
Practices of the IDAs under the Budapest Treaty



José Miguel López-Coronado, PhD.

Patent Deposit Manager

Colección Española de Cultivos Tipo

Universidad de Valencia

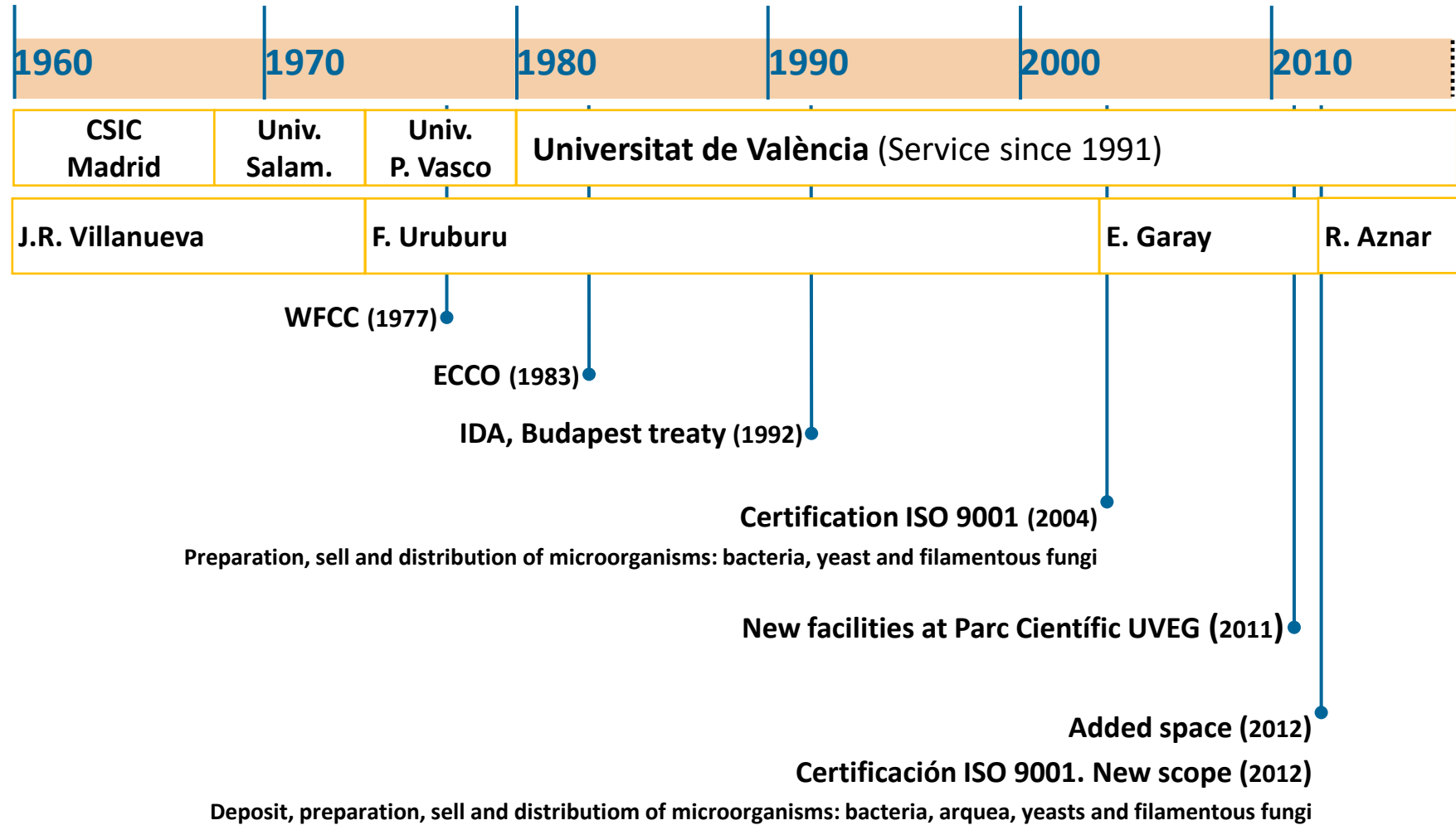


The CECT

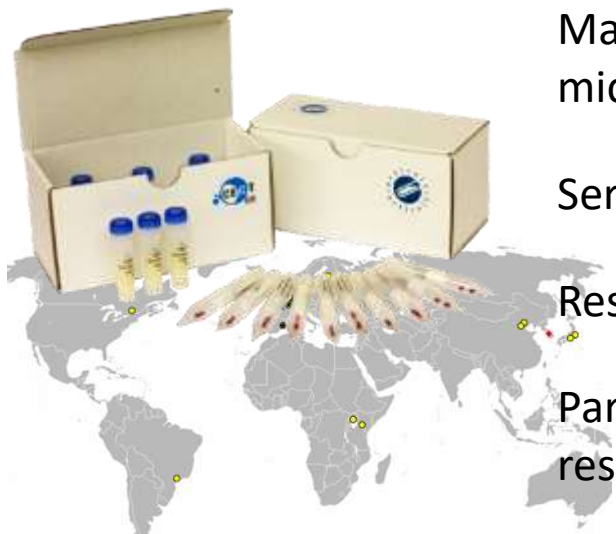
Spanish Public Microbial Resource Center
Service of the University of Valencia



