

Terminology and recommendations of the *UNCITRAL Legislative Guide on Secured Transactions: Supplement on Security Rights in Intellectual Property*

A. Terminology^a

“Acquisition security right” includes a security right in intellectual property- or a licence of intellectual property, provided that the security right secures the obligation to pay any unpaid portion of the acquisition price of the encumbered asset or an obligation incurred or credit otherwise provided to enable the grantor to acquire the encumbered asset.

“Consumer goods” includes intellectual property or a licence of -intellectual property used or intended to be used by the grantor for personal, family or household purposes.

“Inventory” includes intellectual property or a licence of intellectual property- held by the grantor for sale or licence in the ordinary course of the grantor’s business.

B. Recommendations 243-248

Security rights in tangible assets with respect to which intellectual property is used^b

243. The law should provide that, in the case of a tangible asset with respect to which intellectual property is used, a security right in the tangible asset

^aIf it could be included in the *Guide*, this text would be placed in the relevant terms in section B, Terminology and interpretation.

^bIf it could be included in the *Guide*, this recommendation would be placed in chapter II, Creation of a security right, as recommendation 28 bis.

does not extend to the intellectual property and a security right in the intellectual- property does not extend to the tangible asset.

Impact of a transfer of encumbered intellectual property on the effectiveness of the registration^c

244. The law should provide that the registration of a notice of a security right in intellectual property in the general security rights registry remains effective notwithstanding a transfer of the encumbered intellectual property.

Priority of rights of certain licensees of intellectual property^d

245. The law should provide that the rule in recommendation 81, subparagraph (c), applies to the rights of a secured creditor under this law and does not affect the rights the secured creditor may have under the law relating to intellectual property.

Right of the secured creditor to preserve the encumbered intellectual property^e

246. The law should provide that that the grantor and the secured creditor may agree that the secured creditor is entitled to take steps to preserve- the encumbered intellectual property.

Application of acquisition security right provisions to security rights in -intellectual property^f

247. The law should provide that the provisions on an acquisition security right in a tangible asset also apply to an acquisition security right in intellectual property or a licence of intellectual property. For the purpose of applying these provisions:

(a) Intellectual property or a licence of intellectual property:

(i) Held by the grantor for sale or licence in the ordinary course of the grantor's business is treated as inventory; and

^cIf it could be included in the *Guide*, this recommendation would be placed in chapter IV, The registry system, as recommendation 62 bis

^dIf it could be included in the *Guide*, this recommendation would be placed in chapter V, Priority of a security right, as recommendation 81 bis. As an asset-specific recommendation, this recommendation would replace the general recommendation 81, subpara. (c), to the extent that it applies to the priority of the rights of a non-exclusive licensee of intellectual property as against the rights of a secured creditor of the licensor.

^eIf it could be included in the *Guide*, this recommendation would be placed in chapter VI, Rights and obligations of the parties to a security agreement, as recommendation 116 bis.

^fIf it could be included in the *Guide*, this recommendation would be placed in chapter IX, Acquisition financing, as recommendation 186 bis.

- (ii) Used or intended to be used by the grantor for personal, family or household purposes is treated as consumer goods; and
- (b) Any reference to:
 - (i) Possession of the encumbered asset by the secured creditor does not apply;
 - (ii) The time of possession of the encumbered asset by the grantor refers to the time the grantor acquires the encumbered intellectual-property or licence of intellectual property; and
 - (iii) The time of the delivery of the encumbered asset to the grantor refers to the time the grantor acquires the encumbered intellectual-property or licence of intellectual property.

*Law applicable to a security right in intellectual property*⁸

248. The law should provide that:

(a) The law applicable to the creation, effectiveness against third parties and priority of a security right in intellectual property is the law of the State in which the intellectual property is protected;

(b) A security right in intellectual property may also be created under the law of the State in which the grantor is located and may also be made effective under that law against third parties other than another secured-creditor, a transferee or a licensee; and

(c) The law applicable to the enforcement of a security right in intellectual property is the law of the State in which the grantor is located.

⁸If it could be included in the *Guide*, this recommendation would be placed in chapter X, Conflict of laws, as recommendation 214 bis.