

Guide for International Counsel: Customs Enforcement of IP Rights in Europe & Germany – The New Rules

February 2014

Preface

Customs authorities in the European Union may detain goods under their control which are suspected of infringing intellectual property (IP) rights. Such proceedings are governed by a new Regulation (EU) No 608/2013¹ issued in 2013 which came into effect on 1 January 2014.

There are limited parallels between customs actions in Europe and proceedings before the U.S. International Trade Commission (ITC). Both sets of actions provide for seizures of infringing goods entering the borders of the respective jurisdictions. However, the U.S. ITC will not seize such goods until it has conducted its own hearing and determination of the validity and infringement of the patents. By contrast, the EU and national proceedings discussed herein provide a temporary barrier against suspect imports, and it is left to the national courts to decide whether this barrier shall be removed or not, provided the importer objects to the detention. Furthermore, to establish standing at the ITC, the right holder must show that an industry in the United States relating to articles protected by the patent exists or is in the process of being established. Such “domestic industry” requirement must not be fulfilled under the European or national customs actions rules. Accordingly, the customs enforcement system can be used by anybody holding IP rights, such as patents, supplementary protection certificates (SPCs), utility models, designs, trade marks and copyrights, in the European Union.

This article offers an overview of the new framework. McDermott will publish updates as the legislation’s framework is developed.

¹ Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003(OJ L 181, 29.6.2013, p. 15.)

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1. Introduction

Customs actions have become an important strategic tool for combatting IP infringement in cross-border trade. The European Union first sought to use customs authorities to help combat product piracy in 1986 when it introduced a Regulation to allow seizure of pirated goods upon importation into the European Market. Although originally limited to combatting product piracy, the legislation has been revised on several occasions and, since 1 July 1999, is even applicable against goods that infringe patents, irrespective of piracy. The European customs measures are uniformly applicable to all EU Member States but may be complemented, where necessary, by individual national measures. Replacing its predecessor from 2003², the new Regulation further strengthens border measures against IP-infringing goods and makes it easier for such goods to be destroyed following their seizure. Following are several key components of the new Regulation:

- **Procedural aspects:** Like the prior Regulation, the new Regulation is confined to procedural aspects and does not contain rules relating to the existence of an infringement of IP rights. This forms a question of national law.
- **Coverage:** The new Regulation covers a wider range of intellectual property rights than the prior Regulation, extending its scope to trade names, topographies of semiconductor products, circumvention devices, plant varieties and utility models.
- **Small consignments:** As a result of the growing number of counterfeit goods ordered through the internet and sent by postal service, the new Regulation also provides for enhanced monitoring of small consignments.
- **Transit:** The new Regulation does not change the situation for goods which are shipped from third-party countries into the European Union and intended for another third-party country. The new Regulation does not modify the solution given by the Court of Justice's decision in *Philips and Nokia*³, wherein the Court decided that goods, *prima facie* not intended for the EU market, can nevertheless be seized if there is convincing evidence and substantial likelihood that the goods will be re-routed to sale on the EU market.

² Council Regulation (EC) No. 1383/2003 of 22 July 2003.

³ See EUCJ, 1 December 2011, C-446/09 and C-495/09.

Customs actions can be a powerful tool for seizing samples of infringing goods and acquiring information about the source, destination and distribution channels of such goods. In particular, patentees have had success initiating customs seizures at trade shows. Accordingly, reliance on the customs authorities as a means to protect intellectual property has skyrocketed in recent years.

In the European Union, customs authorities carry out the detention of suspect products without an in-depth assessment and analysis of validity and infringement of the intellectual property right. The customs authorities instead rely on the allegations of the right holder. As soon as the authorities detect suspected goods (and usually after an initial consultation, often by phone, with the contact person named in the application), they order detention of the goods. The right holder even receives an opportunity to inspect the detained goods and take samples. Prior to court proceedings, customs actions are essentially formalities initiated by the filing of an application form. This application procedure is efficiently channelled through centralised offices in EU countries, such as the Zentralstelle Gewerblicher Rechtsschutz (ZGR) in Munich.

The right holder is able to stop the proceedings in all stages. The right holder can decide whether a further detention is necessary or an immediate release of the goods is preferred, and is thus in a position to minimise any further interference in the customs clearance.

