

中国的知识产权海关保护制度

China's Legal Framework for Customs Protection of Intellectual Property Rights

第三部分 扣留侵权嫌疑货物的申请

Part Three Application for seizure of suspected goods that infringed the IP rights

1. 知识产权权利人发现侵权嫌疑货物（已备案或尚未备案）即将进出口，或者接到海关就实际监管中发现进出口货物涉嫌侵犯在海关总署备案的知识产权而发出的书面通知的，可以向货物进出境地海关提出扣留侵权嫌疑货物的申请，并按规定提供相应的担保。

1. Where an owner of intellectual property rights discovers that goods suspected of infringing rights, (whether or not record having been filed) are about to be imported or exported, or the owner of the IP rights receives the notification from the customs of the suspected infringing goods in the course of exercising its supervision over import and export goods, the owner may submit an application for impoundment of goods suspected of infringing rights to the customs of the place where the goods are to enter into or exit from China. The owner is required to provide security for the seizure of the suspected infringing goods in accordance with the legal rules.

2. 知识产权权利人发现侵权嫌疑货物的扣留申请

2.1 扣留侵权嫌疑货物的申请书及相关的证明文件

- ① 知识产权权利人的名称或者姓名、注册地或者国籍等；
- ② 知识产权的名称、内容及其相关信息；
- ③ 侵权嫌疑货物收发货人的名称；
- ④ 侵权嫌疑货物名称、规格等；
- ⑤ 侵权嫌疑货物可能进出境的口岸、时间、运输工具等；
- ⑥ 侵权嫌疑货物涉嫌侵犯备案知识产权的，申请书还应包括海关备案号。

2. IPR owner request customs to seize the suspected infringing goods

2.1 Where an owner of Intellectual Property Rights requests customs to impound goods suspected of infringing upon rights, he shall submit an application form and the relevant supporting documents. The application form for seizing the suspected infringing goods and relevant documentary proof:

- ① the name or personal name, place of registration or nationality, etc. of the owner of the Intellectual Property Rights;
- ② the name, details and the relevant information of the Intellectual Property Rights;
- ③ the names of the consignees and consignors of the goods suspected of infringing upon rights;
- ④ the name and specifications, etc. of the goods suspected of infringing upon rights; and

- ⑤ the port by which, the time at which and the means of transportation by which, the goods suspected of infringing upon rights may enter into or exit from China.
- ⑥ Where the goods suspected of infringing upon rights are suspected of infringing upon Intellectual Property Rights that are filed for record, the application form shall also include the customs record number.

2.2 申请扣留侵权嫌疑货物的证据

除申请书外还应提供足以证明侵权事实明显存在的证据，所提交的证据应当能够证明以下事实：

- ① 请求海关扣留的货物即将进出口
- ② 在货物上未经许可使用了侵犯其商品专用权的商标标识、作品或者实施了其专利

2.2 The evidence of suspected infringing goods in support of the application

In addition to the application form, the owner of the IPR shall provide evidence that is sufficient to prove that the infringement clearly exists:

- ① the goods for which customs seizure is requested are about to be shipped into or out of China;
- ② the goods have used the trademark, copyright or patent that have infringed upon the IPR without obtaining the consent from the owner of the IP rights.

2.3 知识产权权利人申请扣留侵权嫌疑货物的担保，应当在海关规定的期限内向海关提供相当于货物价值的担保。

2.3 The IPR owner who requests the customs to seize the suspected infringing goods should provide to the customs a security equal to the value of the goods within the time period prescribed.

3. 知识产权权利人接到海关发现侵权嫌疑货物通知的扣留申请

海关发现侵权嫌疑货物以书面通知知识产权权利人，知识产权权利人的回复及其扣留申请，及扣留货物担保。

- ① 知识产权权利人在接到海关书面通知送达之日起 3 个工作日内应予以回复
- ② 认为该货物侵犯其在海关总署备案的知识产权并要求海关扣留的，向海关提出扣留申请。（办法与知识产权权利人发现侵权嫌疑的扣留申请相同）
- ③ 认为该货物未侵犯其在海关总署备案的知识产权或者不要求海关扣留的，向海关书面说明情况。（经海关同意，知识产权权利人可以查看货物）

3. Upon receipt of notification from the customs of the suspected infringing goods, the IP right owner submits the application to the customs for the impoundment of the suspected infringing goods

The customs that discover the goods suspected of infringing the IPR shall notify the IPR owner. The IPR owner shall reply to customs, make request for seizing the suspected infringing goods and provide security for the seizure.

