



Chile accedes the Budapest Treaty

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular HarneckerCarey contact.

Guillermo Carey
Partner
+56 2 928 26 38
gcareyc@carey.cl

Fernando García
Director
+56 2 928 26 65
fgarcia@carey.cl

Francisco Carey
Senior Associate
+56 2 928 26 38
fcarey@harneckercarey.cl

This memorandum is provided by HarneckerCarey for educational and informational purposes only and is not intended and should not be construed as legal advice.

HarneckerCarey
Isidora Goyenechea 2800, 43rd Floor
Las Condes, Santiago, Chile.
www.harneckercarey.cl

On May 5th, 2011 Chile joined the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. In Chile, this treaty will enter into force on August 5th, 2011.

This accession is consistent with Chile's ratification of the Patent Cooperation Treaty (PCT), which facilitates the filing of patent applications in different parts of the world, while through this new accession also the patent procedure of living organisms will be easier and faster.

The difficulties for patenting living organisms are that the description of the invention, which is necessary for its analysis, disclosure and later reproducibility, cannot be ensured by means of a written description of the patent application alone, but the microorganism also has to be deposited in one or more international entities that can keep them, and must be certified by the World Industrial Property Organization, which makes this kind of applications more expensive and complicated.

The Budapest Treaty regulates the form of disclosure of these applications indicating: "The Contracting States that allow or require the deposit of microorganisms for the purposes of patenting procedure must recognise, for such purposes, the deposit of a microorganism with any international depositary authority".

According to the above, as this treaty determines the possibility of making a single deposit at an international authority, notwithstanding the number of applications filed in different countries on the same invention, the deposit procedure of this kind of patents gets easier and faster, also reducing the general costs of the proceedings.



However, the ratification of this treaty means a step forward for Chile, since it is favourable for the patent application of microorganisms, there is a debt regarding the development of the domestic legislation, since the Chilean regulation is very limited in this matter, so there are certain questionings. One of these dilemmas refers to the suitable moment for depositing the microorganism. Since said deposit pursues accomplishing the requirement of disclosure, assimilating the description in the inventions of non living content, we consider that the deposit should be submitted before or simultaneously to the filing of the application. Since there are no international depositary authorities in Chile, nor in Latin America, it is advisable that the samples are sent with anticipation, specially in the cases where a priority is claimed.