

DG Enterprise IPR Conference

Hamburg 26 March 2010

AMEM Presentation



Austrian Marine Equipment Manufacturers

Marketing Forum der österreichischen Marineausstatter

Protection of Intellectual Assets

Classification Societies

All started with **Load Lines**.

The metamorphosis of Class

- ▶ from Load Lines to **Classification**
- ▶ from Classification to **Certification**
- ▶ from Certification to **Consultancy**

- ▶ **from non-for-profit** **to moderate profits**
- ▶ **from moderate profits** **to big business**
- ▶ **from big business** **to big money making**



Annual Report Bureau Veritas (Wendel Investissement)

quote

“Cash flow is the ultimate operational indicator for Bureau Veritas”

unquote

Message: Be it so, but Class should take adequate responsibility / liability for being the well paid custodian of safety and security! IPR in the shipbuilding, shipping and equipment industry has become a massive safety and security issue and thus it interferes with Classification Societies!

Protection of Intellectual Assets

Authentication of Products and Certificates

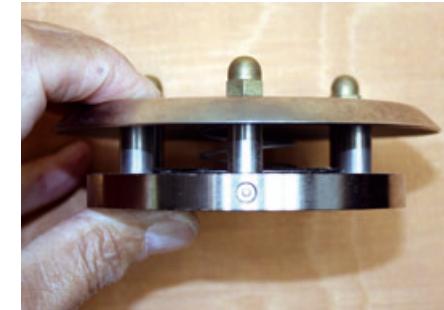
- ▶ The industry has adjusted to the fact that **copied products**, accompanied by **copied certificates** are deployed in ships being built in the predominant shipbuilding countries **Korea** and the **P.R. of China**.
- ▶ The European marine equipment industry will be confronted – in the near future – with the inrush of copied products into the Internal Market. Not sitting in a ship as they did in the past, but packed in containers, on pallets, in boxes and crates. Equipment manufacturers and the Member States / European Commission are committed to react – **now!**
- ▶ No question – industry will have to bear the major cost burden, but it desperately needs a highly contemporary legal framework, as part of – if you like – a **4th Erika package!**
- ▶ The technology is around to safeguard intellectual properties and assets as products make their way from the original equipment manufacturer (holder of a patent and / or know how / know why) to their final destination across the entire supply / value chain!
- ▶ The combined impact on the shipbuilding and equipment industry from these criminal activities is alarming. Even more surprising is the fact that meeting these threats head-on can be **not only simple, but cost-effective as well!**

Message: Beyond the financial losses to legitimate makers, there are also grave safety issues associated with this bold crime!

Protection of Intellectual Assets

Products

Authentication of products made of solid materials (steel) like **machinery** and its **components**
e.g. robust chips embedded in the product



Authentication of products made of threads, yarns and fibres like **fabrics / textiles**
e.g. multi-component fiber technology



Authentication of liquids like fuel oil or diesel in multi-fuel propulsion or **lubrication**
e.g. nano technology



Protection of Intellectual Assets

Certificates

- ▶ The need for securing and authenticating printed documents has never been greater!
- ▶ Due to the wide-reaching nature and harm of fraud and counterfeiting, the marketplace shipping, shipbuilding, equipment industry and recognised organisations, classification societies, notified bodies, test institutes and the like requires far reaching legislatives of the IMO and the Flag States merely from a safety point of view, as **IACS is hesitant to adjust to these challenges!**
- ▶ In direct response to current and future document fraud threats, all links in the supply chain of marine equipment need a fast, cost-efficient and indisputable way to protect vital documents like
 - design drawings
 - calculations
 - test reports
 - material certificates/chemical analysis



- type and design approvals
- survey and inspection reports
- license agreements

from unauthorised copying, scanning and digital imaging

Message: The safety of shipping is based significantly on the security of its sensitive documents! Printed documents still carry weight as the “real” versions ! If copied products that were accompanied by copied certificates fail, this may affect the safety of ships and lives at sea!

Protection of Intellectual Assets

Security of the Supply Chain

- ▶ With rising pressure of ship owners on European shipyards and equipment manufacturers to get cheaper ships and spare parts, the temptation will increase to source from the **grey market**.
- ▶ One important area over which shipyards and equipment manufacturers as well as shipping companies can exert a large measure of control is the security of the **supply chain**.
- ▶ Lax security creates opportunities for counterfeit and stolen goods to make their way into legitimate production, to give only an example – the grey market for **electronic components**.
- ▶ Equipment manufacturers will do their part to prevent their production and trade of counterfeit / copied products, in raising the level of the security of their supply chains.