The CECT



The CECT

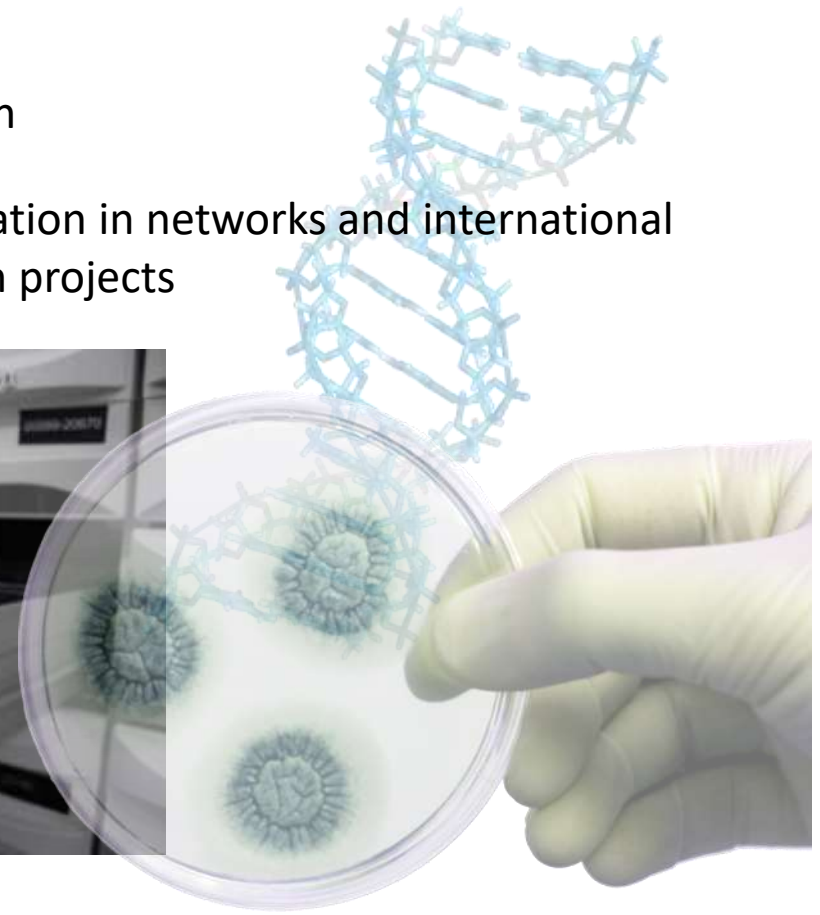


Maintenance, preservation and supply of microbial resources

Services

Research

Participation in networks and international research projects



The CECT

Kind of microorganisms accepted

Bacteria and Archaea

Filamentous fungi

Yeasts



The CECT

Kind of microorganisms accepted

Up to risk group 3(**)

