect to different matters or classes of matters dealt with by or under those regulations,

but this sub-section shall not be taken to limit a power to make regulations conferred by any other provision of this Act.”.

### **Addition of Schedule**

9. The Principal Act is amended by adding at the end thereof the Schedule set out in the Schedule to this Act.

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## **SCHEDULE**

Section 9

### **SCHEDULE TO BE INSERTED IN PRINCIPAL ACT**

“SCHEDULE 3

Section 6

### **BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICRO ORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE**

Budapest, 28 April 1977

#### **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 micro organisms 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 micro organism’ 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 micro organism to an international depositary authority, which receives and accepts it, or the storage of such a micro organism 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 organisation’ means an organisation 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 organisation competent for the grant of patents;
- (vii) ‘depositary institution’ means an institution which provides for the receipt, acceptance and storage of micro organisms 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 micro organism 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;

**SCHEDULE—continued**

- (xii) 'Organisation' means the World Intellectual Property Organisation;
- (xiii) 'International Bureau' means the International Bureau of the Organisation 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 Organisation;
- (xv) 'Regulations' means the Regulations referred to in Article 12.

**CHAPTER I**

**Substantive provisions**

Article 3

*Recognition and Effect of the Deposit of Micro organisms*

- (1) (a) Contracting States which allow or require the deposit of micro organisms for the purposes of patent procedure shall recognise, for such purposes, the deposit of a micro organism 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 micro organism.
- (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 micro organism for any reason, in particular,
  - (i) where such micro organism 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 micro organism 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 micro organism to which the deposited micro organism 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 micro organisms;
  - (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 micro organism 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 micro organism indicated that the micro organism 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.

**SCHEDULE—continued**

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

**Article 5***Export and Import Restrictions*

Each Contracting State recognises 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 micro organisms 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 organisation; in that case, the depositary institution must be located on the territory of a state member of the said organisation.

(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 micro organisms, 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 micro organisms, with the requirement of secrecy, as prescribed in the Regulations;
- (viii) furnish samples of any deposited micro organism under the conditions and in conformity with the procedure prescribed in the Regulations.

(3) The Regulations shall provide the measures to be taken:

- (i) where an international depositary authority discontinues, temporarily or definitively, the performance of its functions in respect of deposited micro organisms or refuses to accept any of the kinds of micro organisms which it should accept under the assurances furnished;
- (ii) in case of the termination or limitation of the status of international depositary authority of an international depositary authority.

**Article 7***Acquisition of the Status of International Depositary Authority*

(1) (a) A depositary institution shall acquire the status of international depositary authority by virtue of a written communication addressed to the Director General by the Contracting State on the territory of which the depositary institution is located and including a declaration of assurances to the effect that the said institution complies and will continue to comply with the requirements specified in Article 6 (2). The said status may be acquired also by virtue of a written communication addressed to the Director General by an intergovernmental industrial property organisation and including the said declaration.

(b) The communication shall also contain information on the depositary institution as provided in the Regulations and may indicate the date on which the status of international depositary authority should take effect.

(2) (a) If the Director General finds that the communication includes the required declaration and that all the required information has been received, the communication shall be promptly published by the International Bureau.

(b) The status of international depositary authority shall be acquired as from the date of publication of the communication or, where a date has been indicated under paragraph



**SCHEDULE—continued**

- (1) (b) and such date is later than the date of publication of the communication, as from such date.
- (3) The details of the procedure under paragraphs (1) and (2) are provided in the Regulations.

**Article 8**

*Termination and Limitation of the Status of International Depository Authority*

- (1) (a) Any Contracting State or any intergovernmental industrial property organisation may request the Assembly to terminate, or to limit to certain kinds of micro organisms, any authority's status of international depository authority on the ground that the requirements specified in Article 6 have not been or are no longer complied with. However, such a request may not be made by a Contracting State or intergovernmental industrial property organisation in respect of an international depository authority for which it has made the declaration referred to in Article 7 (1) (a).
- (b) Before making the request under subparagraph (a), the Contracting State or the intergovernmental industrial property organisation shall, through the intermediary of the Director General, notify the reasons for the proposed request to the Contracting State or the intergovernmental industrial property organisation which has made the communication referred to in Article 7 (1) so that that State or organisation may, within six months from the date of the said notification, take appropriate action to obviate the need for making the proposed request.
- (c) Where the Assembly finds that the request is well founded, it shall decide to terminate, or to limit to certain kinds of micro organisms, the status of international depository authority of the authority referred to in subparagraph (a). The decision of the Assembly shall require that a majority of two-thirds of the votes cast be in favour of the request.
- (2) (a) The Contracting State or intergovernmental industrial property organisation having made the declaration referred to in Article 7 (1) (a) may, by a communication addressed to the Director General, withdraw its declaration either entirely or in respect only of certain kinds of micro organisms and in any event shall do so when and to the extent that its assurances are no longer applicable.
- (b) Such a communication shall, from the date provided for in the Regulations, entail, where it relates to the entire declaration, the termination of the status of international depository authority or, where it relates only to certain kinds of micro organisms, a corresponding limitation of such status.
- (3) The details of the procedure under paragraphs (1) and (2) are provided in the Regulations.

