

Regulations Governing Customs Detaining Goods Suspected of Patent Infringement

• Promulgated on March 24, 2014

Article 1

These Regulations are formulated pursuant to Article 97-4 of the Patent Act (hereinafter referred to as “the Act”).

Article 2

A patentee requesting Customs to detain imported articles that are suspected of infringing the patent right(s) shall do so in writing to the customs offices of importation of such articles, accompanied by the following:

1. document(s) of proof of the patent right(s); where a utility model patent right is concerned, the technical evaluation report of said utility model shall also be provided;
2. a copy of the identity document(s), juristic person certificate(s) or other document(s) proving qualification of the detention requester.
3. an infringement analysis report and sufficient description for identifying the suspected infringing articles, along with other information including samples, photos, catalogs or pictures of the suspected infringing articles as well as the electronic files thereof.
4. a sufficient description enabling Customs to identify the articles to be detained, such as the name of the importer, the business administration number or I.D. card number thereof, import declaration number, name, type or specification of the articles, possible importing date, port or vehicle.
5. a power of attorney, if the detention request is filed by an appointed agent.

An exclusive licensee may, within the licensed scope, make a request prescribed in the preceding paragraph.

Where information concerning a detention request stated in Paragraph 1 is yet to be provided, Customs shall immediately notify the detention requester to make such provision; the customs clearance procedures of the suspected infringing articles are not affected until such provision is made.

Article 3

Where the detention request conforms to the provisions of the preceding article, the detention requester shall, upon immediate notice from Customs, provide a security amounting to the duty-paid price of the imported articles, as assessed by Customs, or any of the following equivalent assurance:

1. bonds issued by the government;

2. certificate of deposit;
3. certificate of deposit issued by a credit cooperative;
4. over one year's trust certificate from an investment company; or
5. guarantee from a loan institution.

A pledge of the assurance as set forth in Subparagraphs (1) through (4) of the preceding paragraph shall be established with Customs.

Prior to the provision of security or equivalent assurance as stated in Paragraph 1 by the detention requester, Customs should handle the suspected infringing articles in accordance with the regulations governing customs clearance of imported articles.

Article 4

Prior to carrying out the detention, Customs may ask the detention requester to provide assistance. If such request for assistance is rejected without any justifiable reasons thereby leading to failure in carrying out detention, Customs may proceed with handling the suspected infringing articles in accordance with the regulations governing customs clearance of imported articles.

Article 5

Customs having reviewed and deemed the detention request to be in compliance with the provisions of the preceding three (3) articles shall immediately carry out the detention and notify in writing the detention requester and the owner of the detained articles.

Article 6

The detention requester or the owner of the detained articles requesting Customs for examining the detained articles in accordance with Paragraph 5, Article 97-1 of the Act shall do so in writing to the customs offices of importation of such articles.

The examination as set forth in the preceding paragraph shall be carried out in compliance with the time, place and manners specified by Customs.

Customs specifying matters prescribed in the preceding paragraph shall refrain from compromising confidential information protection of the detained articles.

Article 7

The detention requester shall, in compliance with Article 96 of the Act, file a litigation claiming that the detained articles infringe the patent right(s) and notifies Customs of such filing within twelve (12) days following the date of receipt of Customs' written notice provided under Article 5. Where litigation has been filed prior to carrying out of the detention, the detention requester shall still notify Customs of such filing.

If necessary, Customs may, pursuant to Paragraph 2, Article 97-2 of the Act, extend the time period prescribed in the preceding paragraph by another twelve (12) days.

Article 8

The owner of the detained articles requesting Customs to repeal detention in

compliance with Paragraph 4, Article 97-1 of the Act shall do so in writing to the customs offices of importation of such articles, accompanied by a security or equivalent assurance amounting to two times the duty-paid price of the imported articles as prescribed in Paragraph 1 of Article 3.

The assurance referred to in the preceding paragraph shall be provided in accordance with Paragraphs 1 and 2 of Article 3.

Article 9

In the event of any of the following, the detention requester or the owner of the detained articles shall file a request for repeal of detention in writing with the customs offices of importation, accompanied by relevant document(s) of proof:

1. where, as prescribed in Subparagraph 2, Paragraph 1, Article 97-2 of the Act, the litigation initiated by the detention requester claiming that the detained articles infringe the patent right(s) has been dismissed by a final and binding court judgment; or
2. where, as prescribed in Subparagraph 3, Paragraph 1, Article 97-2 of the Act, a court of law in a final and binding judgment has held that the detained articles do not infringe the patent right(s).

Article 10

Customs repealing the detention in accordance with Paragraph 1, Article 97-2 of the Act shall follow the procedures under applicable regulations governing customs clearance of imported articles.

Customs repealing the detention in accordance with Subparagraph 5, Paragraph 1, Article 97-2 of the Act may, as prescribed in the preceding paragraph, retain a representative sample.

Article 11

The detention requester or the owner of the detained articles filing a request with Customs for the return of the security or assurance in accordance with Paragraph 3 or 4, Article 97-3 of the Act shall state the ground thereof and provide, if applicable, the following document(s):

1. a copy of a judgment of the court along with a copy of a certificate stating the judgment is final and binding, or a copy of document which legally have the equivalent effect as a final and binding judgment of the court;
2. a copy of a settlement agreement;
3. a copy of the document proving that the other party has been notified to exercise the right within a specified time period of no less than twenty (20) days but has yet to do so within the said period;
4. a copy of the document proving that the other party has agreed upon such return.

Article 12

These regulations enter into force on March 24, 2014.