

Normative Act 127/97

Subject: Establishes rules of proceeding on the application of the Industrial Property Law regarding patents and certificates of addition to inventions.

The President of the INPI, within the scope of his prerogatives, and considering the need that general rules of proceeding be established to define and comply with the provisions of the Industrial Property Law—Law No. 9279 dated May 14, 1996 (hereinafter IPL), regarding invention patents, utility model patents and certificates of addition to inventions,

decides:

To hereby establish the following rules of proceeding:

1. OWNERSHIP

1.1

The request for non-disclosure of the inventor's name, in accordance with § 4th of Article 6th of the IPL, shall be indicated in the filing request, and there should be submitted, in the form of attachments, in a closed envelope, a document from the applicant naming and qualifying the inventor and the inventor's statement requesting that his name not be disclosed.

1.1.1

Upon verification by the INPI, the documents and the statement referred herein above shall be kept in a sealed envelope.

1.2

Upon a request of non-disclosure of the inventor's name, the INPI shall omit such information in the publications regarding the process in question, as well as in copies of the process supplied to third parties.

1.3

In the case of item 1.1, third parties with legitimate interest may request to the INPI that the inventor(s)' name(s) be informed, under the obligation, subject to the penalties provided in the law, that they shall effect no disclosure thereof, beyond the need to establish and question an eventual illegitimate condition.

2. PERIOD OF GRACE

2.1

The disclosure of an invention or utility model shall not be deemed to be part

of the state of the art when it occurs during the 12 (twelve) months prior to the date of filing or of priority of the patent application, provided it was effected according to Inserts I, II and III of Article 12 of the IPL (period of grace).

2.2

The inventor may, for the purposes of Article 12 of the IPL, when filing the application, indicate the form, place and date of the event of disclosure, having done the same himself.

2.3

The INPI, during the examination, may, whenever it deems necessary, formulate a duly substantiated official requirement for the submission, within 60 (sixty) days, of evidence, characterized by the requisite of certainty, as to the existence and date, as well as the relationship of such disclosure, in the form provided in Article 12 of the IPL.

3. PRIORITY

3.1

The priority claim shall be evidenced by a proper document from the origin, containing the specification and, if applicable, claims and drawings, accompanied by a free translation of the filing certificate or equivalent document.

3.2

When the data identifying the applications included in the filing certificate or equivalent document duly reflect such data as included in the filing request of the application (form model 1.01), a statement may be made, in the respective filing form, or in separate, until the date of submission of the proper document, having the same effect as the free translation provided in § 2nd of Article 16 of the IPL.

3.3

If the priority claim made when filing is supported by other additional priorities, in accordance with § 1st of Article 16 of the IPL, the initial delay of 180 (one hundred and eighty) days from the filing of the application (Article 16 of the IPL) for submission of the respective evidence, shall not be altered.

3.4

If the document having originated the priority is from a different applicant than the one that filed the application in Brazil, through the assignment of rights, a copy shall be submitted of the corresponding assignment document, executed on a date prior to that of filing in Brazil, or a statement of assignment or equivalent document, notarization/legalization thereof being

excused, together with a free translation or a bilingual document.

3.4.1

The formalities of the document of assignment of the priority right shall be those provided in the law of the country where it will have been executed.

3.4.2

The right due to filing and the right of priority shall be deemed as having been assigned in the case of patent applications which applicant is the employer or the client of the inventor in light of a contract, provided that submission be made of the document evidencing such relationship and the assignment of future inventions, or an equivalent document.

3.5

Failure to submit evidence of the claim for priority as provided in Article 16 of the IPL shall entail the loss of priority, except if the party proves that such failure was due to a legitimate reason, the provisions of Article 221 of the IPL being applied therefore.

3.6

The patent application having been originally filed in Brazil without claiming priority and not having been published, shall ensure the right of priority (internal priority) for the subsequent application on the same subject matter filed in Brazil by the same applicant or by successors within the delay of 1 (one) year.

3.6.1

The priority claim shall be made in the act of filing of the application by means of the indication of the number and date of the previous application.

3.6.2

The prior application still pending shall be deemed as being definitively shelved and published.

4. SUBMISSION OF THE PATENT APPLICATION

4.1

The patent application, which shall always be in the Portuguese language, shall include:

- (I) Filing request form, by means of form model 1.01;
- (II) Specification, in accordance with the provisions of the present Act;
- (III) Claims, in accordance with the provisions of the present Act;

(IV) Drawings, in accordance with the provisions of the present Act, if applicable;

(V) Abstract of the disclosure, in accordance with the provisions of the present Act;

(VI) Evidence of payment of the filing fee.

4.2

The patent application may be delivered at the reception department of the INPI, or by postal delivery, with receipt of delivery addressed to the Patents Directorate (Diretoria de Patentes- DIRPA /SAAPAT), Praa Mau á, 7, indicating the code DVP.

4.2.1

The applications filed by mail shall be deemed received on the date of posting or on the first working day immediately after, in case the posting is done on a Saturday, a Sunday or a holiday and upon the closing hour of the activities of the reception department at the head office of the INPI, in Rio de Janeiro.

4.3

An application that does not formally comply with the provisions of Items (I) through (V) above, but that contains data concerning the applicant and the inventor, along with a description and drawings (mandatory in the case of Utility Models), enabling the perfect identification of the object, may be delivered, against a dated receipt, to the INPI, which shall establish the requirements to be complied with, within the delay of 30 (thirty) days of acknowledgement thereof, in the form provided in Article 226 of the IPL.

4.3.1

In the case where the application is in the Latin alphabet and in a foreign language, submission must also be made, within the same delay of the preceding item, of a free translation of all documents originally in foreign language. If such translation corresponds to the patent application submitted in accordance with Item 4.1, the applicant may substitute it with a corresponding statement.

4.3.2

Upon having complied with all requirements as to the formal questions, the filing shall be deemed as having been effected on the date of the receipt.

4.3.3

The date to be considered for the purpose of filing, if during processing of the application it is established that the object described does not correspond to the original text, shall be the date of compliance with the requirement.

4.3.4

In case of failure to comply with the requirement, the application shall be returned to the applicant or shall be placed at the disposal of the same in a specific file at the INPI until conditions may be met for returning the same at a later date.

