

No. 6

**Regional Best Practice Study on
Intellectual Property Rights (IPR)**



Automated Recordation and Targeting System
(ARTS) for IPR Protection in India Customs

India Customs

And

WCO ROCB Asia Pacific

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Acronyms

ARTS	Automated Recordation and Targeting System
BRN	Bond Registration Number
ICES	the Indian Customs EDI System
IEC	Import Export Code
IPR	intellectual property rights
MIS	Management Information System
RMD	Risk Management Division
RMS	Risk Management System
ROCB	Regional Office for Capacity Building
TRIPS	the WTO Agreement on Trade Related Aspects of Intellectual Property Rights
UPRN	Unique Permanent Registration Number
UTRN	Unique Temporary Registration Number
WCO	World Customs Organization
WIPO	World Intellectual Property Organization

Foreword

Effective IPR enforcement at the borders is critical function for the customs in 21st century. ROCB has incorporated capacity building in enhancing IPR border enforcement into its strategic plan, and a range of projects have and will be implemented in this aspect. In 2008, the WCO mission conducted a diagnosis on IPR border enforcement in India Customs. It was noticed that Automated Recordation and Targeting System (ARTS) served as e-application and enforcement platform for IPR enforcement. In October 2008, India Customs demonstrated this system to participants of the WCO Regional Workshop on Fight against Counterfeiting and Piracy. The initiative of ARTS is well recognized by regional experts and practitioners.

Identifying, developing and disseminating the best practices in Customs modernization initiatives of concerned members in our region is a key element of ROCB activities. To promote more pioneering initiatives in IPR border enforcement, ROCB decides to develop a best practice report on ARTS.

Strongly supported by the Central Board of Excise & Customs, India, the report has been prepared by the Risk Management Division, Directorate General of Systems, Mumbai. Mr. ZHANG Shujie, technical attaché with ROCB, coordinated the project. It is hoped that such valuable experience of Indian Customs is also beneficial to other regional member administrations.

Yoshihiro Kosaka, Head of ROCB Asia Pacific

I. Background

Enforcement of Intellectual Property Rights (IPR) is a major challenge confronting all the enforcement authorities around the globe. A strong IPR regime with effective remedies against its infringement is important for promoting free and fair international trade and commerce and encouraging innovation and investment. Grant of IPRs and their proper enforcement encourages fair trade as well as access to quality products to consumers. The setting up of World Intellectual Property Organization (WIPO) and signing of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), to which India is a signatory, has sharply focused the role of IPR in International trade.

India has a long history of protection of IPR through legislative enactments. The present border enforcement regime basically originates from the TRIPS Agreement which sets out the minimum standards of Intellectual Property protection for Member States. In India, statutes such as the Copyright Act (1957), the Trade and Merchandise Marks Act (1958), the Trade Marks Act (1999), the Patents Act (1970), the Designs Act (2000) and the Geographical Indications of Goods (Registration and Protection) Act (1999) have been enacted to protect the respective Intellectual Property Rights. To deal with trans-border infringements of intellectual property, Section 11 of the Customs Act (1962) has provision to restrict or prohibit import and export of goods infringing trademarks, patents and copyrights or any other law for the time being in force. Notification no. 1/64-Cus dated 18-1-64 was issued under Section 11 of the Customs Act (1962) prohibiting import of goods infringing trademarks and

designs under the Trade and Merchandise Marks Act (1958) and Indian Patents and Designs Act, (1911), respectively.

It is of utmost importance that strong IPR laws must be ably supported by an equally strong enforcement mechanism. However, it should also be ensured that the measures and procedures to enforce IPR do not become barrier to legitimate trade. In order to ensure that IPR infringements are addressed effectively at the time of import and to define the role of Customs precisely in combating IPR infringements at the borders, Indian Customs issued notification 49/2007-Customs (NT) dated 08-May-2007 to prohibit import of goods infringing five IPRs Viz., Copyrights, Trade Marks, Patents, Designs and Geographical Indications subject to the conditions and procedure laid down in the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. These Rules lay down a detailed procedure to be followed by the right holders or their authorised representatives and the Custom authorities for seeking suspension of suspect imported goods. Guidelines to enable the implementation of the provisions of the IPR Rules uniformly and unambiguously have been issued. (Circular No 41/2007 Customs dated 29-Oct-2007).

