

How to proceed in an effective way against counterfeiting at the European borders

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Facts and figures:

- In 2010 EU Customs seized more than 103 million products
- Shipments doubled: 2009, 43,500 and 2010, 80,000
- China main source 85%
- Other countries: Turkey, Thailand, Hong Kong and India
- 90% of all detained products were destroyed



EU 2020 strategy: Effective IPR enforcement is essential:

- Protection of IPR key driver for further growth in research innovation and employment
- Damages to the proprietor of rights , manufactures and traders
- Loss of taxes
- Dangerous to the health and safety of consumers





Council regulation: scope of protection:

- Registered trademarks
- Design Patents
- Copyrights or related rights
- Patents and supplementary protection certificates (SPC)
- Plant variety rights, designations of origin and geographical indications or designations.



Reg. Pat.

The existing legal framework:

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

Title: Customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.

Scope of protection:

- For trademarks: the use of designations that cannot be distinguished in their essential aspect from the registered trademark
- Designs and copyrights: The offending product must qualify as a copy of the protected item
- Patents: normal infringement criteria apply

Procedure:

- Application for Border Measures:
- Could apply for EU-wide border control
- Information needed:
 - Suspected channels of illegal trade,
 - Details on how to spot counterfeits
 - Information on channels of trade used for the original goods
 - Other information
- Declaration accepting liability for third party claims
- Educational session possible

Procedure:

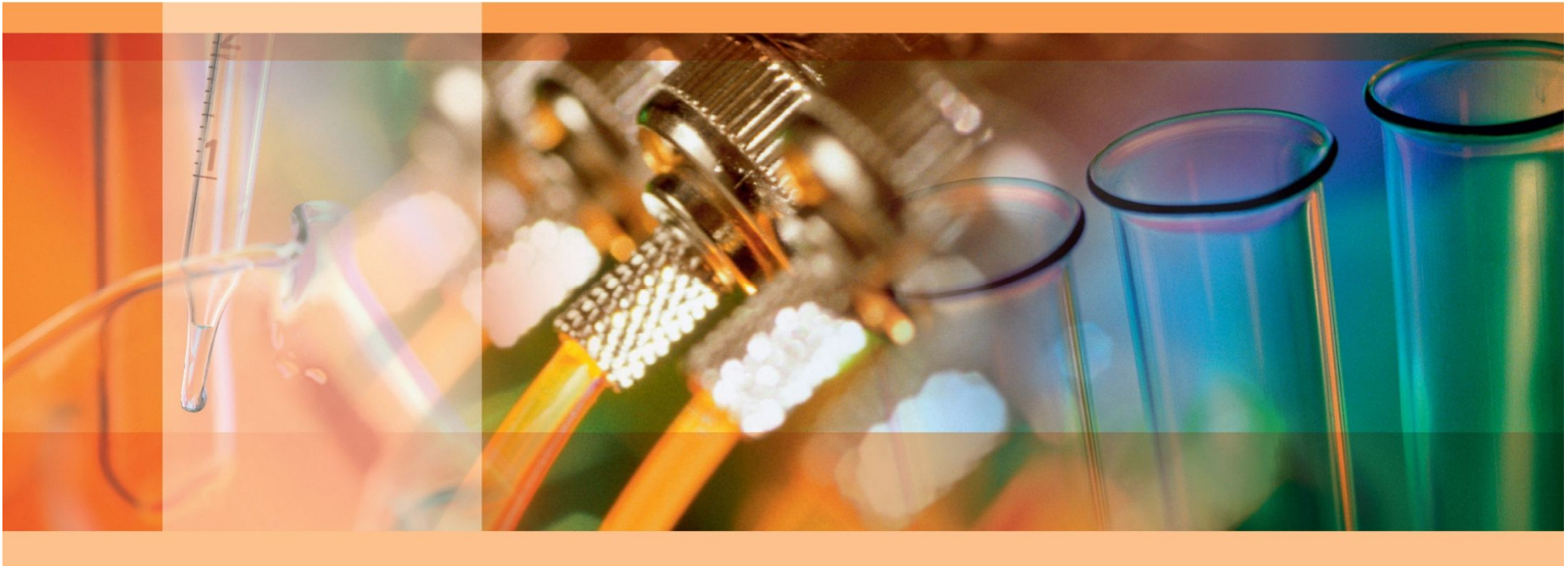
- Customs stop further shipment
- Notifys the applicant
- The applicant has a period of 10 working days to take further action (possible extension of 10 working days)
- Further customs action, two different ways:
 - The standard procedure
 - Simplified procedure



Goods in transit in EU:

- Manufacturing fiction
- ECJ Montex/Diesel
- ECJ: Philips Electronics NV/Lucheng meijing Industrial Company Ltd and Nokia Corporation/her Majesty's Commisioners of Revenu and Customs
- Philips: *"does Article (2) (b) of 3295/94 ... Imply that... the court.. Must apply the fiction that the goods were manufactured in that same Member State, and must then decide, by applying the law of the Member State, whether those goods infringe the intellectual-property right in question?"*
- Nokia: *are non-community goods bearing a Community trade mark which are ... in transit for a non-Member State to another non-Member State capable of constituting "counterfeit goods" if there is no evidence to suggest that those goods will be put on the market in the EC, either in conformity with a customs procedure or by means of an illicit diversion*
- Decision 1 December 2011

Thank you for your kind attention!



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ありがとうございました

ご質問等ございましたら、下記までお気軽に
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