An importer that stays mute during the proceedings could be penalised, as silence may lead to the destruction of the products. The importer's agreement to destruction is presumed if it does not explicitly object to the destruction within a 10-day period. The number of cases where such presumed agreement leads to destruction of the products is significant. Most of these cases, however, concern clear counterfeits where the importer knows that an objection would obviously be without merit. If the owner of the seized goods objects to the detention, the right holder must initiate court proceedings within 10 working days; this deadline can be extended by a further 10 working days. Then the case moves to the regular patent infringement courts.

2. Legal Framework

2.1. EU Rules

European rules allow for detention of infringing goods at all of the European Union's external borders, irrespective of the place of importation. The primary rules are contained in the Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement

of intellectual property (hereinafter referred to as the Regulation)⁴, which provides for uniform measures throughout the European Union, applied by national customs authorities. The Regulation is completed by the Commission Regulation (EC) No. 1352/2013 of 4 December 2013 setting forth provisions for the implementation of the Regulation (hereinafter referred to as the Implementing Regulation).⁵ The Regulation is primarily applicable to goods which are leaving or entering the single market, *i.e.*, from countries outside the European Union into the territory of the custom-free market (so-called customs territory of the Union, Article 1 of the Regulation).

Customs actions may only cover those European countries where an enforceable right is available. For instance, customs actions based on a European Patent that designates certain EU Member States are limited to those EU states where the European patent is valid and in force. A Community Design, on the other hand, would be enforceable in all EU Member States. Thus, an IP portfolio may cover EU territory in different ways. In some territorial areas of the European Union, the protection may be strong and consist of multi-layer rights, whereas in other perhaps less commercially active parts of Europe, the protection may be weaker. This presents many interesting strategic questions that may be addressed with local counsel once suspected goods are actually detained at an entry point of the Community Customs area.

2.2. National Rules

Besides the pan-EU provisions, national law in any of the EU Member States may provide for additional protection. German law provides for additional protection under §142a of the Patent Act. Customs actions according to German national law are applicable to areas that are not covered by the Regulation (§142a (1) of the German Patent Act). The German national rules “complete” the Regulation in the following areas:

- **Movements of goods between EU countries:** The Regulation covers measures applicable at the external borders of the single market. These are mainly the customs at the border delimiting the territory of the European Union. The Regulation does not address transit of infringing goods across internal borders within Europe, such as that between Germany and France. For instance, infringing goods that have been produced in France or Spain and are later imported into German territory could not be subject to measures based on the Regulation. These are goods that are already within the single market, and therefore national laws, per §142a of the German Patent Act, would govern.

⁴ The full text of the Regulation is available in English at <http://eur-lex.europa.eu/>.

⁵ The full text of the Implementing Regulation is available in English at <http://eur-lex.europa.eu/>.

- **Illegal parallel imports of original goods (i.e., “grey market” goods):**
The Regulation explicitly excludes coverage of original goods that have been produced with the consent of the right holder.⁶ European patent rights are not necessarily exhausted even if original goods are concerned. This is particularly applicable to goods that the right holder or an authorised person has put into a market outside the European Union. Nevertheless, even if their re-importation into the European Market represents an infringement of patent rights, these goods cannot be seized by means of the Regulation. The new Regulation also does not apply to “goods manufactured by a person duly authorised by a right holder to manufacture a certain quantity of goods, in excess of the quantities agreed between that person and the right holder”, i.e., unauthorised overruns. However, measures according to §142a of the German Patent Act may help in such situations. It is commonly accepted case law⁷ that illegal parallel imports (grey market products) or unauthorised overruns may be combatted by means of national measures on the basis of §142a of the German Patent Act. For instance, the right holder may hinder the importation into German territory of a product that it had previously bought on the market of a developing country for a lower price. It also is a very efficient tool to hinder the commercial activity of vendors using the internet to sell original goods bought in low-price countries for resale in European high-price countries.

3. Application Proceedings

Regardless of whether the application is based on the Regulation or on §142a of the German Patent Act, it is principally the right holder that may apply for a customs action.⁸ This is the person who is named in the register. As an exception, the right holder can also be the licensee, provided the licensee is formally authorised by the right holder to initiate customs proceedings.⁹ Proof of ownership can be provided by means of an excerpt of the register. The application must be filed with the competent customs authorities. In Germany, the competent customs authority is as follows:

Zentralstelle Gewerblicher Rechtsschutz
(Bundesfinanzdirektion Südost)
Sophienstraße 6
80333 München

⁶ Art. 1(5) Regulation.