**Article 9**

*Intergovernmental Industrial Property Organisations*

- (1) (a) Any intergovernmental organisation to which several States have entrusted the task of granting regional patents and of which all the member States are members of the International (Paris) Union for the Protection of Industrial Property may file with the Director General a declaration that it accepts the obligation of recognition provided for in Article 3 (1) (a), the obligation concerning the requirements referred to in Article 3 (2) and all the effects of the provisions of this Treaty and the Regulations applicable to intergovernmental industrial property organisations. If filed before the entry into force of this Treaty according to Article 16 (1), the declaration referred to in the preceding sentence shall become effective on the date of the said entry into force. If filed after such entry into force, the said declaration shall become effective three months after its filing unless a later date has been indicated in the declaration. In the latter case, the declaration shall take effect on the date thus indicated.
- (b) The said organisation shall have the right provided for in Article 3 (1) (b).
- (2) Where any provision of this Treaty or of the Regulations affecting intergovernmental industrial property organisations is revised or amended, any intergovernmental industrial property organisation may withdraw its declaration referred to in paragraph (1) by notification addressed to the Director General. The withdrawal shall take effect:
- (i) where the notification has been received before the date on which the revision or amendment enters into force, on that date;
- (ii) where the notification has been received after the date referred to in (i), on the date indicated in the notification or, in the absence of such indication, three months after the date on which the notification was received.
- (3) In addition to the case referred to in paragraph (2), any intergovernmental industrial property organisation may withdraw its declaration referred to in paragraph (1) (a) by notification addressed to

**SCHEDULE—continued**

the Director General. The withdrawal shall take effect two years after the date on which the Director General has received the notification. No notification of withdrawal under this paragraph shall be receivable during a period of five years from the date on which the declaration took effect.

(4) The withdrawal referred to in paragraph (2) or (3) by an intergovernmental industrial property organisation whose communication under Article 7 (1) has led to the acquisition of the status of international depositary authority by a depositary institution shall entail the termination of such status one year after the date on which the Director General has received the notification of withdrawal.

(5) Any declaration referred to in paragraph (1) (a), notification of withdrawal referred to in paragraph (2) or (3), assurances furnished under Article 6 (1), second sentence, and included in a declaration made in accordance with Article 7 (1) (a), request made under Article 8 (1) and communication of withdrawal referred to in Article 8 (2) shall require the express previous approval of the supreme governing organ of the intergovernmental industrial property organisation whose members are all the States members of the said organisation and in which decisions are made by the official representatives of the governments of such States.

**CHAPTER II****Administrative provisions****Article 10***Assembly*

- (1) (a) The Assembly shall consist of the Contracting States.
    - (b) Each Contracting State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.
    - (c) Each intergovernmental industrial property organisation shall be represented by special observers in the meetings of the Assembly and any committee and working group established by the Assembly.
    - (d) Any State not member of the Union which is a member of the Organisation or of the International (Paris) Union for the Protection of Industrial Property and any intergovernmental organisation specialised in the field of patents other than an intergovernmental industrial property organisation as defined in Article 2 (v) may be represented by observers in the meetings of the Assembly and, if the Assembly so decides, in the meetings of any committee or working group established by the Assembly.
  - (2) (a) The Assembly shall:
    - (i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Treaty;
    - (ii) exercise such rights and perform such tasks as are specially conferred upon it or assigned to it under this Treaty;
    - (iii) give directions to the Director General concerning the preparations for revision conferences;
    - (iv) review and approve the reports and activities of the Director General concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;
    - (v) establish such committees and working groups as it deems appropriate to facilitate the work of the Union;
    - (vi) determine, subject to paragraph (1) (d), which States other than Contracting States, which intergovernmental organisations other than intergovernmental industrial property organisations as defined in Article 2 (v) and which international non-governmental organisations shall be admitted to its meetings as observers and to what extent international depositary authorities shall be admitted to its meetings as observers;
    - (vii) take any other appropriate action designed to further the objectives of the Union;
    - (viii) perform such other functions as are appropriate under this Treaty.
  - (b) With respect to matters which are of interest also to other Unions administered by the Organisation, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organisation.
- (3) A delegate may represent, and vote in the name of, one State only.
  - (4) Each Contracting State shall have one vote.

**SCHEDULE—continued**

- (5) (a) One-half of the Contracting States shall constitute a quorum.
- (b) In the absence of the quorum, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the quorum and the required majority are attained through voting by correspondence as provided in the Regulations.
- (6) (a) Subject to Articles 8 (1) (c), 12 (4) and 14 (2) (b), the decisions of the Assembly shall require a majority of the votes cast.
- (b) Abstentions shall not be considered as votes.
- (7) (a) The Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the General Assembly of the Organisation.
- (b) The Assembly shall meet in extraordinary session upon convocation by the Director General, either on his own initiative or at the request of one-fourth of the Contracting States.
- (8) The Assembly shall adopt its own rules of procedure.

Article 11

*International Bureau*

- (1) The International Bureau shall:
  - (i) perform the administrative tasks concerning the Union, in particular such tasks as are specifically assigned to it under this Treaty and the Regulations or by the Assembly;
  - (ii) provide the secretariat of revision conferences, of the Assembly, of committees and working groups established by the Assembly, and of any other meeting convened by the Director General and dealing with matters of concern to the Union.
- (2) The Director General shall be the chief executive of the Union and shall represent the Union.
- (3) The Director General shall convene all meetings dealing with matters of concern to the Union.
- (4) (a) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly, and any other meeting convened by the Director General and dealing with matters of concern to the Union.
- (b) The Director General, or a staff member designated by him, shall be ex officio secretary of the Assembly, and of the committees, working groups and other meetings referred to in subparagraph (a).
- (5) (a) The Director General shall, in accordance with the directions of the Assembly, make the preparations for revision conference.
- (b) The Director General may consult with intergovernmental and international non-governmental organisations concerning the preparations for revision conferences.
- (c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conference.
- (d) The Director General, or a staff member designated by him, shall be ex officio secretary of any revision conference.