4.4

If the filing is effected by mail delivery, and if additional copies have been delivered, in order to return the same to the applicant, the applicant should also deliver an additional envelope, addressed and stamped, for returning the additional copies by mail, the INPI not being responsible for loss thereof. In the absence of such addressed and stamped envelope, such additional copies shall be placed at the disposal of the applicant, at the INPI, in Rio de Janeiro.

5. FILING

5.1

The filing is considered to be the act whereby the INPI, having proceeded to effect the formal preliminary examination, docket the application by means of a specific numbering.

6. DIVIDED APPLICATIONS

6.1

The patent application may be divided into two or more before the conclusion of the examination:

- (a) on request from the applicant;
- (b) in compliance with a requirement, when the technical examination discloses that the application is complex or that it includes a group of inventions comprising more than one inventive concept, or more than one utility model.

6.1.1

An application may not be divided if it includes only one invention or only one utility model if the division entails mutilation or double protection of the invention or model.

6.1.2

The filing of the divided application should include:

- (a) an application petition using the form model 1.01, together with the respective fee payment form.

(b) the documents integrating the divided application should be in accordance with the rules established in this Act, and, in the specification, after the title, there should be stated the fact of the division mentioning the nature, the number and the date of filing of the original application, application, in the following terms: "Divided from ----- filed on ----/----/----";

b.1) the specification, the abstract, and when applicable, the drawings of the divided application shall be limited to the contents of the subject matter claimed therein, except when needed for the perfect understanding of the subject matter, in which it may include matter being included in the original application;

(c) the fee payment forms for the applicable fees according to the processing phase of the original application (annuities, request for examination, etc...), in the amount set forth in the table of fees in effect on the date of submission thereof.

6.2

The application specification, the drawings and the abstract of the original application, when applicable, shall be altered accordingly, to exclude inconsistent subject matter or such as may not clearly regard the invention being claimed.

6.3

When the claims of the original application result from the division of the schedule of claims of the original application, the claims of the original application shall be altered accordingly to exclude the subject matter claimed in the divided application.

6.4

The divided application shall be docketed upon preliminary formal examination, being mechanically numbered in accordance with the year of filing of the application from which it originates.

6.5

The filing of the divided application shall be automatically notified in the RPI (Industrial Property Official Gazette), such notification including the number of the original application and the indication of the fact that it is a division.

6.6

The divided application shall be deemed as being in the same processing phase as the original application, the INPI being in charge of reducing to terms the reference to the documents and petitions that are found in the original application.

7. EXAMINATION OF THE APPLICATION

7.1

During the technical examination, there may be issued a requirement for the submission, within the delay of 60 (sixty) days, subject to shelving of the application, of a free translation of the specification and, if applicable, of the claims included in the proper document from the country of origin.

This translation may be substituted with a statement from the applicant to the effect that the documents mentioned in the application are faithfully included in the original document.

7.2

Assisting Documents

The documents submitted by third parties, meant as assisting documents, shall be considered as if they were references identified in the search effected by the examiner, and as such, if relevant, shall be attached to the technical opinion report, to be known and replied by the applicant.

7.3

When the technical opinion report advises that the application does not fit within the nature being claimed, the applicant wishing to alter the same must make an explicit mention thereto, in the appropriate reply.

7.4

When the adaptation of the application to the new nature is accepted, the applicant shall, in the case where there is a difference in favor of the INPI of the fees applicable to the adapted nature, proceed to pay the due difference; in the reverse situation there shall be no devolution, since the examination was effected for the nature having been initially required.

7.5

End of the Examination

For the purposes of Articles 26 and 31 of the IPL, the end of the examination is deemed to be the date of the conclusive opinion report regarding patentability, or the thirtieth day prior to the publication of the decision of acceptance, rejection or definitive shelving, whichever of these is the last to occur.

8. OFFER TO LICENSE

8.1

A patent which is exclusively licensed may not be the subject of an offer.

8.2

A patent being licensed which license is not exclusive may be the subject of an offer, although without being entitled to the benefit of reduction of the annuities provided in Article 66 of the IPL.

8.3

The Certificate of Addition of Invention, being an accessory of the patent, accompanies the patent being offered and may not be offered independently.

8.4

An unlicensed patent may be the subject of an offer with the benefit of the reduction of the annuities per Article 66 of the IPL, in the following conditions:

8.4.1

The holder will request the INPI to promote the offer for the purposes of exploitation, indicating all the inherent contractual conditions, e.g. royalties, delays, payment conditions, scale, availability of know-how, technical support.

8.4.2

The INPI, upon examining the situation of the patent and of the clauses and conditions imposed, shall promote the publication of the offer, providing the reduction of the annuities yet to become due.

8.4.3

When the patent is not in a condition where it may be offered, being e.g. under exclusive voluntary license, under a petition questioning its validity or burdened with charges, the INPI shall notify the holder in connection therewith.

8.5

The publication of the offer shall include, at least, the number of the patent, the holder, the term of validity, the title, the object and the period of the license.

8.6

The publication shall be effected at least once every semester.

8.7

The INPI shall provide, upon request from third parties being interested, an integral copy of the contractual conditions offered by the holder, informing the same on the fact.

8.7.1

After communicating to the holder that the conditions of the offer have been conveyed to third parties, the holder shall, within 60 days, extensible until

180 days have been completed, notify the INPI as to the developments in the negotiations. In the absence of action from the holder, the INPI shall assume that the applicant has desisted from the offer, and shall refrain from applying the reduction of the annuity fee.

8.8

There being an explicit statement to the INPI as to the acceptance of the terms of the license contract for exploitation of the patent by third parties, the holder shall not be allowed to desist therefrom.

8.8.1

The INPI shall communicate the acceptance to the holder, providing the adequate actions to complete the contract.

8.9

If no agreement is reached between the holder and the licensee regarding the applicable remuneration, any one of the parties may request that the INPI arbitrate the same.

8.10

The holder should renew the request for offer every year, ratifying the terms thereof.

8.10.1

In the absence of any statement concerning the renewal of the offer, for 2 (two) consecutive years from the notice published in the RPI (Official Industrial Property Gazette), the holder of the offer shall be presumed to have desisted, extinguishing the benefit of the reduction of annuity and the possibility of renewal thereof.

9. CERTIFICATE OF ADDITION TO INVENTION

9.1

The improvement or development introduced by an invention claimed in an application or in a patent may be the object of a Certificate of Addition to Invention, provided that it expresses the same inventive concept thereof.