These Rules inter alia, provide for

- the filing of a notice by the right holder with customs;
- a single point registration of the notice filed by the right holder by Customs;
- on interdiction of infringing goods, a time limit for right holders to join proceedings;
- adequate protection to the rightful importer;
- adequate protection to Customs for bona fide act;
- ex officio action by Customs in specified circumstances;

- procedure for adjudging the infringement;
- mode of disposal of the confiscated goods.
- No action against goods of non-commercial nature contained in personal baggage or sent in small consignments intended for personal use of the importer.

In order to achieve the goal of effective enforcement and trade facilitation, an automated system that would help the right-holders to conveniently register their rights with the Custom authorities and enable the Customs administration to provide assured protection and fool-proof monitoring to a greater degree has also been developed. Towards this goal the Indian Customs has developed the Automated Recordation and Targeting System (ARTS), an e-application for effective implementation of the IPR border measures. ARTS envisages registration of rights at the local level and its protection at the national level across all major Customs locations in India.

1.1 Objectives of ARTS

A manual system of recordation of the Rights and targeting of potentially infringing goods would have several disadvantages such as:

- The system would be officer dependent/driven; there would be no certainty that the right action would be taken for the protection of the IPR.
- Centralised co-ordination with the right-holder or other customs formations would not be possible. The right holder may have to

co-ordinate individually with customs formations at different ports for seeking protection.

- In the manual system, it would not be possible to integrate the custom clearance procedures and risk management application with the IPR protection.

The Automated Targeting and Recordation System (ARTS) was developed with the following objectives:

- Effective implementation of the IPR border measures coupled with Trade facilitation;
- Integration of IPR enforcement with Customs clearance procedures;
- Providing a web based platform for right holders to record their rights with Customs;
- Enabling National targeting of suspect consignments;
- Creation of a centralized national database containing useful information for enforcement;
- Providing access to a centralised database for the Officers posted in Customs field formations across the country;

1.2 Development Process of ARTS

ARTS has been developed by a core group set up in the Risk Management Division (RMD) of the Directorate of Systems and Data Management, Central Board of Excise and Customs and in consultation with the officials of the Controller General of Patents, Designs and Trade-marks. Based on the inputs received and consultations with the stake-holders, the data elements were finalised and the framework for web architecture was put in place, leading to the development of ARTS.

1.3 Programme Owner

The Risk Management Division (RMD), under the Directorate of Systems and Data Management, Central Board of Excise and Customs is overall in charge of ARTS. The process of verification and approval of registration is done by local Customs formations and the National level targeting of suspect consignments is done by RMD.

1.4 Human and Financial resources in implementing ARTS

The data elements and the web-architecture framework were developed in-house by Custom officers of RMD. The business process, technical specifications, design of web-enabled process were also conceived and finalized by officers of RMD. The software was developed by a vendor who was awarded an integrated contract for several projects for the Customs Department. Hence the cost of this particular project cannot be separately indicated.

In each of the Custom locations, an IPR cell has been constituted, led by senior officials who were vested with the responsibility of verifying the applications, completing web-enabled registration formalities and making correspondence with the Risk Management Division and other Customs formations.

1.5 Technology employed

ARTS for IPR Protection system is designed using below mentioned technology:

- The front end is JSP & HTML and the backend is Oracle 10g

- Sun OS 5.8 [**OS**] running on SUNW,Ultra-60 [**Hardware**]
- Sun Java(TM) System Web Server 6.1 2005Q4 SP6 [**Webserver**]
- Java version "1.6.0_02" [**JDK Version info**]
 - Java(TM) SE Runtime Environment (build 1.6.0_02-b05)
 - Java HotSpot(TM) Client VM (build 1.6.0_02-b05, mixed mode)

2. Measures

2.1 Scope for implementing ARTS

Indian Customs has successfully implemented the Indian Customs EDI System (ICES) for on-line assessment of imports and exports. Further, as part of ongoing Business Process Re-engineering initiatives, a Risk Management System (RMS) had been introduced in major Customs locations. The RMS provides tools/privileges for planned targeting/intervention of suspect consignments. Seeking to integrate IPR enforcement with the Customs clearance procedures, at all the major locations, ARTS has provision for recording and targeting separately the five Intellectual Property Rights covered under border measures Viz., Trade Marks, Copyright, Patents, Designs and Geographical Indications. The consignments suspected to infringe the rights of the IPR holders are interdicted using the RMS.

The following two basic conditions should be satisfied by the right holder before the imported goods infringing his Intellectual Property could be interdicted by the Indian Customs:

- Intellectual Property Rights must be registered in India under the parent IP enactment in the name of the right holder or IP owner;
- The procedure and conditions laid down in the IPR (Imported Goods) Enforcement Rules, 2007 should be followed.

