

Why "Record" Security Interests in Intellectual Property at the Canadian Intellectual Property Office?

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In Canada, security interests in intangible property collateral are perfected (or published, in the case of Québec) by making a registration under the personal property security legislation ("PPSL") of the province where the debtor is deemed to be located at the time the security interest attaches. Intellectual property, such as trade-marks, patents, industrial designs, or copyrights, whether registered or unregistered, is not treated any differently than other types of intangible property collateral in that regard.

However, each of the federal *Trade-marks Act*, *Patent Act*, *Industrial Design Act*, and *Copyright Act* also provide for, or permit, the "recording" (i.e. registration) at the [Canadian Intellectual Property Office](#) (the "CIPO") of assignments or transfers of the types of intellectual property to which those statutes apply. None of them refer specifically to security interests or perfection, and there is no jurisprudence regarding the legal effect of recording a security interest with CIPO. Nevertheless, it is conceivable that a court might someday conclude (contrary to the current generally accepted view) that the PPSL priority rules do not apply to intellectual property applications or registrations maintained at the CIPO as a result of paramount federal legislation, and according that priority disputes in respect of intellectual property collateral are to be determined under common law. The recording at the CIPO of a security interest in registered intellectual property might then enable a secured party to demonstrate that notice of its security interest was properly given to competing secured creditors. Moreover, even outside the context of a common law priority dispute, a recording at the CIPO might help avoid potential litigation risk by putting other interested parties on notice (to the extent such other parties reviewed the applicable CIPO records).

Therefore, where registered intellectual property constitutes a significant part of the collateral, secured parties often record at the CIPO their security interest against the property in question (in addition to making appropriate filings under applicable PPSL). The recording process essentially involves the payment to the CIPO of a prescribed fee, and the filing of a copy of an executed security agreement (identifying in sufficient detail (including reference to application numbers or, where applicable, registration numbers) the intellectual property against which the security is granted) by the CIPO in the appropriate records. Recording may only be done after the security agreement is effective, and for confidentiality reasons secured creditors often prefer to record only an abridged (but fully executed) version of their "main" security document.