

All Things IP



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IPR Recordation with the Customs authorities under the Customs IPR enforcement Rules

Intellectual Propriety rights (IP rights) holders are under constant threat of counterfeit products in the market, which is increasing exponentially with growing technology and increase in cross-border commerce between countries. Interestingly, such counterfeit goods may not always be manufactured in the domestic market but may also enter through the customs frontiers of a country. Therefore, it is crucial for IP rights holders to keep a close watch and take appropriate action against infringers in case of infringement of their IP rights by any third party.

With an intention to protect the IP rights of proprietors in India, the Government of India formulated Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. These rules are aimed to prevent counterfeiting and infringing goods from surreptitiously being imported into the Indian markets. IP owners can now record their IP Rights i.e. trademark, designs, copyright and geographical indication through the Indian Customs IPR Recordation Portal (<https://ipr.icegate.gov.in>).

Procedure for recordal of IP rights with the Customs

The IP rights holder will have to file separate applications for its respective trademark, patent, design, copyright and geographical indication through the above referred online portal. Upon registration on the portal, a unique id and a password will be created and thereafter the duly filled-in form along with the necessary documents must be submitted. Subsequently, a Unique Temporary Registration Number (UTRN) will be provided to the holder. The said UTRN along with the physical copy of documents, print-out of the online form and statutory fees of Rs.2000 must be filed at the jurisdictional IPR cell of the Custom House.

Documents to be filed with the Application Form

- Proof of ownership of the IP rights and copies of the corresponding registration certificates.
- Images of genuine goods (for trademarks, product patents and designs).
- Images of infringing goods (if applicable/available).
- A statement regarding the scope of the IP right sought to be recorded.
- Details regarding differentiating features of genuine and infringing goods.
- Statement of grounds for suspension of infringing goods (if applicable).
- The Importer Exporter code (IEC code) of the rights holder and other authorized importers.
- In case of geographical indications - description of the GI and geographical area of production.
- Customs Tariff headings of the applicable goods (if available).
- An indemnity bond indemnifying the Customs authorities against all liabilities and expenses on account of suspension of clearance of allegedly infringing goods.
- The General Bond or Centralised Bond: Such bond to be executed by the IP rights holder in order to bear the cost towards destruction and detention charges of the infringing goods.
- Power of attorney authorizing the person who is filing the application.
- Demand draft of Rs.2000 in favour of the Commissioner of Customs of the opted location.

The Customs office will scrutinize the documents within 30 days of the online filing and may call upon the IP rights holder to furnish additional documents/information if required. Upon satisfaction,



the office shall issue the Unique Permanent Registration Number (UPRN) and formally record the IP rights with the Customs authorities. Accordingly, import of allegedly infringing goods of the recorded IP rights in India shall be deemed as prohibited under Section 11 of the Customs Act, 1962.

Detention of goods and the process to be undergone by the IP rights holder

In case where any goods purportedly infringing upon a recorded IP rights are detained at the customs frontiers of India, the concerned jurisdictional Customs office will give notice to both the importer and the IP rights holder to join the proceedings. If the IP rights holder fails to join the proceedings within the given time period, the infringing goods shall be released to the importer. The time period for non-perishable goods is ten working days extendible by ten working days whereas it is just three working days extendible by four working days in case of perishable goods. If the IP rights holder attends the proceedings and the Customs officials conclude that the goods are indeed infringing on the IP right holder's recorded IP rights and there is no legal proceeding pending, the infringing goods will be seized and thereafter destroyed under intimation to the IP right holder, in accordance with the provisions provided in the Customs Act. The cost of such detention and destruction shall be borne by the IP right holder. It is pertinent to note that goods of non-commercial nature contained in personal baggage or meant for personal use of the importer are not subject to the above Rules.

It is undoubtedly a great initiative by the government to set up such a user-friendly platform to encourage the IP rights owners to record their IP rights with the Customs office and thereby fight together against cross-border counterfeiting and infringement of IP rights in India. For more information on IP protection strategies please contact saisunder@eshwars.com.



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