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CHILE ENTERS THE BUDAPEST TREATY

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

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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 send with anticipation, specially in the cases where a priority is claimed.

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