

**BRAZIL**

**Patent Regulations**

Normative Instruction PR No. 17/2013 Provides for the application of the Industrial Property Law in relation to patents and certificates of invention addition

ENTRY INTO FORCE: March 18, 2013

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## **1. TITLE**

**1.1.** The request for non-disclosure of the inventor's name, as provides paragraph 4 of article 6 of the LPI must be indicated in the application for registration and must be attached thereto, as an Annex, in a sealed envelope, a document of the applicant appointing and identifying the inventor and the inventor's statement requesting non-disclosure of his/her appointment.

**1.1.1.** After their checking by INPI, the foregoing documents and statement will be kept in a sealed envelope.

**1.2.** Provided that the applicant requests the non -disclosure of the name of the inventor, the INPI will omit such information from the publications regarding the subject proceedings, nor in the copies of the proceedings furnished to third parties.

**1.3.** In the event foreseen in item 1.1., third parties that have a legitimate interest may request to the INPI that the name(s) of the inventor(s) be disclosed, under the commitment, subject to the penalties of the law, to not make such disclosure to an extent that surpasses the amount necessary to contest a possible lack of legitimacy.

## **2. GRACE PERIOD**

**2.1.** The disclosure of an invention or industrial design will not be considered state of the art when it occurs during the period of twelve (12) months that precede the date of filing or of the priority of the patent application, if disclosed according to items I, II and III of article 12 of LPI (grace period).

**2.2.** The inventor may, for the purposes of article 12 of the LPI, on the occasion of the filing of the patent application, indicate the manner, place and date of his/her disclosure.

**2.3.** The INPI may, during the analysis of the application, whenever it deems necessary, issue an official grounded action to the applicant for it to submit, in a term of sixty (60) days, evidence that is unquestionable in regard to the occurrence and date thereof, as per article 12 of the LPI.

### **3. PRIORITY**

**3.1.** The priority claim must be supported by an appropriate document of origin that contains the description and, if the case may be, claims and drawings, jointly with an unofficial translation of the certificate of filing or an equivalent document.

**3.2.** When the data that identifies the application stated in the certificate attesting the filing thereof or the equivalent document match the data contained in the patent application (Form 1.01), the statement may be affixed in the respective application form, or separately, up to the date on which such document is filed, affording the same effects of the unofficial translation mentioned in paragraph 2 of article 16 of the LPI.

**3.3.** If the priority claim that is requested in the application for registration form is supplemented by other such claims, as provides paragraph 1 of article 16 of the LPI, the initial one hundred and eighty (180) day term as of the date of filing of the patent application (article 16 of LPI) for the respective evidencing will not be changed.

**3.4.** If the document that originated the priority pertains to an applicant other than the applicant that filed the application in Brazil, pursuant to an assignment of rights, a copy of the corresponding instrument of assignment must be filed, bearing a date prior to the filing of the application in Brazil, or a statement of assignment or equivalent document, not being required notarization/legalization thereon, and accompanied by an unofficial translation or bilingual document.

**3.4.1.** The formalities of the instrument of assignment of the priority right shall be those determined by the law of the country where such instrument was executed.

**3.4.2.** The right to file the application and the priority right are presumed assigned in the event of patent applications whose applicant is the employer or party contracted by the inventor, provided that the document evidencing said relation and the assignment of future inventions or equivalent document is filed.

**3.5.** The lack of evidencing of the priority claim of priority as provides article 16 of the LPI will entail the loss of the priority

right, except when the party proves that it did not do so for just cause, thus applying the provisions of article 221 of the LPI.

**3.6.** The patent application originally filed in Brazil, without a priority claim and unpublished will assure a priority right (domestic priority) in regard to a subsequent patent application for the same subject matter that is filed in Brazil by the same applicant or successors within a term of one (1) year.

**3.6.1** The priority claim will be requested in the filing of the patent application by indicating the number and date of the preceding patent application.

**3.6.2.** The previously filed application that remains pending will be considered definitively shelved and published.

#### **4. FILING OF THE PATENT APPLICATION**

**4.1.** The patent application, which will be always written in Portuguese, must contain:

- (i) Application form, as per Form 1.01;
- (ii) Description, as per the provisions hereof;
- (iii) Claims, as per the provisions hereof;
- (iv) Drawings, as per the provisions hereof, if the case may be;
- (v) Summary, as per the provisions hereof;
- (vi) Evidence of payment of the official filing fee.

**4.2.** The patent application may be delivered at the receptions of the INPI offices or by mail, with acknowledgement of receipt, addressed to the Patent Department -- DIRPA/SAAPAT -- located at Praça Mauá, 7, indicating thereon the code DVP.

**4.2.1.** It will be presumed that the patent applications filed by mail are received on the mailing date or the immediately subsequent business day, when mailed on a Saturday, Sunday or holiday, and at the time of closing of the expedient at the reception of the INPI main offices in Rio de Janeiro.

**4.3.** The patent application that does not fulfill the requirements of the foregoing items (I) through (V), but that includes data regarding the applicant and the inventor, in addition to a description and drawings (compulsory in the case of Utility Models), that permit the object to be perfectly identified, may be filed, upon dated receipt, at the INPI, who will determine the requirements to be fulfilled in a

thirty (30) day term as of the acknowledgement thereof, as provides article 226 of the LPI.

**4.3.1.** If the application is written in the Latin alphabet and a foreign language, the applicant must also file, within the same term mentioned in the foregoing item 4.3, an unofficial translation of all documentation originally drafted in the foreign language. If such translation corresponds to the patent application filed according to item 4.1., the applicant may replace such translation by a corresponding statement.

**4.3.2.** Provided that the requirements regarding the formal aspects are fulfilled, the patent application will be considered filed on the date on which it is received.

