



American Intellectual Property Law Association

December 14, 2018

Saudi Authority for Intellectual Property
Kingdom of Saudi Arabia

Via email: saip@saip.gov.

RE: Request for Public Consultation on the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (Budapest Treaty)

Dear Sir:

The American Intellectual Property Law Association (AIPLA) thanks the Saudi Authority for Intellectual Property for this opportunity to respond to the Request for Public Consultation on the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (Budapest Treaty).

AIPLA is a national bar association of approximately 13,500 members engaged in private or corporate practice, in government service, and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property. Our mission includes helping establish and maintain fair and effective laws and policies that stimulate and reward invention while balancing the public's interest in healthy competition, reasonable costs, and basic fairness.

AIPLA writes in support of the accession of Saudi Arabia to the Budapest Treaty. AIPLA's members serve as counsel for those having interests in intellectual property of all kinds, including biological inventions. In the experience of our membership, the Treaty has a positive impact on stakeholders in member countries and on the global progress of biotechnology innovation. We expect it would have the same effect in Saudi Arabia.

To summarize the Treaty, it requires member states to recognize a deposit of biological material made in any of 47 official depositories as adequate for patenting purposes. Because biological materials can often only be made by propagation of such materials from existing materials, many countries require a deposit of biological material accompany a patent application for any biological invention requiring such material. Prior to the Treaty, inventors were required to make one deposit in each state having a deposit requirement. Providing a deposit is expensive and time consuming. The need to make multiple deposits if patents are sought in multiple countries multiplies the cost and time required. For pathogenic organisms there is also a safety risk each time a sample of the living organism is shipped over long distances.

Should Saudi Arabia sign the treaty, inventors of microorganisms and other inventions requiring biological materials (referred to herein as “biological inventions”) will gain an advantage when seeking patent protection in Saudi Arabia. Under current law, an inventor of such an invention may be required to make a biological deposit in Saudi Arabia, even if a deposit has already been made to a biological depository in another country. If Saudi Arabia signs the Treaty, a single deposit in any one of the 47 official depositories will be effective to support a patent application in any of the 80 member states, plus Saudi Arabia.

Based on our experience in the United States, this should have a positive impact on Saudi inventors, who might otherwise be required to make a deposit in their home country, and another to apply for patents in existing Treaty countries. It should also have a positive impact on foreign efforts to make biological technology available in Saudi Arabia by easing the patenting process there.

Participation in the Treaty would also remove any need for the establishment of a depository within Saudi Arabia. Under the Treaty anyone applying for a patent in Saudi Arabia would be able to use any of the established depositories currently recognized by the Treaty. Saudi Arabia would be free to decide whether to create a domestic depository, or to rely on the international network of depositories available under the Treaty.

This would also harmonize Saudi patent law with three other members of the Gulf Cooperation Council (GCC) that have already signed the Treaty: Bahrain, Oman, and Qatar. Currently an inventor in a GCC country that wishes to patent a biological invention in all six countries could be required to make four separate deposits (one in a Treaty-recognized depository, one in Saudi Arabia, one in Kuwait, and one in the United Arab Emirates). Although such an inventor could seek a patent through the Gulf Cooperation Council Patent Office (GCCPO), the GCCPO is not an option for inventors taking advantage of Saudi Arabia’s recent accession to the Patent Cooperation Treaty.

Finally, signing the Treaty would further develop Saudi Arabia’s maturing body of law regarding biotechnology, providing increased certainty to Saudi and non-Saudi inventors alike.

For the reasons above, we support Saudi Arabia’s contemplated membership to the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

AIPLA appreciates the opportunity to provide these comments. Please contact us if you would like us to provide additional information on any issues discussed above.

Sincerely



Sheldon H. Klein
President

American Intellectual Property Law Association