9.2

The filing of the request for a Certificate of Addition to Invention shall include:

- (a) a request submitted in form model 1.01, together with the respective fee payment form;
- (b) the documents that integrate the request for a Certificate of Addition to Invention should be in accordance with the rules established in this Act, and

in the specification, after the title, there should be included the indication that the same comprises a Certificate of Addition mentioning the number and the filing date of the main application, in the following terms: "Certificate of Addition of Invention of PI -----, filed on ---/---/---";

b.1) The description, the abstract and, if applicable, the drawings of the request for Certificate of Addition to Invention shall be limited to the contents of the subject matter claimed therein, except when necessary for the perfect understanding of the matter, in which case it may include matter which is included in the main application;

9.3

The filing of the request for a Certificate of Addition to Invention shall be automatically notified in the RPI (Official Industrial Property Gazette), such notice including the number of the original application and the indication of it being a Certificate of Addition to Invention.

9.4

Whenever possible, the claims of the Certificate of Addition to Invention shall be described in a manner being interrelated with the corresponding ones of the main application or patent.

9.5

The decision regarding a Certificate of Addition to Invention for a pending patent application shall depend on the decision regarding the main application.

9.5.1

The granting of the Certificate of Addition to Invention shall be dependent on the granting of the main patent, which may occur simultaneously.

9.6

The applicant may, in the delay allowed to appeal the rejection of the request for the addition certificate, due to the same not presenting the same inventive concept, request that it be transformed into an invention or utility model patent application.

9.6.1

When the request for a Certificate of Addition to Invention is transformed into a patent application, the date of filing of the patent application shall be that of the Certificate of Addition to Invention, the same being renumbered accordingly.

9.7

The same provisions pertaining to the issuance of the patent apply to the issuance of the addition certificate.

10. ANNUAL FEE

10.1

Annuity Payment

10.1.1

The annuity is the annual fee to which is subject the patent application or the patent, from the 24th (twenty-fourth) month of the date of filing (the beginning of the third year).

10.1.2

The Certificate of Addition shall be subject to the annual fee from the beginning of the annual period (of the application or the patent of which it is an accessory) following the filing thereof. The delay for payment is the same of the application or the patent of which it is an accessory.

10.1.3

Payment of the annuity should be made from the 24th (twenty-fourth) month of the filing date, in the first 03 (three) months of each annual period, and it may also be made regardless of notice, within the following 06 (six) months, by means of the payment of an additional fee (Article 84 paragraph 2nd of the IPL).

10.1.4

Payment of the upcoming annuities regarding patents and addition certificates thereof may be made in advance at the time of one of the regular payments, provided it is done in one sole instance and covering the whole remaining period.

10.1.4.1

The above provision shall not be applied to patents while in the process of being offered for licensing with reduction of annuity.

10.1.5

The regular or advance annuities shall be paid according to the amount provided in the table of fees in effect at the date of the payment.

10.1.6

The payment of annuities may be made by means of a fee payment form, bank remittance or other procedures that the INPI may render available.

10.1.7

Should the payment be made in an insufficient amount, the INPI shall formulate a requirement for completion thereof, which must be answered within the delay of 60 (sixty) days from publication of the notice in the RPI.

10.2

Penalty for Failure to Pay an Annuity

10.2.1

Failure to pay an annuity shall result in shelving of the application or in an invitation to reinstate the patent or addition certificate.

10.2.2

When the notice of shelving or invitation to reinstate is published, the applicant or holder may request reinstatement thereof, within the delay of 03 (three) months, as established in Art. 87 of the IPL, using the form model 1.02.

10.2.3

The request for reinstatement should be instructed with the fee payment forms for both the annuity due, with the additional fee, and for the reinstatement request itself.

10.3

Evidence of Payment

10.3.1

Payment of the annuity should be evidenced during the course of the delay established for the respective payment.

10.3.1.1

Evidence of payment of an annuity may be made by means of submission of a copy of the fee payment form, a copy of the bank remittance or similar, that may enable the precise identification of the payment having been effected, including the respective annual period, if applicable.

10.3.2

The evidence may be delivered at the INPI reception department or mailed at a post office, including a receipt of delivery.

10.3.3

The submission of evidence is not subject to a fee.

10.4

Penalty for Failure to Submit Evidence of Payment of Annuity

10.4.1

Should the payment not be evidenced, the INPI shall formulate a requirement for submission of evidence of payment, which must be answered within the delay of 60 (sixty) days.

10.4.2

Should the requirement not be answered, the INPI shall assume that payment has

not been effected, and proceed to enforce the applicable procedures.

10.4.3

Should the concerned party, within the delay for reinstatement, produce formal evidence of having effected the payment, the same shall, except in case of legitimate reason, be required to pay the amount of the reinstatement fee.

10.5

Restoration

10.5.1

The restoration shall apply whenever the annual fee is not paid within the delay provided in Articles 84 or 85 of the IPL.

10.5.2

The delay for restoration shall be 03 (three) months from publication in the RPI (Official Industrial Property Gazette) of the notice of shelving of the application or the invitation to restore the patent.

10.5.3

The request for restoration shall be instructed with the fee payment form for the restoration request together with the fee payment form for the applicable annuity paid in the amount provided for that case.

11. ADDITIONAL PROVISIONS

11.1

Power of Attorney

11.1.1

The instrument of power of attorney, in the form and the terms provided in Article 216 of the IPL, when the concerned party does not make the request in person, may be submitted within the delay of 60 (sixty) days from the practice of the first act of the party regarding the process, regardless of notification or official request.

11.1.1.1

In the case of a person domiciled abroad, whose acts are not being performed through an attorney in the form of Article 216 of the IPL, there must be submitted a power of attorney, in the terms provided in Article 217 of the IPL, regardless of the act having been performed in person.

11.1.1.2

The power of attorney provided in Article 217 of the IPL, if not submitted at the time of filing, may be requested by the INPI at any time, including after extinction of the patent, and the same must be submitted within the delay of

60 (sixty) days.

11.1.1.3

If no power of attorney is submitted within the delay of 60 (sixty) days of filing, the application shall be deemed definitively shelved and published.

11.2

The reductions in fees as provided shall only be subject to accumulation up to a maximum percentage of 70% (seventy per cent).

11.3

The shelving provided in § 2nd of Article 216 shall be that of the petition or of the litigation concerning the petition, which shelving may be appealed.

11.4

The free translations mentioned in this Act must include an attestation from the concerned party, applicant or holder, as to its faithfulness.