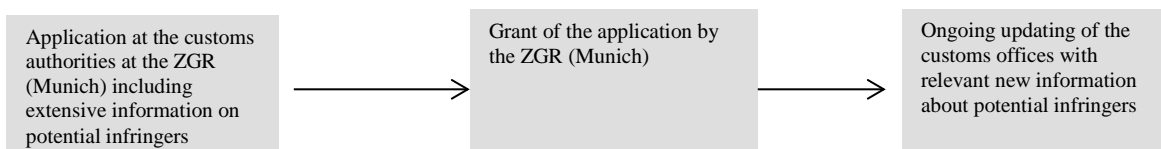
⁷ Federal Financial Court, VII R 89/98, GRUR Int. 2000, 780, Jockey.

⁸ Art. 3 (1)(a) Regulation.

⁹ Art. 3 (2)(a) and (3) Regulation.

The Regulation provides for two different tracks: one is applicable to the Community rights with a Community-wide effect¹⁰ (Article 4 of the Regulation), and the other is applicable to national rights, particularly European patents, national patents, utility models, SPCs and national trade marks.

Table 1: Application Proceedings



3.1. Content of the Application

The application is made by means of pre-established forms¹¹ which are available on the customs authority's website. In Germany, the required data can be entered directly into an online form available on the ZGR website.¹² Later, if the application is granted, the ZGR forwards this form to the border authorities. That is, it is made available through the customs intranet. The intranet is the information tool that is consulted by border personnel to detect suspected shipments. Accordingly, the success of the measure significantly depends upon the data and illustrations given by the right holder when completing the form.

In addition to proof that the right holder is authorised to assert the patent rights¹³, the application should contain the following information:

- The name and address of a legal or technical person, usually the lawyer handling the filing procedure.¹⁴ This person must be vested with a power of attorney. This is also the first contact person in the event that customs detects suspect goods.
- An accurate and detailed technical description of the goods—*i.e.*, sufficient information to enable customs to distinguish authentic/original products from suspected goods. The right holder should add a list of those companies authorised to sell original goods.

¹⁰ Community trademark, Community design, a Community plant variety, or a designation of origin or geographical indication or a geographical designation protected by the Community.

¹¹ See Annex I of the Implementing Regulation; a different form must be used if the right holder bases the application on the national regime, namely §142a of the German Patent Act.

¹² www.ipr.zoll.de.

¹³ Art. 6 (3)(a)(c) Regulation.

¹⁴ Art. 6 (3)(k) Regulation.

- Available information on potential infringers and infringing goods. This information should be constantly updated.
- Information (if available) regarding the particularities of the packaging; schedule of arrival or departure; means of transportation; identity of the importers, exporters and holders of suspect goods; and details of the distribution channels used by potential infringers, including information concerning upcoming trade shows. Accordingly, a list of companies that potentially import suspect products into the European market, as well as those companies potentially receiving such products, should be added and constantly updated.

The effectiveness of an application for action by customs depends on the accuracy and thoroughness of the information that customs authorities receive regarding the goods and the potential infringer. The more information is available to customs, the greater the chance that infringing items will be detected.

3.2. Guarantee

The right holder must provide a guarantee. In case of customs actions based on the Regulation, it is sufficient to provide an assumption of liability for the case where the detained goods in question are subsequently found not to infringe the asserted IP rights, if the holder of the goods or declarant has suffered damage in that regard. The assumption of liability, which is contained as an undertaking in the application form (see Annex I of the Implementing Regulation), shall cover eventual damages resulting from an unjustified detention of goods. There is no rating of creditworthiness or other similar check; the signed undertaking is sufficient.

The situation is different in the case of customs actions based on German national rules. Here a security bond is necessary. According to §108(1) of the Code of Civil Procedure, this security bond shall be a written, irrevocable, unlimited in time, absolute, unconditional and directly liable bank guarantee to cover eventual damages resulting from an unjustified detention. For the time being, the ZGR requires a bond of EUR 10,000 from a bank which is officially accredited to operate and provide financial services within German territory. If it is too difficult to find a suitable bank, the right holder may also deposit the amount into a trust account with any deposit agency of a German Court.

