

party to whom the sample was furnished.

(c) Upon request made to the Office, the Office will certify whether a deposit has been stated to have been made under conditions which make it available to the public as of the issue date of the patent grant provided the request contains:

- (1) The name and address of the depository;
- (2) The accession number given to the deposit;
- (3) The patent number and issue date of the patent referring to the deposit; and
- (4) The name and address of the requesting party.

§ 1.809 Examination procedures.

(a) The examiner shall determine pursuant to §1.104 in each application for patent, application for reissue patent or reexamination proceeding if a deposit is needed, and if needed, if a deposit actually made is acceptable for patent purposes. If a deposit is needed and has not been made or replaced or supplemented in accordance with these regulations, the examiner, where appropriate, shall reject the affected claims under the appropriate provision of 35 U.S.C. 112, explaining why a deposit is needed and/or why a deposit actually made cannot be accepted.

(b) The applicant for patent or patent owner shall respond to a rejection under paragraph (a) of this section by—

(1) In the case of an applicant for patent, making an acceptable original or replacement or supplemental deposit or assuring the Office in writing that an acceptable deposit will be made on or before the date of payment of the issue fee, or, in the case of a patent owner, requesting a certificate of correction of the patent which meets the terms of paragraphs (b) and (c) of § 1.805, or

(2) Arguing why a deposit is not needed under the circumstances of the application or patent considered and/or why a deposit actually made should be accepted. Other replies to the examiner's action shall be considered non-responsive. The rejection will be repeated until either paragraph (b)(1) of this section is satisfied or the examiner

is convinced that a deposit is not needed.

(c) If an application for patent is otherwise in condition for allowance except for a needed deposit and the Office has received a written assurance that an acceptable deposit will be made on or before payment of the issue fee, the Office will mail to the applicant a Notice of Allowance and Issue Fee Due together with a requirement that the needed deposit be made within three months. The period for satisfying this requirement is extendable under §1.136. Failure to make the needed deposit in accordance with this requirement will result in abandonment of the application for failure to prosecute.

(d) For each deposit made pursuant to these regulations, the specification shall contain:

- (1) The accession number for the deposit;
- (2) The date of the deposit;
- (3) A description of the deposited biological material sufficient to specifically identify it and to permit examination; and
- (4) The name and address of the depository.

APPLICATION DISCLOSURES CONTAINING NUCLEOTIDE AND/OR AMINO ACID SEQUENCES

SOURCE: Sections 1.821 through 1.825 appear at 55 FR 18245, May 1, 1990, unless otherwise noted.

§ 1.821 Nucleotide and/or amino acid sequence disclosures in patent applications.

(a) Nucleotide and/or amino acid sequences as used in §§1.821 through 1.825 are interpreted to mean an unbranched sequence of four or more amino acids or an unbranched sequence of ten or more nucleotides. Branched sequences are specifically excluded from this definition. Sequences with fewer than four specifically defined nucleotides or amino acids are specifically excluded from this section. "Specifically defined" means those amino acids other than "Xaa" and those nucleotide bases other than "n" defined in accordance with the World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard