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Patent enforcement using Customs

Eike Schaper · Friday, May 13th, 2011 · Landmark European Patent Cases

Customs actions based on the [EC Regulation No 1383/2003](#) are a very effective tool. Also patentees can file an application for border seizure with the national customs authorities to prohibit infringing goods from entering into the European Community.

Customs authorities detain goods which are merely suspected of infringing a patent; they do not decide whether the goods are actually infringing. Although the goods are detained only for a short time (usually at least 10 working days), this may have severe consequences – e.g. in case the allegedly infringing goods were intended to be exhibited at a trade show.

With the assistance from customs, the patentee can detect new infringements, and gather information about source and distribution channels of the infringing goods. Once goods have been detained, customs informs the patentee, at his request and if known, of the names and addresses of the consignee, the consignor, the declarant or the holder of the goods as well as of the origin and provenance of the goods suspected of infringing the patent.

The patentee has then the opportunity to inspect detained goods and to analyse samples in order to find out whether the detained goods are infringing or not.

The Regulation provides in Art. 11 for a simplified procedure which enables customs authorities to have the detained goods abandoned for destruction, without there being any need to determine in court proceedings whether the patent has been infringed: The detained goods are abandoned for destruction if the patentee informs the customs authorities that the goods concerned infringe his patent and provides an agreement of the declarant, holder or owner of the goods; the agreement shall be deemed accepted if they have not specifically opposed destruction within 10 working days. According to [statistics](#) from German customs, detained goods have been destroyed pursuant to this simplified procedure in 86.8% of the cases in 2010 (i.e. in 20,582 out of 23,713 cases of detention – which were mostly based on trademark counterfeiting).

In case of an objection against the destruction of the detained goods, the patentee must file an infringement action within 10 working days (extendable by a maximum of 10 working days in appropriate cases); otherwise the goods are released. During patent infringement proceedings the goods remain under border detention – unless a security is provided by the alleged infringer.

Customs authorities do not charge a fee to cover the administrative cost of applications submitted under the Regulation, and customs will take actions, such as detaining goods, without charging fees to the right holder. However, destruction of infringing goods will be carried out by customs at

the expense of the patentee (who may take recourse against the infringer).

For an effective enforcement strategy, patentees should consider filing an application for customs seizure as an additional option.

Eike Schaper

Links:

[COUNCIL REGULATION \(EC\) No 1383/2003 of 22 July 2003](#)

concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights

[German statistics of customs detentions](#)

[EU statistics of customs detentions](#)

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