4. Grant of the Application

The application is processed *ex parte*. When the ZGR receives the application, it checks whether the requirements are met, specifically whether the application contains sufficient information to enable the detection of the goods in question, and whether a sufficient guarantee is provided. Following the filing of the application, the ZGR may informally contact the right holder if any information is missing. The ZGR does not, however, assess the validity of the rights. It is satisfied with an excerpt from the register showing that the rights are in force. The ZGR also does not check whether the applicant's statements are correct. The customs authorities rather rely on the written factual allegations and explanations of the right holder. Once the application is granted, the ZGR feeds the information contained in the application into the customs intranet, which is then available at the customs offices.

5. Ongoing Updates to Customs

The order of the ZGR granting the application specifies a time period during which the customs authorities take action.¹⁵ This period shall not exceed one year, but on expiration the ZGR may extend the period per request of the right holder.

During the time period of the validity of the customs order, the facts on the ground may change. For instance, the right holder may become aware of new potential infringers, or may obtain better information on the means of transportation and the commercial channels used for shipping the suspect goods. As new or more accurate information becomes available, the customs application should be updated. This can be done easily through the ZGR website.

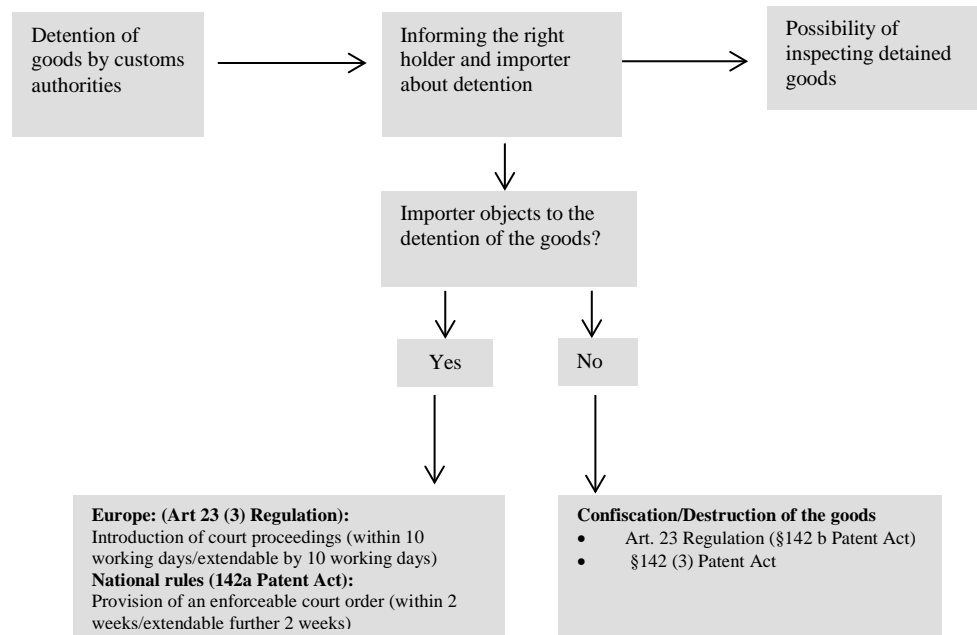
According to Article 15 of the Regulation, the right holder is obliged to inform customs if the intellectual property right covered by the application ceases to have effect, if the right holder ceases for other reasons to be entitled to submit an application, or if any other modifications render the application on file inaccurate.

6. Detention Procedure

The following table provides a simplified scheme of the detention procedure. Detention is carried out by the customs authorities without in-depth analysis of the validity and infringement of the IP right. Once goods are seized, however, proceedings may shift to the regular courts, where the patent rights are analysed.

¹⁵ Art. 11 (1) Regulation.

Table 2: Detention Procedure



6.1. Customs' Detection and Assessment of Goods

If customs detects goods that it suspects infringe, according to the information found on the customs intranet, it will detain these goods.¹⁶ According to Article 2(7) of the Regulation, such goods are basically goods “with regard to which there are reasonable indications that they are prima facie subject of an act of infringement”. Accordingly, the determination of the infringement of the IP right apparently depends on a review of the factual information and documents provided by the right holder to customs. The infringement must apparently be more than a mere assumption.¹⁷ Prior to detaining the goods, customs may also ask the right holder to provide them with any other relevant information with respect to the goods. This possibility seems to broaden the basis for customs’ review of the situation. Nevertheless, the new Regulation stays silent as to what extent it is customs’ duty to investigate the legal justification of the detention. The new Regulation only stipulates that “where the customs authorities identify” suspected goods they shall suspend the release of the goods or detain them. This seems to impose an even lower threshold for a legal review on the side of customs than was applicable in the previous Regulation,¹⁸ which required that customs gained satisfaction “that goods [...] are suspected of infringing an intellectual property right”.