11.5

The documents submitted and the forms instituted in this Act shall be filled in white paper with black ink, and they should also be filled using black ink.

11.6

A request for photocopy shall be made by means of form model 1.05.

12. DELAYS

12.1

The request for granting of an additional delay for the performance of an act not having been performed due to a legitimate reason shall be submitted by means of form model 1.08 and instructed with the justification thereof and applicable evidence.

12.2

Upon the INPI having accepted to the legitimate reason which prevented the party from performing the act within the legal delay, the INPI shall notify the concerned party on the delay that may be granted thereto, in the form provided in Article 226 of the IPL.

12.3

The delay to be granted for the performance of the act shall be from at least 15 (fifteen) days to, at most, the legal delay for the corresponding acts.

13. GUARANTEE OF PRIORITY

13.1

The guarantee of priority filed in accordance with Law No. 5772/71 shall become automatically extinct if, within the delay of 12 (twelve) months in the case of patent protection and 6 (six) months in the case of a utility model, counted from the date of filing thereof, the patent application has not been submitted.

14. NUMBERING

14.1

The numbering of the applications for patents of inventions and of utility models as well as that of the corresponding patents, and that of the addition certificate, shall be comprised of three segments and one check digit, as follows:

14.1.1

Alphabetic qualifier

Invention PI

Utility Model MU

Certificate of Addition C, followed by the numeral corresponding to the quantity of certificates of addition to invention relative to the same invention.

14.1.2

Numerical qualifier—designating the year when the filing was made and, simultaneously, the nature of the protection, comprising two numerals, where the second numeral from left to right indicates the year of the decade, while the first numeral from left to right indicates the nature of the protection, according to the following code:

Invention—numeral corresponding to the decade of the year of filing.

Utility Model—numeral corresponding to the decade of the year of filing minus 2
Certificate of Addition—corresponds to that of the main Invention.

14.1.3

Quantifier

Invention—increasing numerical series, annual, comprised of five numerals beginning with 00001.

Utility Model—increasing numerical series, annual, comprised of five numerals beginning with 00001.

Certificate of Addition—corresponds to that of the main Invention.

14.2

The numbering of the protection for inventions and utility models continues to be in effect, that is, the numbers of the applications in the course of processing and of the patents of inventions and of utility models having been granted shall not be altered.

15. SPECIFIC DETAILS REGARDING THE PATENT APPLICATION

15.1

Patent of Invention

15.1.1

Initial Request

The initial request shall be effected by means of the form model 1.01.

15.1.2

Patent Specification

The patent specification shall:

- (a) begin with the title;
- (b) refer to a single invention, or to a group of interrelated inventions such that they comprise a single inventive concept;
- (c) specify the technical field to which the invention refers;
- (d) describe the state of the art as may be considered useful for understanding, search and examination of the invention, citing, whenever possible, the documents reflecting the same, pointing out the existing technical problems;
- (e) define the objects of the invention and describe, in a clear, brief and precise manner, the proposed solution for the existing problem, as well as the advantages of the invention relative to the state of the art;
- (f) point out, clearly, the novelty and bring to evidence the technical effect achieved;
- (g) list the figures presented in the drawings, specifying the graphic representations thereof (views, cross-sections, circuit layouts, block diagrams, flowcharts, graphs, ...);

- (h) specify, in those cases where there are included reproductions of photographs (such as metallographic structures), the characteristics being peculiar to that type of graphic representation, such as for example, enhancement, conditions and nature of the photographed material, etc.,
- (i) describe the invention in a consistent, clear and sufficient manner to enable a person skilled in the art to realize the same, cross-referencing to the reference signs included in the drawings, if any, and, if applicable, use examples and/or comparative charts, relating the same to the state of the art;
- (j) point out, when the nature of the invention encompasses more than one form of execution, the better one thereof, known to the applicant, at the date of filing;
- (k) indicate, explicitly, the industrial use when the same is not obvious from the description of the invention;
- (l) be submitted such that it follows the order indicated for the above items, except when, due to the object of the invention, another different manner or order allows a better understanding and a more concise presentation.

15.1.3

Patent Claims

15.1.3.1

Quantity, Numbering and Category

- (a) the quantity of independent and dependent claims should be sufficient to correctly define the subject matter of the application;
- (b) the claims should be numbered consecutively, in Arabic numerals;
- (c) the claims can be of one or several categories (such as product and method, method and apparatus, product, method and apparatus, etc.), provided they are linked by a single inventive concept, being arranged in the most practical manner possible.

15.1.3.2

Formulation of the Claims

- (a) the claims should preferably begin with the title or part thereof corresponding to their respective category, and include the expression "characterized by" only once in each claim;

- (b) each claim should define, clearly and precisely, and in a positive manner, the technical characteristics to be protected thereby, avoiding expressions that may result in lack of definition in the claim;
- (c) the claims should be fully based on the patent specification;
- (d) except when being absolutely necessary, the claims may not include, regarding the characteristics of the invention, references to the patent specification or to the drawings, of the type "as described in part ... of the specification" or "as well as represented in the drawings";
- (e) when the application includes drawings, the technical characteristics defined in the claims should include, between brackets, the respective reference signs included in the drawings if considered necessary for the understanding thereof, it being understood that such reference signs are not limitative regarding the claims.
- (f) each claim should be written without being interrupted by points.
- (k) explanatory parts relative to the operation, advantages and the simple use of the subject shall not be allowed in the claims.

15.1.3.2.1

Independent Claims

- (a) Are those that, the unity of the invention being preserved, are intended to protect the essential and specific technical characteristics of the invention in its integral concept, each category of claims including at least one independent claim.
- (b) Each independent claim should correspond to a certain group of characteristics essential to the realization of the invention, more than one independent claim for the same category being admissible only if such claims define different groups of alternative characteristics being essential to the realization of the invention, being linked by the same inventive concept;
- (c) the independent claims belonging in different categories, where one of the categories is especially adapted to the other, shall be preferably formulated in a way that may stress the interconnection thereof, employing, in the initial part of the claim, expressions, such as for example: "Apparatus for the realization of the method defined in claim...", "Method for obtaining the product defined in claim..."
- (d) the independent claims should, when necessary, include, between the initial part thereof and the expression "characterized by", a preamble

expressing the characteristics being essential to define the subject matter claimed and already comprised in the state of the art;

(e) after the expression "characterized by" there should be defined the essential and particular technical characteristics which, in combination with the aspects expressed in the preamble, are intended to be protected;

(f) the independent claims may serve as the basis of one or more dependent claims, and should preferably be grouped together in the order corresponding to the title of the application.

