

Changes to Requirements for Seed Deposits at American Type Culture Collection and Advanced Notice of Change to Manual of Patent Examining Procedure

Biological material that may be deposited for purposes of utility applications under 35 U.S.C. § 101 includes plant 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 inventive 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 seven Budapest Treaty International Depository Authorities (IDAs) that accept seeds for deposit. Of those seven, the American Type Culture Collection (ATCC), which is one of the largest IDAs, has recently updated its requirements regarding the number of seeds for deposit.

In the past, ATCC required 2,500 seeds for deposit. These 2,500 seeds were to be packaged in 25 packets of 100 seeds. Distribution analysis of deposited seeds to requesters by ATCC revealed that, at most, four seed packets had been requested of any seed deposit. Most common requests involved one or two packets of seeds. As a result, effective January 1, 2019, ATCC reduced the number of seeds required for patent seed deposits to 25 packets of 25 seeds for deposit, for a total of 625 seeds.

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 deposited material. Additionally, should the biological deposit no longer be viable or become contaminated, the depositor would be required to supplement or replace the 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.

With these safeguards already in place as per the biological deposit rules, and because the biological deposit rules do not require a minimum number of seeds, 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 ATCC, 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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Andree Iancu

Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office