¹⁶ Articles 17(1) Regulation.

¹⁷ Rogge/Grabinski, PatG, 10th ed., § 142a R. 20; Cordes, GRUR 2007, 483 (485); Hermesen, Mitt. 2006, 261, (262).

¹⁸ EC No 1383/2003.

A detention based on the national provisions even requires that “the infringement is obvious” (§142a(1) of the Patent Act). It would seem that both provisions require at least to some extent a legal review by the customs authorities as to whether the detained products indeed infringe the concerned patent. In practice, however, the customs authorities rely on the right holder's allegations. There has been some criticism of this practice in the literature¹⁹ and by courts²⁰ because there is a risk for abuse. In Germany the trend may be toward greater review by customs authorities, but ultimately the likelihood of any substantial legal review, now or in the future, in the customs clearance process is low, because customs officers do not have any particular IP-related expertise.

Important German customs entry points where most suspected products are detected are as follows:

- German airports, in particular the airport of Frankfurt
- German maritime harbours, in particular Bremen and Hamburg
- Mail (close to 67 per cent of all suspected products are detected through mail clearance)
- Customs clearance at the special customs offices for tradeshows

Other important entry points are harbours in France (Le Havre), Belgium (Antwerp) and The Netherlands, in particular the harbour of Rotterdam. These harbours are used for transit and have a high volume of important container traffic.

6.2. Notification of Detention

As soon as the customs authorities have detected suspected goods, they take action with regard to the detained goods. The right holder is provided the following information:

- Actual or estimated quantity, and the actual or presumed nature of the detained goods, including available images thereof, as appropriate

¹⁹ See AIPPI, Question Q. 208, Answer of the German Group.

²⁰ District Court Düsseldorf InstGE 9, 130, 137.

- The names and addresses of the declarant or the holder of the goods
- The origin, provenance and destination of the suspected goods (Article 17(4) of the Regulation, §142a(2) of the Patent Act)

The right holder has an opportunity to inspect the detained goods. When examining the goods, the customs authorities may take samples and provide them to the right holder.²¹

The importer (usually the declarant) of the goods also will be informed about the detention. It may happen that innocent products are detained by customs. In such a situation, the right holder should clear the situation as soon as possible and take the necessary steps such that the detained goods are quickly released to minimise any further interference in the customs clearance and to avoid possible liabilities.

6.3. Measures After Notification of the Parties

6.3.1. EU Rules

6.3.1.1. Destruction

This procedure may result in the destruction of the detained products. It requires the following steps:

- The right holder confirms within 10 working days from the notification of detention in writing,²² that, in its conviction, the suspected goods infringe the IP right, and indicates its agreement to their destruction. To require an expressed conviction from the right holder that the suspected goods indeed infringe the concerned IP right leverages a sense of responsibility and challenges the right holder to a serious review of the situation.
- The declarant or the holder of the goods agrees in writing to customs, also within 10 working days, to the destruction of the goods. Where the declarant or the holder of the goods has not confirmed its agreement to the destruction of the goods, nor notified its opposition thereto, to the

²¹ Art. 19 (2) of the Regulation.

²² Art. 23 (1) Regulation: Within three working days in case of perishable goods. The 10-day period may be extended by a further 10 working days where circumstances warrant.

customs authorities within those deadlines, the customs authorities may deem the declarant or the holder of the goods to have confirmed its agreement to the destruction of those goods.²³ Accordingly, *this agreement is presumed if the holder or owner of the goods has not explicitly objected to the destruction within the indicated 10-day period.*²⁴

Once the right holder informs the authorities that the detained goods infringe the patent, and provides an explicit or presumed agreement, the goods will be destroyed. In the case of clear counterfeits, the holder of the goods will commonly not object, and this leads to destruction of the goods without any further legal review.

