

Newsletter

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BRAZIL TO HAVE A DEPOSITARY INSTITUTION OF BIOLOGICAL MATERIAL

In April 2006 the Brazilian Patent and Trade Mark Office (BPTO) and the Brazilian Institute of Metrology, Standardisation, and Industrial Quality (INMETRO) signed a protocol for the creation of the Brazilian Centre for Biological Material.

The Centre is expected to be operating in Xerém, Rio de Janeiro, in October 2006. To that end, three biologists are working full-time on the project, three others are

going to be nominated soon and the budget of roughly US\$ 1 million has already been approved.

It will be the first depositary institution of biological material in the country, having the following goals: a) further support the filing of biotechnology patent applications; b) organise the system of microorganism collections by creating a service chain that meets the international requirements of traceability and safety; and c) organise the national system of accreditation and certification of biological material.

The creation of such a centre is of particular interest to national applicants, who will not have to send the biological material of their invention to an international depositary institution, thereby avoiding the payment of extra fees and transportation bureaucracies.

On the other hand, since Brazil is not a Member of the Budapest Treaty, there is no international obligation to recognise deposits made in institutions abroad. Indeed, according to the Industrial Property Act, the deposit of biological material for patent protection purposes shall be accepted if made before either an institution authorised by the BPTO or appointed in an international treaty. Taking into account that there is no such an international treaty in force in Brazil, only those made before the national depositary institution will be deemed valid.

For foreign applicants, the costs of filing a biotech patent application in Brazil will be higher because at least two different deposits of biological material will have to be made. This scenario is likely to change only when Brazil becomes a Member of the Budapest Treaty and takes the obligation of accepting any deposit made under the auspices of said international instrument. This decision, however, is yet to be taken.

Those are preliminary considerations that seemed relevant regarding this matter. We are at the entire disposal for any assistance our clients may need in this matter or in any other related to intellectual property. In case of interest in our services, please contact our partner João L.D.F. Vianna (JLDFVianna@leonardos.com.br).