2.2 Major Procedures in using ARTS

Major procedures in using ARTS are demonstrated in Figure 1 and relevant requirements are elaborated as below:

2.2.1 Application for Registration of IPR

The on-line IP recordation system and recordation procedure functioning since January, 2008 is currently hosted on <http://ipr.icegate.gov.in>. The following is the procedure for recordation in brief:

- *Filing of a notice by the right holder* – A user friendly web-enabled application form has been devised. The right holders are required to log onto <http://ipr.icegate.gov.in>. Thereafter, they can choose the location of the Custom House where they wish to record the notice for suspension of suspected infringing goods. Option has been provided to separately register different IPRs viz., Copyrights, Trade Marks, Patents, Designs and Geographical Indications. For every right, the right holder is required to file a separate notice. After completing the formalities on-line, the application can be “submitted” on the website. A Unique Temporary Registration Number (UTRN) is generated by the System and communicated to the Stake holders. It may be

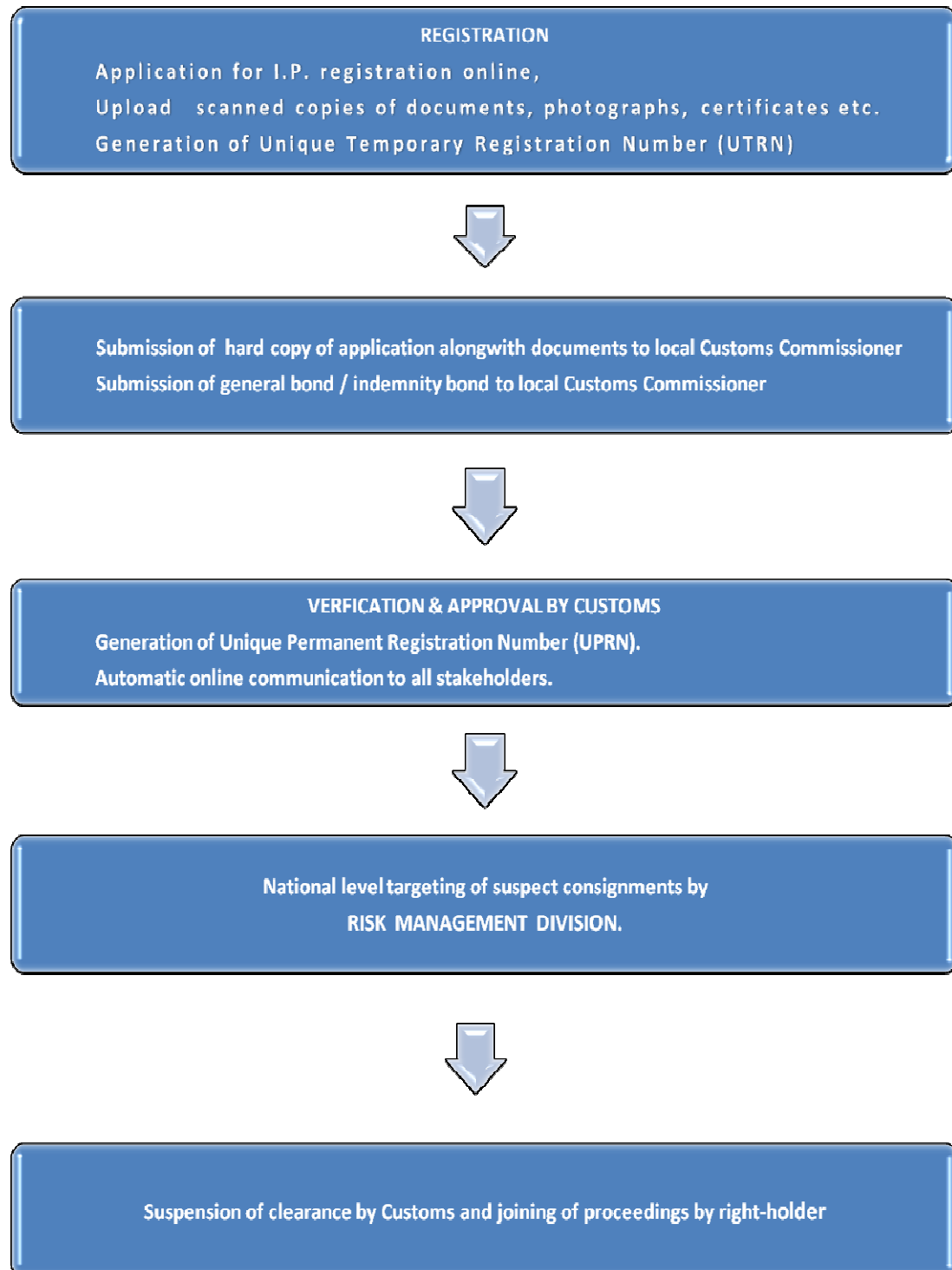
noted that the UTRN is only an acknowledgement of the application filed by the right holder and it does not accord any protection to the right holder. The System also prompts the applicant to take a print-out of the application.