Article 12

*Regulations*

- (1) The Regulations provide rules concerning:
  - (i) matters in respect of which this Treaty expressly refers to the Regulations or expressly provides that they are or shall be prescribed;
  - (ii) any administrative requirements, matters or procedures;
  - (iii) any details useful in the implementation of this Treaty.
- (2) The Regulations adopted at the same time as this Treaty are annexed to this Treaty.
- (3) The Assembly may amend the Regulations.
- (4) (a) Subject to subparagraph (b), adoption of any amendment of the Regulations shall require two-thirds of the votes cast.
- (b) Adoption of any amendment concerning the furnishing of samples of deposited micro organisms by the international depositary authorities shall require that no Contracting State vote against the proposed amendment.

**SCHEDULE—continued**

(5) In the case of conflict between the provisions of this Treaty and those of the Regulations, the provisions of this Treaty shall prevail.

**CHAPTER III****Revision and amendment**

## Article 13

*Revision of the Treaty*

- (1) This Treaty may be revised from time to time by conferences of the Contracting States.
- (2) The convocation of any revision conference shall be decided by the Assembly.
- (3) Articles 10 and 11 may be amended either by a revision conference or according to Article 14.

## Article 14

*Amendment of Certain Provisions of the Treaty*

- (1) (a) Proposals under this Article for the amendment of Articles 10 and 11 may be initiated by any Contracting State or by the Director General.
  - (b) Such proposals shall be communicated by the Director General to the Contracting States at least six months in advance of their consideration by the Assembly.
- (2) (a) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly.
  - (b) Adoption of any amendment to Article 10 shall require four-fifths of the votes cast; adoption of any amendment to Article 11 shall require three-fourths of the votes cast.
- (3) (a) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the Contracting States members of the Assembly at the time the Assembly adopted the amendment.
  - (b) Any amendment to the said Articles thus accepted shall bind all the Contracting States which were Contracting States at the time the amendment was adopted by the Assembly, provided that any amendment creating financial obligations for the said Contracting States or increasing such obligations shall bind only those Contracting States which have notified their acceptance of such amendment.
  - (c) Any amendment which has been accepted and which has entered into force in accordance with subparagraph (a) shall bind all States which become Contracting States after the date on which the amendment was adopted by the Assembly.

**CHAPTER IV****Final Provisions**

## Article 15

*Becoming party to the Treaty*

- (1) Any State member of the International (Paris) Union for the Protection of Industrial Property may become party to this Treaty by:
  - (i) signature followed by the deposit of an instrument of ratification, or
  - (ii) deposit of an instrument of accession.
- (2) Instruments of ratification or accession shall be deposited with the Director General.

## Article 16

*Entry Into Force of the Treaty*

- (1) This Treaty shall enter into force, with respect to the first five States which have deposited their instruments of ratification or accession, three months after the date on which the fifth instrument of ratification or accession has been deposited.
- (2) This Treaty shall enter into force with respect to any other State three months after the date on which that State has deposited its instrument of ratification or accession unless a later date has been indicated in the instrument of ratification or accession. In the latter case, this Treaty shall enter into force with respect to that State on the date thus indicated.

## SCHEDULE—continued

### Article 17

#### *Denunciation of the Treaty*

- (1) Any Contracting State may denounce this Treaty by notification addressed to the Director General.
- (2) Denunciation shall take effect two years after the day on which the Director General has received the notification.
- (3) The right of denunciation provided for in paragraph (1) shall not be exercised by any Contracting State before the expiration of five years from the date on which it becomes party to this Treaty.
- (4) The denunciation of this Treaty by a Contracting State that has made a declaration referred to in Article 7 (1) (a) with respect to a depositary institution which thus acquired the status of international depositary authority shall entail the termination of such status one year after the day on which the Director General received the notification referred to in paragraph (1).

### Article 18

#### *Signature and Languages of the Treaty*

- (1) (a) This Treaty shall be signed in a single original in the English and French languages, both texts being equally authentic.
  - (b) Official texts of this Treaty shall be established by the Director General, after consultation with the interested Governments and within two months from the date of signature of this Treaty, in the other languages in which the Convention Establishing the World Intellectual Property Organization was signed.
  - (c) Official texts of this Treaty shall be established by the Director General, after consultation with the interested Governments, in the Arabic, German, Italian, Japanese and Portuguese languages, and such other languages as the Assembly may designate.
- (2) This Treaty shall remain open for signature at Budapest until 31 December, 1977.

### Article 19

#### *Deposit of the Treaty; Transmittal of Copies; Registration of the Treaty*

- (1) The original of this Treaty, when no longer open for signature, shall be deposited with the Director General.
- (2) The Director General shall transmit two copies, certified by him, of this Treaty and the Regulations to the Governments of all the States referred to in Article 15 (1), to the intergovernmental organisations that may file a declaration under Article 9 (1) (a) and, on request, to the Government of any other State.
- (3) The Director General shall register this Treaty with the Secretariat of the United Nations.
- (4) The Director General shall transmit two copies, certified by him, of any amendment to this Treaty and to the Regulations to all Contracting States, to all intergovernmental industrial property organisations and, on request, to the government of any other State and to any other intergovernmental organisation that may file a declaration under Article 9 (1) (a).

