

Content

Title : Operational Directions Governing the Mutual Cooperation between Taiwan Intellectual Property Office and the Korean Intellectual Property Office in the Field of Deposit of Biological Materials for the Purposes of Patent Procedure **Ch**

Date : 2020.09.01

Legislative : 1. Promulgated on September 1, 2020.

Content : 1. These Operational Directions (hereinafter referred to as “the Directions”) are formulated to strengthen cooperative ties between Taiwan and Korea, to reduce the burden of applicants having to repeat the process of making a deposit, to implement the provisions set forth in Paragraph 5, Article 27 of the Patent Act, and to carry out the terms stated in the Mutual Cooperation in the Field of Deposit of Biological Materials for the Purposes of Patent Procedure between Taiwan and Korea.

2. In the event an applicant files a patent application in the Republic of China and deposits biological materials in a depository located in Korea and designated by the Korean Intellectual Property Office (hereinafter referred to as “KIPO”), such deposit shall be governed by Korean laws

and regulations. However, the persons qualified for requesting to be furnished a sample and the grounds for requesting to be furnished a sample shall be governed by Paragraph 1 of Article 13 and Paragraph 1 of Article 14 of the Regulations for the Deposit of Biological Materials for Patent Application.

In the event an applicant files a patent application to the KIPO and deposits biological materials in the depository located in the Republic of China and designated by the Taiwan Intellectual Property Office, Ministry of Economic Affairs (hereinafter referred to as “TIPO”), such deposit shall be governed by the Regulations for the Deposit of Biological Materials for Patent Application and the Directions. However, the persons qualified for requesting to be furnished a sample and the grounds for requesting to be furnished a sample shall be governed by Korean laws and regulations.

3. Through this mutual cooperation between TIPO and KIPO, the effect of the deposit of biological materials made for the purposes of patent procedure at a designated depository by one Office shall be recognized for the purposes of patent procedure by the other Office.

The scope of the recognition referred to in the preceding paragraph shall include the fact and the date of the deposit as provided by the designated depository and what is furnished as a sample is one

of the deposited biological materials.

The other Office may request a copy of certificate of deposit issued by the said designated depository indicating the deposit made pursuant to Paragraph 1.

4. The designated depositories referred to in the Directions shall mean respectively the Food Industry Research and Development Institute (FIRDI) in the Republic of China, and the Korean Collection for Type Cultures (KCTC) or the Korean Culture Center of Microorganisms (KCCM) or

the Korean Cell Line Research Foundation (KCLRF) or the Korean Agricultural Culture Collection (KACC) in the Republic of Korea.

5. In the event a designated depository of either office can furnish samples of the deposited biological materials for any reason, including where such biological materials is no longer viable or 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, the designated depository shall promptly notify the depositor of such inability, and indicate the cause thereof. The depositor may make a new deposit of the biological materials which were originally deposited. The new deposit shall be made pursuant to the preceding paragraph with the designated depository with which the original deposit was made. In the event of any of the followings, however, the

deposit may be made to another designated depository of either Office:

- (1) where the designated depository with which the original deposit was made has ceased to have the status of designated depository; or
- (2) where the furnishing of samples is prevented by export or import restrictions.

The new deposit made pursuant to Paragraph 1 or 2 shall be accompanied by a statement signed by the depositor alleging that the newly deposited biological materials are the same as those originally deposited.

Unless otherwise provided for in this Point, the new deposit will be deemed as being made on the same date as the original deposit where the statement thereof verified the viability of the originally deposited biological material and where the new deposit was made within three (3) months after the date on which the depositor received the notification referred to in Paragraph 1.

If the furnishing of samples is prevented by the cause stipulated in Subparagraph 1 of Paragraph 2 and the depositor does not receive the notification referred to in Paragraph 1 within six (6) months after the date on which the termination of the status of a designated depository was published by the designating Office, the three-month time limit referred to in the preceding paragraph will be counted from the date of the said publication.

6. If any designated depository temporarily or definitively discontinues the performance of its responsibilities, the designating Office shall adopt the following measures:

- (1) ensure that the original depository promptly notifies all the depositors affected by the discontinuance of the performance of its functions; and
- (2) promptly notify the other Office of the fact and the extent of the discontinuance and of the measures which have been taken by the said designating Office.

Where the depositor receives a certificate of the deposit from the receiving depository stating the new accession number given to the original deposit, the Office with which a patent application was filed shall be notified of the new accession number by the depositor.

7. If any designated depository refuses deposit of any kind of biological materials it is supposed to accept, the designating Office will promptly notify the other Office of the relevant facts and the measures which have been taken.

8. The depositor may not withdraw the deposit after receiving the certificate of deposit issued by the designated depository.

9. The Directions may apply where the request of deposit of biological materials has been filed prior to the implementation of the Directions and the relevant patent application for invention is filed with TIPO after such implementation.