**4.3.3.** If it is ascertained during the processing of the patent application that the object thereof does not correspond to the original text, the date that will be adopted for the effects of determining the date of filing will be the date on which the official action is fulfilled.

**4.3.4.** If such official action is not fulfilled, the application will be returned to the applicant or will be kept at its disposal in a specific file at the INPI, until it is possible to be returned.

**4.4.** In the event of filing by mail, if additional application forms were sent, for their return to the applicant, the applicant must also send an additional envelope, addressed and sealed, for the return of the additional application forms by mail, without liability to INPI for the astray of mail. In the event of lack of such addressed and sealed envelope, such additional application forms will remain at the disposal of the applicant at the INPI offices in Rio de Janeiro.

## **5. FILING OF APPLICATION FOR REGISTRATION (DEPOSIT)**

### **5.1. REVOKED**

## **6. DIVIDED APPLICATIONS**

**6.1.** The patent application may be divided into two or more applications until the end of the examination process:

- a) at the applicant's request;
- b) pursuant to the fulfillment of an official action, when the technical examination reveals that the application is complex or that it comprises a group of inventions that encompasses more than one

concept of invention, or more than one utility model.

**6.1.1.** The application for a single invention or utility model may not be divided if such division implies in mutilation or double protection to the invention or model.

**6.1.2.** The filing of the divided application must include:

a) request for registration through the application Form 1.01., accompanied by the receipt of payment of the respective tax official fee;

b) the documents that comprise the divided application must fulfill the provisions set forth hereunder, being determined that, in regard to the description, after the title, it must indicate that it is a divided application, mentioning the nature, number and date of filing of the original application, as follows: "Division of \_\_\_\_\_, filed on ../../..";

b.1) The description, the summary, and, if the case may be, the drawings of the divided application will be restricted to the contents of the matter claimed therein, except when required for the perfect comprehension of the matter, in which case matter contained in the original application may be included;

c) the receipts of payment of the official fees applicable according to the stage of the registration proceedings of the original application (annuities, examination request, etc...) in the amount determined in chart of fees effective on the date of its filing.

**6.2.** The description, drawings and summary of the original application, when the case may be, must be modified accordingly so as to exclude inconsistent matter or matter that is not clearly related to the claimed invention.

**6.3.** If the claims of the divided application result from the division of the claims set forth in the original application, the claims set forth in the original application must be accordingly modified so as to exclude the claimed matter from the divided application.

**6.4. REVOKED**

**6.5.** The notice of filing of the divided application will be automatically published in the RPI (Official Bulletin), being mentioned in such notice the number of the original application and indicated that it is a divided application.

**6.6.** The divided application will be deemed as being in the same procedural stage of the original application, and the INPI will state by writing the documents and petitions that are in the dockets of the original application.

## **7. EXAMINATION OF THE APPLICATION**

**7.1.** During the technical examination, an official action may issue requesting the applicant to submit, in a term of sixty (60) days, under penalty of shelving of the application, an unofficial translation of the description and, if the case may be, of the claims contained in the suitable document of the country of origin. Such translation may be replaced by a statement of the applicant that all documents comprised in the application are accurately contained in the document of origin.

### **7.2. SUPPORTING MATERIAL**

The documents filed by third parties as supporting material will be considered references identified in the search conducted by the examiner and, as such, if relevant, will be attached to the technical opinion for the acknowledgment and reply of the applicant.

**7.3.** When the technical opinion finds that the application is not covered in the type of application filed, the applicant, if it wishes to amend the application, it must expressly mention so in the pertinent manifest.

**7.4.** If the amendment in connection with the new nature of the application is accepted, and if any balance is owed to INPI in regard to the official fees for the amended application, the applicant must effect payment of the due amount; in an opposite situation a reimbursement will not be effected for that the examination was performed under the nature originally claimed.

### **7.5. CONCLUSION OF THE EXAMINATION**

For the purposes of articles 26 and 31 of the LPI, the conclusion of the examination is deemed to be the date of the conclusive opinion of the technical examiner as to the feasibility of granting of the registration for the patent, or the thirtieth day prior to the publication of the acceptance, rejection or definitive shelving decision, whichever occurs last.

## **8. OFFERING OF LICENSE**

**8.1.** The patent exclusively licensed cannot be an object of an offering.

**8.2.** The patent licensed without exclusivity may be the object of an offering, however without the benefit of reduction of the annuities foreseen in article 66 of the LPI.

**8.3.** The Certificate of Addition to Invention, when it is an accessory of the patent, will accompany the offered patent and cannot be offered severally.

**8.4.** The non-licensed patent may be the object of an offering enjoying the benefit of reduction of the annuities provided in article 66 of the LPI, if the following conditions are fulfilled.

**8.4.1.** The owner must request to INPI to promote the offering for exploitation purposes, indicating all the inherent contractual terms, such as, royalties, terms, payment conditions, scale, availability of know-how, technical assistance.

**8.4.2.** The INPI, subsequent to checking the status of the patent and the terms and conditions imposed, will proceed to publish the offering and arrange the reduction of the annuities which will be payable.

**8.4.3.** If the patent is not fit for offering, being for example, under exclusive voluntary license or pending a challenge against its validity or burdened by a lien, the INPI will notify the owner thereon.

**8.5.** The publication of the offering will indicate, at least, the number of the patent, owner, term of its validity, title, object and term of license.

**8.6.** Such notice will be published at least once semi-annually.

**8.7.** The INPI will furnish, upon request of interested third parties, a complete copy of the contractual terms offered by owner and will notify the owner thereon.

**8.7.1.** As of the notice to the owner of the providing of the conditions of the offering to third parties, the owner will, in a term of sixty (60) terms, extendable up to the completion of a term of one hundred eighty (180) days, notify to INPI the development of the negotiations. In the absence of the owner's manifestation, the INPI will presume



that the applicant desisted from its offering, and will not reduce the annuities.

