

Intellectual Property – Aspects of Securities

The current position

Personal property

- Most forms of intellectual property are personal property and security may be taken over them
- Trade marks
- Patents
- Designs
- Plant Breeder's Rights
- Copyright

Registration/Recording of Securities Over Intellectual Property

- Trade marks – specifically envisaged by and referred to in the legislation – Part 11 of the Act
- Patents – oblique reference to rights other than ownership appearing on the Register - s189
- Designs – previous legislation of 1906 had specific provision for noting a mortgage on the Register (s38A), 2003 Act does not refer to it at all
- Plant Breeder's Rights – no reference to anything other than ownership
- Registrars' practice – will note security interests for trade marks, patents and designs but not plant variety rights.
- Copyright – there is no register.

Charges under Corporations Act 2001

- Charges may be given over patents, trade marks, copyright or registered design. S262. Corporate charge may not be given over Plant Breeders Rights.
- Corporations Act 2001, s279 provides that priority of charges under the corporations legislation does not apply to
 - Designs Act 1906 (repealed 2003)
 - Trade Marks Act 1955 (repealed 1995)
 - Patents Act 1952 (repealed 1990)
- Registered charges over company property have priority over later charges or earlier unregistered charges if the chargee does not have notice of the earlier interests s280

Hypothetical

- Rogue Ltd registers patent for its 'widgets'.
- Rogue Ltd executes a mortgage of the patent in favour of Lender Ltd.
- Lender Ltd has this noted on the patent Register
- Later, Rogue Ltd executes a corporate charge over its property to Gullible Bank (GB)
- GB registers the corporate charge.
- GB's security may have priority over Lender unless noting on the patent register constitutes notice of Lender's interest.

Issues to address

- Where should security over intellectual property be registered – on the relevant register for that IP regime or a central, national security register.
- There is no place to register security over Plant Breeder's Rights
- Searching for security interests – one stop shopping or individual IP registers?
- Effect of registration
- Relationship of security over IP to charges over company property
- Transition issues.