15.1.3.2.2

Dependent Claims

(a) are those that, the unity of the invention being preserved, include characteristics from (an) other prior claim(s) and define detailings of those characteristics and/or additional characteristics, including an indication as to the dependence of such claim(s) and, if necessary, the expression "characterized by";

(b) the dependent claims should not exceed the limitations of the characteristics comprised in the claim(s) to which they refer;

(c) in the dependent claims, there should be defined, in a precise and understandable manner, their dependence relationships, formulations of the type "in accordance with one or more of the claims...", "in accordance with the preceding claims..." or similar not being admissible;

(d) any dependent claim referring to more than one claim (multiple dependence claim) should refer to those claims in the alternative form or in the cumulative form (additively formulated), only one of the formulations being allowed, either alternative or cumulative, for all claims with multiple dependence;

(e) the multiple dependence claims in the alternative form may serve as the basis for any other multiple dependence claim, provided that the dependence relationships of the claims be structured in a manner allowing the immediate understanding of the possible combinations resulting from those dependences.

15.1.4

Drawings

15.1.4.1

The drawings, flowcharts, diagrams, graph schematics should:

- (a) have their sheets numbered consecutively, in Arabic numerals, centralized at the top the pages, indicating the page number and, preferably, the total number of pages (of drawings) separated by a slanted bar (e.g. 1/3, 2/3, 3/3);
- (b) be executed with firm indelible lines, uniform and without colors, preferably, using technical drawing instruments, in a manner allowing the reproduction thereof;
- (c) be devoid of any texts, initials or stamps, the only elements allowed to be included being indicative terms (such as "water", "steam", "open", "closed", section "AA", etc.), and keywords, in the case of electrical circuits, block diagrams, flowcharts and graphs;
- (d) have the indicative terms, if any, disposed so as not to cover any line of the figures;
- (e) have cross sections indicated by oblique cross-hatching enabling easy reading of the reference signs and lines of direction;
- (f) be made in a clear manner and in scale allowing reduction with definition of details, and being allowed to contain, in a single sheet, several figures, clearly separated from one another, numbered consecutively and grouped, preferably, following the order of the specification;
- (g) preserve the same scale for all the elements of the same figure, except when a different proportion is indispensable for the understanding thereof;
- (h) include, whenever using partial figures to compose a complete figure, signs of reference allowing a clear visualization of the continuity of the same;
- (i) have the figures, whenever possible, disposed in the sheet in a vertical orientation and, when in the horizontal position, with the upper part facing the left side;
- (j) comprise all the reference signs included in the patent specification, using those reference signs to identify a certain characteristic in all the drawings, wherever the same appears.

15.1.4.2

The submission of reproductions of photographs substituting the figures shall be accepted only in the cases where that may be the only possible means of representing graphically the subject matter of the application, such as metallographic structures, and provided that such reproductions are as clear as may allow the visualization of all the details of the subject matter.

15.1.4.2.1

The photographs must preserve their quality during, at least, the term of effectiveness of the patent;

15.1.4.3

The numbers and letters in the drawings should be at least 3,2 mm in height.

15.1.4.4

All the signs of reference (such as numerals, letters or alphanumeric signs), and the lines of direction that appear in the drawings should be simple and clear, the signs of reference may not include brackets, circles or quotation marks.

15.1.4.5

The drawings may not be framed or delimited by lines, and should be positioned in the paper with the following minimum size margins:

upper 2,5 cm—preferably 4 cm

left 2,5 cm—preferably 3 cm

right 1,5 cm

lower 1 cm

15.1.5

Abstract

15.1.5.1

Regarding the contents, the abstract shall:

- (a) constitute a summation of what was set forth in the patent specification, in the claims and in the drawings;
- (b) indicate the technical field to which the invention belongs;
- (c) be written in a way that allows a clear understanding of the technical problem, of the essence of the solution of that problem using the invention and of the primary use or primary uses of the invention;
- (d) be written in a manner such that it may serve as an efficient instrument of preselection for purposes of searching in a certain technical field, particularly helping the user to formulate an opinion as to the possible convenience of consulting the document in its entirety;

(e) when applicable, include the chemical formulae and/or mathematical equations which, among all those included in the application, best characterize the invention.

15.1.5.2

As to the form, the abstract should:

- (a) begin with the title;
- (b) be as brief as the explanation allows (preferably between 50 and 200 words), preferably not exceeding 20 lines of text;
- (c) contain signs of reference, between brackets, corresponding to each one of the main technical characteristics, when illustrated by a drawing included with the application;
- (d) make no mention to the merit or the worth of the invention requested.

15.2

Utility Model Patent

15.2.1

Conditions of the Application for an Utility Model Patent

15.2.1.1

Initial Request

The initial request shall be effected by means of the form model 1.01.

15.2.1.2

Specification

The specification shall:

- (a) begin with the title;
- (b) refer to a single main model, which may include a plurality of additional different elements, or construction or embodiment variations, provided that the technical and functional unity and bodily unity of the subject matter are preserved;
- (c) specify the technical field to which the subject matter refers;
- (d) describe the state of the art as may be considered useful for understanding, search and examination of the model, citing, whenever possible, the documents reflecting the same, outlining the existing technical problems;

(e) describe, in a clear, brief and precise manner, the proposed solution for the existing problem, as well as the advantages of the model relative to the state of the art;

(f) point out, clearly, the novelty and enhance the functional improvement achieved;

(g) list the figures presented in the drawings, specifying their graphic representations (views, cross-sections, perspective, electrical circuit layout, etc.);

(h) describe the model in a consistent, precise, clear and sufficient manner, including the possible variations, cross-referencing to the reference signs included in the drawings, to define the subject matter requested instead of a mere principle according to which the same may take different forms, expressions of the type "preferred embodiment", "by way of example" etc. not being acceptable.

(i) describe, in the case of a functional improvement arising from the alteration or introduction of an electrical circuit specifically associated to the subject matter, further to the schematic diagram of the mentioned circuit, all those elements of connection and linking responsible for the alteration and arrangement resulting in the best utilization of the model which is the subject matter of the application;

(j) be presented so as to follow the order indicated in the above items, except when due to the object of the model another manner or different order allows a better understanding and a more concise presentation.