### Article 20

#### *Notifications*

The Director General shall notify the Contracting States, the intergovernmental industrial property organisations and those States not members of the Union which are members of the International (Paris) Union for the Protection of Industrial Property of:

- (i) signatures under Article 18;
- (ii) deposits of instruments of ratification or accession under Article 15 (2);
- (iii) Declarations filed under Article 9 (1) (a) and notifications of withdrawal under Article 9 (2) or (3);
- (iv) the date of entry into force of this Treaty under Article 16 (1);
- (v) the communications under Articles 7 and 8 and the decisions under Article 8;
- (vi) acceptance of amendments to this Treaty under Article 14 (3);
- (vii) any amendment of the Regulations;
- (viii) the dates on which amendments to the Treaty or the Regulations enter into force;
- (ix) denunciations received under Article 17.

**SCHEDULE—continued****REGULATIONS UNDER THE BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICRO ORGANISMS FOR THE PURPOSE OF PATENT PROCEDURE****Rule 1***Abbreviated Expressions and Interpretation of the Word 'Signature'***1.1 'Treaty'**

In these Regulations, the word 'Treaty' means the Budapest Treaty on the International Recognition of the Deposit of Micro organisms for the Purposes of Patent Procedure.

**1.2 'Article'**

In these Regulations, the word 'Article' refers to the specified Article of the Treaty.

**1.3 'Signature'**

In these Regulations, whenever the word 'signature' is used, it shall be understood that, where the law of the State on the territory of which an international depositary authority is located requires the use of a seal instead of a signature, the said word shall mean 'seal' for the purposes of that authority.

**Rule 2***International Depositary Authorities***2.1 Legal Status**

Any international depositary authority may be a government agency, including any public institution attached to a public administration other than the central government, or a private entity.

**2.2 Staff and facilities**

The requirements referred to in Article 6 (2) (ii) shall include in particular the following:

- (i) the staff and facilities of any international depositary authority must enable the said authority to store the deposited micro organisms in a manner which ensures that they are kept viable and uncontaminated;
- (ii) any international depositary authority must, for the storage of micro organisms, provide for sufficient safety measures to minimize the risk of losing micro organisms deposited with it.

**2.3 Furnishing of Samples**

The requirements referred to in Article 6 (2) (viii) shall include in particular the requirement that any international depositary authority must furnish samples of deposited micro organisms in an expeditious and proper manner.

**Rule 3***Acquisition of the Status of International Depositary Authority***3.1 Communication**

(a) The communication referred to in Article 7 (1) shall be addressed to the Director General, in the case of a Contracting State, through diplomatic channels or, in the case of an intergovernmental industrial property organisation, by its chief executive officer.

(b) The communication shall:

- (i) indicate the name and address of the depositary institution to which the communication relates;
- (ii) contain detailed information as to the said institution's capacity to comply with the requirements specified in Article 6 (2), including information on its legal status, scientific standing, staff and facilities;
- (iii) where the said depositary institution intends to accept for deposit only certain kinds of micro organisms, specify such kinds;
- (iv) indicate the amount of any fees that the said institution will, upon acquiring the status of international depositary authority, charge for storage, viability statements and furnishing of samples of micro organisms;
- (v) indicate the official language or languages of the said institution;
- (vi) where applicable, indicate the date referred to in Article 7 (1) (b).

## SCHEDULE—continued

### 3.2 *Processing of the Communication*

If the communication complies with Article 7 (1) and Rule 3.1, it shall be promptly notified by the Director General to all Contracting States and intergovernmental industrial property organisations and shall be promptly published by the International Bureau.

### 3.3 *Extension of the List of Kinds of Micro organisms Accepted*

The Contracting State or intergovernmental industrial property organisation having made the communication referred to in Article 7 (1) may, at any time thereafter, notify the Director General that its assurances are extended to specified kinds of microorganisms to which, so far, the assurances have not extended. In such a case, and as far as the additional kinds of microorganisms are concerned, Article 7 and Rules 3.1 and 3.2 shall apply, *mutatis mutandis*.

## Rule 4

### *Termination or Limitation of the Status of International Depositary Authority*

#### 4.1 *Request; Processing of Request*

(a) The request referred to in Article 8 (1) (a) shall be addressed to the Director General as provided in Rule 3.1 (a).

(b) The request shall:

- (i) indicate the name and address of the international depositary authority concerned;
- (ii) where it relates only to certain kinds of micro organisms, specify such kinds;
- (iii) indicate in detail the facts on which it is based.

(c) If the request complies with paragraphs (a) and (b), it shall be promptly notified by the Director General to all Contracting States and intergovernmental industrial property organisations.

(d) Subject to paragraph (e), the Assembly shall consider the request not earlier than six and not later than eight months from the notification of the request.

(e) Where, in the opinion of the Director General, respect of the time limit provided for in paragraph (d) could endanger the interests of actual or potential depositors, he may convene the Assembly for a date earlier than the date of the expiration of the six-month period provided for in paragraph (d).

(f) If the Assembly decides to terminate, or to limit to certain kinds of micro organisms, the status of international depositary authority, the said decision shall become effective three months after the date on which it was made.

#### 4.2 *Communication; Effective Date; Processing of Communication*

(a) The communication referred to in Article 8 (2) (a) shall be addressed to the Director General as provided in Rule 3.1 (a).

(b) The communication shall:

- (i) indicate the name and address of the international depositary authority concerned;
- (ii) where it relates only to certain kinds of micro organisms, specify such kinds;
- (iii) where the Contracting State or intergovernmental industrial property organisation making the communication desires that the effects provided for in Article 8 (2) (b) take place on a date later than at the expiration of three months from the date of the communication, indicate that later date.

(c) Where paragraph (b) (iii) applies, the effects provided for in Article 8 (2) (b) shall take place on the date indicated under that paragraph in the communication; otherwise, they shall take place at the expiration of three months from the date of the communication.

(d) The Director General shall promptly notify all Contracting States and intergovernmental industrial property organisations of any communication received under Article 8 (2) and of its effective date under paragraph (c). A corresponding notice shall be promptly published by the International Bureau.

#### 4.3 *Consequences for Deposits*

In the case of a termination or limitation of the status of international depositary authority under Articles 8 (1), 8 (2), 9 (4) or 17 (4), Rule 5.1 shall apply, *mutatis mutandis*.

**SCHEDULE—continued****Rule 5***Defaults by the International Depositary Authority***5.1 Discontinuance of Performance of Functions in Respect of Deposited Micro organisms**

(a) If any international depositary authority temporarily or definitively discontinues the performance of any of the tasks it should perform under the Treaty and these Regulations in relation to any micro organisms deposited with it, the Contracting State or intergovernmental industrial property organisation which, in respect of that authority, has furnished the assurances under Article 6 (1) shall:

- (i) ensure, to the fullest extent possible, that samples of all such micro organisms are transferred promptly and without deterioration or contamination from the said authority ('the defaulting authority') to another international depositary authority ('the substitute authority');
- (ii) ensure, to the fullest extent possible, that all mail or other communications addressed to the defaulting authority, and all files and other relevant information in the possession of that authority, in respect of the said micro organisms are promptly transferred to the substitute authority;
- (iii) ensure, to the fullest extent possible, that the defaulting authority promptly notifies all depositors affected of the discontinuance of the performance of its functions and the transfers effected;
- (iv) promptly notify the Director General of the fact and the extent of the discontinuance in question and of the measures which have been taken by the said Contracting State or intergovernmental industrial property organisation under (i) to (iii).

(b) The Director General shall promptly notify the Contracting States and the intergovernmental industrial property organisations as well as the industrial property offices of the notification received under paragraph (a) (iv); the notification of the Director General and the notification received by him shall be promptly published by the International Bureau.

(c) Under the applicable patent procedure it may be required that the depositor shall, promptly after receiving the receipt referred to in Rule 7.5, notify to any industrial property office with which a patent application was filed with reference to the original deposit the new accession number given to the deposit by the substitute authority.

(d) The substitute authority shall retain in an appropriate form the accession number given by the defaulting authority, together with the new accession number.

(e) In addition to any transfer effected under paragraph (a) (i), the defaulting authority shall, upon request by the depositor, transfer a sample of any micro organism deposited with it to any international depositary authority indicated by the depositor other than the substitute authority, provided that the depositor pays any expenses to the defaulting authority resulting from the transfer of that sample. The depositor shall pay the fee for the storage of the said sample to the international depositary authority indicated by him.

(f) On the request of any depositor affected, the defaulting authority shall retain, as far as possible, samples of the micro organisms deposited with it.

**5.2 Refusal to Accept Certain Kinds of Micro organisms**

(a) If any international depositary authority refuses to accept for deposit any of the kinds of micro organisms which it should accept under the assurances furnished, the Contracting State or intergovernmental industrial property organisation which, in respect of that authority, has made the declaration referred to in Article 7 (1) (a) shall promptly notify the Director General of the relevant facts and the measures which have been taken.

(b) The Director General shall promptly notify the other Contracting States and intergovernmental industrial property organisations of the notification received under paragraph (a); the notification of the Director General and the notification received by him shall be promptly published by the International Bureau.

**Rule 6***Making the Original Deposit or New Deposit***6.1 Original Deposit**

(a) The micro organism transmitted by the depositor to the international depositary authority shall, except where Rule 6.2 applies, be accompanied by a written statement bearing the signature of the depositor and containing:

- (i) an indication that the deposit is made under the Treaty;



**SCHEDULE—continued**

- (ii) the name and address of the depositor;
  - (iii) details of the conditions necessary for the cultivation of the micro organism, for its storage and for testing its viability and also, where a mixture of micro organisms is deposited, descriptions of the components of the mixture and at least one of the methods permitting the checking of their presence;
  - (iv) an identification reference (number, symbols, etc.) given by the depositor to the micro organism;
  - (v) an indication of the properties of the micro organism which the international depositary authority cannot be expected to foresee but which are dangerous to health or the environment, particularly in the case of new micro organisms.
- (b) It is strongly recommended that the written statement referred to in paragraph (a) should contain the scientific description and/or proposed taxonomic designation of the deposited micro organism.

**6.2 New Deposit**

(a) Subject to paragraph (b), in the case of a new deposit made under Article 4, the micro organism transmitted by the depositor to the international depositary authority shall be accompanied by a copy of the receipt of the original deposit, a copy of the most recent statement concerning the viability of the micro organism originally deposited indicating that the micro organism is viable and a written statement bearing the signature of the depositor and containing:

- (i) the indications referred to in Rule 6.1 (a) (i) to (v);
  - (ii) a declaration stating the reason relevant under Article 4 (1) (a) for making the new deposit, the statement required under Article 4 (1) (c), and, where applicable, an indication of the date relevant under Article 4 (1) (e);
  - (iii) where a scientific description and/or proposed taxonomic designation was/were indicated in connection with the original deposit, the most recent scientific description and/or proposed taxonomic designation as existing on the date relevant under Article 4 (1) (e).
- (b) Where the new deposit is made with the international depositary authority with which the original deposit was made, paragraph (a) (i) shall not apply.

