

Topic 5

Practices of the IDAs under the Budapest Treaty



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Meeting of Member States and International Depositary Authorities under the Budapest Treaty
Geneva, November 13 to 14, 2023



DSMZ - German Collection of Microorganisms and Cell Cultures GmbH

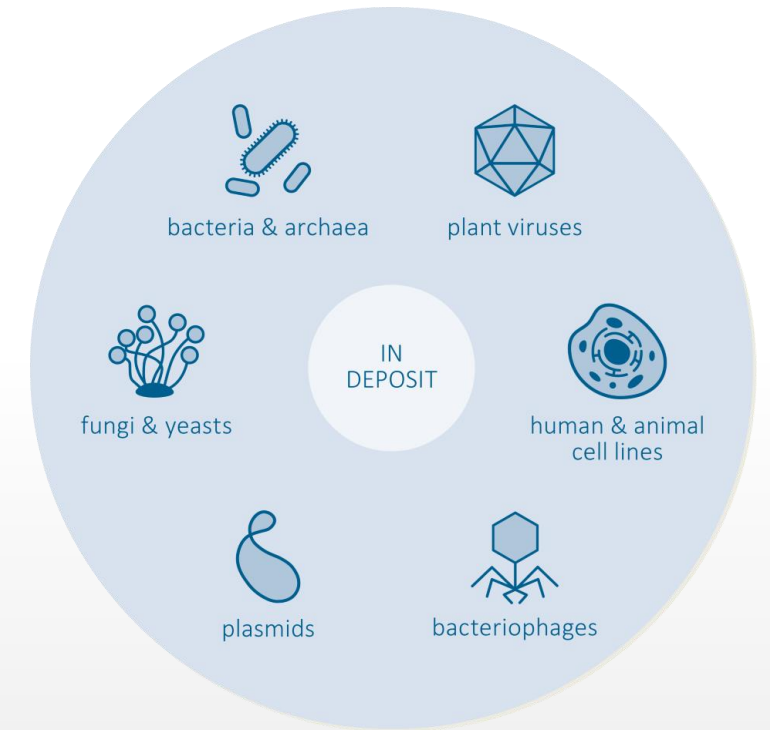


- DSMZ = both
 - **Research infrastructure (active collection)** used by science and industry for non-commercial purposes
 - **Research institution** in the field of microbial biodiversity research
- The most **diverse biological resource center** in the world
- One of the largest **collections of microorganisms and cell cultures** worldwide
- DSMZ was the first "**Registered Collection**" under the EU Regulation 511/2014 for the **Nagoya Protocol**
- The only recognized **international depository** in Germany under the **Budapest Treaty**

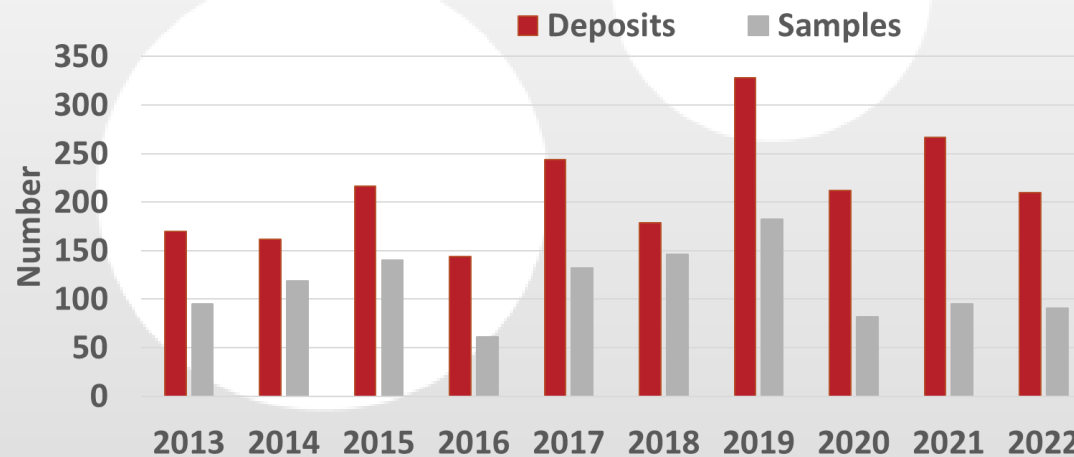


DSMZ as Patent Depository

- > 45 years
- First patent strain in 1972
- Recognized as **International Depository Authority (IDA)** according to the Budapest Treaty **since 1981**
- Total > 9000 patent deposits



Patent Deposit in Numbers



Providing Safe Storage & Controlled Access

Accession Form (BP1)

Arrival of the biological material

Viability testing and purity checking

Assigning of the deposition number

Statements of receipt (BP4) & viability (BP9)

Preservation of the biological material

Depositor check

Storage for at least 30 years

Release of samples on request

Topic 5



30 years of storage and beyond

Budapest Treaty Rule 9.1

- **What?**
 - Any microorganism deposited with an **IDA**
- **How?**
 - Stored to keep it **viable and uncontaminated**
- **Period?**
 - At least **5 years after the most recent request** for the furnishing
 - A least **30 years** after the date of the deposit



30 years of storage and beyond

Situation

- > 2200 **old (>30 years+5)** deposits at DSMZ
 - Old deposits: **no agreement**
 - Interim period: **destruction/transfer in public collection/send back/prolong deposit** offered in BP1
 - Recently (after the Mexico IDA 2018 meeting and according the code of practice): **transfer to open collection/prolong deposit**
- Working on a procedure that would allow **transfer to open collection**
 - Considering regulations such as the **Nagoya Protocol**, but this has **not yet been put into practice**
- **Prolongation** against a fee (35€ per year on request) and **confirms** such in an official **letter**
- So far, **no material** has been **destroyed**
- **Furnishing of samples** following rules (**rule 11**) of the BT



30 years of storage and beyond

Challenges

- Contact depositors
- Space and financing
- Different national laws
- No clear regulations

Requirements

- Disclosure of patents
 - Information on connection **patent - deposit**
- (Open?) availability of the material
- Feasibility for IDA collections
- Important for scientific research and new biotechnological applications



30 years of storage and beyond

Aims & Action

- Discussion on several IDA meetings
- Working Group with IDA representatives
- Discussion and meetings with stakeholders (IDAs, the World Intellectual Property Organization, lawyers, patent offices, government representatives)
- Official Meeting
- Definition of **clear, legally secure rules**
- **Update of the Budapest Treaty rules?**

Nagoya

Current Situation

- Information during deposit procedure
- Deposit itself not problematic
 - Storage/Transfer not Nagoya relevant
 - Depositor is in charge to take care of usage of the sample during patenting process
- Furnishing of samples - Requesting Party
 - Requesting Party may not aware of the problem
 - Requesting Party may assume that material is "safe" (DSMZ Open Collection as registered collection)
 - Requesters have no possibility to get information
 - contact to depositor difficult
 - Information is not available



Nagoya

To be implemented

- Inclusion in BP1
 - Request information (country of origin, access date (depending on country = sampling or export date, usage)
 - Request documents
 - Mandatory? What happens if information/documents are not provided?
- Check Nagoya relevance during patenting process via patent offices?
- After 30 +5 years: Feasibility of transfer to open collection?
 - For registered collections: deposition without information not possible



For Discussion

- Definition of **clear, legally secure rules** on the fate of deposits
- Destruction?
- Check relevance for society/ patent status
 - Who? Communication IPO-IDA (Topic 3 und 4)
 - + Depositor can actively decide (by when must notification be made?)
- Continue deposit in IDA or transfer to open collection
 - How is the open collection selected?
 - Transfer to open collection possible?
 - Nagoya, registered collection, deposition without information not possible
 - Availability of an open collection
 - Feasibility for open collection
- Inclusion in collection catalogue, incl. reference to patent?
- Obligations of the IDA

The DSMZ IDA Team

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