15.2.1.2

Claims

15.2.1.2.1

Quantity and Numbering

(a) each application should include only one independent claim describing the model, defining integrally all the characteristics of form or arrangement introduced, essential to provide the functional improvement;

(b) dependent claims shall only be accepted when:

(b.1) the same refer to a complementary element of optional use that does not alter or modify the conditions of use and operation of the subject matter;

(b.2) the same refer to a variation in the form or to a detail associated to component elements of the model, defined in the first claim, and that do not alter the unity of the model (technical and functional unity and bodily unity of the subject matter) and its operation;

(b.3) the same refer to the subject matter in its three-dimensional form in the cases where the final configuration is secondary and resulting from the assembly of an initial planned structure having been characterized in the first claim;

(c) the claims shall be numbered consecutively in Arabic numerals.

15.2.1.2.2

Formulation of the Claims

(a) the claims should begin with the title of the application and include the expression "characterized by" only once in each claim;

(b) each claim should define, clearly and precisely, and in a positive manner, the technical characteristics to be protected thereby, avoiding expressions that may result in lack of definition in the claim;

(c) the dependent claims should not exceed the limitations of the characteristics comprised in the claim(s) to which they refer;

(d) the independent claim should, when necessary, include between the title and the expression "characterized by", a preamble expressing the characteristics already known in the state of the art being indispensable for the construction and definition of the model;

(e) the independent claim should define, after the expression "characterized by", only the new form or arrangement being introduced, including all the elements that constitute it, as well as their positions and interconnections thereof relative to the whole;

(f) the characteristics of the model that are defined in the claims should include, between brackets, the signs of reference appearing in the drawings;

(g) each claim should be written in a continuous fashion without being interrupted by points;

(h) the claims should be entirely based on the specification and drawings;

(i) the dependent claims should begin with the title of the application followed by the expression "in accordance with claim No. ..." and, if

necessary, the expression "characterized by";

(j) except when absolutely necessary, the claims may not include, as regards the characteristics of the model, references to the specification or to the drawings, of the type "as set forth in part ... of the specification", or "as set forth in drawing ...", etc.;

(k) claims regarding utilization and explanatory parts regarding the operation, advantages and utilization of the subject matter shall not be accepted.

15.2.1.3

Drawings

There should be applied, where applicable, the provisions applicable to inventions (Item 15.1.4.), except Item 15.1.3.2.

15.2.1.5

Abstract

There should be applied, where applicable, the provisions applicable to inventions (Item 15.1.5.).

15.3

General Specifications Regarding Patent Applications

15.3.1 The title should be concise, clear and precise, identifying the subject matter of the application, without irrelevant or unnecessary expressions or words (such as "new'", "better", "unique" and similar), or any fanciful denominations, and be identical in the filing form, in the specification and in the abstract.

15.3.2

Terminology and symbols

15.3.2.1

The weight and measurement units should be expressed in the terms of the international system of measurement units, their multiples and sub-multiples.

15.3.2.2

Regarding the geometrical, mechanical, electrical, magnetic, thermal, optical and radioactivity indications, there should be followed the General Chart of Units of Measure in effect, established by the competent national bureau.

15.3.2.3

The chemical formulae and/or mathematical equations, as well as symbols,

atomic weights, nomenclature and specific units, not provided in the General Chart of Units of Measure, should follow the established practice of the respective technical field.

15.3.2.4

The terminology and the symbols should be uniform throughout the application.

15.3.3

General Specifications

15.3.3.1

The specification, the claims, the drawings (if any) and the abstract should be submitted in 03 (three) copies, for the use of the INPI, allowing the submission of an additional two copies, at most, to be returned to the applicant.

15.3.3.2

The specification, the claims and the abstract should be typewritten or printed using characters at least 2,1 mm in height, and at least, with a 1 ? spacing, without interlineation, in indelible black ink, allowing that, when necessary, the chemical formulae and/or mathematical equations be handwritten or drawn.

15.3.3.3

The specification, the claims, the drawings (if any) and the abstract may not include erasures or amendments, stamps, logos, lettering, signatures or initials, signals or indications of any nature whatsoever being alien to the application, and they should be submitted in A4 size paper (210 mm x 297 mm), flexible, resistant, white, smooth, not glossy, not transparent, using only one side, not creased, torn or folded.

15.3.3.4

All the basic documents of the application, namely the specification, the claims, the drawings (if any) and the abstract should be submitted in a manner which allows the reproduction thereof.

15.3.3.5

The specification, the claims and the abstract should not include any graphic representations.

15.3.3.6

The specification and the abstract may include tables, the inclusion of the same in the claims being allowed when indispensable.

15.3.3.7

Each basic document integrating the application should begin in a new sheet with independent numbering.

15.3.3.8

The chemical formulae and/or mathematical equations, as well as tables, when inserted within the text, should be identified.

15.3.3.9

The drawings should, preferably, follow the established Brazilian rules for technical drawings.

15.3.3.10

The sheets relative to the specification, the claims and the abstract should:

(a) contain the text inside the following margins:

minimum maximum

upper 2 cm 4 cm—preferably 4 cm

left side 2,5 cm 4 cm—preferably 3 cm

right side 2 cm 3 cm

lower 2 cm 3 cm

(b) be numbered consecutively, using Arabic numerals, in the center of the upper part, between 1 and 2 cm from the border of the sheet, preferably indicating the number of the page and the total number of pages (of each of those parts), separated by a slanted bar (for example, if the specification has 31 pages, sheets 2, 12 and 31 would be: 2/31, ..., 12/31, ..., 31/31);

(c) Exceptionally, in the cases where it may be necessary to modify the specification and that alteration entails a substantial rearrangement of the remaining sheets comprising the same, there may be accepted substitute sheets with hybrid numbering, that is, formed by Arabic numerals and letters, duly linked to the preceding sheet and to the following sheet, there having to exist a clear indication of the sequence, in all the sheets with hybrid numbering and in the one immediately preceding the same, by means of a footnote in these sheets, in the following terms: (in sheet 4)—"to be continued on sheet 4(a)", (in sheet 4(a))—"to be continued on sheet 4(b)", (in sheet 4(b))—"to be continued on sheet 5".