**6.3 Requirements of the International Depositary Authority**

- (a) Any international depositary authority may require that the micro organism be deposited in the form and quantity necessary for the purposes of the Treaty and these Regulations and be accompanied by a form established by such authority and duly completed by the depositor for the purposes of the administrative procedures of such authority.
- (b) Any international depositary authority shall communicate any such requirements and any amendments thereof to the International Bureau.

**Rule 7**  
**Receipt**

**7.1 Issuance of Receipt**

The international depositary authority shall issue to the depositor, in respect of each deposit of micro organism effected with it or transferred to it, a receipt in attestation of the fact that it has received and accepted the micro organism.

**7.2 Form; Languages; Signature**

- (a) Any receipt referred to in Rule 7.1 shall be established on a form called an 'international form,' a model of which shall be established by the Director General in those languages which the Assembly shall designate.
- (b) Any words or letters filled in in the receipt in characters other than those of the Latin alphabet shall also appear therein transliterated in characters of the Latin alphabet.
- (c) The receipt shall bear the signature of the person or persons having the power to represent the international depositary authority or that of any other official of that authority duly authorised by the said person or persons.

**7.3 Contents in the Case of the Original Deposit**

Any receipt referred to in Rule 7.1 and issued in the case of an original deposit shall indicate that it is issued by the depositary institution in its capacity of international depositary authority under the Treaty and shall contain at least the following indications:

**SCHEDULE—continued**

- (i) the name and address of the international depositary authority;
- (ii) the name and address of the depositor;
- (iii) the date of receipt of the micro organism by the international depositary authority;
- (iv) the identification reference (number, symbols, etc.) given by the depositor to the micro organism;
- (v) the accession number given by the international depositary authority to the deposit;
- (vi) where the written statement referred to in Rule 6.1 (a) contains the scientific description and/or proposed taxonomic designation of the micro organism, a reference to that fact.

**7.4 Contents in the Case of the New Deposit**

Any receipt referred to in Rule 7.1 and issued in the case of a new deposit effected under Article 4 shall be accompanied by a copy of the receipt of the original deposit and a copy of the most recent statement concerning the viability of the micro organism originally deposited indicating that the micro organism is viable, and shall at least contain:

- (i) the indications referred to in Rule 7.3 (i) to (v);
- (ii) an indication of the relevant reason and, where applicable, the relevant date as stated by the depositor in accordance with Rule 6.2 (a) (ii);
- (iii) where Rule 6.2 (a) (iii) applies, a reference to the fact that a scientific description and/or a proposed taxonomic designation has/have been indicated by the depositor;
- (iv) the accession number given to the original deposit.

**7.5 Receipt in the Case of Transfer**

The international depositary authority to which samples of micro organisms are transferred under Rule 5.1 (a) (i) shall issue to the depositor, in respect of each deposit in relation with which a sample is transferred, a receipt indicating that it is issued by the depositary institution in its capacity of international depositary authority under the Treaty and containing at least:

- (i) the indications referred to in Rule 7.3 (i) to (v);
- (ii) the name and address of the international depositary authority from which the transfer was effected;
- (iii) the accession number given by the international depositary authority from which the transfer was effected.

**7.6 Communication of the Scientific Description and/or Proposed Taxonomic Designation**

On request of any party entitled to receive a sample of the deposited micro organism under Rules 11.1, 11.2 or 11.3, the international depositary authority shall communicate to such party the scientific description and/or proposed taxonomic designation referred to in Rules 7.3 (vi) or 7.4 (iii).

**Rule 8*****Later Indication or Amendment of the Scientific Description and/or Proposed Taxonomic Designation*****8.1 Communication**

(a) Where, in connection with the deposit of a micro organism, the scientific description and/or taxonomic designation of the micro organism was/were not indicated, the depositor may later indicate or, where already indicated, may amend such description and/or designation.

(b) Any such later indication or amendment shall be made in a written communication, bearing the signature of the depositor, addressed to the international depositary authority and containing:

- (i) the name and address of the depositor;
- (ii) the accession number given by the said authority;
- (iii) the scientific description and/or proposed taxonomic designation of the micro organism;
- (iv) in the case of an amendment, the last preceding scientific description and/or proposed taxonomic designation.

**8.2 Attestation**

The international depositary authority shall, on the request of the depositor having made the communication referred to in Rule 8.1, deliver to him an attestation showing the data referred to in Rule 8.1 (b) (i) to (iv) and the date of receipt of such communication.

**SCHEDULE—continued****Rule 9***Storage of Micro organisms***9.1 Duration of the Storage**

Any micro organism deposited with an international depositary authority shall be stored by such authority, with all the care necessary to keep it viable and uncontaminated, for a period of at least five years after the most recent request for the furnishing of a sample of the deposited micro organism was received by the said authority and, in any case, for a period of at least 30 years after the date of the deposit.

**9.2 Secrecy**

No international depositary authority shall give information to anyone whether a micro organism has been deposited with it under the Treaty. Furthermore, it shall not give any information to anyone concerning any micro organism deposited with it under the Treaty except to an authority, natural person or legal entity which is entitled to obtain a sample of the said micro organism under Rule 11 and subject to the same conditions as provided in that Rule.

**Rule 10***Viability Test and Statement***10.1 Obligation to Test**

The international depositary authority shall test the viability of each micro organism deposited with it:

- (i) promptly after any deposit referred to in Rule 6 or any transfer referred to in Rule 5.1;
- (ii) at reasonable intervals, depending on the kind of micro organism and its possible storage conditions, or at any time, if necessary for technical reasons;
- (iii) at any time, on the request of the depositor.

