

Changes to Requirements for Orthodox Crop Seed Deposits at the Provasoli-Guillard National Center for Marine Algae and Microbiota (NCMA) at Bigelow Laboratory for Ocean Sciences

Biological material that may be deposited for purposes of utility applications under 35 U.S.C. § 101 includes orthodox crop seeds. Even though the deposit of biological material is not applicable to patent applications submitted under the Plant Patent Act (35 U.S.C. §§ 161-164), utility applications directed to plants must meet the requirements of 35 U.S.C. § 112. In order to ensure compliance with 35 U.S.C. § 112 for patents for utility plant inventions, the deposit of orthodox crop seeds may supplement the disclosure in the specification to provide an adequate written description of the invention and to enable those skilled in the art to make and use the claimed invention. A deposit must comply with the biological deposit rules (37 CFR 1.801 through 1.809) to be relied upon to meet the requirements of 35 U.S.C. § 112.

Currently, there are eight Budapest Treaty International Depositary Authorities (IDAs) that accept plant seeds for deposit. As one of those eight, the Provasoli-Guillard National Center for Marine Algae and Microbiota (NCMA) at Bigelow Laboratory for Ocean Sciences, has recently updated its requirements regarding the number of orthodox crop seeds required for a deposit.

In the past, NCMA required 2,500 seeds per orthodox crop seed deposit. These 2,500 seeds were to be packaged in 25 packets of 100 seeds. NCMA has reduced the number of orthodox crop seeds required for patent seed deposits to 25 packets of 25 seeds for deposit, for a total of 625 orthodox crop seeds per deposit.

The biological deposit rules require that should there be requests that exceed the availability of a deposited material, the depositor must replace or supplement the originally deposited material. Additionally, should the biological deposit no longer be viable or become contaminated, the depositor would be required to supplement or replace the original biological deposit. A depositor's failure to replace a deposit causes the application or patent involved to be treated in any Office proceeding as if no deposit were made. See 37 CFR 1.805.

As stated in the Official Gazette notice of March 26, 2019 (1460 OG 263), the USPTO is amending the Manual of Patent Examining Procedure at § 2403.02 to indicate that, so long as the number of seeds deposited complies with the requirements of the IDA where the deposit is made, the USPTO would consider such a compliant submission as satisfying the rules under 37 CFR 1.801 through 1.809. It should be noted, however, that although a deposit of 625 seeds is compliant for submission to NCMA, other IDAs may have different minimum requirements. Accordingly, any depositor should confirm that the number submitted to a specific IDA complies with that IDA's requirements for seed deposits.

Questions about this announcement may be directed to Mary C. Till, Senior Legal Advisor, Office of Patent Legal Administration, 571-272-7755. Comments may be directed to the Patent Practice mailbox at patentpractice@uspto.gov. Electronic mailbox inquiries typically are returned within one business day.

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