PATENTS AMENDMENT BILL 1984

Date Introduced: 28 March 1984
House: House of Representatives
Presented by: Hon. Barry Jones, M.P., Minister for Science and Technology

Purpose

To provide for the deposition and storage of micro-organisms where they are part of a patent, and not reasonably available. To ratify the Budapest Treaty, which sets up an internationally recognised system of depositories in various countries for patents purposes.

Background

One of the main advantages of patents is that each patented discovery is published as a description which must be sufficient to permit development of the discovery under licence.

Recent advances in biotechnology have featured new types of microorganism which cannot be adequately described in a patent application. Even a full description, say, of an organism's DNA base sequence would not enable it to be cultured. Accordingly, there is a need for patent applications involving unavailable microorganisms to include the storing of a sample of viable cells as an authentic description and source.

In order that patent applications made in a number of countries should not necessitate multiple cell samples and destinations, signatories to the Budapest Treaty agree to recognise international depositories. Thus, under the Bill, an Australian depository would hold microorganisms recognised by overseas patent authorities.

Main Provisions

Clause 5, in amending Section 40 of the Principal Act, sets out conditions and procedures for compulsory deposition of microorganisms as part of a patent application. To the extent that the invention is a microorganism (new sub-section 40(4)) or where a microorganism is necessary to perform the invention, and the
microorganism is not reasonably available to a skilled person (new Sub-section 40(3)), then deposition is required. The applicant must provide evidence of deposition, supply adequate information (such as how to grow the microorganism), provide authority for samples to be taken, and make sure samples are actually available (new Sub-section 40(5)). Microorganisms stored overseas are to be regarded as available (new Sub-section 40(6)).

Clause 6 allows the Commissioner of Patents to order the prohibition or restriction of access to deposited microorganisms if necessary in the interests of the defence of the Commonwealth (new Sub-section 131(1A)).

Clause 7 enables a prescribed court or the Commissioner of Patents to require compliance of a patent with new Sub-section 40(5) if a microorganism reasonably available at the date of patent lodgement subsequently ceases to be available.

Clause 8 provides for Australia's ratification of the Budapest Treaty. The Treaty and its Regulations make up a new Schedule to the Patents Act (Clause 9).

For further information, if required, contact:

Science, Technology and Environment Group

6 April 1984

LEGISLATIVE RESEARCH SERVICE