6.3.1.2. *Regular Proceedings*

Destruction proceedings are unavailable if the goods' owner, holder or declarant objects to the destruction in a timely manner. In that event, the right holder must initiate court proceedings within 10 working days²⁵ from the receipt of the notification of detention. This deadline can be extended further by 10 working days in appropriate cases, *i.e.*, upon the duly justified request by the right holder. The Regulation, in particular Article 23, does not provide for a definition of the term "proceedings, to determine whether an intellectual property right has been infringed", but it is commonly understood that it is sufficient to file a regular lawsuit²⁶ with one of the competent patent infringement courts.²⁷ The requirement also is fulfilled by means of a request for a preliminary injunction, which may constitute a *precautionary measure* according to Article 24 EC (2) (b) of the Regulation, and would have the additional effect of rendering a request of the importer to release the detained products, which might be later filed, unsuccessful (see following section 6.3.1.3).

Accordingly, the right holder has 10, at maximum 20, working days to prepare and file a complaint brief or to request a preliminary injunction with a competent German infringement court. The customs authorities do not provide a forum for adjudicating whether the patent is valid and infringed (as is the case with the U.S. ITC). Rather, the customs authorities form a temporary barrier against suspect imports, and it is principally left to the national courts to decide whether this barrier shall be removed.

6.3.1.3. *Possibility of Release of Detained Goods (Article 24 Regulation)*

²³ Art. 23 (1) (c) Regulation.

²⁴ See also §142b (4) Patent Act.

²⁵ In case of perishable goods, the period shall be three working days, which is not extendable.

²⁶ This can also be a request for a preliminary injunction.

²⁷ Rundschreiben der Bundesfinanzdirektion Südost, 20 August 2008.

If the right holder has initiated court proceedings and thus fulfilled the requirements of Article 23 of the Regulation, and absent action on the part of the declarant, owner, importer, holder or consignee, the goods will remain with the customs authorities. But the Regulation provides for relief to obtain an early release of the detained goods. This procedure is described in Article 24 of the Regulation. The early release can be requested by the declarant or holder of the goods. The customs authorities then typically release the detained goods on provision of a guarantee, which shall be sufficient to protect the interests of the right holder. The amount of the guarantee shall basically be equal to the amount the importer of the goods would have to pay as damages for the infringement of the detained goods. The right holder's indications will be taken into account when determining the amount of the guarantee. However, if no agreement between right holder and importer can be reached on a reasonable amount, the customs authorities will determine it.

However, according to Article 24(2)(b) of the Regulation, the customs authorities will not release the detained products if the "authority empowered for this purpose has authorized precautionary measures." That is, customs would not release the detained goods even on the provision of a sufficient guarantee by the importer if the right holder can provide an executable court decision ordering the impounding of the detained goods. Accordingly, the maintenance of the detention requires not only that court proceedings have been initiated by the right holder, but also that a court reviews the situation and renders an executable decision. Without this decision ordering precautionary measures, the goods would be released against the guarantee. In view of the speed of the early release proceedings according to Article 24 of the Regulation, it seems to be necessary that the right holder requests precautionary measures through preliminary injunction proceedings.

Often the right holder is satisfied with the release because the short interruption in importation is enough to at least hinder exhibition at a trade show, and in the meantime the right holder can examine samples and obtain relevant information on parties and distribution channels.

6.3.1.4. *Special Proceedings for Small Consignments*²⁸

The specific procedure for small consignments of counterfeit and pirated goods has been introduced in order to minimise the administrative burden and costs. It simplifies the standard proceedings and responds to the growing amount of infringing goods ordered through the internet and sent by postal services. The procedure allows for such goods to be destroyed without the explicit agreement of the applicant in each case. It only applies if the following are true:

²⁸ Article 26 of Regulation (EU) No 608/2013.

- The suspected goods are counterfeit or pirated goods.²⁹
- The goods are not perishable goods.
- The goods are covered by a decision granting an application.
- The right holder has specifically requested the use of the procedure. The form contains a box, which needs to be ticked.
- The goods are transported in small consignments.³⁰

Requesting the procedure entails the undertaking from the applicant to bear the costs related to the destruction of goods under this procedure, where requested by the customs authorities.