(d) have at the left margin, next to the text, the lines being numbered, from the fifth, every five lines (5, 10, 15, etc...), such numbering beginning anew for every sheet and referring only to the lines of text, not considering the spaces occupied by tables, chemical, physics or mathematical formulae inserted

within the text, so as that the numbering of the lines suffer no interruptions of sequence.

16. SPECIFIC PROVISIONS FOR THE BIOTECHNOLOGY AREA

16.1

Deposit of Biological Material

16.1.1

In the case provided in the sole paragraph of Article 24 of the IPL, the deposit of the biological material should be made at institutions located in the Country, duly authorized and accredited by the INPI.

16.1.1.1

The disclosure of the institutions authorized by the INPI to receive deposits of biological material shall be widely publicized through the RPI (Official Industrial Property Gazette).

16.1.1.2

In the absence of an institution located in the Country being authorized by the INPI or indicated in an international agreement being in effect in the Country, in order to deposit the biological material being the subject matter of the patent application, the applicant shall be allowed to effect the deposit with any one of the international deposit authorities, acknowledged in the "Budapest Treaty on International Acknowledgement of Deposit of Micro-Organisms for the purposes of Instruction of Processes Concerning Patent Matters".

16.1.1.1.2

The INPI shall divulge informations on the official Institutions mentioned in the preceding Item.

16.1.1.3

The deposit of biological material should be effected until the date of filing of the application.

16.1.1.3.1

There being a claim of priority, the deposit of the biological material should correspond to the date of the priority claimed.

16.1.1.3.2

The data concerning the deposit of the biological material should integrate the specification.

16.1.1.3.3

When the biological material has been deposited in an institution not authorized in the form of the present provision, such deposit should be

effected within the delay of 60 (sixty) days from the date of filing of the application or the date of the beginning of the National Phase, if that is the case.

16.1.1.4

The pending application that is not in accordance with the present provisions shall be subjected, at the time of the technical examination, to the applicable requirements.

16.1.1.5

Independent of the prior provisions, whenever necessary for the technical checking of the characteristics of the biological material, the INPI may formulate a substantiated technical requirement as to the analysis and verification in situ of such material.

16.2

The Specification

The specification, further to the specific details included in Item 15 of this Act, should additionally include the indispensable properties of the living material needed for its complete description, according to the technologies being inherent to the respective matter considered relevant for its perfect characterization, such as those given as examples hereafter, or alternative parameters that may identify it better:

16.2.1

Yeasts

- (a) Growth states in adequate media
- (b) Formation of "ascospores"
- (c) Formation of "ballistospores"
- (d) Physiological properties such as:
 - optimum conditions of growth
 - assimilation of nitrates
 - decomposition of lipids
 - decomposition of urea
 - liquefaction of gelatine

- degree of osmotolerance
- formation of carotenoids
- formation of organic acid
- formation of substances similar to starch

(e) Assimilation or lack of same of more than fifteen carbon sources (such as the carbon sources with asterisks are indispensable)

- D-arabinose
- L-arabinose
- D-ribose
- D-glucose*
- D-mannose
- D-galactose*
- L-rhamnose
- D-fructose
- L-sorbose
- maltose
- sacarose
- lactose*
- mellibiose
- cellobiose
- trecalose
- raffinose

16.2.2

Funguses and mildews

(a) Growth states in adequate media

– of those media, two or more should be selected and the morphological properties of their respective fructification organs; asexual spore and mycelium, and the form, color, etc., of the colony relative to the state of growth should be described

(b) Physiological and ecological properties such as:

- optimum conditions of growth
- degree of growth
- phenol-oxidase reaction

Note: In the cases where the properties of the culture may be insufficient in themselves, for the identification of the new species, a description of the morphological properties, of a standard species and being dehydrated or in lamina shall be required.

16.2.3

Bacteria

(a) Morphological properties in the adequate media such as:

- size and shape of the cells
- presence or absence of cellular pleomorphism

If pleomorphic, the details of same.

- presence or absence of motility.

When present, the state of adherence of the flagellum.

- presence or absence.

If present, size and shape of the spores and sporangiae and the position of the spores.

- coloring in gram

(b) State of growth in the adequate media

(c) Physiological properties such as:

- reduction of nitrate
- denitrogenation
- MR test
- VP test
- formation of endol
- hydrolysis of starch
- formation of pigment
- degree of growth
- formation of acid and gas from the following carbon sources:
 - (1)-L-arabinose
 - (2)-D-xilose
 - (3)-D-glucose
 - (4)-D-mannose
 - (5)-D-fructose
 - (6)-D-galactose
 - (7) maltose
 - (8) sacarose
 - (9) lactose
 - (10) trealose
 - (11)-D-sorbitol
 - (12)-D-mannitol
 - (13)-inositol

(14) glycerin

(15) starch

(d) Other properties required to characterize the new species such as:

- gluconic acid oxidation
- decomposition of cellulose
- decomposition of alcohol
- hemolyses
- coagulase
- lipase

(e) Photosynthetic anaerobic bacteria and those that require inorganic nutrients must also be described according to the Bergy's Manual or research reports.

16.2.4

Actinomycetes

(a) Morphological properties such as:

- ramification, shape of the hypha
- number of spores, structure of the surface and size of spore
- presence or absence of flagellospores
- state of fission of the mycelium

(b) State of growth in the adequate media

Note: Regarding the state of growth in those media the color of the actinomycetes at the surface of the colony should be described.

(c) Physiological properties such as:

- hydrolisis of starch
- degree of growth

(d) Assimilation of the following carbon sources:

- L-arabinose
- D-xilose
- D-glucose
- D-fructose
- sacarose
- inositol
- L-rhamnose
- raffinose
- D-mannitol

16.2.5

Algae

- state of growth in adequate medium

- morphological properties:

presence of pigments

presence of nutritive reserves

means of locomotion

nature of the cell wall

- physiological properties:

fixation of nitrogen

formation of proteins

formation of stabilizing agents (alginates, agar, carragennin)

formation of sedimentation

synthesis of vitamins

16.2.6

Protozoa

- state of growth in the adequate medium

- morphological properties:

means of locomotion

cell structures

- physiological properties:

management of cellulose

- pathogenicity (vitasi cycles, host bands)

16.2.7

Viruses

- state of growth in the adequate medium

- morphological properties:

formation of proteins

formation of infections

formation of nucleic acids

formation of lipids

formation of hydrocarbons

- physiological properties:

pathogenicity (DNA virosis, RNA virosis)

- biochemical replication

- coupling or maturing

- adsorption
- penetration and stripping
- release
- lysis

16.2.8

Other living material allowing cultivation "in vitro"

not included in the preceding categories

The deposit, in the form of a viable culture, should be accompanied by a differential characterizing description of the living material, in the morphological, physiological and/or biochemical planes. The deposit should also be accompanied by the description of the ideal means and methods for the cultivation of the living material "in vitro".

