

Protecting Intellectual Property with the United States Customs and Border Protection

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The United States Customs and Border Protection (CBP) protects businesses and consumers every day by combating the trade and importation of counterfeit and pirated goods through an aggressive intellectual property enforcement program. Many of the targeted counterfeit products include those which pose a threat to the safety of American consumers as well as to the nation's security. Some of these products include: electrical items such as power cords and lights that can catch fire or shock consumers, batteries that may explode or leak mercury, personal care items such as toothpaste and shampoo that may contain harmful bacteria, and computer network components and semiconductors that can disrupt communications that are vital for national security.

CBP also protects businesses through the enforcement of intellectual property rights by preventing the flow of counterfeit goods and copyright infringement. Trademarks registered on the Principal Register of the United States Patent and Trademark Office (USPTO) and copyrights registered with the U.S. Copyright Office of the Library of Congress can be recorded with CBP to assist in the protection of the intellectual property rights of the owner. Recordation of the intellectual property rights is made through an Intellectual Property Rights e-Recordation (IPRR) application.

The filing of the IPRR electronic application begins the administrative recordation process with CBP. The recordation is effective on the date that it is approved by CBP, and remains in force concurrently with the federal trademark or copyright registration period. It is cancelled upon the expiration, cancellation, or revocation of the underlying registration. A separate application is required for each recordation sought. The recordation fee for copyrights is \$190, and the recordation fee for trademarks is \$190 per International Class of goods.

Intellectual property right enforcement is conducted through various offices throughout CBP. This includes CBP officers and Import Specialists from the Office of Field Operations that inspect and seize infringing shipments on a daily basis at any of the 317 official ports of entry into the United States.

On May 29, 2009, the board of directors of the Intellectual Property Owners Association (IPO) adopted a resolution voicing their thoughts on Senate Bill 515. This included support for providing statutory and regulatory authority to the CBP to extend full border enforcement protection to design patents by creating a registry similar to what currently exists for goods protected by trademarks or copyrights.

The IPO is a trade association for owners of patents, trademarks, copyrights and trade secrets. IPO is the only association in the U.S. that serves all intellectual property owners in all industries and all fields of technology. The association advocates effective and affordable IP ownership rights and provides a wide array of services to members. These services include supporting member interests relating to legislative and international issues, analyzing current intellectual property related issues, providing information and educational services, and disseminating information to the general public on the importance of intellectual property rights.

In contrast to a utility patent, which includes a detailed technical disclosure along with drawings, if necessary, and one or more claims, a design patent relies primarily upon the drawing(s) to communicate what is protected. The design patent has only one claim. This claim, rather than listing any structure or describing the design in words, generally refers to the drawings as a standard of what is protected. While utility patents may be obtained for novel, useful, and unobvious

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inventions, the design patent does not protect utility. The focus of a design patent is directed toward an ornamental design, configuration, improved decorative appearance, or shape of an invention.

It is envisioned that the creation of a design patent registry would compliment and enhance the existing trademark and copyright registries within CBP by providing CBP officers and Import Specialists with drawings against which to compare potential counterfeit goods. The implementation of a design patent registry would likely increase the amount of counterfeit goods confiscated by CBP, which totaled \$272.7 million in value in 2008.

In summary, legislation has been proposed to provide statutory and regulatory authority to CBP to enforce protection of current owners of issued design patents. This newly-created design patent registry would mirror the existing registries for current owners of federally registered United States trademarks and copyrights recorded with CBP. Recordation of these intellectual property rights will further assist CBP in combating the trade of counterfeit goods within the United States.

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