Aerobics or slightly anaerobics

Halophiles



The CECT

Kind of deposits

Public

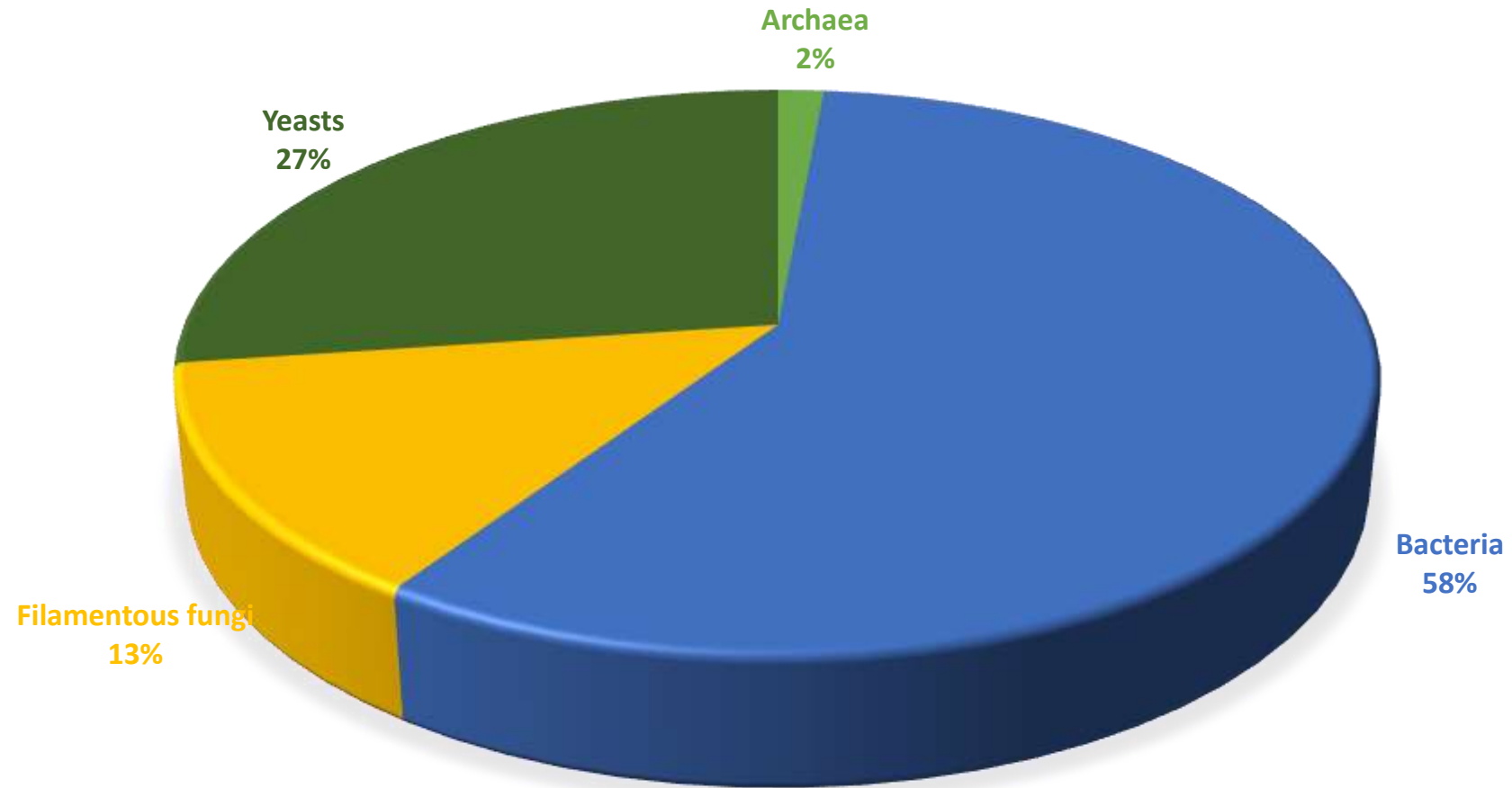
Restricted

Patent purposes according the Budapest treaty



The CECT

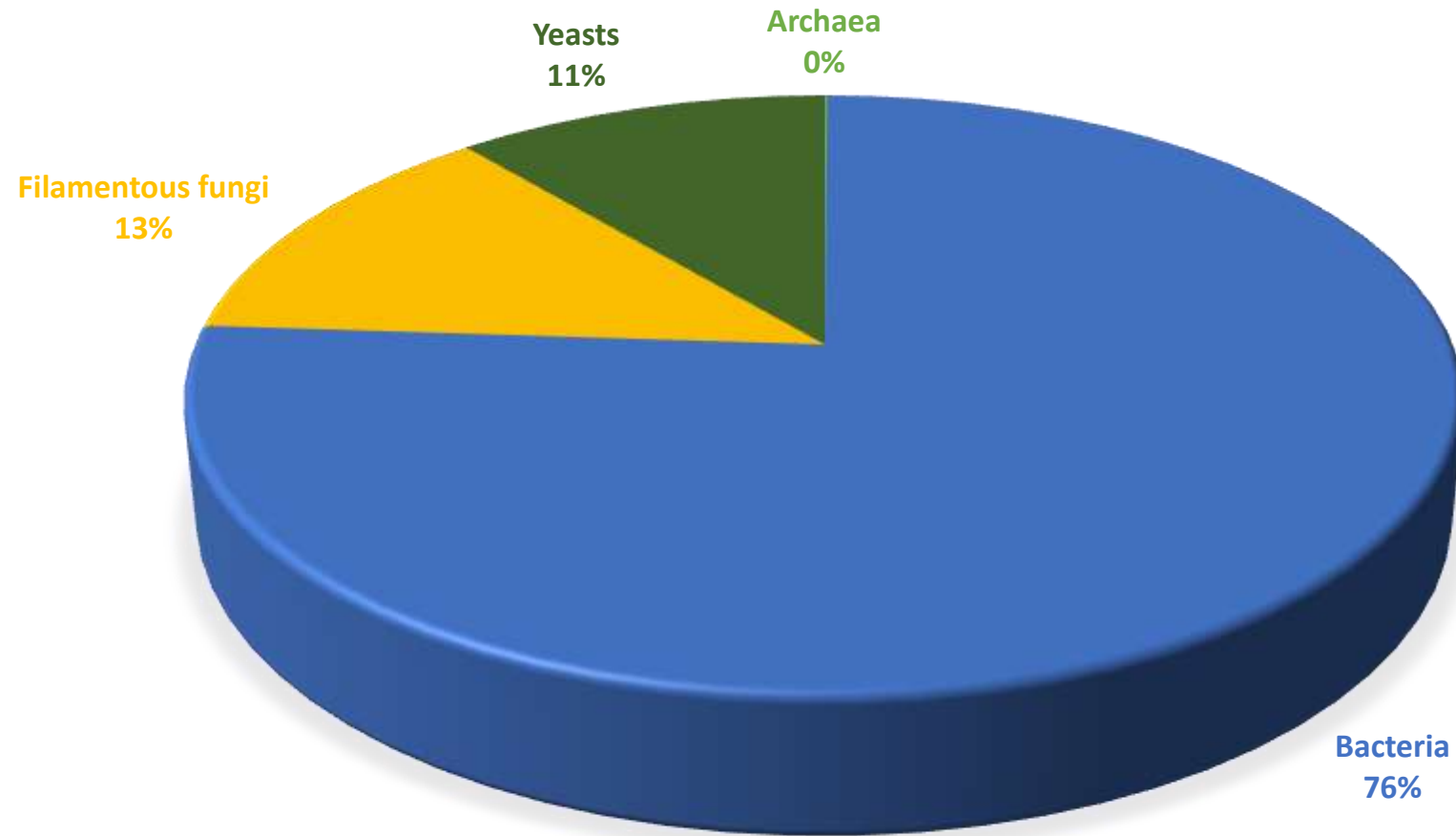
Public deposits



2023 Nov. 8th. (8435)

The CECT

Budapest treaty deposits



2023 Nov. 8th. (1365)

IDA Practices

Electronic documents

False patent deposits

Compulsory information on deposit

Extremely expensive deposits

Nagoya Protocol

IDAs as strains stockage

Strains fate after 30+5

Why are mo deposited for patent purposes?