- *Execution of General Bond* – The Right holder has to furnish a General Bond without security to the Jurisdictional Commissioner of Customs in the prescribed format. Prior to grant of registration, the right holder is also required to furnish an indemnity bond to the Commissioner of Customs at the Port of registration in the specified format.

The following documents are required in order to effect the IP recordation.

- The registration certificate of trademarks / copyrights / patents / designs in India;
- The Import Export Code (IEC) of the right holder/Importer;
- Statement of grounds for suspension of release of suspect infringing goods;
- Digital images of genuine goods and the infringing goods, if available, for uploading in the system;
- List of countries where the genuine goods are manufactured;
- Any information related to suspected infringing Imports/Importers.

Figure 1: Major Procedures in Using ARTS



2.2.2 Verification and Approval of Registration

After completion of on-line registration and receipt of UTRN, the right holder has to file the printed application form, along with the physical copies of Bonds to the Commissioner of Customs. Samples, models or photographs of registered products, where available, can also be submitted to the Commissioner of Customs. After the receipt of application, the Commissioner of Customs verifies the veracity of declarations made therein including cross-verification of particulars furnished with the IPR authorities concerned and by calling for any additional information from the applicant. After verification, approval is granted on-line. The System automatically generates a Unique Permanent Registration Number (UPRN) which is communicated to the applicant for all future correspondence. Simultaneously, a formal communication to this effect is sent, within 24 hours, to the Risk Management Division and all other Custom Houses, who can access the details through the user names and pass-words given to them. The protection of rights is accorded only on grant of a UPRN to the right holder.

2.2.3 National level Targeting

The System automatically communicates the UPRNs to Risk Management Division within 24 hrs. The national level targeting is handled by RMD, where specific targets are created in the RMS for interdiction of suspect consignments on the basis of the information furnished by the applicants. The national level targets are sent with appropriate instructions to the Customs officers in the field to handle the suspect consignments. Though the registration is done locally,

protection is being accorded nationally, at all the ports, airports and dry ports.

2.2.4 Suspension of clearance of suspected Consignments

Once an import consignment containing suspect infringing goods is interdicted by the target in the RMS, clearance of such consignments is suspended by the Customs and the right holder is intimated, who is required to formally join the proceedings within the prescribed timelines. The right holder has to execute necessary bond along with security, within three days from the date of interdiction of the goods. If the right holder fails to comply with the above, the goods are released immediately. The right holder has the option to request for taking samples and getting the same examined, tested and analyzed on his own in order to determine whether the goods infringe the subject IPR. The infringing goods can be seized if there are reasons to believe that the goods are liable to confiscation in terms of the provisions of Customs Act, 1962.

2.3 Key Features of the ARTS

One of the key features of this system is the facility given to the right-holder to upload online relevant data including information and/or photographs / pictures of the genuine as well as suspected infringing goods. This information stored in the national database of registered rights and accessible to authorized officers helps the officers in taking an informed and proper decision regarding any infringing goods, at the click of a button.