**10.2 Viability Statement**

(a) The international depositary authority shall issue a statement concerning the viability of the deposited micro organism:

- (i) to the depositor, promptly after any deposit referred to in Rule 6 or any transfer referred to in Rule 5.1;
- (ii) to the depositor, on his request, at any time after the deposit or transfer;
- (iii) to any industrial property office, other authority, natural person or legal entity, other than the depositor, to whom or to which samples of the deposited micro organism were furnished in conformity with Rule 11, on his or its request, together with or at any time after such furnishing of samples.

(b) The viability statement shall indicate whether the micro organism is or is no longer viable and shall contain:

- (i) the name and address of the international depositary authority issuing it;
- (ii) the name and address of the depositor;
- (iii) the date of the deposit of the micro organism and of the transfer, if any;
- (iv) the accession number given by the said authority;
- (v) the date of the test to which it refers;
- (vi) information on the conditions under which the viability test has been performed, provided that the said information has been requested by the party to which the viability statement is issued and that the results of the test were negative.

(c) In the cases of paragraph (a) (ii) and (iii), the viability statement shall refer to the most recent viability test.

(d) As to form, languages and signature, Rule 7.2 shall apply, *mutatis mutandis*, to the viability statement.

(e) In the case of paragraph (a) (i) or where the request is made by an industrial property office, the issuance of the viability statement shall be free of charge. Any fee payable under Rule 12.1 (a) (iii) in respect of any other viability statement shall be chargeable to the party requesting the statement and shall be paid before or at the time of making the request.

**SCHEDULE—continued**

## Rule 11

*Furnishing of Samples***11.1 *Furnishing of Samples to Interested Industrial Property Offices***

Any international depositary authority shall furnish a sample of any deposited micro organism to the industrial property office of any Contracting State or of any intergovernmental industrial property organisation, on the request of such office, provided that the request shall be accompanied by a declaration to the effect that:

- (i) an application referring to the deposit of that micro organism has been filed with that office for the grant of a patent and that the subject matter of that application involves the said micro organism or the use thereof;
- (ii) such application is pending before that office or has led to the grant of a patent;
- (iii) the sample is needed for the purposes of a patent procedure having effect in the said Contracting State or in the said organisation or its member States;
- (iv) the said sample and any information accompanying or resulting from it will be used only for the purposes of the said patent procedure.

**11.2 *Furnishing of Samples to or with the Authorisation of the Depositor***

Any international depositary authority shall furnish a sample of any deposited micro organism:

- (i) to the depositor, on his request;
- (ii) to any authority, natural person or legal entity (hereinafter referred to as 'the authorised party'), on the request of such party, provided that the request is accompanied by a declaration of the depositor authorising the requested furnishing of a sample.

**11.3 *Furnishing of Samples to Parties Legally Entitled***

(a) Any international depositary authority shall furnish a sample of any deposited micro organism to any authority, natural person or legal entity (hereinafter referred to as 'the certified party'), on the request of such party, provided that the request is made on a form whose contents are fixed by the Assembly and that on the said form the industrial property office certifies:

- (i) that an application referring to the deposit of that micro organism has been filed with that office for the grant of a patent and that the subject matter of that application involves the said micro organism or the use thereof;
- (ii) that, except where the second phrase of (iii) applies, publication for the purposes of patent procedure has been effected by that office;
- (iii) *either* that the certified party has a right to a sample of the micro organism under the law governing patent procedure before that office and, where the said law makes the said right dependent on the fulfilment of certain conditions, that that office is satisfied that such conditions have actually been fulfilled *or* that the certified party has affixed his signature on a form before that office and that, as a consequence of the signature of the said form, the conditions for furnishing a sample to the certified party are deemed to be fulfilled in accordance with the law governing patent procedure before that office; where the certified party has the said right under the said law prior to publication for the purposes of patent procedure by the said office and such publication has not yet been effected, the certification shall expressly state so and shall indicate, by citing it in the customary manner, the applicable provision of the said law, including any court decision.

(b) In respect of patents granted and published by any industrial property office, such office may from time to time communicate to any international depositary authority lists of the accession numbers given by that authority to the deposits of the micro organisms referred to in the said patents. The international depositary authority shall, on the request of any authority, natural person or legal entity (hereinafter referred to as 'the requesting party'), furnish to it a sample of any micro organism where the accession number has been so communicated. In respect of deposited micro organisms whose accession numbers have been so communicated, the said office shall not be required to provide the certification referred to in Rule 11.3 (a).

**11.4 *Common Rules***

(a) Any request, declaration, certification or communication referred to in Rules 11.1, 11.2 and 11.3 shall be