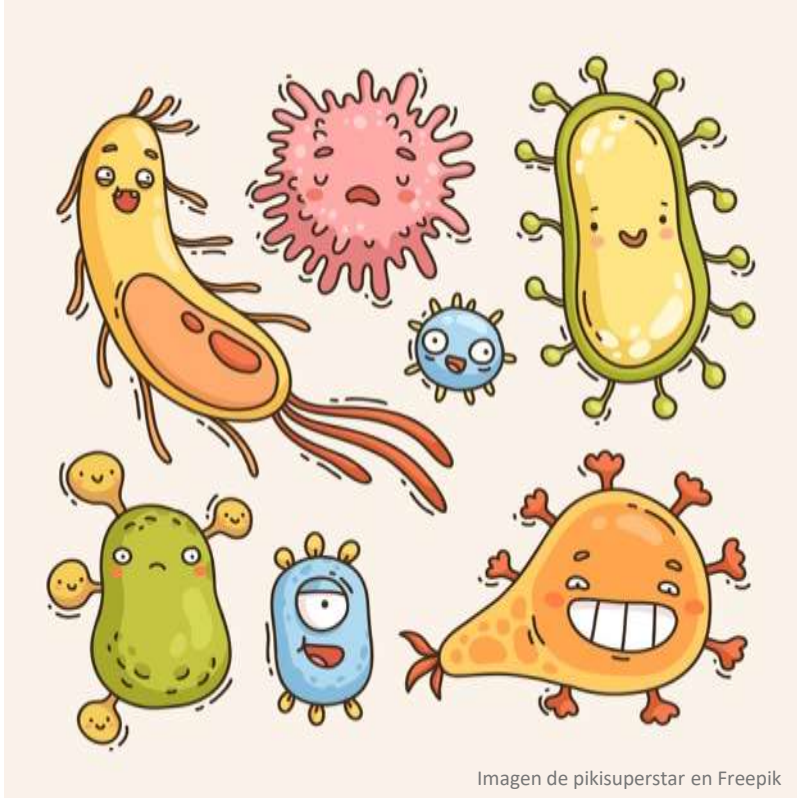
Introduction to the Budapest Treaty

(a) Deposit of Microorganisms for the Purposes of Patent Procedure

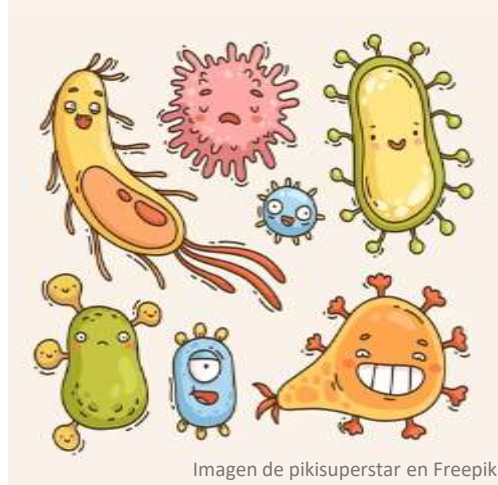
i. Disclosure and the Requirement for Deposit

1. A fundamental requirement of **patent law** is that the **details of an invention** must be **fully disclosed** to the public. For disclosure to be adequate, an invention must be described in **sufficient detail** to permit a person skilled in the art to **repeat** the effect of the invention (...). Moreover, if the microorganism was not generally available to the public, the written disclosure of the invention might be held to be insufficient...

30 + 5

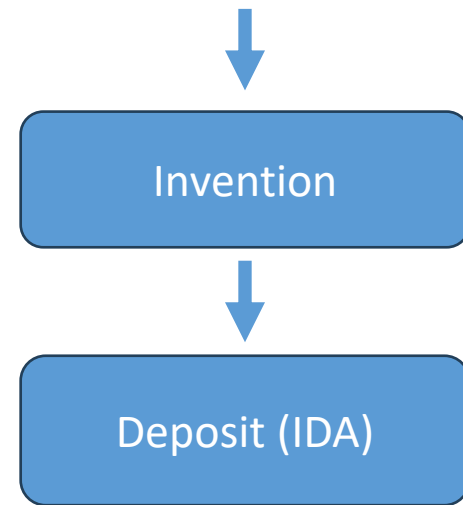
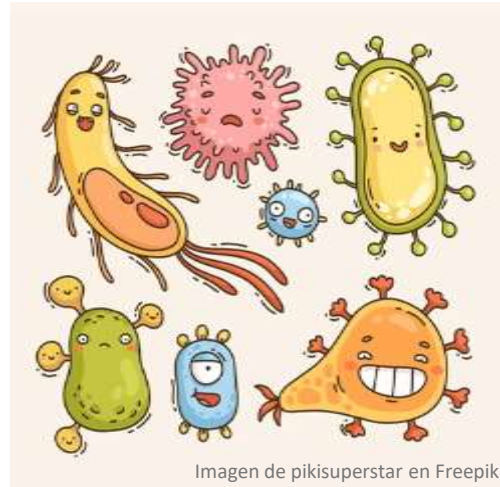


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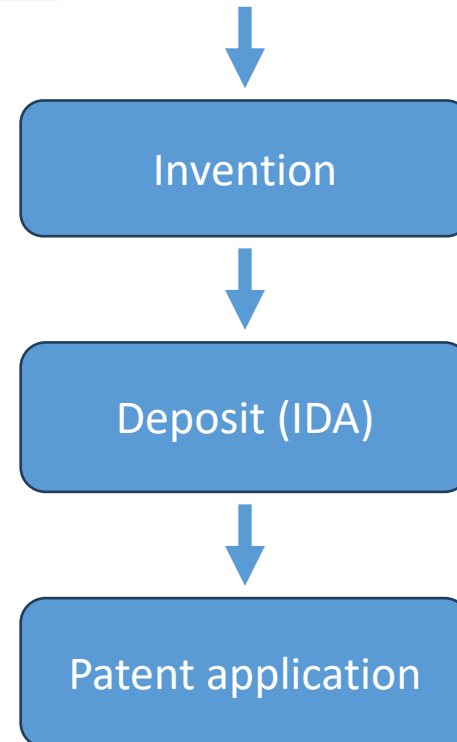
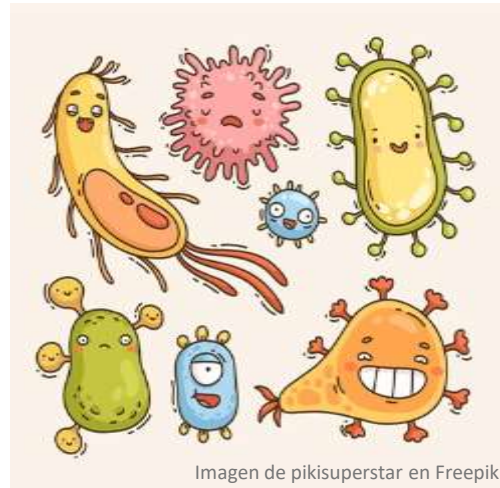


