

## Australian Personal Property Securities Register

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The Personal Property Securities Act 2009 (Cth) (PPSA) introduces in Australia a national law that will affect secured financing transactions involving personal property, including most forms of intellectual property (IP). Anyone who is selling, purchasing or licensing IP assets in Australia or is involved in financing transactions where IP is a security should, therefore, evaluate their arrangements in light of the PPSA.

Like the New Zealand regime, the Australian PPSA provides for the creation and enforceability of security interests in personal property, the determination of priority between competing security interests or other types of interests in the same personal property, and the establishment of a publically searchable register of security interests called the Personal Property Security Register ("PPSR"). Most forms of IP, such as registered trade marks, patents, copyright, registered designs and licences, are personal property over which a security interest may be registered. However, the definition does not include trade secrets or unregistered trade mark rights.

The two key concepts under the PPSA are "attachment" and "perfection".

"Attachment" relates to the creation of the security interest between the parties. "Perfection" governs competing priorities between parties with an interest in the same property as well as subsequent purchasers or lessees.

Relevant to intangible property assets like IP, perfection occurs when the security interest has been completed, and recorded on the PPSR. Once so perfected, the registered security interest defeats any unperfected security interests and, with a few exceptions, any later registrations over the same assets.

In addition, any subsequent purchaser or lessee is bound by the perfected security interest and deemed to have notice of it.

Under the new system, IP Australia's registers will no longer be legal securities registers. Instead, from 30 January 2012, mortgages and other security interests recorded on the Patents, Trade Marks and Designs Registers have no legal effect. