
India - FAQ's on Border Control Measures

Does Indian law contain provisions to prevent the importation of counterfeit goods into India?

In 2007, a series of notifications were issued enabling IP holders to record their rights with Customs authorities to prevent the importation of infringing goods. The rules, which were framed under the *Customs Act*, and are known as the *Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007*, currently apply only to import into India, not export out of India.

Do the *Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007* apply to Patents?

The Rules cover not only Patents, but also Designs, Copyright, Trade Marks and Geographical Indications. IP owners can record their rights with Customs authorities, which will then monitor imports for any goods that may infringe.

What is the procedure for filing an application with Customs under the *Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007*?

Applications, which can be filed by the rights holder or its representative, must be in the prescribed format. They may be submitted electronically. Separate forms must be completed for each of the Intellectual Property Rights: Copyright, Trade Mark, Designs, Patents and Geographical Indications.

An application, once submitted electronically, must be followed with physical copies of documents such as registration/renewal certificates, Power of Attorney etc. along with payment of the official fee: INR 2000 (approx. US\$ 42).

What will I need in order to make an application to Customs under the *Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007*?

- Application in the prescribed format (may be submitted electronically, followed by a paper copy).
- Official fee of INR 2000 (approx US\$42).
- Power of Attorney from the rights holder if the application is submitted by an authorised representative.
- Certified extract from official database as proof of IP rights.
- Detailed description of goods, along with samples or coloured images

How many ports are covered by the recordation system? Does a brand owner need to file multiple applications for all ports or will a single application suffice?

At present around 36 ports across the country are covered by the recordation system. A single application covers all these ports.

How much time is taken by Customs to accept an application and record the IP? For how long will the recordal be effective?

Within 30 working days of receipt of an application, Customs must, notify the applicant whether or not the IP has been recorded. Recordals remain effective for a period of five years or expiry of the IP, whichever is earlier.

What procedure is followed once goods are detained by the Customs Authorities?

Once infringing goods have been detained, notice is given by Customs to both the importer and the rights holder, inviting them to join the process. The examination of the consignment is done in the presence of both parties. The parties are also provided with representative samples for examination, testing and analysis to assist in determining whether or not the goods infringe.

At this stage, the rights holder, or its authorised representative, must furnish a bond of an amount equivalent to 110% of the value of the detained goods, along with security, in the form of a bank guarantee or fixed deposit, equivalent to 25% of the bond value. The rights holder is also required to execute a bond indemnifying the Custom authorities.

What is the purpose of an Indemnity Bond?

The indemnity bond protects Customs authorities against all liabilities and expenses they may incur as a result of having detained the goods. In other words, the person importing the goods will not be able to claim damages from Customs on account of the goods being 'held' at the port. Any such liability will be borne by the IP holder.

What is the maximum period Customs can detain suspected infringing/counterfeit goods?

The rights holder, or his authorised representative, must inspect the goods and take follow-up action within 10 working days from the date of notice. If no steps are taken within that period, the goods will be released. It is possible to extend that period by another 10 days. However, in the case of perishable goods, the period of suspension of release is three working days, which may be extended by another four days.

What is the procedure followed by the Customs authorities where the detained goods are found to be infringing/counterfeit?

If the goods are found to be infringing/counterfeit and the importer does not contest the finding, the consignment will be destroyed under Customs supervision after obtaining 'no objection' from the rights holder. However, prior to destruction, samples of goods may be provided to the rights holder or the importer on request.

Who bears the cost from the time of detention of goods till disposal/destruction?

All destruction, demurrage and detention costs and charges incurred up to the time of destruction or disposal, as the case may be, are borne by the rights holder.

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