Invention

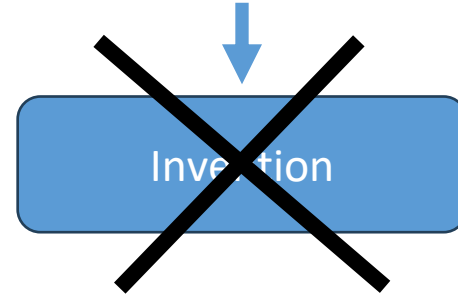
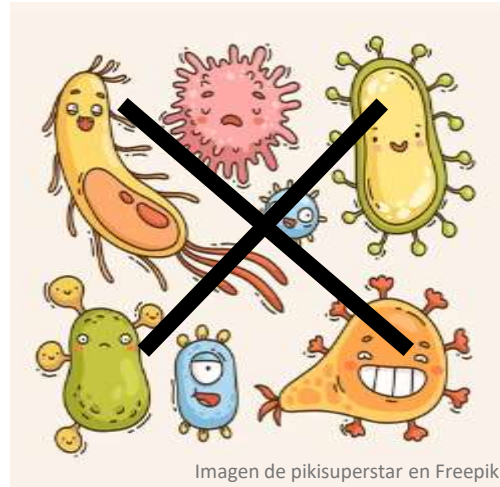
30 + 5



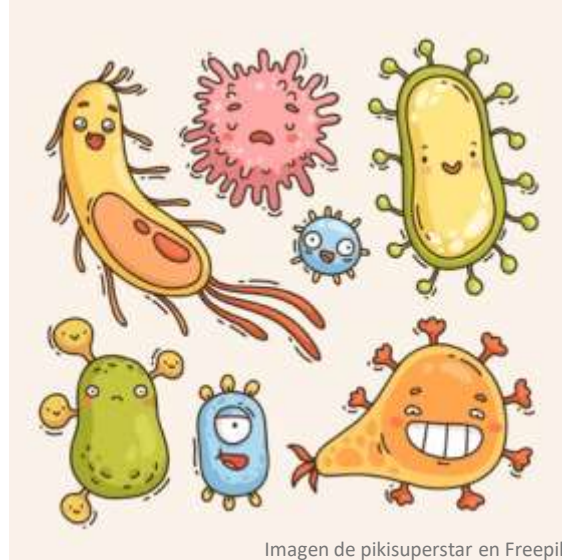
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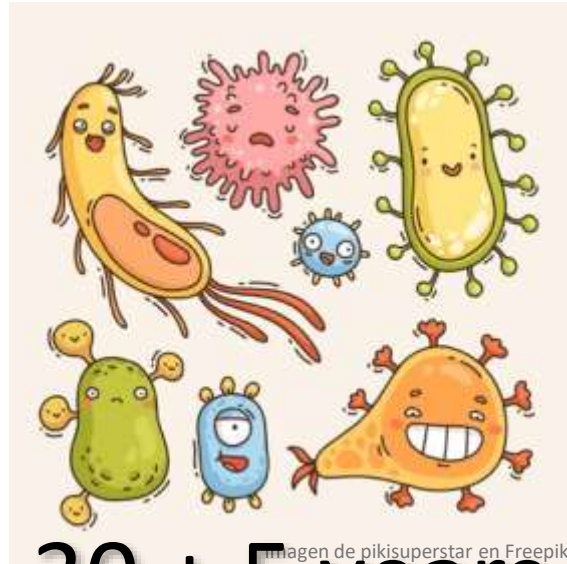


