CHAPTER 10: COUNTRY SUMMARIES -- PATENT AND PLANT VARIETY PROTECTION LAW

What follows is a country-by-country discussion on the state of patent protection for biotechnological inventions, microorganism deposit requirements and breeder rights for all countries surveyed. The majority of our information was compiled from responses to a questionnaire and materials provided by the correspondents listed in the back of the book. The information that is self-explanatory in Tables found at the end of this chapter is not duplicated in the textual material.

The reader is cautioned that the following information is subject to change, especially in view of ongoing development in this field. Before reaching any final conclusions, a local representative should be consulted in order to ascertain the latest legal developments.

A. ARGENTINA

1. Patentable Subject Matter

In Argentina, patent protection can be obtained for discoveries or new inventions which are 'new industrial products, new means and new applications of known means for obtaining an industrial result or product. Pharmaceutical compositions are excluded from protection.2

Although no formal rules have been published by the Argentina Patent Office, the Office has informally confirmed the patentability, in principle, of biotechnology in official actions, application correspondence and meetings between examiners and patent attorneys. The current policy is to refuse applications for pure cultures of 'naturally existing' microorganisms and for plant cells, new plant varieties and genetically engineered plants on grounds that protection is available under the Argentina Law on Seed and Phytogenetical Creation.3

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1 Argentine Law No. 111 on Patents of Invention § 3 (1864).
2 Id. § 4.
3 Letters from Miguel N. Armando, CLARK, MODET & CIA (Argentina) (July 2 and July 23, 1985).
The Argentine Patent Office does, however, accept applications for microorganism processes, genetically engineered microorganisms and biological macromolecules. For example, a patent has issued claiming a recombinant DNA vector.

No policy has been established regarding the patentability of animal cells, animal breeds or genetically engineered animals.

2. Microorganism Deposit

Although there are no rules covering the deposit of microorganisms, according to Argentine policy a microorganism not readily available to the public must be deposited in a recognized international depository by the filing date of the application.

3. Plant Variety Protection

Argentina has plant variety protection legislation but is not a member of UPOV. The Seed and Phylogenetical Creation Law of 1978 protects property rights in registered seeds, which term includes fruits, bulbs, tubers, buds, cuttings or other materials, including nursery plants intended for sowing, planting or propagation. The term 'phylogenetical creations' is intended to cover plant varieties of any genetic nature obtained either by discovery or by application of scientific knowledge, as long as they are officially registered at the National Registry of Plant Varieties. An application for protection must state the reason why the variety is considered novel, and plant material must be submitted. The new variety must satisfy distinctiveness, uniformity and stability criteria, and the protection grant is for a period of 10-20 years, depending upon the variety.

Compulsory licensing for a period not exceeding two years is provided, in those instances where the title holder is not supplying public requirements of seed at reasonable prices and quantities. The title holder must retain samples of the

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4 Id.

5 Argentine Patent No. 225,404, (granted March 31, 1982) containing claims to a recombinant DNA vector described in terms of a structural gene encoding a particular protein, a vector containing the structural gene, and restriction sites flanking the gene in the vector.

6 1985 ABA Committee Reports 73; PATENT PRACTITIONERS GUIDE TO DEPOSITION AND DEPOSITORIES WORLDWIDE, AIPLA Chemical Practice Committee, 1 (January 1985).