**8.8.** If the INPI expressly manifests itself as to the acceptance of the terms of the license agreement for exploitation of the patent by third parties, the owner cannot desist.

**8.8.1.** The INPI will notify to the owner the acceptance, promoting the acts required for the conclusion of the agreement.

**8.9.** In the event that the owner and licensee do not agree as to the fee therefor, any of the parties may request to the INPI an arbitration thereof.

**8.10.** The owner must yearly renew the offering request, confirming its terms.

**8.10.1.** In the absence of any manifestation as to the renewal of the offering during a term of two (2) consecutive years, as of the notice published in the RPI, it will be presumed that the owner desisted of its offering, thus extinguishing the benefit of reduction of the annuity and the possibility of its renewal.

## **9. CERTIFICATE OF ADDITION TO INVENTION**

**9.1.** The improvement or development introduced to an invention claimed in a patent application or patent may be the subject matter of a Certificate of Addition to Invention, provided that it affords the same inventive concept.

**9.2.** The filing of the request for a Certificate of Addition to Invention must contain:

a) application Form 1.01., accompanied by the receipt of payment of the corresponding official fee;

b) the documents that comprise the request for a Certificate of Addition to Invention must comply with the provisions hereunder, and in regard to the description, after the title, an indication that it refers to a Certificate of Addition must be included, mentioning the number and date of filing of the main application, as follows: "Certificate of Addition to Invention PI No. \_\_\_\_\_, filed on ../../..";

b.1) the description, summary and, if the case may be, the drawings of the request for a Certificate of Addition to Invention must be

restricted to the contents of the matter claimed therein, except when required for the perfect comprehension of the matter, in which case it may include matter contained in the main application.

**9.3.** The filing of the request for a Certificate of Addition to Invention will be automatically published in the RPI, which notice will indicate the number of the original application and that it is a Certificate of Addition to Invention.

**9.4.** Always when possible, the claims of the Certificate of Addition to Invention will be described in a manner that interrelates them to the corresponding claims of the application or main patent.

**9.5.** The decision regarding the Certificate of Addition to Invention of a pending patent application will be conditioned to the decision regarding the main application.

**9.5.1.** The grant of the Certificate of Addition to Invention is conditioned to the grant of the main patent, and may occur simultaneously.

**9.6.** The applicant may, during the term for an appeal against the rejection of the request for a Certificate of Addition, given that it does not have the same inventive concept, apply for the conversion thereof into an application for a patent of invention or utility model.

**9.6.1.** Upon conversion of the request for a Certificate of Addition into a patent application, the date of the filing of the patent application will be considered the date of filing of the request for the Certificate of Addition to Invention, which will be renumbered accordingly.

**9.7.** The provisions that apply to the issuance of a patent apply to the issuance of the Certificate of Addition.

## **10. ANNUITY**

### **10.1 PAYMENT OF ANNUITY**

**10.1.1.** Annuity is the yearly payment to which the patent application or patent is subject, as from the twenty-fourth (24th) month of its filing (beginning of the third year).

**10.1.2.** The Certificate of Addition is subject to the payment of the annuity as of the beginning of the annual period (of the application

or patent to which it is an accessory) that follows its filing. The term for the payment thereof is the same term therefor of the application or patent to which it is accessory.

**10.1.3.** The payment of the annuity must be effected as of the twenty-fourth (24th) month of the date of filing, during the first three (3) months of each annual period, and may be effected regardless of notice within the subsequent six (6) months, upon payment of an additional fee (article 84, paragraph 2 of the LPI).

**10.1.4.** The payment of annuities not yet due of patents and its certificates of addition may be paid in advance upon the payment of one of the regular payments, provided that in a single installment and covering the entire remaining period.

**10.1.4.1.** The foregoing does not apply to the patents that are under offering of license which enjoys a reduction of the annuity.

**10.1.5.** The regular or prepaid annuities must be paid according to the schedule of official fees current on the date of payment.

**10.1.6.** The payment of the annuities may be effected through a slip for the payment therefor, bank order or other means that are made available by INPI.

**10.1.7.** In case of underpayment, the INPI will issue an official action for the payment of the unpaid sum, which must be fulfilled in a term of sixty (60) days as of the notice published in the RPI.

## **10.2. EFFECTS OF LACK OF PAYMENT OF ANNUITY**

**10.2.1.** The lack of payment of an annuity will entail the shelving of the application or a call for the reinstatement of the patent or certificate of addition.

**10.2.2.** Upon publication of the notice of shelving or call for reinstatement, the applicant or owner may request its reinstatement in a term of three (3) months, as provides article 87 of the LPI, through Form 1.02.

**10.2.3.** The request for reinstatement must be filed with the receipts of payment of the annuity due and of the additional fee, on the occasion of the request for reinstatement itself.

## **10.3. PROOF OF PAYMENT**

**10.3.1.** The payment of the annuity will be evidenced in the course of the term for the payment thereof.

**10.3.1.1.** The proof of payment of the annuity may be effected upon the filing of copy of the slip for the payment thereof, copy of the bank order or similar order, which enables the accurate identification of

the payment effected, if the case may be.

**10.3.2.** Such proof may be delivered at the reception of the INPI offices or by mail, with notice of receipt.

**10.3.3.** Such providing of proof is not subject to the payment of an official fee.

#### **10.4. EFFECTS OF LACK OF SUBMISSION OF PROOF OF PAYMENT OF THE ANNUITY**

**10.4.1.** If payment is not evidenced, the INPI will issue an official action for submission of evidence of payment, which must be fulfilled in a term of sixty (60) days.

**10.4.2.** If such official action is not fulfilled, the INPI will presume that payment was not effected, and will proceed with the applicable proceedings.

**10.4.3.** If the interested party, within the term for reinstatement, formally evidences that the payment was effected, except in the event of just cause, the interested party will be subject to the payment of the official fee for reinstatement.

#### **10.5. REINSTATEMENT**

**10.5.1.** Reinstatement may always be requested when the annuity is not paid within the term provided in articles 84 or 85 of the LPI.

**10.5.2.** The term for reinstatement is three (3) months as of the notice published in the RPI informing the shelving of the application or the call for reinstatement of the patent.

**10.5.3.** The request for reinstatement must be filed jointly with the receipt of payment of the official fee for reinstatement and the receipt of payment of the official fee for the applicable annuity.

### **11. OTHER PROVISIONS**

#### **11.1. POWER OF ATTORNEY**

**11.1.1.** The instrument of power of attorney, under the form and provisions of article 216 of the LPI, when the interested party does not personally file the application, may be filed in a term of sixty (60) days as of the practice of the first act of the party in the registration proceedings, regardless of notice or official action.

**11.1.1.1.** In the event of a person domiciled abroad, and whose acts are not performed by an attorney-in-fact, as provides article 216 of the LPI, a power of attorney must be submitted, as provides article 217 of the LPI, even if the act was personally performed.

**11.1.1.2.** The power of attorney referred in article 217 of the LPI,

if not filed on the occasion of the filing of the application for registration, may be required by INPI at any moment, inclusively after the patent is extinguished, and it must be submitted in a term of sixty (60) days.

**11.1.1.3.** In case power of attorney is not presented within six (60) days as from such registration, the application shall be deemed definitively shelved and published.

**11.2.** The foreseen reductions of the official fees may only be accumulated up to a maximum percentage of 70% (seventy percent).

**11.3.** The shelving referred in paragraph 2 of article 216 regards the petition, and an appeal may be filed against such shelving.

**11.4.** The unofficial translations mentioned herein must contain a representation of the interested party, applicant or owner of the accuracy thereof.

**11.5.** The documents filed and the forms introduced through this Act must be printed in blank paper with black ink, and must likewise be filled in with black ink.

**11.6.** The request for photocopy must be effected through Form 1.05.

## **12. TERMS**

**12.1.** The request for the grant of an additional term for the practice of an act that is not performed for just must be made through Form 1.08 and supported by a justification therefor and the applicable evidence.

**12.2.** In the event the INPI acknowledges the just cause which impeded the party to practice an act within the legal term, INPI will notify to the interested party the term that is granted to it, as provides article 226 of the LPI.

**12.3.** The term to be granted for the practice of the act will be fifteen (15) days, at least, to, at maximum, the legal term for the corresponding acts.

### **13. GUARANTEE OF PRIORITY RIGHT**

**13.1.** The guarantee of priority in applications filed pursuant to Law No. 5772/71 will be automatically extinguished if, during the term of twelve (12) months for a patent of invention and six (6) months for a utility model, as of the date of filing thereof, the patent application is not filed.

### **14. REVOKED**

### **15. SPECIFICATIONS OF THE PATENT APPLICATION**

#### **15.1. PATENT OF INVENTION**

##### **15.1.1. INITIAL REQUEST**

The initial request will be filed through Form 1.01.

##### **15.1.2. DESCRIPTION**

The description must:

- a) begin with the title;
- b) refer to a single invention, or a cluster of inventions interrelated in a manner that such comprise a single inventive concept;
- c) specify the technical field to which the invention refers;
- d) describe the state of the art that may be deemed useful for the comprehension, search and examination of the invention, mentioning, whenever possible, the documents that reflect it, stressing the existing technical problems;
- e) define the purposes of the invention and describe clearly, concisely and accurately, the solution proposed for the existing problem, as well as the advantages of the invention in regard to the state of the art;
- f) clearly highlight the novelty and evidence the technical effect reached;
- g) list the figures that appear in the drawings, specifying its graphic representations (perspectives, items, circuit diagrams, block diagrams, flowcharts, charts,...);
- h) specify, in the cases in which there is the inclusion of reproduction of photographs (such as metallographic structures), the particular characteristics of such type of graphic representation, such as enlargement, conditions and nature of the material photographed, etc...;
- i) describe the invention consistently, precisely, clearly and sufficiently, so that a technician in the field may do so, quoting the

references contained in the drawings, if any, and, whenever necessary, use examples and/or comparative tables relating them to the state of the art;

j) emphasize, if the nature of the invention includes more than one manner of performance, the best of all, known by the applicant at the registration date;

k) explicitly indicate the industrial use if such use is unclear as from the description of the invention;

l) be presented in a manner to follow the order mentioned in the items above, except if, due to the subject matter of the invention, another manner or different order permits a better comprehension thereof and a more concise presentation.

### **15.1.3. CLAIMS**

#### **15.1.3.1. QUANTITY, NUMBERING AND CATEGORIES**

a) the amount of independent and dependent claims must be sufficient to define correctly the subject matter of the application;

b) the claims shall be sequentially numbered, with Arabic numerals;

c) the claims may have one or more categories (such as product and process, process and device, product, process and device, etc.), provided that connected with similar concept of invention, following the most practical order.

