

中国的知识产权海关保护制度

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

第五部分 其他有关事项

Part Five Other relevant matters

1. 知识产权权利人应当承担的责任

- ① 海关依法扣留侵权嫌疑货物，知识产权权利人应当支付有关仓储、保管和处置费用。未支付有关费用的，海关可以从其向海关提供的担保金中扣除或者要求担保人履行有关担保责任。
- ② 海关接受知识产权保护备案和采取知识产权保护措施的申请后，因知识产权权利人未提供确切情况而未能发现侵权货物的，未能及时采取保护措施或者采取保护措施不力的，由知识产权权利人自行承担责任。
- ③ 知识产权权利人请求海关扣留侵权嫌疑货物后，海关不能认定被扣留的侵权嫌疑货物侵犯知识产权权利人的知识产权，或者人民法院判定不侵犯知识产权权利人的知识产权的，知识产权权利人应当依法承担赔偿责任。

1. The legal responsibility of the IP right owner

- ① Where customs impounds goods suspected of infringing upon rights according to the provisions hereof, the owner of the Intellectual Property Rights shall pay the relevant fees for storage, custody and disposal, etc. Where the owner of the Intellectual Property Rights has not paid the relevant fees, customs may deduct such fees from the guarantee he provides to customs, or request the guarantor to perform the relevant guarantee liability.
- ② Where, after customs has accepted an application for record filing of protection of Intellectual Property Rights and for adoption of protective measures for Intellectual Property Rights, an owner of Intellectual Property Rights cannot provide precise details and as a result, the goods infringing upon rights are not discovered, or the protective measures are not adopted in a timely manner or effectively, the owner of the Intellectual Property Rights shall bear the liability himself.
- ③ Where, after an owner of Intellectual Property Rights has requested customs to impound goods suspected of infringing upon rights, customs cannot confirm whether the impounded goods suspected of infringing upon rights has infringed upon the Intellectual Property Rights of the owner of Intellectual Property Rights, or the people's court rules that the goods have not infringed upon the Intellectual Property Rights of the owner of Intellectual Property Rights, the owner of Intellectual Property Rights shall be liable for compensation according to law.

2. 主要的相关日期及时限

1	海关总署应当作出是否准予备案的决定，并书面通知申请人。	自收到申请人全部申请文件之日起 30 个工作日内
2	备案知识产权的情况发生改变的，知识产权权利人应当向海关总署办理备案变更或者注销手续。	自发生改变之日起 30 个工作日内
3	知识产权权利人在接到海关书面通知应予以回复	送达之日起 3 个工作日内
4	海关对扣留侵权嫌疑货物的调查。海关应当对被扣留的货物是否构成侵犯知识产权进行调查、认定。	自扣留之日起 30 个工作日内
5	海关根据知识产权权利人申请扣留的侵权嫌疑货物，未收到人民法院协助执行通知的，给予放行。	权利人申请扣留的，自扣留之日起 20 个工作日内；海关依职权扣留调查的，自扣留之日起 50 个工作日内
6	备案自海关总署核准备案之日起生效	有效期为 10 年

2. Summary of important days and periods

1	Customs making a decision whether or not to accept record filing	Within 30 working days
2	IPR owner to file a change in the details of the filed record of IPR or cancel the record filing	Within 30 working days of the change
3	IPR owner should reply to the customs who gives a written notification to the owner of the import or export goods suspected of infringing the IPR	Within 3 working days
4	Customs should carry out and complete the investigation on the seized goods suspected of infringing IPR, and arrive at a conclusion on the alleged infringement	Within 30 working days
5	Customs shall release the seized goods in the absence of receiving any request from the people's court for assistance in law enforcement.	Within working 20 days if seizure is requested by IPR owner; 50 working days if seizure initiated by customs for investigation
6	Record filed shall be valid for a period	10 years from day of customs approval

3. 提供海关担保比较

- (1) 事前没有办理知识产权海关总署备案，海关依照权利人申请扣留嫌疑侵权货物。在这种情况下，权利人的担保金额是嫌疑侵权货物的价值的一半。权利人事前有在海关备案，海关发现嫌疑侵权货物依职权调查处理。权利人的最高担保金额只是 10 万人民币（最少 2 万）。

(2) 知识产权海关保护总担保范围适用于使用商标使用权的进出口商品。总担保金额是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处置费之和；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，总担保的担保金额为人民币 20 万元。

3. Comparing different types of guarantee given to the customs

(1) Where the IPR owner does not file the record at the PRC General Administration of Customs and requests the customs to seize the goods suspected of infringing the IPR, the applicant should provide a security equal to 50% of the value of the goods in question. Where the IPR owner has previously filed the records of the IPR at the customs, and the customs discover the suspected infringing goods and inform the IPR owner of the suspected infringing goods, the IPR owner should only give a maximum security of RMB100,000 (subject to a minimum of RMB20,000).

(2) The scope of general customs guarantee shall apply to the customs protection for trademark right on import and export goods. The amount of general guarantee should be the sum of storage, custody, and disposal of the suspected infringing goods after they have been seized in the preceding year. In case that there was no application to the customs for a seizure of any suspected infringing goods in the preceding year, or the costs of storage, custody and disposal of the suspected infringing goods is less than RMB200,000, the amount of the general guarantee is RMB200,000.

4. 在海关备案的优点

4. Advantages of IPR record filing at the customs

- (1) 将知识产权在海关总署备案可以有效地阻嚇有意侵权的单位和个人；
- (2) 如果将知识产权在海关备案，要求海关扣压嫌疑侵权货物的最高抵押金是 10 万元人民币；如果事前没有在海关备案，要求海关扣压嫌疑侵权货物的抵押金是嫌疑侵权货物价值的一半，该金额可以高于事前有备案的要求金额。
- (3) 如果将知识产权在海关备案，海关会主动通知备案人嫌疑进出口的侵权货物。

- (1) The record filing of IPR at the customs can act as effective deterrent to those who are going to infringe the IPR;
- (2) Where the IPR is filed at the customs for record, the amount of security provided for seizure of infringing goods is limited to RMB100,000 only . In the absence of filing the IPR at the customs, to make a seizure request to the customs, the IPR owner should provide a security equal to the value of the suspected infringing goods, which could be much bigger.
- (3) The customs will inform the IPR owner of any import and export goods suspected of infringing his IP rights.