

## REQUIREMENT TO PROVIDE INFORMATION CHARACTERISING DEPOSITS OF BIOLOGICAL MATERIAL

When depositing biological material, applicants often overlook Rule 28(1)(b) EPC, which prescribes that the application as filed should include “*such relevant information as is available to the applicant on the characteristics of the biological material*”. Hence, it is never enough (to satisfy the requirements for sufficiency of disclosure) just to make, and refer to, the deposit. Non-compliance of the specification with Rule 28 is a ground of revocation.

Recent amendments to the *Guidelines for Examination* at the European Patent Office suggest that the Office is becoming stricter with regard to Rule 28(1)(b). Accordingly, we recommend that applications as filed should:

- (i) describe the biological material as fully as possible;
- (ii) include a proposed taxonomic description; and
- (iii) provide an indication of any significant differences from known biological material (this may include metabolic, morphological or growth characteristics).

An indication of suitable growth conditions should also be provided.

The necessary characterising information may have been given to the depository institution, in which case the information may simply be incorporated into the specification.

If biological material is deposited which cannot self-replicate but which must be replicated in a biological system, then information characterising or referencing the biological system is also required.

The information in this Newsletter was correct at the date of release. More up to date information is available by contacting Eric Potter Clarkson. All comments contained here are of a general nature and full professional advice should be sought on any specific problem.

Please note that all our Newsletters can be found on our website at [www.eric-potter.com](http://www.eric-potter.com).