

Turkey Introduces Online Intellectual Property Registration System to Help Identify Counterfeit Goods Passing Customs

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The Turkish Ministry of Customs and Trade ("TMCA") has launched an online application system on its website. This new system allows intellectual property and industrial right holders ("IP right holders") to more easily register their rights in the TMCA's central database. Previously, IP right holders were required to submit physical documents. The TMCA uses the database to assess goods passing through Turkey's customs points and identify illegitimate shipments. Recent reports state that counterfeit products worth between \$3.5 billion and \$4.4 billion are imported into Turkey and directly consumed by Turkish consumers every year. In 2012, over 2,750,000 trucks passed through Turkish customs points.

2009 Regulations and Changes to the Application Process

New Turkish Customs Regulations came into effect in October 2009. These Regulations outlined a mechanism for IP right holders to file the necessary applications and requests online. However, the electronic system described in the Regulations was not active until April 1, 2013.

Through the online system, IP right holders can now:

1. Register their IP rights at all Turkish customs points
2. Renew their existing TMCA registrations
3. Check the status of their existing TMCA registrations

This new online facility is the latest in series of changes to the process for registering intellectual property rights with the TMCA. Prior to the 2009 Regulations, IP right holders were required to send physical documents to each individual customs point in Turkey. From 2009 until recently, IP rights holders were only required to supply one set of physical documents to a central TMCA office in Ankara. Each of the far-flung customs points can access the information through a central computer system. This latest change means IP rights holders no longer have to send physical documents to Ankara to register their IP rights, but rather can now register these with the TMCA online.

Advantages of Registering with the TMCA

Once the IP rights holder registers with the TMCA, the information will be accessible by every custom point in Turkey. This includes information about the registered patent, design, trademark, integrated circuit topography, geographical indicators or even copyright (which is not registerable).

IP rights holders may choose to register with the TMCA either:

1. As a precaution against possible infringing goods passing through Turkish customs points, or
2. Where they have some actual information that counterfeit goods will be passing through Turkish customs points.

Thus, IP right holders may either "tip off" the TMCA about known illegitimate shipments or rely on the TMCA to identify illegitimate shipments itself. In either circumstance, staff at the customs point will refer to the information provided by the IP rights holder to determine whether the goods in question are legitimate or not.

Application Process

Applications can be completed either by the rights holder or its representative. However in practice, foreign rights holders must file applications through a local representative. This is because the TMCA's online system asks for the applicant's Turkish identity number.

On receiving an online application the TMCA will process it and notify the applicant of its decision in writing within 30 working days. The TMCA may either accept or refuse the application.

If the TMCA accepts an application, this will last 12 months before the IP rights owner will need to renew this with the TMCA again through the online system.

If the TMCA rejects the application, there is no appeal mechanism, but the applicant may file a fresh application for the same trademark. The TMCA may reject an application if documents are missing.

Information Supplied During an Application

When submitting an application to the TMCA the IP rights owner must make a declaration and submit proof that they hold the intellectual property rights for the goods in question. This is usually proved via provision of a Trademark Certificate. Therefore, before making an application to the TMCA, an applicant must first register their IP rights in Turkey with the Turkish Patent Institute. The TMCA and Patent Institute processes are different and entirely separate.

IP rights holders should supply as much information as possible about their goods to assist staff at the customs points to determine whether goods are legitimate or not. This information includes:

- An accurate and detailed technical description of the goods
- Pictures of legitimate goods and their packaging
- The freight company usually used for legitimate goods
- The usual packaging techniques for legitimate goods
- The destination and recipient of legitimate goods
- Known scheduled shipments, including dates, consignment numbers and destinations/recipients
- The pre-tax value of the original goods on the legitimate market in Turkey
- The identity of the importer, exporter or holder of the goods
- Any details about the goods which are specific to the type of intellectual right

IP rights holders should also supply any information they may have about illegitimate goods, such as:

- Technical differences between legitimate and counterfeit goods
- Common geographical sources and destinations of illegitimate goods
- The country or countries of production and the routes used by traffickers
- Pictures of illegitimate goods

The Process for Stopping Suspected Counterfeit Goods at Customs Points

When goods are suspected of being counterfeit, customs will hold the goods and send a fax to the person nominated by the IP rights holder during the online application. They will notify this person irrespective of whether the goods are destined for Turkey or continuing on to another final destination. Customs suspends shipment for three business days to allow time for this person to inspect the suspected goods. The parties shipping and receiving the goods are not formally alerted to the suspension having occurred. However, in reality, they may become aware due to delays in delivery or other channels.

Where shipping is suspended there are some financial obligations imposed on the trademark holder. These were introduced by the 2009 Law. All expertise and examination costs must be paid by the rights holder. For example, when the customs staff must bring the suspected goods from another part of the customs area, this generally involves a forklift. The costs of this are borne by the trademark owner.

Where the IP rights holder inspects the suspended shipment and determines the goods to be counterfeit they may choose to obtain a preliminary injunction to prevent the shipment from continuing further. The IP rights holder must obtain this injunction within 10 business days for normal goods and within three business days for perishable goods. The time allowed to obtain the injunction is measured from the date the TMCA notified the nominated person of the suspended goods.

In appropriate cases, the period to obtain an injunction may be extended by a maximum of 10 further business days. However, the time period to obtain an injunction relating to perishable goods may not be extended.

If the IP rights holder does not obtain an injunction within this time frame, the TMCA will release the goods to continue their shipment. The TMCA will not take any further action once the shipment is released.

In practice, even if the products are highly suspected as being counterfeit the customs office will not inform a rights holder unless they have registered their rights in the central database. This illustrates the importance of IP rights holders registering their rights in Turkey even if they do not intend to enter the Turkish market. Turkey is an important hub for international land, sea and air transportation. Therefore, if IP rights owners neglect to register with the TMCA they will not be informed of counterfeit goods as they pass through Turkish customs points.

IP Rights Holders May Request Destruction of the Goods

As an alternative to initiating potentially lengthy and expensive court proceedings, IP rights holders may choose to initiate simplified destruction proceedings to have the goods destroyed by the TMCA. This process requires written consent from the owner of the goods.

Prior to 2009, there was no legal arrangement in Turkey for destroying goods at customs. The 2009 Customs Regulation harmonized Turkish customs law with EU legislation. For this reason, the simplified destruction provisions are very similar to EU Council Regulation no.1383/2003.

The simplified destruction mechanism enables IP rights holders to request destruction of the suspected infringing goods without a court order. This makes the simplified destruction mechanism an efficient and cost-effective avenue for IP rights holders.

The owners of the suspended counterfeit goods usually prefer this method as well since it avoids them incurring warehouse fees while they wait for a court decision.

IP right holders have 10 business days to request that the TMCA destroy the goods under this mechanism. This time limit runs from the date the TMCA detained the suspected goods. In appropriate cases the period to request destruction of the goods may be extended by a maximum of 10 further business days.

When requesting destruction of the goods within the scope of the simplified destruction mechanism, IP rights holders should submit:

- A declaration explaining that the goods are counterfeit or pirated, and
- How the goods infringe upon the IP rights holder's rights, and
- The true owner's written consent to destroy the goods.

Upon receiving the true owner's written consent to destruction, a destruction decision is easily issued by the TMCA. Destruction is carried out by a licensed waste facility under the IP rights holder's supervision.

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