

## Microorganism Deposit Requirements

If an invention is a microorganism, or involves the use of one, it may not be possible to describe the microorganism in the patent specification in enough detail to enable the invention to be reproduced.

The description in an Australian patent specification can be supplemented by depositing a microorganism. The deposit must be made if the person to whom the specification is addressed could not reasonably be expected to perform the invention (including the best mode) without having a sample of the microorganism.

The Australian Industrial Property Organisation (AIPO) interprets the term "microorganism" to include any microscopic or ultramicroscopic living thing. Examples include bacteria, other procaryotes, fungi (including yeasts), algae, protozoa, eucaryotic cells, cell lines, hybridomas, viruses, plant tissue cells, spores, and hosts containing materials such as vectors, cell organelles, plasmids, DNA, RNA, genes and chromosomes. The Office also permits reliance on biological materials such as naked DNA, RNA, and genes.

In order to satisfy the AIPO requirement:

- The deposit must be made with an International Depository Authority before the complete Australian patent application is filed.
- The deposit must satisfy the requirements of the Budapest Treaty.
- A copy of the deposit receipt must be filed with the AIPO before the application is accepted.

Before the application is laid open for public inspection at 18 months from the priority date (or acceptance if earlier) the patent specification must include:

- the accession number of the deposit;
- the name of the depository institution; and
- any relevant information on the characteristics of the microorganism known to the applicant.

The Notice of Entitlement, which must be filed before acceptance, must include details of the deposit and must attest that the applicant is entitled to rely on the deposit.

### PCT Considerations

PCT deposit requirements in Australia are governed by Rule 13<sup>bis</sup>, which requires the specification to include:

- the name and address of the depository institution;
- the date of deposit; and
- the accession number of the deposit.

These details may be supplied using Form PCT/RO/134.



A PCT case is usually open to public inspection long before it enters the national phase.

If the PCT application does not include the information required under Rule 13<sup>bis</sup>, the Australian national phase application is unlikely to satisfy Australian deposit requirements. Once the national phase has been entered, the problem can only be rectified using expensive extension of time procedures.

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