

## **QUESTION 56**

### **Protection of industrial property in the field of microbiology**

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Yearbook 1974/I, pages 106 - 108  
Executive Committee and Council of Presidents of Melbourne,  
February 24 - March 2, 1974

Q56

#### **Question Q56**

#### **Protection of industrial property in the field of microbiology**

#### **Resolution**

The IAPIP,

having considered the complexity of patent problems in this field, the many different national viewpoints, the varied patent office procedures and conflicting existing court decisions,

and having also considered that agreement in certain areas may however now be possible,

*adopts the following resolution:*

A new Special Arrangement under Article 15 of the Paris Convention should be made, providing for:

- (a) deposition in a culture collection of the microorganism(s) described in a patent specification and not available to the public as a requisite for grant of a patent;
- (b) deposition in one culture collection approved under this Arrangement as being sufficient to meet the requirements of all States parties to this Arrangement;
- (c) deposition on or before the filing of the first patent application (with the possibility of formal details of deposition being furnished later within a prescribed period).

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## **QUESTION 56**

### **Protection of industrial property in the field of microbiology**

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Yearbook 1975/III, page 136  
29th Congress of San Francisco, May 3 - 10, 1975

Q56

#### **Question Q56**

#### **Protection of Industrial Property in the Field of Microbiology**

#### **Resolution**

The IAPIP welcomes the remarkable work done by WIPO since the passing of the IAPIP resolution in Melbourne in the formulation of a Draft for an International Agreement, including Rules, on the deposit of microorganisms for patent purposes. This Draft Agreement is to be regarded as a Special Agreement under Article 19 of the Paris Convention. According to the above Draft Agreement, deposit of a strain of a microorganism not available to the public, in one internationally recognized depository authority, will be sufficient to satisfy the deposit requirements for filing patent applications relating thereto in all the contracting States. IAPIP is of the opinion that said deposit should be made at the latest at the filing date of the application or at the priority date if priority is claimed.

The IAPIP notes the provision in the Agreement drafted by WIPO that the earliest time of release of the deposited strain to third parties upon their request following publication of the respective application or patent should be determined by the national law of each contracting State. Nevertheless, it is the opinion of the IAPIP that the deposited microorganism should not be released to third parties until some enforceable form of patent protection begins. Further, the above Agreement should contain uniform rules establishing the minimum conditions of assurance against misuse of the microorganisms to be required by the international depository authority for the release of a deposited strain of a microorganism to a third party applying for such release.

The IAPIP proposes that such release should be made contingent upon the filing of a statement with an undertaking to the applicant or patentee by the person seeking said release; said statement should be filed in the Patent Office of the respective contracting State together with the application for release and the undertaking should include at least the following:

1. that the released microorganism will be used for purposes of research and/or identification, and not for industrial or commercial purposes which are within the scope of the invention as covered in the respective patent application or patent;

2. that the microorganism will not be given to third parties;

3. that should any dispute arise regarding the breach of the undertaking under point 1, the receiver of the microorganism shall prove that he has not violated that undertaking. The effective duration of the above undertaking should be limited to the duration of patent protection in the State where the application for release was made.

Such an undertaking should be embodied in a uniform International Release Form which could be drafted and brought into final form by the Director General of WIPO (or by the General Assembly of all contracting States). Said International Release Form executed in a legally binding manner should be given to the depositor, to the depository authority and to the Patent Office of the respective State in which such application for release was made.

If certain of the above provisions could not be accepted into the Treaty, they should at least be introduced by the applicable national law.

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## **QUESTION 56**

### **Protection of industrial property in the field of microbiology**

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Yearbook 1978/II, page 147  
30th Congress of Munich, May 15 - 19, 1978

Q56

#### **Question Q56**

#### **Protection of Industrial Property in the Field of Microbiology**

#### **Resolution**

1. The IAPIP congratulates WIPO on the successful conclusion of the Budapest Treaty.
2. In order to enable the inventors in the field of microbiology to benefit from the advantages made available by the Treaty, the National Groups of the IAPIP should request their Governments to take the necessary steps for the ratification of, or accession to, this Treaty.
3. In view of the fact that the Budapest Treaty leaves to national legislation the regulation of the release of the deposited strains, the IAPIP is of the opinion that in national or supranational legislation provisions should be adopted to avoid a misuse of the deposited strains.

The conclusions of the resolution of the Congress of San Francisco are still valid. Accordingly, the IAPIP supports the efforts to grant the release of the deposited strain in the period between the publication of the application and the beginning of final patent protection only to an expert who is considered a representative of the public and who can reproduce and test the data of the application.

The IAPIP confirms its position as up to now in this regard, meaning that it would be desirable that the public in general has access to the deposited strain, namely not on the day of the laying-open to public inspection, but beginning with the day of the final grant of the patent.

After the grant of final protection it should be assured that the strain handed over to the parties is not taken out of the territory of protection.

4. It should be recognized that the access to the strain by the public on the date of the application is a question of fact. Consequently the possibility should be provided that statements of the application concerning this question could be corrected. For this reason, the IAPIP is of the opinion that the statement contained in rule 28, paragraph 2, of the Implementing Regulations to the European Patent Convention should not be irrevocable.

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