16.3

Listing of Biological Sequences

16.3.1

Conditions

16.3.1.1

Any patent application describing a sequence of nucleotids or amino acids should include—further to the specification, claims, drawing and abstract, a separate section named Listing of Sequences, immediately after the claims.

16.3.1.2

The listing of sequences should include:

16.3.1.2.1

General information about the patent application, as specified in Item 16.3.2.

16.3.1.2.2

General information about the sequence, as specified in Item 16.3.3.

16.3.1.2.3

All the sequences or parts of sequences described in the application being identified separately by an identification number, being presented as described in Item

16.3.4.3

through 16.3.4.13.

16.3.1.3

Whenever there is a reference made in the specification, in the claims or in the abstract, to the Listings of Sequences, the same should be made using the identification number, even if other representations of the sequence are presented in the text.

16.3.2

General Information of the Patent Application

The general information of the patents application should include:

(I) Data on the Applicant:

(a) name

(b) full address

(II) Data on the Priority, if applicable.

(III) Title of the Invention

(IV) Number of sequences included in the application.

(V) Format for computer reading.

(a) means

(b) computer used

(c) operating system

16.3.3

General Information of the Sequence

The general information of the sequence should include:

16.3.3.1

The identification number of the sequence

16.3.3.2

Characteristics of the sequence

(a) size

(b) type

(c) conformation of the ribbon (if a nucleotid)

(d) topology

16.3.3.3

Characteristics of the sequenced molecule

(a) type: DNA, RNA, other nucleic acids, peptides, etc.)

(b) name (of the gene or of the peptide)

(c) product of the gene

16.3.3.4

Other relevant information, if available, such as:

- original source of the molecule,
- position of the sequence in the genome,
- associated phenotype,
- enzymatic activity
- biological activity,
- general function of the class of the gene or of the product thereof,
- cellular location

16.3.4

Description of the Sequences

16.3.4.1

A sequence of nucleotids is defined as being a sequence of ten or more nucleotids

16.3.4.2

A sequence of amino acids is defined as being a sequence of four or more amino acids.

16.3.4.3

The sequences of nucleotids should be presented using the letters code for nucleotid bases, as specified below:

Code Meaning

A Adenine

C Cytosine

G Guanine

T Thymine

U Uracile

M A or C

R A or G

W A or T/U

S C or G

Y C or T/U

K G or T/U

V A or C or G; not T/U

H A or C or T/U; not G

D A or G or T/U; not C

B C or G or T/U; not A

N A or C or G or T/U o

unknown.

16.3.4.4

The amino acids corresponding to the codons of the sequence should be presented immediately below the corresponding codon.

16.3.4.5

The amino acids in a sequence should be listed in the direction N-terminal to C-terminal, using the three-letter code with the first letter being a capital, as per the following list:

Code Amino acid

Ala Alanine

Arg Arginine

Asn Asparagine

Asp Aspartic acid

Asx Aspartic acid or Asparagine

Cys Cysteine

Glu Glutamic acid

Gln Glutamine

Glx Glutamine or Glutamic acid

Gly Glycine

His Histidine

Ile Isoleucine

Leu Leucine

Lys Lysine

Met Methionine

Phe Phenylalanine

Pro Proline

Ser Serine

Thr Treonine

Trp Triptofane

Tyr Tyrosine

Val Valine

Xaa Unknown or other

16.3.4.6

In a sequence of nucleotids, the non-coding part (including introns) should be listed in groups of ten bases.

16.3.4.7

In a sequence of nucleotids, the coding part should be listed in sets of three (codons).

16.3.4.8

The sequence of nucleotids should be listed with a maximum 16 codons, or 60 bases per line.

16.3.4.9

The numbering of the bases should begin with the first base of the sequence having the number 1, and proceed through the sequence in the direction 5'' to 3''.

16.3.4.10

At the end of each line containing the list of bases, at the right margin, there should be noted the number corresponding to the last base of this line.

16.3.4.11

The numbering of the corresponding amino acids in a sequence of nucleotids should begin with the first amino acid of the protein having the number 1. The presequences and the signal sequences, when present, should have negative numbers counted in the reverse, beginning with the amino acid near that with number 1.

16.3.4.12

The sequence of amino acids should be listed with a maximum of 16 amino acids or line.

16.3.4.13

The symbols for components of less common peptides and for substitutes in the carboxylic groups or in hydrogen atoms of peptides should be presented in accordance with the recommendations of the IUPAC-IUB.

16.4

Access to the Biological Material

Publication of the application

16.4.1

The biological material that supplements the specification of the patent application, in accordance with the sole paragraph of Article 24 of the IPL,

shall become accessible to the public, being technically skilled, on the date of publication of the application, except if such access is forbidden by the law or by a treaty in effect in the country.

16.4.1.1

The person or entity filing the application or the holder of the patent shall not be able to prevent or hinder the access, except when able to prove the existence of reasons of a technical or legal nature.

16.4.1.1.1

In the event provided in the preceding item, the INPI shall take the necessary steps to reach a decision concerning the reasons claimed by the applicant or holder for preventing access to the biological material.

16.4.1.1.1.1

When the claim of unavailability entails matters under the competence of a different Federal Public Administration bureau, the deliberation of the INPI shall be based upon the technical opinion to be previously reported by that bureau.

16.3.1.1.2

Should the INPI decide against the claim of the applicant or holder, the same shall be served notice to, in the delay of 60 (sixty) days, take the applicable measures as may be required to render the biological material available.

16.3.1.1.3

Should the applicant or holder fail to render the material available shall be deemed as noncompliance with the provisions of Article 24 of the IPL, whereby the application or patent shall be subject to the pertinent legal penalties.

17.

This Normative Act shall begin its term of effectiveness on 05/15/97, the provisions of Normative Acts 013/75, 017/76, 057/81, 076/85, 082/86, 092/88, 100/89, 101/89, 102 89, 111/93, 113/93 and 121/93, where concerning patents, and any other eventual provisions to the contrary being hereby revoked.

(signed)

Américo Puppín

President