#### **15.1.3.2. ELABORATION OF THE CLAIMS**

a) the claims must preferably be initiated by the title or part thereof corresponding to the respective category thereof and include a single expression "characterized by";

b) each claim must define clearly and accurately, and in a positive way, the technical characteristics to be protected by each claim, and expressions which entail any uncertainty regarding the claim must be avoided;

c) the claims must be fully grounded in the description;

d) except if absolutely necessary, the claims must not include, in regard to the characteristics of the invention, references to the description or to the drawings, such as "as described in item ... of the description" or "as well as represented by the drawings";

e) if the application includes any drawings, the technical characteristics determined in the claims must be accompanied, between parenthesis, by the respective reference signals included in the drawings if deemed necessary for the comprehension thereof, and it will be understood that said reference signals do not limit such claims;

f) each claim must be continuously written, without interruption by

dots;

g) explanations in connection with the operation, advantages and mere use of the subject matter will not be accepted in the claims.

#### **15.1.3.2.1. INDEPENDENT CLAIMS**

a) are those which, provided the invention unit is maintained, aim at protecting the technical characteristics essential and specific to the invention in its full concept, and each claim category is entitled, at least, to one independent claim;

b) each independent claim must correspond to a certain set of characteristics essential to the performance of the invention, and will only be admitted more than one independent claim of the same category if such claims define different sets of characteristics alternative and essential to the performance of the invention, connected by the same inventive concept;

c) the independent claims of different categories, in which one of such categories must be specially adapted to the other, must be preferably elaborated so as to evidence the interconnection thereof, and expressions such as: "Means for the performance of the process specified in the claim...", "Process to obtain the product specified in the claim..." shall be used in the initial part of the claim;

d) the independent claims must, when necessary, include between the initial part thereof and the expression "characterized by", a preamble expressing the characteristics essential to the definition of the matter claimed and already included in the state of the art;

e) after the expression "characterized by" the technical characteristics which are essential and singular that, accompanied by the aspects mentioned in the preamble, are wished to be protected must be defined;

f) the independent claims may ground one or more dependent claims, and must preferably be classified following the order corresponding to the title of the application.

#### **15.1.3.2.2. DEPENDENT CLAIMS**

a) are those which, provided that the invention unity is maintained, include characteristics pertaining to any previous claim(s) and define with details the characteristics thereof and/or any additional characteristics, containing an indication of dependence on such claim(s) and, if necessary, the expression "characterized by";

b) the dependent claims must not exceed the limitations of the characteristics included in the claim(s) to which said claims refer;

c) the dependent claims must accurately and fully define the relations of dependence thereof, and expressions such as "pursuant to one or



more claims", "pursuant to the preceding claims..." or similar expressions will not be admitted;

d) any dependent claim that refers to more than one claim (multiple dependence claim) will refer to such claims in an alternative or cumulative manner (formulated in annexes), and only one of such claims, either the alternative claim or the cumulative claim shall be permitted for all multiple dependence claims;

e) the multiple dependent claims in the alternative manner may ground any other multiple dependence claim, provided that the dependence relations of the claims are organized to permit the immediate comprehension of any possible combinations which result from such dependence.

#### **15.1.4. DRAWINGS**

**15.1.4.1.** The drawings, flowcharts, diagrams, graphic plans must:

a) have sequentially numbered pages, with the numbers at the top and the center of the pages, in Arabic numbers, indicating the page number and preferably the total number of pages (of drawings) separated by a diagonal bar (such as 1/3, 2/3, 3/3);

b) have indelible strong uniform and colorless lines preferably using technical drawing instruments, so as to permit the reproduction thereof;

c) have no texts, initials or seals, and may contain only indicative terms (such as "water", "steam", "open", "closed", "item AA", etc) and keywords, in case of electric circuits, block diagrams, flowcharts and charts;

d) have indicative expressions, if any, organized in a manner that no line of the figures is covered;

e) have sections indicated by diagonal hachures that permit the easy reading of the reference signals and of the directive lines;

f) be clearly drawn and in a scale that permits reduction with a detailed definition and may include in a single page, several figures, each clearly separated from the other, sequentially numbered and organized in groups, preferably, following the order of the description;

g) maintain in the same scale all elements of one drawing, except if a different proportion is indispensable for the comprehension thereof;

h) contain, whenever partial drawings are used to form a complete figure, reference signals that permit the continuity thereof to be clearly visualized;

i) have the drawings, whenever possible, ordered on the page in upright position and, whenever organized in horizontal position, with the top

section turned to the left side;

j) contain all the reference signals specified in the description, observing the use thereof to identify a certain characteristic in all drawings, whenever such characteristic appears.

**15.1.4.2.** The submission of reproduced photographs in replacement of figures will only be accepted in the cases where such means is the only possible way to graphically represent the subject matter of the application, such as methalographic structures, and provided that such reproductions afford a sharpness that permits visualization of all details of the subject matter.

**15.1.4.2.1.** The photographs must maintain their quality during, at least, the term of the patent.

**15.1.4.3.** The numbers and letters in the drawings must have a minimum height of 3.2 mm.

**15.1.4.4.** All reference signals (such as numerals, letters or alphanumeric numbers) and directive lines that appear in the drawings must be simple and clear, and the reference signals must not include parenthesis, circles or quotation marks.

**15.1.4.5.** The drawings will not be framed or delineated by lines, and must be placed on the paper with the following minimal margins:

upper margin ..... 2.5 cm -- preferably 4 cm

left margin ..... 2.5 cm -- preferably 3 cm

right margin ..... 1.5 cm

lower margin ..... 1 cm

**15.1.5. ABSTRACT**

**15.1.5.1.** In regard to its contents, the abstract must:

a) be an abstract of what was written in the description, in the claims and in the drawings;

b) indicate the technical field to which the invention pertains;

c) be written so as to permit a clear comprehension of the technical problem, the essence of the solution thereof by means of the invention and of the main use or principal uses of the invention;

d) be written so as to serve as an effective instrument of pre-selection for research purposes in a certain technical department, especially assisting the user to formulate an opinion in connection with the convenience, or not, of examining the document in full;

e) if the case may be, include chemical formulas and/or mathematical equations which, among those included in the application, better characterize the invention.

