

## CA – CANADA

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### 1. Requirements for Deposit

Where a specification in a patent application, or in a patent issued on the basis of such an application, refers to a deposit of biological material, the deposit of the biological material is considered to be in accordance with the Patent Regulations if it has been made by the applicant with an international depositary authority. The applicant must inform the Commissioner of Patents of the name of the international depositary authority, the date of the original deposit and the accession number given by the international depositary authority to the deposit. The said information must be included in the description of the patent application and must be provided before the application is open to public inspection.

(Patent Rules 1996<sup>1</sup>, Sections 103 and 104)

### 2. Time of Deposit

The deposit of the biological material must be made with an international depositary authority on or before the filing date of the patent application.

(Patent Rules, Section 104)

### 3. Duration of Storage

No provision.

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<sup>1</sup> The Patent Rules 1996, also contain provisions concerning *Applications Filed in the Period Beginning on October 1, 1989 and Ending on October 1, 1996* (Sections 159 to 166) and *Applications Filed Before October 1, 1989* (Sections 183 to 187)

#### 4. Conditions for the Furnishing of Samples

##### (i) Time of Availability of Samples

Before the patent application is open to public inspection, the applicant may file a notice with the Commissioner of Patents stating the applicant's wish that, until either a patent has been issued on the basis of the application, or the application is refused, or is abandoned and no longer subject to reinstatement, or is withdrawn, a sample of the deposited biological material be furnished only to an independent expert nominated by the Commissioner.

(Patent Rules, Subsection 104(4))

The Intellectual Property Office publishes in the *Canadian Patent Office Record* a form for making a request for the furnishing of a sample of the deposit.

(Patent Rules, Subsection 107(1))

Where the specification in a Canadian patent or in a patent application filed in Canada that is open to public inspection refers to a deposit of biological material by the applicant, and where a person files with the Commissioner of Patents a request made on the form referred to in Subsection 107(1), the Commissioner makes the certification referred to in Rule 11.3(a) of the Regulations under the Budapest Treaty in respect of that person and sends a copy of the request, together with the certification, to the person who filed the request.

(Patent Rules, Subsections 107(2) and (3))

##### (ii) Restrictions Concerning the Furnishing of Samples

Until either a patent has been issued on the basis of the patent application or the application is refused, or is abandoned and no longer subject to reinstatement, or is withdrawn, the Commissioner of Patents does not make the certification referred to in subsection 107(2) in respect of a person unless the Commissioner has received an undertaking by that person to the applicant:

- not to make any sample of biological material furnished by the international depositary authority or any culture derived from such sample available to any other person before either a patent is issued on the basis of the application or the application is refused, or is abandoned and no longer subject to reinstatement, or is withdrawn; and
- to use the sample of biological material furnished by the international depositary authority and any culture derived from such sample only for the purpose of experiments that relate to the subject-matter of the application until either a patent is issued on the basis of the application or the application is refused, or is abandoned and no longer subject to reinstatement, or is withdrawn.

(Patent Rules, Section 108)

Where a notice has been filed with the Commissioner of Patents pursuant to subsection 104(4) in respect of a patent application, the Commissioner, upon request of any person that an independent expert be nominated and with the agreement of the applicant, nominates, within a reasonable time, a person as an independent expert for the purposes of that application.

If no agreement can be reached on the nomination of an independent expert within a reasonable time after the request is made, the notice of the applicant referred to in subsection 104(4) is deemed never to have been filed.

(Patent Rules, Section 109)

Where a notice has been filed with the Commissioner of Patents pursuant to subsection 104(4) in respect of a patent application, until a patent is issued on the basis of the application or the application is refused, or is abandoned and no longer subject to reinstatement, or is withdrawn, a request pursuant to section 107 may only be filed by an independent expert nominated by the Commissioner in accordance with section 109.

Where the Commissioner of Patents makes a certification pursuant to subsection 107(2) in respect of an independent expert nominated by the Commissioner, a copy of the request, together with the certification, is sent to the applicant and to the person who requested the nomination of the independent expert.

(Patent Rules, Section 110)