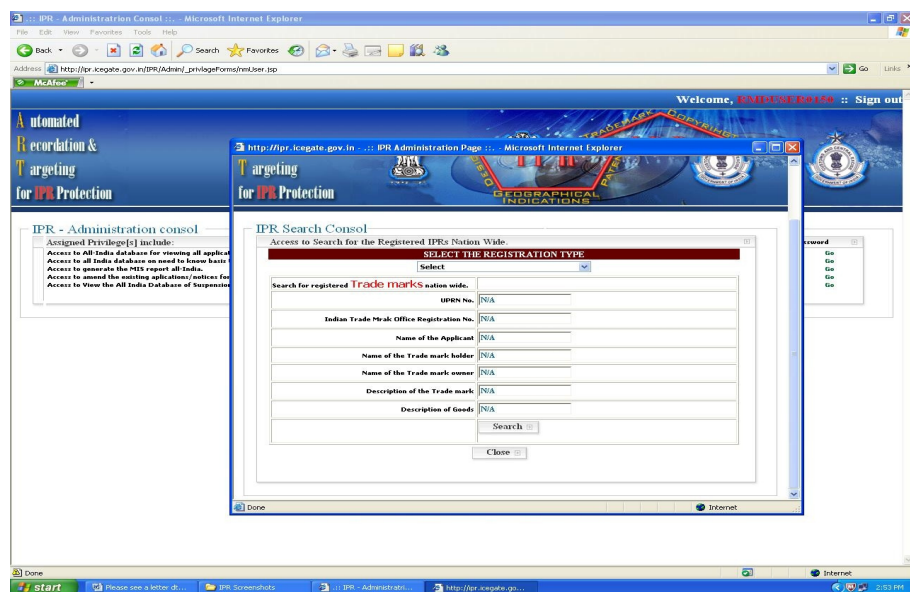
ARTS has two modules:

➤ **Recordation Module for Applicants** - in Public domain.

The applicants (Right Holders) access this module to upload the relevant data. The database is developed on the basis of information given by the right holders. Key features of Recordation module are:

- On-line submission of IPR notice;
- Uploading images of genuine goods and trademark insignias;
- Uploading images of infringing goods;
- Generation of Unique Temporary Registration Number (UTRN);
- Auto generated mail to applicants about the status of the application;
- Communication of final Unique Permanent Registration Number (UPRN) signifying commencement of protection of the recorded IPR.

- **Administration Module for Departmental officers** - Internal and private usage. The Administration module has following key features:
- On-line conversion of UTRN to UPRN;
 - Facility to view the IPR database consisting of documents, images etc;
 - Communication of recordation of IPR to the field formations concerned and Risk Management Division;
 - Provision for assigning privileges to departmental users;
 - Provision for making amendments;
 - Facility for need based search through Management Information System (MIS).



3 Benefits

The ARTS has received extensive patronage from the trade. About 400 IPRs have been recorded for protection so far and goods valued at Rs. 10 Crores (US \$ 2 Million) have been interdicted based on targets placed through the automated system. There is also a gradual

increase in the number of IPRs registered for protection. The System is emerging as an effective platform for closer Customs-business partnership by providing mechanism for dynamic sharing of information.

3.1 Benefits for Right holders

The ARTS has the following benefits for the Right holders:

- Single point registration of notice for IPR protection;
- Effective and assured IPR protection across all ports at the National level;
- Facility for uploading of images of genuine and counterfeit products helps provide relevant information and spread the awareness reinforcing enforcement;
- Facilitates expeditious, transparent and effective enforcement of IPR measures.

3.2 Benefits for Customs

ARTS has the following benefits for Customs:

- Effective enforcement of IPR (Imported Goods) Enforcement Rules, 2007;
- Standardization of internal business process for IPR protection;
- Successful integration of IPR enforcement with RMS;
- National monitoring of suspension of clearance;
- Development of National database;
- Systematic enforcement of IPRs.

- Optimum and efficient utilization of resources;

4 Challenges faced

4.1 Main challenges encountered

The process of online recordation of the Intellectual Property Rights and its integration into Risk management System was required to be conceptualized from beginning and implemented across the country. The format for submission of application for registration of IPR and the data fields thereof was selected carefully and provision was made to enable capturing of the relevant information but without burdening the applicant with unnecessary details. The Standardization of business processes and procedures and finalization of data elements for web-site architecture was a great challenge for the officers involved in the development of the application.

4.2 Action to refine ARTs

Representations were received from the trade for making provisions in the ARTS to effect modifications after the application has been filed in the system. This problem has been addressed and a modification provision has been incorporated in the Administration module.

4.3 Lessons learnt

The success of the ARTS shows that trust-based relationship between industry and Customs can contribute to checking the menace of IPR infringements.

4.4 Future plans to enhance ARTS

The future plans to enhance ARTS include development of an on-line Centralized bond module providing for a single centralized bond and surety/security account for each Right Holder that can be used at all ports in India with facility for creation of a unique Bond Registration Number (BRN) covering more than one UPRN of a right holder, access privileges to officers to credit/debit the centralized bond and on-line facility for the right holder to monitor the centralized bond and security account through unique BRN, on-line payment of fees and building a database of infringements based for better targeting of potentially suspect consignments.

Credits

The draft Report has been prepared by the Risk Management Division, Directorate General of Systems, Mumbai under the guidance of the Central Board of Excise and Customs.