Message: Government authorities and the Commission will have a particular critical role to play in this effort. They must create the legal infrastructure to protect not only trademarks and copyrights effectively and enforce intellectual property laws to deter fraudulent behaviour but also intellectual assets!

Protection of Intellectual Assets

Authentication and OEM Product Liability

Authentication does not only help to discern between an original or a fake product, it can also be used as a risk mitigation tool to reduce product liability in the market place.

It is common practice that the OEM, the holder of a patent, is sued if a fake product has failed and it is his obligation to give the proof that the product was not manufactured in his company.

Message: It should be noted here that describing all the security technologies is not that easy, as almost all companies in this industry do not publish technically and commercially sensitive information, to ensure their clients applications.



Protection of Intellectual Assets

Article 5ter Paris Convention 1925

Article 5ter

*(Patents: Patented Devices Forming Part of Vessel,
Aircraft, or Land Vehicles)*

*In any country of the Union the following shall not be considered
as infringement of the rights of a patentee:*

- 1. the use on board vessels of other countries of the Union
of devices forming the subject of his patent in the body
of the vessel, in the machinery , tackle, gear and other
accessories, when such vessels temporarily or
accidentally enter the waters of the said country, provi-
ded that such devices are used there exclusively for the
needs of the vessel;*

On a first reading of this particular provision in the Paris Convention one images that temporarily means crossing the national waters without having a destination in these waters, for example in the case of an accident when heading for a



port of refuge. This has resulted in no enforcement of patent rights downstream the yard , outside domestic waters where there is a patent in force. Countries in the Far East have obviously taken an advantage of this and Europe was adjusting to it in a "laissez faire, laissez passer" mood.

Message: Convincing arguments have emerged over the time which will make an amendment of Article 5ter more than appropriate!

Protection of Intellectual Assets

EUROSTAT and statistical classification of marine equipment



- ▶ Official statistics play a fundamental role in for the decision makers and legislators in the Member States, the European Commission, the Council, the Parliament, the society and last but not least the industry.
- ▶ Luxemburg based EUROSTAT, the Statistical Office of the European Union, ensures the development, production and dissemination of harmonised statistics at European level.
- ▶ CN Combined Nomenclature is the common nomenclature of the European Community. The 8-digit subheadings in the nomenclature are used in export declarations and in statistical declarations on internal trade.
- ▶ NACE Nomenclature general des Activites economiques dans les Communautes Europeenes is the European reference framework for statistics related to economic activities.

- ▶ Ironically enough, NACE does not distinguish between formal and informal or, between **legal and illegal production!**
- ▶ NACE Rev. 2 – in its present version – does not provide any statistical information on marine equipment!
- ▶ NACE has a 5-year rhythm for revisions. The next revision is envisaged for 2012.
- ▶ The industry should try everything to get marine equipment into the NACE 2012 Revision!
- ▶ Apart from NACE, customs authorities have introduced a broad spectrum of nomenclatures and data bases, accomplished by barcoding standards and the industries “originize” tagging systems

Message: Commission, WCO World Customs Organisation and the marine equipment industry should be encouraged to tackle this problem taking the chance of integrating authentication features!



Protection of Intellectual Assets

WCO World Customs Organisation



- ▶ While **EUROSTAT** is dealing with codes and nomenclatures for statistical purposes, **WCO** is in charge for the Harmonised Commodity Description and Coding System (HS) that forms the basis of the Customs Tariff.
- ▶ Brussels based WCO is an independent intergovernmental organisation with over 160 member countries
- ▶ WCO finds itself in the business of globalising and standardising Customs control efforts to improve both security and facilitation of the global supply chain.

- ▶ WCO administers the technical aspects of the World Trade Organisation (WTO) Agreements on Customs Valuation and Rules of Origin

Message: One of the rare allies of the manufacturing industry / patent holders in their fight against counterfeiters!

Protection of Intellectual Assets

Tracing & Tracking

... under construction ...

Protection of Intellectual Assets

**Recall of products – that have failed –
from the market**

... under construction ...