

CUSTOMS BORDER SEIZURE PROCEDURES IN GERMANY

Comparative Practitioner's Guide: EU Regulation vs. German National Law — Prepared for the International IP Conference (2026)

Strategic Overview: Border seizures serve as a highly effective, low-cost defensive shield to prevent counterfeit or infringing goods from entering the European market. For enterprises, navigating the dual avenues of border enforcement requires understanding the critical procedural and geographical distinctions between the unified EU Customs Regulation and national German law.

Feature / Stage	EU Procedure (Regulation (EU) No 608/2013)	German National Procedure (National IP Laws)
Primary Legal Basis	Regulation (EU) No 608/2013 (Specific harmonized customs code for IP enforcement).	German national IP acts (e.g., § 142a Patent Act, § 25a Utility Model Act, § 146 Trademark Act, § 17 Urheberrechtsgesetz, § 9 Gebrauchsmustergesetz).
Geographical & Customs Scope	Applies strictly to non-Union goods entering, leaving, or transiting the EU customs territory (trade with third countries like China). Can cover multiple EU states via a single application.	Applies to imports/exports across German national borders, including inner-community trade from other EU member states, trade fairs, and inland checkpoint controls.
Intervention Threshold	Requires only a reasonable suspicion (Verdacht) of an IP infringement. No need to prove actual infringement at the time of suspension.	The IP infringement must be obvious (offensichtlich) to the customs officer, meaning there is a very high probability of infringement.
Ex-Officio Action	Permitted. Customs can temporarily suspend the release of suspicious goods ex-officio for up to 4 business days to allow the rights holder to file an emergency application.	Prohibited. German customs cannot act without a prior, formally approved national application already in place.
Upfront Financial Security	Not required for the initial application.	Mandatory. The rights holder must deposit a financial security (typically a bank guarantee or deposit using Form 0134) to cover potential importer damages.
Response Period for Importer	10 working days (3 working days for perishable goods) from notification to object to the destruction.	2 weeks from service of the seizure notice to file a formal objection.
Importer's Silence	Deemed consent (Zustimmungsfiktion). If the importer fails to object within the 10-day period, the goods are automatically scheduled for destruction.	No deemed consent. If the importer remains silent, a formal confiscation order (Einziehungsbescheid) must be issued, served, and become final before destruction.
Action Upon Importer's Objection	The rights holder has 10 working days (extendable by 10 more days upon request) to initiate a civil lawsuit in court to establish infringement.	The rights holder has 2 weeks (extendable to 4 weeks in exceptional circumstances) to obtain and submit a court order or preliminary injunction.

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Exclusions & Ineligible Goods	Parallel imports (Grauimporte) and Overruns (production exceeding authorized licensing limits) are expressly excluded from EU-wide customs action.	Included. Can target parallel imports, overruns, and unharmonized national technical rights.
Sample Dispatch (Musterversand)	Permitted only for registered trademarks, copyrights, designs, and geographical indications. Strictly prohibited for patents and utility models.	Not restricted by EU limitations. General inspection of seized goods and testing is permitted for all intellectual property rights.

TACTICAL PRACTITIONER RECOMMENDATIONS

1. Implement Dual Filings Strategically

Leverage the EU-wide application for broad, low-barrier protection against direct imports from third countries (such as China) to benefit from the zero security deposit and the lower 'reasonable suspicion' threshold. Simultaneously, maintain targeted national German applications defensively to capture inner-community trade, address parallel imports/overruns, and protect trade fair exhibitions like major industrial fairs.

2. Avoid Protective Letters at Customs

Be aware that customs authorities lack the legal mandate or competence to parse complex technical arguments regarding non-infringement or patent invalidity. Consequently, protective letters (Schutzschriften) cannot be deposited with customs; they must be filed with the relevant civil courts, such as the Unified Patent Court (UPC) Registry or the German central electronic registry (ZSR).

3. Establish Rapid Response Workflows for Deadlines

Both importers and rights holders must operate under tight timelines once a seizure is executed. Under EU law, the importer's silence leads to automatic destruction of the goods (Zustimmungsfiktion) after 10 working days. Conversely, if an importer objects to a national seizure, the rights holder must be prepared to obtain and file a civil preliminary injunction within a strict 2-week window (extendable up to 4 weeks under OWiG).

4. Leverage National Procedures for Utility Models

Because utility models (Gebrauchsmuster) are unharmonized national rights, they are entirely ineligible for EU-wide border enforcement applications. To capture infringing products based on utility models, rights holders must file national German applications, which are highly effective for rapid seizure actions at trade fairs and inland checkpoints.