**SCHEDULE—continued**

- (i) in English, French, Russian or Spanish where it is addressed to an international depositary authority whose official language is or whose official languages include English, French, Russian or Spanish, respectively, provided that, where it must be in Russian or Spanish, it may be instead filed in English or French and, if it is so filed, the International Bureau shall, on the request of the interested party referred to in the said Rules or the international depositary authority, establish, promptly and free of charge, a certified translation into Russian or Spanish;
  - (ii) in all other cases, it shall be in English or French, provided that it may be, instead, in the official language or one of the official languages of the international depositary authority.
- (b) Notwithstanding paragraph (a), where the request referred to in Rule 11.1 is made by an industrial property office whose official language is Russian or Spanish, the said request may be in Russian or Spanish, respectively, and the International Bureau shall establish, promptly and free of charge, a certified translation into English or French, on the request of that office.
- (c) Any request, declaration, certification or communication referred to in Rules 11.1, 11.2 and 11.3 shall be in writing, shall bear a signature and shall be dated.
- (d) Any request, declaration or certification referred to in Rules 11.1, 11.2 and 11.3 (a) shall contain the following indications:
- (i) the name and address of the industrial property office making the request, of the authorised party or of the certified party, as the case may be;
  - (ii) the accession number given to the deposit;
  - (iii) in the case of Rule 11.1, the date and number of the application or patent referring to the deposit;
  - (iv) in the case of Rule 11.3 (a), the indications referred to in (iii) and the name and address of the industrial property office which has made the certification referred to in the said Rule.
- (e) Any request referred to in Rule 11.3 (b) shall contain the following indications:
- (i) the name and address of the requesting party;
  - (ii) the accession number given to the deposit.
- (f) The container in which the sample furnished is placed shall be marked by the international depositary authority with the accession number given to the deposit and shall be accompanied by a copy of the receipt referred to in Rule 7.
- (g) The international depositary authority having furnished a sample to any interested party other than the depositor shall promptly notify the depositor in writing of that fact, as well as of the date on which the said sample was furnished and of the name and address of the industrial property office, of the authorised party, of the certified party or of the requesting party, to whom or to which the sample was furnished. The said notification shall be accompanied by a copy of the pertinent request, of any declarations submitted under Rules 11.1 or 11.2 (ii) in connection with the said request, and of any forms or requests bearing the signature of the requesting party in accordance with Rule 11.3.
- (h) The furnishing of samples referred to in Rule 11.1 shall be free of charge. Where the furnishing of samples is made under Rule 11.2 or 11.3, any fee payable under Rule 12.1 (a) (iv) shall be chargeable to the depositor, to the authorised party, to the certified party or to the requesting party, as the case may be, and shall be paid before or at the time of making the said request.

**Rule 12**

*Fees*

**12.1 Kinds and Amounts**

- (a) Any international depositary authority may, with respect to the procedure under the Treaty and these Regulations, charge a fee:
- (i) for storage;
  - (ii) for the attestation referred to in Rule 8.2;
  - (iii) subject to Rule 10.2 (e), first sentence, for the issuance of viability statements;
  - (iv) subject to Rule 11.4 (h), first sentence, for the furnishing of samples.
- (b) The fee for storage shall be for the whole duration of the storage of the micro organism as provided in Rule 9.1.
- (c) The amount of any fee shall not vary on account of the nationality or residence of the depositor or on account of the nationality or residence of the authority, natural person or legal entity requesting the issuance of a viability statement or furnishing of samples.

**SCHEDULE—continued****12.2 Change in the Amounts**

(a) Any change in the amount of the fees charged by any international depositary authority shall be notified to the Director General by the Contracting State or intergovernmental industrial property organisation which made the declaration referred to in Article 7 (1) in respect of that authority. The notification may, subject to paragraph (c), contain an indication of the date from which the new fees will apply.

(b) The Director General shall promptly notify all Contracting States and intergovernmental industrial property organisations of any notification received under paragraph (a) and of its effective date under paragraph (c); the notification of the Director General and the notification received by him shall be promptly published by the International Bureau.

(c) Any new fees shall apply as of the date indicated under paragraph (a), provided that, where the change consists of an increase in the amounts of the fees or where no date is so indicated, the new fees shall apply as from the thirtieth day following the publication of the change by the International Bureau.

**Rule 13***Publication by the International Bureau***13.1 Form of Publication**

Any publication by the International Bureau referred to in the Treaty or these Regulations shall be made in the monthly periodical of the International Bureau referred to in the Paris Convention for the Protection of Industrial Property.

**13.2 Contents**

(a) At least in the first issue of each year of the said periodical, an up-to-date list of the international depositary authorities shall be published, indicating in respect of each such authority the kinds of micro organisms that may be deposited with it and the amount of the fees charged by it.

(b) Full information on any of the following facts shall be published once, in the first issue of the said periodical published after the occurrence of the fact:

- (i) any acquisition, termination or limitation of the status of international depositary authority, and the measures taken in connection with that termination or limitation;
- (ii) any extension referred to in Rule 3.3;
- (iii) any discontinuance of the functions of an international depositary authority, any refusal to accept certain kinds of micro organisms, and the measures taken in connection with such discontinuance or refusal;
- (iv) any change in the fees charged by an international depositary authority;
- (v) any requirements communicated in accordance with Rule 6.3 (b) and any amendments thereof.

**Rule 14***Expenses of Delegations***14.1 Coverage of Expenses**

The expenses of each delegation participating in any session of the Assembly and in any committee, working group or other meeting dealing with matters of concern to the Union shall be borne by the State or organisation which has appointed it.

**Rule 15***Absence of Quorum in the Assembly***15.1 Voting by Correspondence**

(a) In the case provided for in Article 10 (5) (b), the Director General shall communicate any decision of the Assembly (other than decisions relating to the Assembly's own procedure) to the Contracting States which were not represented when the decision was made and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication.

(b) If, at the expiration of the said period, the number of Contracting States having thus expressed their vote or abstention attains the number of Contracting States which was lacking for attaining the quorum when the decision was made, that decision shall take effect provided that at the same time the required majority still obtains.

**NOTE**

1. No. 42, 1952, as amended. For previous amendments, see No. 14, 1954; No. 3, 1955; No. 107, 1960; No. 84, 1962; No. 93, 1966; No. 34, 1969; No. 216, 1973; Nos. 91 and 162, 1976; No. 131, 1978; Nos. 9, 19 and 188, 1979; No. 176, 1981; No. 26, 1982; and No. 91, 1983.

