

Union for the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (Budapest Union)

Assembly

**Thirty-Ninth (18th Extraordinary) Session
Geneva, July 14 to 22, 2022**

FORMS UNDER THE BUDAPEST TREATY

Document prepared by the Secretariat

SUMMARY

1. This document contains a proposal to provide spaces for identification of an electronic mail (hereinafter referred to as “e-mail”) address and a telephone number on the Forms prepared under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (Budapest Treaty).
2. Embracing the multilingualism of WIPO, it is also proposed that such Forms be established in the six languages of the United Nations (UN), and that amendments to Rule 11.4(a) and (b) of the Regulations under the Budapest Treaty be made so that all six UN languages will be covered under these provisions.

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3. Fourteen Forms, numbered BP/1 to BP/14, are available under the Budapest Treaty (see the list of the Forms in Annex I). They have been drawn up by the International Bureau of WIPO on the basis of the discussions held by the Assembly of the Budapest Union (hereinafter referred to as “Assembly”) and the Interim Advisory Committee for the preparation of the entry into force of the Budapest Treaty.

4. The establishment of Forms are not all provided for in the Regulations under the Budapest Treaty. The Regulations prescribe Forms for BP/4, 5, 6, 9 and 12. As for the other Forms, which bear the numbers BP/1, 2, 3, 7, 8, 10, 11, 13 and 14, the Assembly considered it useful to have these drawn up as models. Consequently, the International Bureau established these Forms accordingly.

5. Forms BP/4, 5, 6, and 9 are called "international forms". They relate to a receipt of a microorganism and a viability statement, which are issued by the International Depositary Authorities (IDAs). These international forms are available in English, French, Russian and Spanish, as decided by the Assembly. Other Forms are currently available in English and French.

INCLUSION OF A TELEPHONE NUMBER AND AN E-MAIL ADDRESS IN THE FORMS UNDER THE BUDAPEST TREATY

6. For the purposes of identification of, and communication with, a depositor of a microorganism or a requester of a sample of a microorganism, all BP Forms contain spaces for his/her name and address. However, none of them provides spaces with respect to an e-mail address and a telephone number of a party concerned.

7. In practice, e-mail and telephone have been well-established, standard means of communication today. Indications of telephone numbers and email addresses also serve the function of identifying the party concerned, and communicating with the party whenever it is necessary. Providing the possibility of including such information in the BP Forms will benefit the users of the Budapest System, ensuring prompt communication between the IDAs, Intellectual Property Offices (IPOs) and depositors of a microorganism or requesters of a sample of deposited microorganisms. It is thus, proposed to include spaces for the e-mail address and the telephone number in the BP Forms.

8. Pursuant to Rule 11.3(a) of the Regulations under the Budapest Treaty, the contents of Form BP/12, which relate to the furnishing of samples of deposited microorganisms to the legally entitled party, shall be fixed by the Assembly. Consequently, the Assembly is invited to consider the inclusion of the e-mail address and the telephone number of the party concerned as part of the contents of Form BP/12.

9. With respect to other BP Forms, the international forms, i.e., BP/4, BP/5, BP/6 and BP/9, are established by the Director General (see Rule 7.2(a) and Rule 10.2(d) of the Regulations under the Budapest Treaty). The rest of the BP Forms¹ are prepared by the International Bureau as a mere reference or a model for the users of the Budapest System. Accordingly, the International Bureau will prepare draft revised BP Forms that will contain spaces for an e-mail address and a telephone number of the depositor/requester, and circulate them to the Member States for consultation, prior to the finalization and publication of the revised BP Forms.

ESTABLISHMENT OF BP FORMS IN THE SIX UN LANGUAGES

10. According to Rules 7.2(a) and 10.2(d) of the Regulations under the Budapest Treaty, the languages of Forms BP/4, 5, 6 and 9 shall be designated by the Assembly. During its second session in 1981, the Assembly designated English, French, Russian and Spanish as the languages of these Forms.² Other Forms are customary established by the International Bureau in English and French.

11. Since the decision of the Assembly in 1981, China and several countries whose official language is (or official languages include) Arabic³ joined the Budapest Treaty. The official

¹ BP/1, BP/2, BP/3, BP/7, BP/8, BP/10, BP/11, BP/13 and BP/14.

² Document BP/A/II/11.

³ Bahrain, Jordan, Morocco, Oman, Qatar, Saudi Arabia, Tunisia, and the United Arab Emirates.

languages of many of 85 Contracting States of the Budapest Treaty are Arabic, Chinese, Spanish or Russian. With the geographical expansion of the Treaty, extending the languages in which the BP Forms are available would offer the users of the Budapest System a better language choice in carrying out the procedures established by the Budapest Treaty. It is thus, proposed that the Assembly designate the six UN languages, i.e., Arabic, Chinese, English, French, Spanish and Russian, as the languages of Forms BP/4, 5, 6 and 9.

