Border Seizure

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Border seizure

Published in ?? 2025

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IP Brochure

With successful border seizure applications, the import and export of goods infringing intellectual property rights can be prevented at the external borders of the EU or Germany. Border seizure applications are therefore a useful means of effectively enforcing industrial property rights, particularly in cases of infringement not yet identified. Furthermore, applications may be made in addition to bringing infringement proceedings before the courts. This brochure provides an initial overview of requirements and possibilities regarding border seizure applications.

As part of the border seizure, intellectual property right holders have the option of preventing the import into and export from the territory covered by the border seizure application without having to know the identity of the persons involved.

At the same time, border seizures can also be an effective means of enforcing property rights against infringing parties known to the right holder, partly because the goods may be detained relatively easily at the external borders, and partly because successful seizure of the goods and imminent destruction may put the property right holder in a good position for settlement proceedings with the infringing party.

The number of seizures by German customs officers is very high. Between 2022 and 2024, there was an average of over eighteen thousand seizures, with over 16 million goods in these three years having a value of more than one billion euros seized per year. Looking at the value of seized goods, personal items, e.g. jewelry, watches, glasses, bags, etc., topped the “hit list” in 2021. The majority of goods were seized due to trademark infringements, followed by design infringements, which have constantly been increasing. Most seizures affect shipments from China. This is followed in second place—albeit at some distance—by Turkey. The seizures are the result of close collaboration between the customs authorities and around nine hundred intellectual property right holders. In 2024, this included over 450 border seizure requests.

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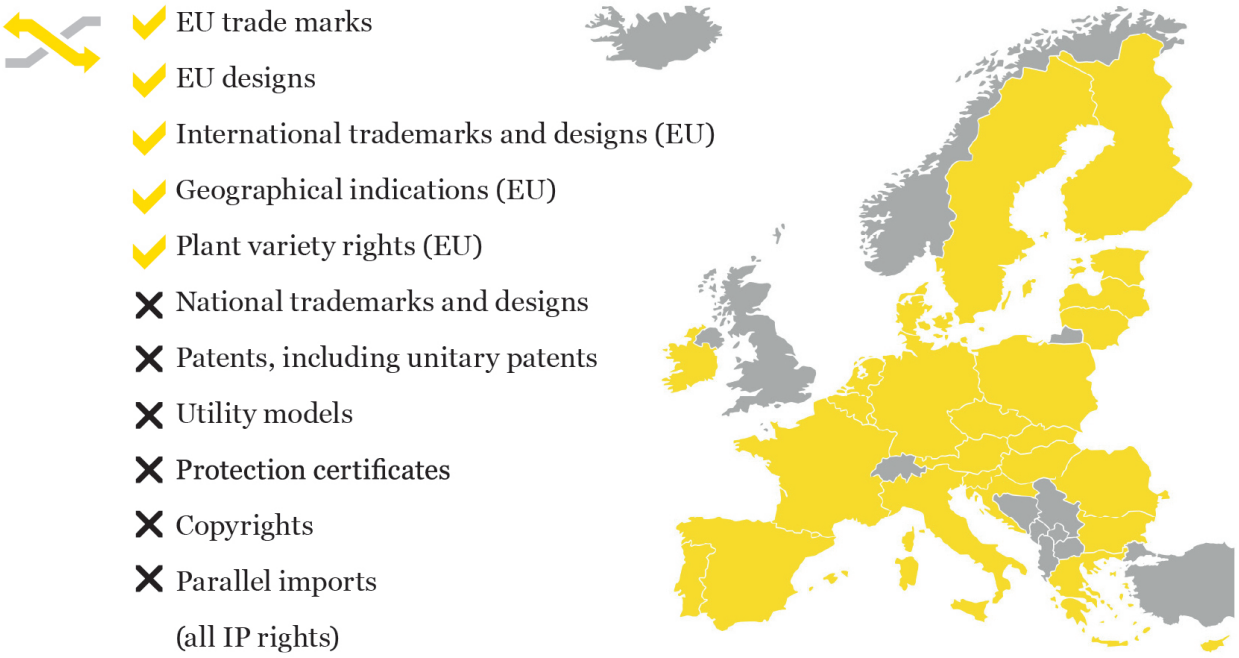
1. Border seizure

Generally, a national border seizure application should be distinguished from a Union application. While national applications are aimed solely at action by the German customs authorities, a Union application is capable of prompting action by several or even all customs authorities of the EU Member States. This may involve different applications and different procedures depending on the property right and the action sought. This brochure sets out the main features of the border seizure procedure.