- ① The IPR owner shall reply to the customs within 3 working days of receiving the notification from the customs.
- ② The owner considers that the goods have infringed upon the IP rights that have been record filed at the General Administration of Customs, and applies to the customs for the impoundment of the suspected infringing goods. (the same procedure shall be followed as the application by the owner who discover the infringement of the IP rights)
- ③ The owner consider that the goods have not infringed upon the IP rights that have been record filed at the General Administration of Customs, or the owner does not request the customs to impound the goods and explains the situation to the customs. (Upon obtained the consent from the customs, the IPR owner may inspect the suspected infringing goods)

3.1 要求海关扣留侵权嫌疑货物的，应当按照以下规定向海关提供担保：

- ① 货物价值不足人民币 2 万元的，提供相当于货物价值的担保；
- ② 货物价值为人民币 2 万元至 20 万元的，提供相当于货物价值的 50%的担保，但担保金额不得少于人民币 2 万元；
- ③ 货物价值超过人民币 20 万元的，提供人民币 10 万元的担保；
- ④ 经海关同意，知识产权权利人可以向海关提供总担保。总担保金额不得低于人民币 20 万元。
- ⑤ 知识产权权利人未提出申请或者未提供担保的，海关将发行货物。

3.1 Where the IP right owner requests the customs to seize the suspected infringing goods, the owner should provide security equal to the value of the goods within the time period prescribed.

- ① Where the value of the goods is less than RMB20,000, the owner shall provide the security equal to the value of the goods;
- ② Where the goods are valued between RMB20,000 and RMB200,000, the owner shall provide security equal to 50% of the value of the goods, subject to the condition that the amount should not be less than RMB20,000;
- ③ Where the goods are valued more than RMB200,000, the owner shall provide a security for RMB100,000;
- ④ Upon obtaining the consent from the customs, the owner of the IPR shall provide a general security, with the total amount being no less than RMB200,000;
- ⑤ Where the IPR owner does not submit application for an impoundment order, or has submitted the application but cannot provide the security, the customs shall release the suspected infringing goods.

3.2 请求扣留货物的总担保

- ⑥ 总担保适用范围总担保只限于知识产权权利人在一定时间内因接到海关发现侵权嫌疑货物通知，根据《知识产权海关保护条例》第 16 条规定，多次向海关提出扣留涉嫌侵权其已在海关总署备案商标专用权的进出口货物申请的情事。
- ⑦ 总担保的申请及随附材料

- ⑧ 总担保的金额应相当于知识产权权利人上一年度向海关申请扣留侵权嫌疑货物后发生的仓储、保管和处置等费用之和；知识产权权利人上一年度未向海关申请扣留侵权嫌疑货物或者仓储处置费不足人民币 20 万元的，总担保金额为人民币 20 万元。
- ⑨ 总担保保函的有效期是指作为担保人的银行承担履行担保责任的期间，即总担保保函签发之日起至第二年 6 月 30 日。
- ⑩ 担保事项发生期间知识产权权利人在向海关提出采取保护措施申请时无需另行提供担保的期间，即自海关总署核准之日起至当年 12 月 31 日。

3.2 Request for impoundment of goods under a general security

- ① Scope for the application of general security shall apply in situations under which the IP right owner, upon receiving the notifications from the customs of suspected infringing goods within a certain time period, has, in accordance with article 16 of the “ Regulations for the Customs Protection of Intellectual Property Rights”, made many requests to the customs to seize the goods suspected of infringing the trademark rights that have recorded at the General Administration of Customs;
- ② The application for a general security and the information attached;
- ③ The amount of a general security should be equal to the sum of the storage, warehousing, and disposal expenses incurred in the previous year following the request made to the customs to seize the goods; where the sum as mentioned above is less than RMB200,000, the amount of general security shall be RMB200,000;
- ④ The validity period of the guarantee given by the bank as the guarantor refer to the period of guarantee, which shall commerce from the day of signing the letter of guarantee to the 30th day of June in the following year;
- ⑤ To request the customs to take protection measure, the IPR owner need not provide security during the guarantee period, which runs from the date customs grants the approval to the 31st day of December in the current year.

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