6.3.1.5. Ex Officio Proceedings

According to Article 18 of the Regulation, the customs authorities can also act without any underlying request of the right holder. If customs detains goods suspected of infringing an IP right that are not covered by a valid application, customs will try to locate the person or entity entitled to submit the application, which will have then four working days to file it.

6.3.2. German Rules (§142a of the German Patent Act)

The procedure based on the German national rules is comparable to European rules but not completely the same. Even under German law the absence of an objection and appropriate subsequent action may lead to the destruction of the detained products. Where no opposition to the detention is made by the importer, at the latest within two weeks of service of the notification of the detention, the customs authorities shall order confiscation of the detained products, which consequently results in the destruction of the detained products (§142a(3) of the Patent Act).

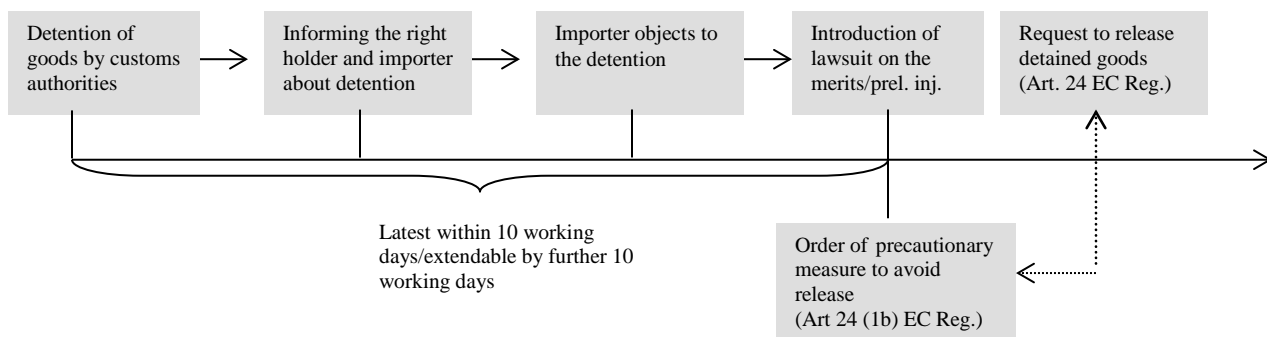
²⁹ In particular infringements concerning signs which are identical to trade mark or cannot be distinguished in its essential aspects from it (Art. 2 (5)) and goods which infringe copy rights, related rights or designs (Art. 2).

³⁰ These are postal or express courier consignments, which contain three units or less or have a gross weight of less than two kilograms.

If the importer objects to the detention, the customs authorities inform the right holder, which must then indicate to the customs authorities whether it still seeks the maintenance of the detention. If the right holder withdraws its request, the customs authorities will release the detained products.

If the right holder intends to proceed, it must submit an executable court decision ordering the impounding of the detained goods. This is different from the European customs action proceedings, where it is sufficient to simply prove that regular proceedings on the merits have been initiated. The detention triggered by a German customs action requires not only that court proceedings have been initiated, but also that a court reviews the situation and renders an executable court decision. As this decision must be provided within a short time frame, namely within two weeks, the right holder must initiate preliminary injunction proceedings to achieve this goal. Where the right holder can show that a court decision has been requested, but has not yet been received, the seizure shall be maintained for a further two weeks at most.

Table 3: Procedure After Detention



7. Possible Liabilities

Where the detention proves to have been unjustified from the beginning (for instance, where it is later found that there is no infringement of the asserted patent, or if it is invalidated), and the right holder did not timely withdraw the request to maintain the detention, the right holder shall be required to compensate the damages that the detention has caused to the person entitled to

dispose of the goods.³¹ The amount of damages may consist of the difference between the price the owner of the goods would have received when selling them earlier and the value of the goods after the detention. Because the detained products are released by customs in case of an unjustified detention, the calculation of damages is consequently linked to the temporary unavailability of the detained products. The claimant has the burden of proving the cause and amount of the damages. This is difficult to do in practice, and liabilities are usually kept within reasonable limits.

8. Costs of the Proceedings

Except for the costs related to the storage, handling and destruction of detained goods, there are no fees to be paid to the customs authorities for the application procedure. The preparation of the application will involve some legal costs, as will the maintenance of the detention measures, depending on how many different seizures customs effectively makes and on how many follow-up court proceedings may be necessary.

³¹ Art. 28 of the Regulation.