

</en/legal/epc/2020/r31.html>

Rule 31 ⁴⁷, ⁴⁸

Deposit of biological material

(1) If an invention involves the use of or concerns biological material which is not available to the public and which cannot be described in the European patent application in such a manner as to enable the invention to be carried out by a person skilled in the art, the invention shall only be regarded as being disclosed as prescribed in [Article 83](#) if:

- (a) a sample of the biological material has been deposited with a recognised depositary institution on the same terms as those laid down in the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 28 April 1977 not later than the date of filing of the application;
- (b) the application as filed gives such relevant information as is available to the applicant on the characteristics of the biological material;
- (c) the depositary institution and the accession number of the deposited biological material are stated in the application, and
- (d) where the biological material has been deposited by a person other than the applicant, the name and address of the depositor are stated in the application and a document is submitted to the European Patent Office providing evidence that the depositor has authorised the applicant to refer to the deposited biological material in the application and has given his unreserved and irrevocable consent to the deposited material being made available to the public in accordance with [Rule 33](#).

(2) The information referred to in [paragraph 1\(c\)](#) and [\(d\)](#) may be submitted

- (a) within sixteen months after the date of filing of the application or, if priority has been claimed, after the priority date, this period being deemed to have been observed if the information is communicated before completion of the technical preparations for publication of the European patent application;
- (b) up to the date of submission of a request under [Article 93, paragraph 1\(b\)](#);
- (c) within one month after the European Patent Office has communicated to the applicant that the right to inspect the files under [Article 128, paragraph 2](#), exists.

The ruling period shall be the one which is the first to expire. The communication of this information shall be considered as constituting the unreserved and irrevocable consent of the applicant to the deposited biological material being made available to the public in accordance with [Rule 33](#).

⁴⁷ See notice from the EPO of 07.07.2010 ([OJ EPO 2010, 498](#)).

⁴⁸ See decision of the Enlarged Board of Appeal [G 2/93](#) (Annex I).