Deposits under the Budapest treaty

30 + 5



Image by Vecteezy.com



30 + 5 years

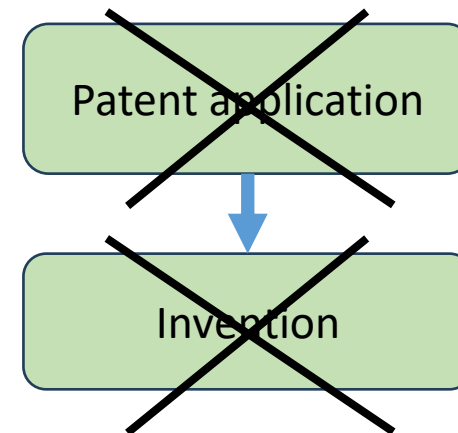
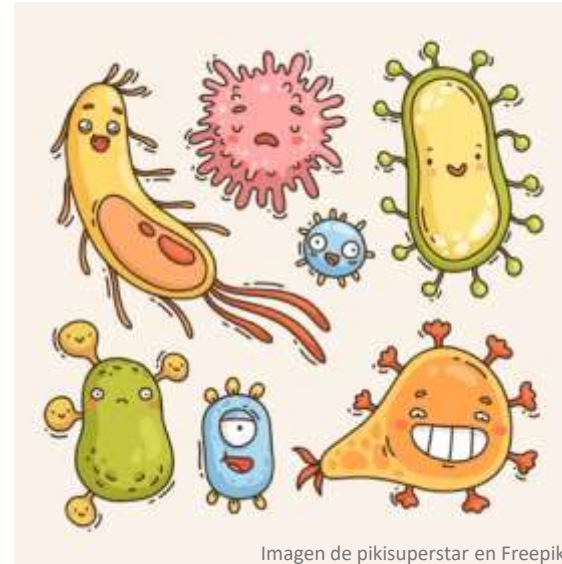
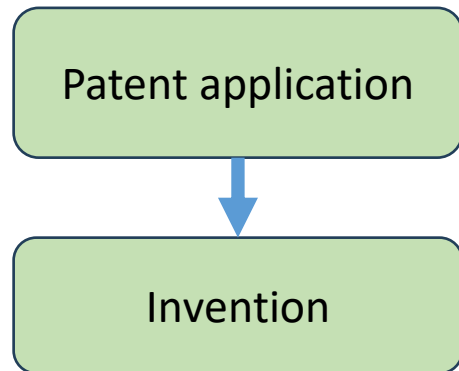
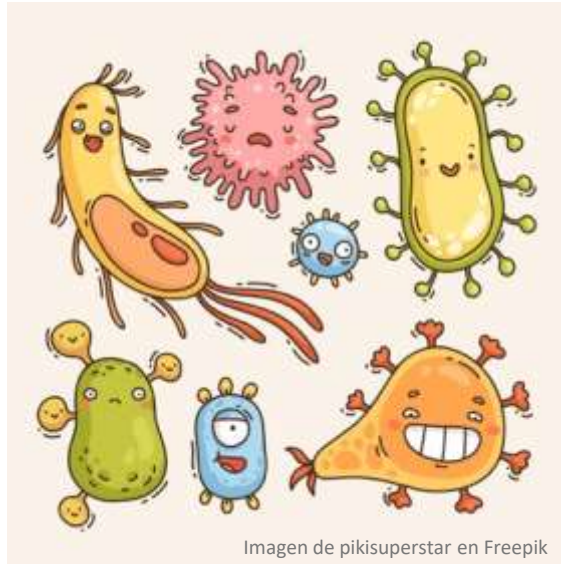
Deposits under the Budapest treaty

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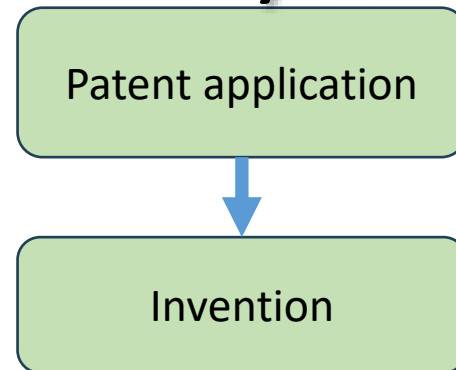


Deposits under the Budapest treaty

30 + 5



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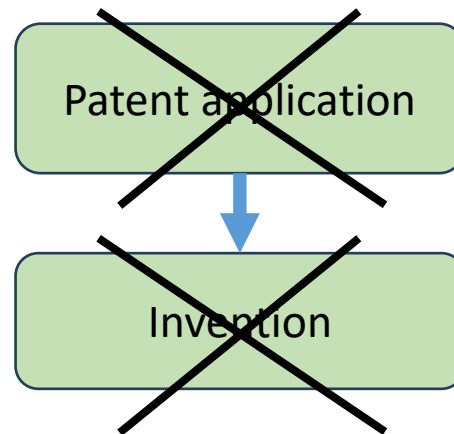
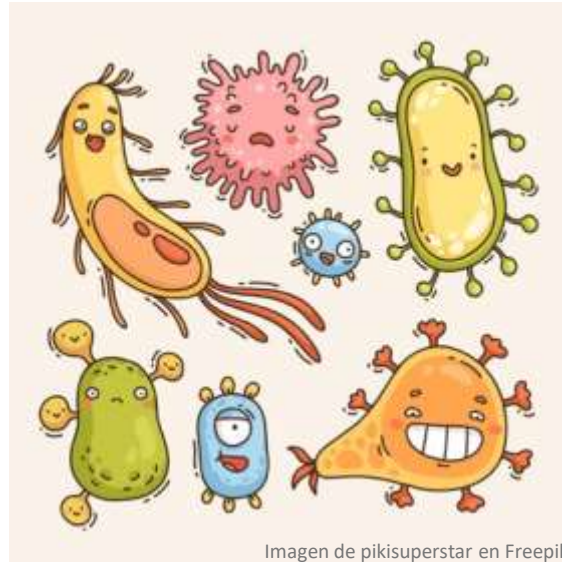
30 + 5 years

