

# INTELLECTUAL PROPERTY 2021 EXPERT GUIDE

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## Why the enforcement of IP rights is crucial

By Cecilia Falconi

If protection of IP rights is a must, enforcement of those rights is crucial. Legal systems such as The Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIP’s Agreement”), regional directives within the UE scope, and territorial legislations are to be still harmonised regarding infringements to IP rights. Holders of these rights are in a continuous battle against unauthorised use and falsification. Pursuing legal action through administrative, civil and criminal proceedings is a constant challenge. Defending all types of claims is also challenging when multinational companies see their commercial activities affected in many jurisdictions.

The world has seen a very complex landscape of infringement activities radicalised by the COVID-19 situation. We have faced an enormous illegal trade of the main products that humanity has required because of the pandemic; such as facemasks, disinfectants, medicines, and medical devices. A wide range of industries have also been impacted through the prevalence of the internet and electronic commerce in response to the pandemic. Moreover, counterfeiting is continues to be prevalent in fashion industry goods, perfumes and cosmetics, whilst also becoming an increasing matter of public health concern due to rising instances in the food and beverage industries, liquor and tobacco, baby food, milk powder, and others.

The recent OECD-EUIPO study *Trade in Counterfeit Pharmaceutical Products* established that “companies registered in the United States are hit hardest by the trade in counterfeits: almost 38% of all seized counterfeit medicines infringe the intellectual property (IP) rights of firms registered in the United States”.<sup>1</sup> Also regard-

ing the “one estimate suggests that the cost to EU governments of revenues foregone from counterfeit medicines is on the order of EUR 1.7 billion”.<sup>2</sup> Additional findings state that the health systems have observed adverse consequences when treating patients as a result of consuming counterfeit medicines. The environmental pollution caused by these illegal practices involve a criminal activity potentially with toxic chemicals, and it has been determined that there is a high social cost with job losses increasing, estimating more than 80,000 jobs in the EU pharmaceutical and related industries.

The OECD/EUIPO 2020 advises using the methodology developed in the OECD/EUIPO (2017) report, in which the authors “developed a quantitative exercise to determine the producers and transit points of fake pharmaceuticals in the global trade. This exercise first uses the list of top provenance identified by the indices described, and in a second step the methodology uses two sets of statistical filters to distinguish producers from transit points among the main provenance economies identified in the first step.”<sup>3</sup>

Table 4.34 determined that the main producing economies are India, China (People’s Republic of), Philippines, Vietnam, Indonesia, Pakistan. The main transit points up to 2016 were Hong Kong (China), United Arab Emirates, Egypt, Cameroon, Turkey and Singapore. The findings are related with products and transit points in the pharmaceuticals counterfeit trade destined for the European Union. In some territories, especially those of Latin America, it’s

<sup>2</sup>. *Ibidem*

<sup>3</sup>. OECD-EUIPO (2020) *Trade in Counterfeit Pharmaceutical Products* © OECD/EUIPO 2020 page 38

<sup>4</sup>. OECD-EUIPO (2020) *Trade in Counterfeit Pharmaceutical Products* © OECD/EUIPO 2020 page 37

<sup>1</sup>. OECD-EUIPO (2020) *Trade in Counterfeit Pharmaceutical Products* © OECD/EUIPO 2020 page 12



**The European Council MEDICRIME Convention has an international spectrum and it’s open for signature and ratification not only of the European countries, but of third countries as well.**



**Table 4.3. Main producing economies and transit points for counterfeit pharmaceutical products and medicines traded worldwide, 2014-2016**

Producing economy	Transit point
India	Hong Kong (China)
China (People’s Republic of)	United Arab Emirates
Philippines	Egypt
Viet Nam	Cameroon
Indonesia	Turkey
Pakistan	Singapore

Note: Economies are listed in order of importance, measured by RCAP and RCAT index values, indicating a greater likelihood that the economy in question is a producer or a transit point of counterfeit medicines in world trade.

been seen that joining efforts with the Academy has strength the officers’ training programmes destined to judges, prosecutor, customs officers, health authorities, judicial of customs police. Product and parts transability are recommended. Strengthening the systems will provide the IP holder and all stakeholders, including consumers, secured access to products –particularly those of the pharmaceutical and medical devices industries.

The European Council MEDICRIME Convention<sup>5</sup> has an international spectrum and it’s open for signature and ratification not only of the European countries, but of third countries as well. Considering that human health is involved with democracy, human rights, and law systems with enforcement tools, the MEDICRIME Convention has created a work frame and parties’ responsibilities that is worth seeing and promoting. Although this Convention is, as its name states, on the criminal side, IP holders would like to see official governments take serious actions to implement and enforce it. The United States internally promotes legal reforms to forbid medicine sales online; transability would

operate in a more secure environment regardless the potential original product sales.

The pharmaceutical industry IP represents around 4.3% of all world trademark and patent filling, in regards with trademarks being international class 05, the OECD/EUIPO 2020 shows that in 2016 there was 390,888 applications worldwide.<sup>6</sup> It’s expected to see that these numbers will continue to grow from 2016 up until 2023. The regional, national and international IP systems will have to strengthen available tools and procure legal reforms when needed.

Seeking a legal sphere that warrants the accessibility to effective tools to enforce IP rights is a constant. Governments and legislative parties should continue to promote harmonisation that could permit combined efforts towards legality, the challenges are enormous contributing with commitment in all applicable spheres is a must to promote better and more efficient systems.

<sup>5</sup>. Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health. Council of Europe Treaty Series – No. 211, Moscow, 28.X.2011

<sup>6</sup>. OECD-EUIPO (2020) *Trade in Counterfeit Pharmaceutical Products* © OECD/EUIPO 2020 page 26