

1984

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

PATENTS AMENDMENT BILL 1984
EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Science and
Technology, the Honourable Barry O. Jones, M.P.)

PATENTS AMENDMENT BILL 1984

OUTLINE

The main purpose of this Bill is to amend the Patents Act 1952 to ensure that Australians can take advantage of the procedures made possible by the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure, done at Budapest on 28 April 1977, to which Australia intends to accede. Patent applicants whose invention involves a micro-organism will be enabled, and required in certain circumstances, to make a deposit of the micro-organism in a prescribed depositary institution. All international depositary authorities under the Budapest Treaty will be included, so that a single deposit in one authority will, under the Treaty, satisfy deposit requirements of patent laws in all other member countries. This obviates the need for costly and cumbersome multiple deposits, and will also give Australian industry more ready access to deposited strains.

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Notes on Clauses

Introduction

Clauses 1 and 2 of the Bill provide for the short title and commencement of the legislation.

Interpretation

Clause 3 inserts definitions of 'Budapest Treaty', 'depository institution', 'international depository authority', 'prescribed depository institution', and 'rules relating to micro-organisms' into section 6 of the Patents Act.

Form of Application

Clause 4 amends section 35 of the Patents Act to require a patent applicant who makes a micro-organism deposit to lodge further documents as prescribed. It is intended that this would include, for example, copies of receipts for micro-organism deposits.

Contents of Specifications

Clause 5 provides additional requirements under section 40 of the Patents Act for patent specifications relating to micro-organisms so as to require deposit of micro-organisms in certain circumstances. Amended sub-section 40(3) specifies the circumstances in which a deposit is required in accordance with sub-section 40(5). The most important factor is where a micro-organism used in an invention is not reasonably available to a person skilled in the art. Sub-sections 40(3) and 40(4) provide that the requirement of a full description of a micro-organism will be satisfied provided the deposit requirements in sub-section 40(5) are met.

New sub-section 40(5) sets out deposit requirements.

Apart from the need to make a deposit with a prescribed depositary institution, the specification must include the characteristics of the micro-organism and information about the deposit itself. Further, the applicant must authorise access to deposits in accordance with the rules relating to micro-organisms, and the depositary institution must be able to furnish samples. It is intended that the rules relating to access will be formulated after consultation with interest groups.

Sub-section 40(6) has the effect that a micro-organism may be held to be reasonably available if it is available from an overseas country, even if not available in Australia.

Sub-section 40(7) enables default by a depositary institution to be rectified by a new deposit without affecting the depositor's position.

Prohibition or Restriction of Access

Clause 6 enables the prohibition or restriction of access to a deposited micro-organism under section 131 of the Patents Act where access would be against the interests of the defence of the Commonwealth. Section 131 currently relates only to prohibiting or restricting publication of information relating to inventions.

Micro-organisms Ceasing to be Reasonably Available

Clause 7 inserts a new section 154A in the Patents Act. The new section enables a court or the Commissioner of Patents to make a declaration, having the effect that the deposit requirements of sub-section 40(5) must be complied with, in a case where a micro-organism was available at the time of lodgment of the specification but subsequently becomes unavailable.

Regulations

Clause 8 amends section 177 of the Patents Act to empower the Governor-General to make regulations relating to the Budapest Treaty, the depositing of and access to micro-organisms, and the functions of prescribed depositary institutions.

Addition of Schedule

Clause 9 amends the Patents Act by adding a new Schedule 3 to the Patents Act. The new Schedule contains the text of the Budapest Treaty and of Regulations under the Treaty.

