

## CH – SWITZERLAND

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### 1. Requirements for Deposit

Article 50a(1) and (2) of the Federal Act on Patents for Inventions (LBI): biological material

Where an invention entails the manufacture or use of biological material and cannot be sufficiently described, the disclosure shall be supplemented by the deposit of a sample of the biological material and, in the description, by information relating to the essential characteristics of that material and by a reference to the deposit.

Article 45b of the Ordinance on Patents for Inventions (OBI): Obligation of deposit  
Where an invention involves biological material, or the manufacture or use of biological material that is not accessible to the public, and that invention cannot be described in such a way as to allow a person skilled in the art to carry it out, it shall not be deemed to have been disclosed in accordance with the provisions of Articles 50 and 50a of the Law, unless:

- a. a sample of the biological material has been deposited with a depositary institution recognized as such at the date of filing or, if priority is claimed, at the date of priority;
- b. at the date of filing, the description contains the information available to the applicant on the essential characteristics of the biological material; and
- c. the patent application contains, at the date of filing, the indication of the depositary institution and the reference number of the deposited biological material.

### 2. Time of Deposit

Article 50a(3) of the LBI:

The invention shall not be deemed to have been disclosed as per Article 50 until the sample of the biological material has been deposited, no later than the filing date of the application, with a recognized depositary institution and unless the patent application as initially filed contains information on the biological material and a reference to the deposit.

### 3. Duration of Storage

The provisions of Rule 9 of the Regulations Under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure shall be applied and the duration of storage shall be a minimum of 30 years. Article 45j of the OBI states that the duration of storage shall be exclusively governed by the Budapest Treaty and the Regulations thereunder.

### 4. Conditions for the Furnishing of Samples

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

Article 45e(1) of the OBI: availability of the deposited biological material

From the date of deposit onwards and throughout the entire duration of storage referred to in Article 45h, the applicant shall make the deposited biological material unconditionally and irrevocably available to the depositary institution for the purposes of the furnishing of samples (Article 45f).

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

Article 45g of the OBI: Declaration of undertaking

(1) In order to have access to samples, the requesting party shall undertake, with regard to the patent applicant or holder and, where the deposit has been carried out by a third party, with regard to the depositor also, during the period of validity of any exclusive right relating to the deposited biological material, not to make the samples of deposited biological material or of material derived therefrom available to a third party and only to use such samples for experimental purposes.

(2) The patent applicant or holder and, where the deposit has been carried out by a third party, the depositor, may renounce the right to require that the requesting party make said undertaking.

(3) Where a sample is furnished to an independent expert, he shall be obliged to provide a declaration through which he makes the undertaking referred to in paragraph (1). With regard to the expert, the requesting party shall be deemed to be a third party as per paragraph (1).

(4) The requesting party shall not be obliged to undertake only to use the biological material for experimental purposes if he uses it for exploitation under a compulsory license.