



Patent Act Amendment Concerning Border Protection Measures for Patents Passes in Legislative Yuan

Date posted: 2014-01-08

On January 3, 2014, the Legislative Yuan passed the Patent Act amendment that includes the addition of 4 border protection provisions (Article 97-1 to 97-4) and a wording revision in Paragraph 2 of Article 143. According to an Additional Resolution at the Legislative Yuan, the coordinating procedures and regulations in regard of this amendment shall be established within 2 months after its promulgation and the new Act shall enter into force therefrom.

The main purpose of this latest amendment is **to strengthen the protection of patentees**. Legislator Lee Guei-min and her colleagues, having consulted relevant foreign legislations, Taiwan's Trademark Act and Copyright Act, proposed that **a mechanism of "request to detain" be introduced to the Patent Act**. Accordingly, a patentee may provide security and request the customs to detain importing goods suspected of infringing the patent right. The owner of the detained goods, on the other hand, may also provide counter security and request to repeal the detention. Major points of this amendment are listed in the following table:

		Major points of this amendment
1	Detention procedures	<ul style="list-style-type: none">● When filing a detention request, the requestor shall make a preliminary showing of the facts of infringement in writing and provide security.● After confirming the validity of such request, the customs should notify the requestor and the owner of the detained goods.● Both parties may examine the goods under such condition where confidential information protection of the detained goods is not compromised.
2	Repeal of detention	<ul style="list-style-type: none">● After a detention request is made, the customs shall proceed with its repeal<ul style="list-style-type: none">if a civil infringement litigation has not been filed by the requestor within 12 days after filing,if a final and binding judgment on non-infringement is



		<p>rendered by a court of law, if the request is revoked by the requestor, or if the owner of the detained goods provides counter security.</p> <ul style="list-style-type: none">● In addition, the requestor shall bear the costs generated from warehousing, loading and unloading the detained goods if the cause of repeal is attributable thereto.
3	Damages	<ul style="list-style-type: none">● If a court rules finally and bindingly that the detained goods do not infringe the patent rights of the detention requestor, the requestor shall be liable to the owner of the detained goods for the damages caused by detention.● In addition, the detention requestor or the owner of the detained goods may request a return of their security or counter security by the customs if a settlement has been reached or consent obtained from the other party.

In view of this amendment involving customs procedures, the Legislative Yuan asked the Ministry of Economic Affairs and the Ministry of Finance to formulate relevant procedures. To this purpose, TIPO has begun drafting the “Regulations Governing Detention of Suspected Patent-Infringing Goods by the Customs” and expects their implementation within 2 months after promulgation of the amendment.

Source: TIPO