

## 7.5. Requirements relating to nucleotide and amino acid sequences

Under R. 30(3) EPC, where the applicant has not filed the necessary sequence listing prescribed in R. 30(1) EPC, the EPO shall invite him to furnish it on payment of a fee. In J. 7/11, the Legal Board held that such invitations cannot be given orally only – a telephone call was, given the short time available, useful, but had to be followed by a written invitation enumerating all objections raised. Failure to do so amounted to a substantial procedural violation.

In J. 8/11 the crucial issue on appeal was the interpretation of the term "disclosed" in R. 30(1) EPC, namely the question whether a patent application which related to the use of polypeptides well known in the prior art and which identified these polypeptides by their common names and by database accession numbers concerning specific representative sequences had to be regarded as "disclosing" amino acid sequences. The board concluded that prior art sequences do not require the filing of a sequence listing and that the Receiving Section had been wrong to apply R. 30 EPC. With reference to J. 7/11 the board pointed out that the Receiving Section is restricted to a merely formal examination of the sequence listing requirements.

The board in T. 2437/13 (coronavirus, nucleic acid, protein and methods for the generation of vaccine, medicaments and diagnostics) decided in relation to priority rights that, since the nucleic acid sequences depicted in Table 3 and sequences having at least 95% sequence identity could be generated by standard techniques, there was no need for a virus to be deposited under R. 31(1) EPC.

## 7.6. Deposit of living material

If an invention involves the use of or concerns biological material which is not available to the public **and** which cannot be described in the European patent application in such a manner as to enable the invention to be carried out by a person skilled in the art, the invention shall only be regarded as being disclosed as prescribed in Art. 83 EPC if a sample of the biological material has been deposited with a recognised depositary institution not later than the date of filing of the application (R. 31(1)(a) EPC) and if the application fulfils the other requirements set out in R. 31 EPC (T. 2068/11, see also G. 2/93, OJ 1995, 275). See also Guidelines F-III, 6 – March 2022 version on sufficiency of disclosure for biological material.

The disclosure of a microorganism need not depend on a deposit according to R. 28 EPC 1973 where the microorganism is sufficiently disclosed by other means (T. 2068/11, cited by T. 1338/12, which is very detailed on this issue; see also the more recent decision in T. 1045/16, relating to plant material, and T. 1376/11).

It is already the boards' firmly established case law that, where biological material is unreservedly and unrestrictedly available to the skilled person and the public – in other words, where it is sufficiently disclosed by other means – there is no need to deposit it to meet the requirements of Art. 83 EPC (T. 1338/12, point 12 of the Reasons).