

## **ZA – SOUTH AFRICA**

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### **1. Requirements for Deposit**

If the complete specification accompanying a patent application claims as an invention a microbiological process or a product thereof, and requires for the performance of the invention the use of a microorganism which is not available to the public on the date of lodging the application and which cannot be made or obtained on the basis of the written description in the specification, a culture of the microorganism must be deposited with a depositary institution which has acquired the status of international depositary authority under the Budapest Treaty.

The complete specification must state the name of the international depositary authority with which the culture was deposited, the date of deposit and the accession number given to the deposit by the international depositary authority. This information may be added to the patent specification at any time before the date of publication or before the opening to public inspection of the patent application, whichever is the earlier.

The complete specification, as lodged, must give such relevant information as is available to the applicant on the characteristics of the microorganism.

(Patents Act No. 57 of 1978, Section 32(6); Patent Regulations 1978, as amended to 1997, Rule 28A(1) and (2))

### **2. Time of Deposit**

A culture of a microorganism must be deposited not later than the date of filing of the patent application.

(Patent Regulations, Rule 28A(1)(a))

### 3. Duration of Storage

No provision.

### 4. Conditions for the Furnishing of Samples

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

The communication in the patent specification of the information concerning the microorganism is considered as constituting the unreserved and irrevocable consent of the applicant to make the deposited culture available to the public from the date of publication or after the opening to public inspection of the patent application, whichever is earlier.

(Patent Regulations, Rule 28A(3))

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

A sample of the deposited culture is furnished to any requesting party from the date of publication or after the opening to public inspection of the patent application, provided that the requesting party makes a valid request therefor to the international depositary authority with which the culture is deposited.

A request for the furnishing of a sample of the deposited culture is valid if it is made on Patents Form P23 on which the Registrar has certified that a patent or patent application referring to the deposit of the culture has been published or has come open to public inspection and that the requesting party is entitled to the furnishing of a sample of the deposited culture.

The Registrar does not make the certification unless the Registrar has received an application on a Patents Form P24 requesting the certification. The application must contain an undertaking from the requesting party *vis à vis* the patentee that the requesting party will not make the deposited culture, or any culture derived therefrom, available to any third party until the patent ceases to have effect by way of expiration, revocation, voluntary surrender, or lapsing without the possibility of renewal in accordance with Section 46 of the Patents Act.

The undertaking *vis à vis* the patentee does not prevent the requesting party from depositing with an international depositary authority a derived culture or the culture itself necessary for the purpose of complying with section 32(6) of the Patents Act.

A derived culture is deemed to be any culture of the microorganism which exhibits those characteristics of the deposited culture which are essential to the carrying out of the invention described in the complete specification in which reference is made to the deposited culture.

(Patent Regulations, Rule 28A(4)(5)(6)(7) and (8))