Patent application



~~Invention~~

30 + 5



30 + 5



Biodiversity



30 + 5 years

Public funding



Research time



Nagoya Protocol

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity

International agreement

Aims at sharing the benefits arising from the **utilization** of genetic resources in a fair and equitable way

Entered into force on 12 October 2014

Change of paradigm: from free access to sovereign rights (CBD art. 15)



Convention on
Biological Diversity

- Faculty to regulate the access to the genetic resources (CBD art. 15.1)
- Conditions to facilitate the access to the genetic resources (CBD art. 15.2)

Nagoya Protocol

UE implementation



Nagoya Protocol Pillars

Access



Member States not EU level

Benefits sharing



Contractual agreement

Compliance



UE Regulation
511/2014 and further

Nagoya Protocol

Article 3

Recognition and Effect of the Deposit of Microorganisms

(2) As far as matters regulated in this Treaty and the Regulations are concerned, no Contracting State may require compliance with requirements different from or additional to those which are provided in this Treaty and the Regulations

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

Nagoya Protocol

Article 4

Relationship with international agreements and instruments

1. The provisions of this Protocol shall not affect the rights and obligations of any Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity. This paragraph is not intended to create a hierarchy between this Protocol and other international instruments

NAGOYA PROTOCOL ON ACCESS TO GENETIC RESOURCES AND THE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING FROM THEIR UTILIZATION TO THE CONVENTION ON BIOLOGICAL DIVERSITY

Nagoya Protocol

Is Budapest treaty compatible with Nagoya Protocol during the 30+5 period?

Should we pay no attention to the Nagoya Protocol for Budapest treaty deposits?

What about Nagoya Protocol for strains after the 30+5 period?

Nagoya Protocol

Storage and handling of biological material and phenotype description is not considered as use

EU Regulation 511/2014



Deposit and maintenance of the strains under the Budapest treaty in the IDAs is out of the scope of the Nagoya Protocol

Nagoya Protocol

Due diligence and furnishing of samples

Rule 11.2

Strains are furnished to the depositor or with his/her authorization

The **depositor** must provide the third party all the ABS related information

Nagoya Protocol

Due diligence and furnishing of samples

Rule 11.3

The **depositor** must provide the information to the third party

The depositor is informed **after** the strain is furnished

- The required information / documentation does not arrive to the third party with the strain
- The depositor cannot be reached

Nagoya Protocol

Due diligence and furnishing of samples

Rule 11.3

The depositor is informed **after** the strain is furnished



The IDA should send the strain with all the information / documentation on request

Nagoya Protocol

MIRRI Best Practice Manual on Access and Benefit Sharing

Verkley, G., Martin, D., & Smith, D. (2016). Zenodo. <https://doi.org/10.5281/zenodo.284881>
www.mirri.org

TRUST: Transparent Users-friendly System of Transfer



Administrative guide, Documents and Procedures = Legal processing (MOSAICC based)

Global Catalogue of Microorganisms = Technical processing



WDCM

Nagoya Protocol

Budapest treaty deposits

Minimal information requested to comply with due diligence

- Material situation with respect to the ABS
- Prove legal accession in the country of origin and information on the Mutually Agreed Terms

Nagoya Protocol

Budapest treaty deposits

Minimal information requested to comply with due diligence

Material situation with respect to the ABS

- Depositor identification for the material (reference of identification)
- Taxonomical designation (proposed taxonomic designation)
- IDAs identification for the material (accession number)
- Date of accession in the country of origin
- Place of accession, including country of origin and geographical coordinates when possible
- Name of the accesor and the name of the institution in the moment of the accesion

Nagoya Protocol

Budapest treaty deposits

Minimal information requested to comply with due diligence

Prove legal accession in the country of origin and information on the Mutually Agreed Terms

- IRCC
- PIC, MAT and/or MTA