

# AIPLA

## American Intellectual Property Law Association

February 2, 2019

Mr. Brandon Lord  
Office of Trade  
U.S. Customs & Border Protection  
1331 Pennsylvania Avenue NW  
Suite 950N  
Washington, DC 20229

*Submitted via*  
[21CCF@cbp.dhs.gov](mailto:21CCF@cbp.dhs.gov)

**Re: Request for Public Comments: 21<sup>st</sup> Century Customs Framework  
83 Fed. Reg. 245 (December 21, 2018)**

Dear Mr. Lord:

The American Intellectual Property Law Association (“AIPLA”) is pleased to have the opportunity to present its views with respect to U.S. Customs and Border Protection (“CBP”) Request for Public Comments: 21<sup>st</sup> Century Customs Framework, 83 Fed. Reg. 245, dated December 21, 2018 (the “Request”).

AIPLA is a national bar association of approximately 13,500 members engaged in private or corporate practice, in government service, and in the academic community. AIPLA members represent a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of patent, trademark, copyright, trade secret, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property. Our mission includes helping establish and maintain fair and effective laws and policies that stimulate and reward invention while balancing the public’s interest in healthy competition, reasonable costs, and basic fairness.

AIPLA supports CBP’s efforts to modernize to meet the challenges of today’s trade environment and to proactively prepare for future trade environments, particularly as the importance of intellectual property rights in the global economy continues to rise. We take this opportunity to address some specific strategy recommendations.

### **Specific Strategy Recommendations**

#### **I. Emerging Roles in the Global Supply Chain**

##### **A. Recording Design Patents**

The roles of product design and design protection continue to become critically important for an increasing range of products and protection of design intellectual property rights is on the rise globally. The World Intellectual Property Indicators 2017 Report reveals

10% annual growth in the filing of design applications, and doubling of the design count from 2005 to 2016.<sup>1</sup>

Thirteen out of the top fifteen importing countries around the world, which make up almost 50% of global imports, have policies in place to stop design infringement at the border, but CBP only records copyrights and trademarks for border enforcement, not designs patents.<sup>2</sup> The European Union Intellectual Property Office registers designs without substantive examination and the EU enacted a law in 2014 which gives customs authorities the ability to detain goods under their control which are suspected of infringing design registrations. The United States Patent Office examines design patent applications and issues design patents with a presumption of validity, thus providing a robust and reliable mechanism for preventing pirated and potentially counterfeit products from entering the country and causing harm to consumers and businesses. AIPLA respectfully submits that the United States join other leading countries in enforcing design patents at the border.

The effective and efficient enforcement of design patent rights at the border by the government and private parties would benefit the public in a number of ways. First, elimination of knock-off products provides an overall public benefit as it protects public expectations about the quality of products and protects public health and safety through the elimination of harmful and substandard look-a-likes/imitations. Further, efficient enforcement efforts at the border benefit both producers and consumers by reducing, in some cases, the need for expensive civil litigation, the cost of which may be passed on to the consumer through higher prices. Accordingly, AIPLA encourages CBP to enforce design patents at the border.

### **B. Permit Exclusive Licensees to Submit to CBP**

CBP maintains a recordation database for certain registered trademarks and copyrights to assist CBP in its efforts to prevent the importation of infringing goods. Currently, only the intellectual property owner may record its intellectual property with CBP.

AIPLA recommends that if the intellectual property owner authorizes it, the exclusive licensee shall have the right to record and enforce the intellectual property that is subject to the exclusive license agreement with CBP. This is particularly important in cases where the intellectual property owner is located outside the United States and the exclusive licensee is a United States company.

### **C. E-Commerce and Small Package Courier Distribution Centers**

Small packages provide a convenient channel for illicit products as these small shipments (compared to larger shipments declaring hundreds, if not thousands of goods) often go unnoticed. In light of the increasing utilization of small package courier distribution centers,

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<sup>1</sup> [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_941\\_2017.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_941_2017.pdf).

<sup>2</sup> <https://www.visualcapitalist.com/visualizing-the-worlds-largest-importers-in-2017/>; [https://ec.europa.eu/taxation\\_customs/business/customs-controls/counterfeit-piracy-other-ipr-violations/legislation\\_en](https://ec.europa.eu/taxation_customs/business/customs-controls/counterfeit-piracy-other-ipr-violations/legislation_en); and <https://www.iam-media.com/new-eu-customs-ip-enforcement-regulation-2013-o>.

AIPLA recommends that CBP increase the number of resources it currently provides to inspect these centers as illicit products are increasingly travelling through this channel.

CBP can improve data sharing between e-commerce platforms and carriers to better identify the illicit shipments. For example, there is a belief that while thousands of packages of counterfeits are shipped, the number of people actually arranging these shipments are relatively small. Identifying these individuals through their accounts, either through e-commerce or their courier accounts, will help identify and combat counterfeiters. For example, shipments made through several e-commerce sites contain a unique and separate tracking number, which AIPLA recommends that CBP track as the name of the importer and exporter are frequently falsified. This will allow CBP to more effectively and efficiently monitor series of shipments and help reduce the number of counterfeits and pirated products coming into the United States.

Account numbers related to courier shipments should be similarly monitored and that information should be shared with brand owners so that they can also track information specific to their brand enforcement programs. Finally, new players in the digital commerce space, such as e-commerce platforms, should be engaged by CBP to allow for improved access to existing platform tools such as unique tracking systems.

## **II. Intelligent Enforcement**

Risk analysis technology that better tracks previous incidents of illicit activity can always be improved to track additional fields such as courier account or e-commerce account information. AIPLA supports detailed tracking of all information available for any packages that are seized. In addition, CBP should create a standardized office for sharing information about previous illicit activity, directly with the agency. The Intellectual Property Rights Center in Washington, DC is a good model to emulate. Additionally, developing a form-based program available online will likely allow victims to better share actionable information.

## **III. Cutting-Edge Technology**

Tools such as Radio Frequency Identification and QR codes are currently being installed in many legitimate products to track authentic goods and allow a quick and simple authentication tool. Providing CBP access to readers of this technology and the databases companies use to track legitimate goods will likely improve CBP's risk analysis and authentication process.

## **IV. Data Access and Sharing**

Currently, CBP notices to brand owners regarding seizures of counterfeit items are not standardized and vary from one port to another. Simply standardizing the information on the forms sent to brand owners will greatly improve their ability to collect this data, with the goal of analyzing that data and providing risk analysis feedback to CBP. It will also help to improve accuracy in terms of the specific goods seized, allowing brands to more easily spot and track the improper actors while maintaining reliable processing of their own authorized goods that may also be entering the country.

This information can also be shared in a more efficient way. Currently, brand owners receive either a hard copy of a notice in the mail or a .pdf email document. Each requires that data be physically transposed into a database for analysis. Providing this information in an Excel format would greatly reduce this burden or even having a database with an API connection that brand owners have access to would greatly improve interactions between brand owners and CBP.

Furthermore, providing brand owners with additional information such as Bill of Lading numbers, the courier used, e-commerce account information, and courier account information would be extremely useful to assist CBP in detecting and stopping counterfeit goods.

### **Conclusion**

AIPLA appreciates the opportunity to provide input to CBP. We are continuing to gather information on these important issues and look forward to continuing to work with CBP and to provide more information as it becomes available.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Sheldon H. Klein', with a stylized flourish at the end.

Sheldon H. Klein  
President  
American Intellectual Property Law Association