**15.1.5.2.** In regard to the form, the abstract must:

a) begin with the title;

- b) be as concise as possible (preferably from 50 to 200 words) and preferably not exceeding 20 lines of text;
- c) include reference signals, between parenthesis, that correspond to each of the main technical characteristics, when illustrated by a drawing contained in the application;
- d) do not mention the merit or the value of the sought invention.

## **15.2. UTILITY MODEL PATENT**

### **15.2.1 REQUISITES FOR A UTILITY MODEL PATENT APPLICATION**

#### **15.2.1.1. INITIAL APPLICATION**

The initial application must be effected through Form 1.01.

#### **15.2.1.2. DESCRIPTION**

The description must:

- a) begin with the title;
- b) refer to a sole principal model, which may include a plurality of distinct additional elements or structural or configuration variants, provided that the technical-functional and corporeal unity of the object is maintained;
- c) specify the technical field to which the object refers;
- d) describe the state of the art that may be considered useful for the comprehension, the search and examination of the model, quoting whenever possible the documents that reflect it, emphasizing the existing technical problems;
- e) describe, clearly, concisely and accurately, the proposed solution for the existing problem, and also the advantages of the model in regard to the state of the art;
- f) clearly emphasize the novelty and prove the functional improvement reached thereby;
- g) relate the figures that appear in the drawings, specifying its graphical representations (views, sections, perspectives, electrical circuit scheme, etc.);
- h) describe the model in a consistent, accurate, clear and sufficient manner, with the possible variants, with references to the reference signals that appear on the drawings, so as to define the object claimed and not a mere principle whereby it may adopt different forms, not being acceptable wording such as "preferred materialization", "for example", etc.;
- i) describe, in the case of a functional improvement pursuant to a change or introduction of an electrical circuit specifically related to the object, in addition to the schematic diagram of such circuit, all the elements of connection and lacing accountable for the change

and disposition that results in the improved use of the model that is the subject object of the patent application;

j) be submitted in a manner that follows the order mentioned in the foregoing items, unless pursuant to the object of the model another manner or different order enables a better comprehension or a more concise presentation.

### **15.2.1.3. CLAIMS**

#### **15.2.1.3.1. QUANTITY AND NUMBERING**

a) each application must contain a single independent claim that describes the model, fully defining all the characteristics of the form or disposition introduced that are essential for the obtaining of the functional improvement;

b) dependence claims will only be accepted if:

(b.1) they refer to a complementary element of optional use that does not change or modify the conditions of the use and operation of the object;

(b.2) they refer to a variation of form or a detail related to elements that comprise the model, defined in the first claim, and that do not change the unity of the model (technical-functional and corporal unity of the object) and its operation;

(b.3) they refer to the object in its three-dimensional form in the cases whereby the final configuration is secondary and results from the assemblage of an initial plane structure characterized in the first claim;

c) the claims must be sequentially numbered in Arabic numbers.

#### **15.2.1.3.2. ELABORATION OF THE CLAIMS**

a) the claims must be initiated by the title of the application and contain, only once, the expression "characterized by";

b) each claim must clearly and precisely define, and in a positive manner, the technical characteristics to be protected by it, avoiding expressions that result in an indefinite claim;

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

d) an independent claim must, when necessary, contain between the title and the expression "characterized by" a preamble stating the characteristics already known in the state of the art that are indispensable to the construction and definition of the model;

e) the independent claim must define, after the expression "characterized by" only the new form or disposition introduced, containing all the elements that comprise it, and also its positioning and interconnections in regard to the whole;

- f) the characteristics of the model defined in the claims must be accompanied, in parenthesis, by the reference signals that appear on the drawings;
- g) each claim must have a continuous wording, without interruption by any dots;
- h) the claims must be totally based on the description and drawings;
- i) the dependence claims must be initiated by the title of the patent application followed by "in accordance with claim No. .." and, if necessary, "characterized by";
- j) except if absolutely necessary, the claims cannot contain, in regard to the characteristics of the model, references to the description or drawings such as "as provided in part .. of the description" or "as represented by the drawing ...", etc.;
- k) claims of use and the portions of explanatory text regarding operation, advantages and use of the object will not be accepted.

#### **15.2.1.4. DRAWINGS**

The provisions regarding inventions (item 15.1.4), except item 15.1.3.2, are applicable, as may be applied.

#### **15.2.1.5. ABSTRACT**

The provisions regarding inventions (item 15.1.5) are applicable, as may be applied.

### **15.3. PATENT APPLICATIONS - GENERAL PROVISIONS**

**15.3.1.** The title must be concise, clear and precise, identifying the object of the application, without irrelevant or unnecessary words (such as "new", "better", "original" and similar) or any fantasy names, and it must be the same for the application, description and the abstract.

#### **15.3.2. TERMINOLOGY AND SYMBOLS**

**15.3.2.1.** The weight and measurement units must be expressed in the international system of units, its multiples and sub-multiples.

**15.3.2.2.** In regard to geometrical, mechanical, electrical, magnetic, thermal, optical and radioactive indications, the provisions of the General Chart of Measurement Units determined by the competent national entity will be observed.

**15.3.2.3.** The chemical formulas and/or mathematical equations, and also the symbols, atomic weights, nomenclature and specific units that are not foreseen in the General Chart of Measurement Units must observe the practice generally adopted in the field.

**15.3.2.4.** The terminology and the symbols must be uniform throughout the application.

### 15.3.3. GENERAL SPECIFICATIONS

**15.3.3.1.** The description, claims, drawings (if any) and the abstract must be filed in three (3) originals, for use by the INPI, being admitted the filing of an additional two originals, at maximum, for return to the applicant.

**15.3.3.2.** The description, claims and the abstract must be typed or printed in types with a maximum height of 2.1 mm and, at minimum, a space of 12, without space between lines, in black indelible ink, being permitted, when necessary, that the chemical formulas or mathematical equations are handwritten or drawn.

**15.3.3.3.** The description, claims, drawings (if any) and the abstract must not contain erasures or amendments, seals, logotypes, signs, signatures or initials signals or indications of any nature that are unrelated to the application, and must be filed in A4 paper (210 mm X 297 mm), soft, resistant, white, plain, non-glossy, non-transparent, used only on one side, unwrinkled, torn or folded.

**15.3.3.4.** All the basic documents of the application, namely, the description, claims, drawings (if any) and the abstract must be filed in a manner that enables its reproduction.

**15.3.3.5.** The description, claims and the abstract cannot contain any graphical indications.

**15.3.3.6.** The description and the abstract may contain charts, being admitted, when indispensable, its inclusion in the claims.

**15.3.3.7.** Each of the basic documents that comprise the application must be initiated on a new sheet with independent numbering.

**15.3.3.8.** The chemical formulas and/or mathematical equations, and also the charts, when inserted in the text, must be identified.

**15.3.3.9.** The drawings must, preferably, comply with the provisions of the Brazilian rules for technical drawings.

**15.3.3.10.** The sheets regarding the description, claims and abstract must:

a) contain a text within the following margins;

	minimum	maximum
upper margin	2 cm	4 cm -- preferably 4 cm
left margin	2.5 cm	4 cm -- preferably 3 cm
right margin	2 cm	3 cm
lower margin	2 cm	3 cm

b) be sequentially numbered, in Arabic numbers, in the center of the upper part, between 1 and 2 cm of the border of the sheet, preferably indicating the number of the page and the total quantity of pages (of each of such parts) separated by a diagonal bar (e.g. if the

description has 31 pages, pages 2, 12 and 31 would be: 2/31, .. 12/31, .. 31/31);

c) Exceptionally, in the case of a change in the description is necessary and such change may imply in a substantial rearrangement of the other pages that comprise it, replacement pages having a hybrid numbering, that is, formed by Arabic numbers and letters, duly linked to the preceding and following pages may be accepted, and which must contain a clear indication of the sequence, on all the pages that have a hybrid numbering and on the immediately preceding page, through a footnote on such pages, as follows: (on page 4) -- "page 4a follows", (on page 4a) -- "page 4b follows", (on page 4b) -- "page 5 follows".

d) have, at the left margin to the text, numbered lines as from the fifth, each five lines (5, 10, 15, etc.), and such numbering must be reinitiated on each sheet and refer only to the lines of the text, not being considered the space occupied by charts, chemical, physical or mathematical formulas inserted in the text, in a manner that the numbering of the lines does not suffer discontinuance.

## **16. SPECIFIC PROVISIONS APPLYING TO BIOTECHNOLOGY**

### **16.1. SUBMISSION OF BIOLOGICAL MATERIAL**

**16.1.1.** For the purposes of article 24 of the LPI, the deposit of biological material must be effected in institutions located in Brazil, duly authorized by the INPI, by registration.

**16.1.1.1.** The disclosure of the Institutions authorized by the INPI to receive the deposit of biological material will be broadly published in the RPI.

**16.1.1.2.** In the event of non-existence of such institution located in Brazil, authorized by the INPI or indicated in an international treaty effective in Brazil, for the deposit of the biological material that is the subject matter of the patent application, the applicant may deposit such material with any of the authorities for international deposit recognized by the "Budapest Treaty for the International Recognition of the Deposit of Microorganisms for the purposes of Initiating Proceedings in Patent Matters".

**16.1.1.2.1.** The INPI will disclose information of the authority Institutions mentioned in the foregoing item.

**16.1.1.3.** The deposit of biological material must be effected up to the date of the filing of the patent application.

**16.1.1.3.1.** In the event of a priority claim based on the Paris Convention, the deposit of the biological material will correspond to

the date of priority that is claimed.

**16.1.1.3.2.** The information regarding the deposit of biological material must be included in the description.

**16.1.1.3.3.** If the biological material is deposited at an institution not authorized as herein provided, such deposit must be effected in a term of sixty (60) days as of the date of the filing of the patent application or the date of initiation of the National Phase, if the case may be.

**16.1.1.4.** The applicable official actions will be issued in the technical examination of the patent applications that are pending and that do not attend these provisions.

**16.1.1.5.** Notwithstanding the foregoing provisions, whenever it is necessary in order to technically evaluate the characteristics of the biological material, the INPI may issue an official, grounded, technical action in regard to the analysis and in situ checking of such material.

## **16.2. DESCRIPTION**

The description, in addition to the specifications set forth in item 15 of this Normative Act, must also contain the indispensable properties of the live matter required for its complete description, in accordance with the technologies inherent to the corresponding matter that are considered relevant for the perfect characterization thereof, such as those exemplified below, or alternative ranges that better identify it:

### **16.2.1. YEAST**

a) Growing states in the adequate means

b) Formation of "ascospores"

c) Formation of "ballistopores"

d) Physiological properties such as:

- ideal conditions for growth

- nitrate assimilation

- decomposition of lipids

- decomposition of urea

- liquefying of gelatin

- degree of osmotolerance

- formation of carotenoides

- formation of organic acids

- formation of substances similar to starch

e) Assimilation, or not, of more than fifteen sources of carbon (such as the sources of carbon in asterisks are indispensable):



D-arabinose  
L-arabinose  
D-ribose  
D-glucose\*  
D-mannose  
D-galactose\*  
L-rhaminose  
D-fructose  
L-sorbose  
maltose\*  
sucrose\*  
lactose\*  
melibiose  
celobiose  
trehalose  
raffinose\*

#### **16.2.2. FUNGUS AND MOLDS**

- a) States of growth in appropriate environment  
- of which environments, two or more must be selected and the morphological properties of the respective fructification organs: asexual spur and mycelium, and form, color, etc., of the colony in regard to the state of growth must be described
- b) Physiological and ecological properties such as:  
ideal conditions for growth  
rate of growth  
reaction to phenol-oxidase

Note: In the cases whereby the culture properties are in themselves insufficient, in order to identify a new species, a description of the morphological properties of a standard species and leiohyllousized or on a glass blade will be necessary.