The European Union border seizure procedure allows for the confiscation of goods which are suspected of infringing intellectual property rights with effect throughout the Union (!). These rights include EU trade marks, EU designs, international trademarks and designs (WIPO) designating the European Union, plant variety rights and geographic indications of origin. Furthermore, action may be taken against goods attempting to circumvent copy protection. Border seizure covers goods imported into the European Union and/or exported from the European Union or goods registered for re-export. Border seizure at the European level is subject to Regulation (EU) No. 608/2013. The items that may be seized at European Union customs posts according to Regulation (EU) No. 608/2013 do not include goods whose sale (merely) breaches competition law and goods produced with the right holders' consent, even if they are to be found in import situations without the right holders' consent (for more information, see our brochure on Parallel Imports and Non-authorized Sales). The latter, as well as patents, utility models, supplementary protection certificates, semiconductor topographies, national trademarks and designs, and Copyrights may however be seized on the basis of a national application pursuant to German law.

Border seizure under German law is codified in the legislation regulating the respective intellectual property rights, e.g. in Section 146 Trademark Act, Section 142a Patent Act, Section 25a Utility Model Act, Section 55 Design Act and Section 40a Plant Variety Protection Act, and author's rights in Section 111b Copyright Act.

Border Seizures (EU)



Goods found in travelers' personal luggage which are not of a commercial nature and which do not exceed a specified value are entirely exempt from seizure.

Important areas exist where, besides a Union application, a national border seizure application according to German regulations may also be a sensible option, particularly in cases of parallel imports ("overruns"), movement of goods within the Community and non-registered trademarks.

Border Seizures (DE)

- Patents, including unitary patents
- Utility models
- Supplementary protection certificates
- Trademarks
- Trade names
- Geographical indications
- Plant variety rights
- Semiconductor topographies
- Designs
- Copyrights
- Parallel imports

(all IP rights)

2. Requirements for border seizure and application procedure

Border seizure is a measure carried out by the customs authorities. The measure is taken regularly in response to applications and also, in exceptional circumstances, on the customs administration's own authority. Intellectual property right holders, certain collecting societies and professional associations, as well as persons authorized to use an intellectual property right are entitled to make a national application for a border seizure. However, besides the right holder and certain collecting societies and professional associations, only an exclusive licensee in at least two Member States may make a Union application, provided the right holder consents. Only one national application and one Union application may be made for each property right. Applications for border seizure are free of charge and can be requested for up to one year. There is nothing to prevent a reapplication and there is no limit to the number of times an extension to a seizure application may be made, provided the intellectual property right remains valid and the applicant remains entitled.

The application is submitted electronically to the customs authorities outside of Germany thus also receiving the application. The latter may still be amended once it has been submitted. It should be noted that the applicant must immediately inform the customs authorities of any change regarding the continued existence of the property right or of the applicant's entitlement.

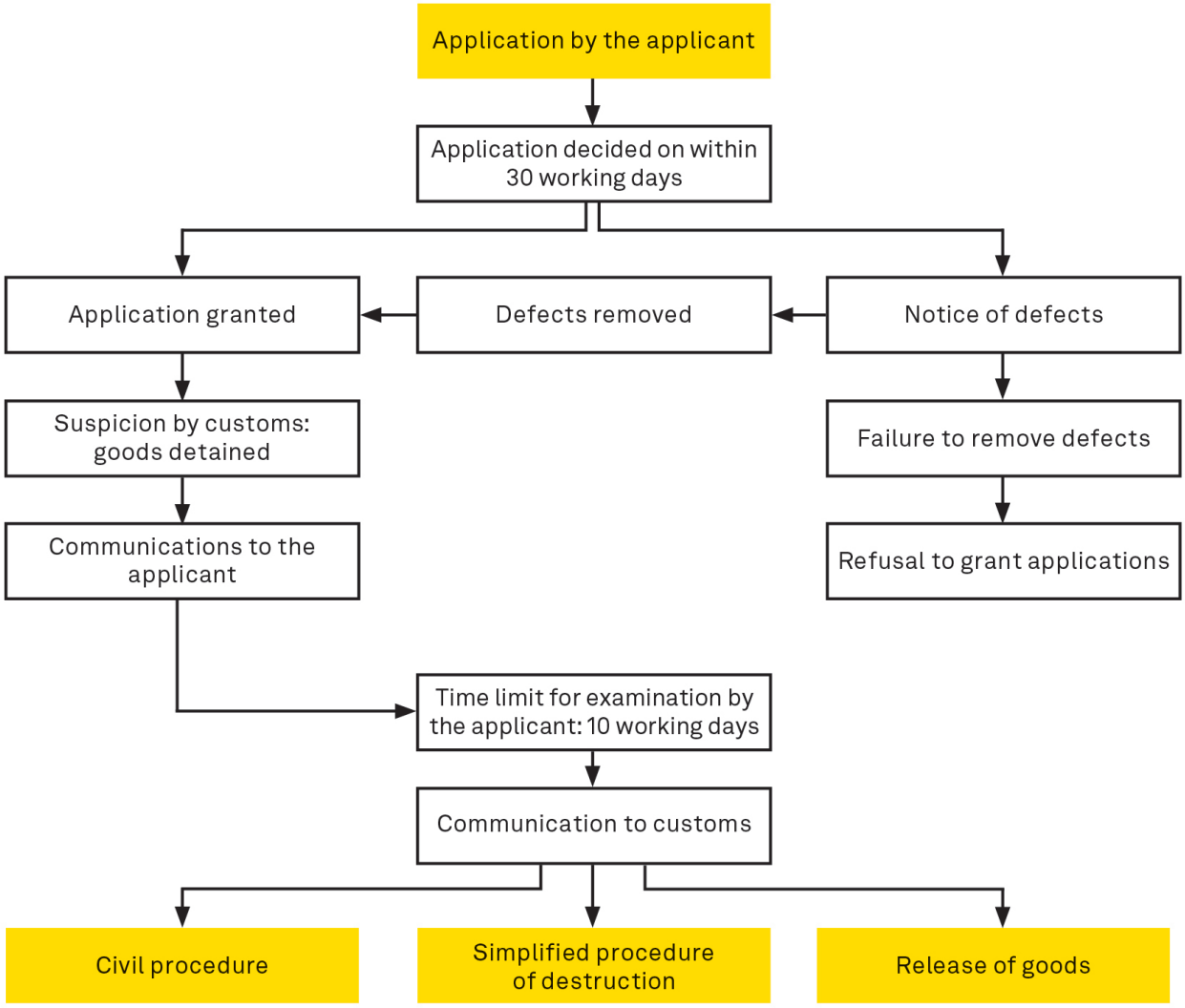
A border seizure application must contain, inter alia, the following:

- The title of the intellectual property right(s)
- Evidence of entitlement
- In the case of a national application: provision of security

A border seizure application should also contain the following:

- Goods affected
- Information regarding original products
- Information regarding infringing products
- Information for a risk analysis

Border seizure by the customs authorities on the basis of a European application requires the suspicion of an infringement of an intellectual property right. The breach of the right does not actually have to exist. In purely national border seizure procedures according to German law, customs can only order a seizure if the IP rights infringement is obvious.



3. Border seizure procedure

The customs authorities only carry out a summary inspection to establish the existence of an infringement of an intellectual property right, i.e. they do not conduct a detailed, substantive inspection, merely a simplified check. In the case of technical property rights in particular, the customs authorities often do not have the necessary resources to check for infringements more closely. As soon as the customs authorities suspect an infringement of an intellectual property right, they detain the goods and inform the customs declarant and/or the owner of the goods as well as the applicant about the seizure.

If the applicant has submitted a proper application, they will receive a comprehensive report on the source of the goods and the persons involved in transporting and declaring them at customs. The applicant is also entitled to inspect the goods. If a proper application has been made, the goods will be handed over or sent to the applicant for inspection. In the course of inspecting the goods the right holder is allowed to go so far as to destroy them and/or to interfere with them substantially if this is necessary to establish that an infringement of an IP right has taken place. The applicant is, however, liable to pay compensatory damages for goods destroyed where applicable, unless the goods were to be destroyed in any case by reason of the rights infringement.

In the framework of a European application, the applicant then has ten working days (Mon.-Fri., excluding public holidays) from notification of the seizure (in the case of perishable goods, just three working days) to notify the customs authorities of the infringement of the right. At the same time, they may apply to have the goods destroyed. In this case, the goods are destroyed by the customs authorities, provided the declarant or owner of the goods either definitely agrees to their destruction or has not objected to their destruction within the period of time cited above (ten or three working days). The applicant bears the costs and responsibility for the destruction of the goods.

Should the declarant and/or owner of the seized goods object to their destruction, the holder of the decision must initiate proceedings to establish the infringement within ten (or three) working days.

4. Strategy

Given the huge commodity flow nowadays, it is obvious that the chances of customs authoritiesfinding goods infringing IP rights are limited. Thus, it is all the more important to assist the customs authorities as far as possible in finding fraudulent goods. The particular features of the property right, of the original products and of the known counterfeits should therefore be provided in the border seizure application in as much detail as possible, whilst keeping it as simple as possible. Where possible, photographs of the original products or of known counterfeit products should also be attached. If the right holder has concrete facts about individual deliveries (such as the

time and means of transport, the transport route, persons involved, etc.), this information should also be passed on to the customs authorities. If a border seizure application is based on a patent, it is also useful to explain the subject matter of the patent intelligibly as well as indicating the identifying features of any patent-infringing goods and providing inspection information.

It should not be overlooked that, due to the vast number of goods imported into Europe, a border seizure application is primarily to be regarded as a measure running parallel to the right holder's own investigations as well as judicial and/or out-of-court measures to enforce the rights. Under no circumstances is it a substitute for actively monitoring the market and pursuing rights infringements that have been discovered.

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