12. Forms BP/10, 11, 12 and 13 regarding furnishing of a sample of a microorganism relate to Rules 11.1, 11.2 and 11.3 of the Regulations under the Budapest Treaty. Rule 11.4(a) and (b) cover the issues concerning the languages and translation of a request, declaration, certification or communication referred to in Rules 11.1, 11.2 and 11.3. They provide: (i) the languages in which any such request, declaration, certification or communication shall be addressed; and (ii) the cases where a translation of these various types of communication shall be furnished by the International Bureau. Specifically, these communications shall be addressed in English, French, Russian or Spanish in certain cases and in English or French in certain other cases, depending on the official language(s) of the IDA that receives such communications. Under certain conditions, the International Bureau has an obligation to establish, upon request, a certified translation of these communications from/to Russian or from/to Spanish.

13. To be in line with the expansion of the languages of the BP Forms and with WIPO's commitment to multilingualism both as its core value and as a means to reach out worldwide,⁴ it is proposed that the Assembly amend Rule 11.4(a) and (b) so that the communications in Arabic and Chinese will be included in these provisions, and a certified translation of the communications to/from Arabic and Chinese may be requested to the International Bureau. Annex II to this document sets out the proposed amendments to Rule 11.4(a) and (b). It is proposed that the Assembly adopt the amendments set out in Annex II, which shall enter into force on January 1, 2023, and shall apply to a request, declaration, certification or communication referred to in Rules 11.1, 11.2 and 11.3, which will be filed or submitted on or after that date.

14. It should be noted that, in practice, even if the IDA's official language (or one of the official languages) is not English, they all accept English as a working language or a communication language. The International Bureau has not found any record of requests for translation under Rule 11.4(a) or (b). Therefore, it is not expected that the modification of Rule 11.4(a) and (b) would have a significant impact on the translation workload of the International Bureau.

15. With respect to other BP Forms, unless the Assembly decides otherwise, the International Bureau will also prepare them in six UN languages so that a consistent level of service for the depositors/requesters, IDAs and IPOs will be provided.

16. *The Assembly of the Budapest Union is invited to:*

(i) fix the contents of Form BP/12 as set out in paragraph 8 of document BP/A/39/1;

(ii) take note of the contents of paragraph 9 of document BP/A/39/1;

⁴ Document WO/PBC/32/6, paragraph 5.

(iii) designate the languages of Forms BP/4, BP/5, BP/6 and BP/9 as set out in paragraph 11 of document BP/A/39/1; and

(iv) adopt the proposed amendments to the Regulations under the Budapest Treaty as set out in Annex II with an entry into force on January 1, 2023.

[Annexes follow]

FORMS UNDER THE BUDAPEST TREATY AND REGULATIONS

1. BP/1: Statement in the case of an original deposit (Rule 6.1)
2. BP/2: Statement in the Case of a New Deposit with the Same International Depository Authority (Rule 6.2)
3. BP/3: Statement in the Case of a New Deposit with Another International Depository Authority (Rule 6.2)
4. BP/4: Receipt in the Case of an Original Deposit (Rule 7.1)
5. BP/5: Receipt in the Case of a New Deposit (Rule 7.1)
6. BP/6: Receipt in the Case of a Transfer (Rule 7.1)
7. BP/7: Communication of the Later Indication or an Amendment of the Scientific Description and/or Proposed Taxonomic Designation (Rule 8.1)
8. BP/8: Attestation Concerning the Later Indication or an Amendment of the Scientific Description and/or Proposed Taxonomic Designation (Rule 8.2)
9. BP/9: Viability Statement (Rule 10.2)
10. BP/10: Request for the Furnishing of Samples of Deposited Microorganisms (Rule 11.1)
11. BP/11: Request for the Furnishing of Samples of Deposited Microorganisms (Rule 11.2(ii))
12. BP/12: Request for the Furnishing of Samples of Deposited Microorganisms (Rule 11.3(a))
13. BP/13: Request for the Furnishing of Samples of Deposited Microorganisms (Rule 11.3(b))
14. BP/14: Notification of the Furnishing of Samples of Deposited Microorganisms (Rule 11.4(g))

[Annex II follows]

PROPOSED AMENDMENTS TO THE REGULATIONS UNDER THE BUDAPEST TREATY⁵

Rule 11

Furnishing of Samples

11.4 *Common Rules*

(a) Any request, declaration, certification or communication referred to in Rules 11.1, 11.2 and 11.3 shall be

(i) in Arabic, Chinese, English, French, Russian or Spanish where it is addressed to an international depository authority whose official language is or whose official languages include Arabic, Chinese, English, French, Russian or Spanish, respectively, provided that, where it must be in Arabic, Chinese, Russian or Spanish, it may be instead filed in English or French and, if it is so filed, the International Bureau shall, on the request of the interested party referred to in the said Rules or the international depository authority, establish, promptly and free of charge, a certified translation into Arabic, Chinese, Russian or Spanish;

(ii) in all other cases, it shall be in English or French, provided that it may be, instead, in the official language or one of the official languages of the international depository authority.

(b) Notwithstanding paragraph (a), where the request referred to in Rule 11.1 is made by an industrial property office whose official language is Arabic, Chinese, Russian or Spanish, the said request may be in Arabic, Chinese, Russian or Spanish, respectively, and the International Bureau shall establish, promptly and free of charge, a certified translation into English or French, on the request of that office or the international depository authority which received the said request.”

(c) to (h) *[No change]*

[End of Annex II and of document]

⁵ Proposed additions are indicated in blue and by underlining the text concerned.