#### **16.2.3. BACTERIA**

- a) Morphological properties in the adequate environments such as:  
- size and form of the cells  
- presence or absence of cellular pleomorphism  
If pleomorphic, its details.  
- presence or absence of motility  
If present, the state of adherence of the flagellum.  
- presence or absence  
If present, the size and form of the spurs and sporangium and the position of the spurs.  
- coloring in gram

- b) State of growth in the appropriate environment
  - c) Physiological properties such as:
    - reduction of nitrate
    - de-nitrogenization
    - MR test
    - VP test
    - formation of endol
    - formation of hydrogen
    - hydrolysis of starch
    - formation of pigment
    - rate of growth
    - formation of acid and gas as from the following sources of carbon:
      - (1) L-arabinose
      - (2) D-xilose
      - (3) D-glucose
      - (4) D-manose
      - (5) D-fructose
      - (6) D-galactose
      - (7) maltose
      - (8) sucrose
      - (9) lactose
      - (10) trealose
      - (11) D-sorbitol
      - (12) D-manitol
      - (13) inositol
      - (14) glycerin
      - (15) starch
  - d) Other properties required for the characterization of the new species, such as:
    - oxidation of gluconic acid
    - decomposition of cellulose
    - decomposition of alcohol
    - hemolysis
    - coagulasis
    - lipases
  - e) Anaerobic photosynthetic bacteria and those that require inorganic nutrients must also be described in accordance with Bergy's Manual or research reports.
- 16.2.4. ACTINOMYCETES**
- a) Morphological Properties such as:
    - ramification, form of hypha

- quantity of spurs, surface structure and size of spur
- presence or absence of flagellumspurs
- state of fission of the mycelium

b) State of growth in the appropriate environments

Note: In regard to the state of growth in these environments, the color of the actinomycetes on the surface of the colony must be described.

c) Physiological properties such as:

- hydrolysis of starch
- rate of growth

d) Assimilation of the following resources of carbon

- L-arabinose
- D-xilose
- D-glucose
- D-fructose
- sucrose
- inositol
- L-raminose
- raffinose
- D-manitol

#### **16.2.5. ALGAE**

- state of growth in appropriate environment
- morphological properties:
  - presence of pigments
  - presence of nutritive reserves
  - means of locomotion
  - nature of the cellular wall
- physiological properties:
  - fixation of nitrogen
  - formation of proteins
  - formation of stabilizing agents (alginates, agar, carragenine)
  - formation of sedimentation
  - synthesis of vitamins

#### **16.2.6. PROTOZOA**

- state of growth in the appropriate environment
- morphological properties:
  - means of locomotion
  - cellular structures
- physiological properties:
  - gesture of cellulose
  - pathogenesis (vitasi cycles, areas of hosts)

#### **16.2.7. VIRUS**

- state of growth in the appropriate environment
- morphological properties:
  - formation of proteins
  - formation of infections
  - formation of nucleic acids
  - formation of lipids
  - formation of carbohydrates
- physiological properties:
  - pathogenesis (DNA virus, RNA virus)
  - biochemical replication
  - coupling or maturing
  - adsorption
  - penetration and denudation
  - liberation
  - lisi

#### **16.2.8. OTHER LIVE MATTERS THAT MAY BE CULTIVATED "IN VITRO" THAT ARE NOT INCLUDED IN THE FOREGOING CATEGORIES**

The deposit, in the form of a feasible culture, must be accompanied by a differentiated characterizing description of the live matter, on the morphological, physiological and/or biochemical levels. The deposit must also be accompanied by the description of the ideal means and methods for cultivation of the "in vitro" live matter.

#### **16.3. REVOKED**

#### **16.4. ACCESS TO BIOLOGICAL MATERIAL**

##### **16.4.1. PUBLICATION OF THE APPLICATION**

The biological material that supplements the description of the patent application, as provides the sole paragraph of article 24 of the LPI will become accessible to the technically capacitated public on the date of the publication of the application, except if such access is impeded by law or treaty in force in the country.

**16.4.1.1.** The applicant or the owner of the patent cannot impede or hinder the access, except upon evidence of the existence of reasons of a technical or legal nature.

**16.4.1.1.1.** In the event of the foregoing item the INPI will conduct the necessary diligence to discuss the reasons alleged by the applicant or owner for not making available access to the biological material.

**16.4.1.1.1.1.** If the allegation not to make available implies in matter of competence of another entity of the Federal Administration, the

resolution of the INPI will be based on a previous technical opinion of such entity.

**16.4.1.1.2.** If the INPI finds that the applicant or owner lack reason, it shall be notified to, in a term of sixty (60) days, proceed with the applicable measures necessary to release the biological material.

**16.4.1.1.3.** The lack of release by the applicant or owner will imply in the lack of compliance with the provisions of article 24 of the LPI, subjecting the application or the patent to the applicable legal provisions.

## **17.**

This Normative Instruction comes into force on the date of its publication, being revoked, in regard to patents, the provisions of Normative Acts No. 13/75, 17/76, 57/81, 76/85, 82/86, 92/88, 100/89, 101/89, 102/89, 111/93, 113/93 and 121/93 and any other provisions to the contrary.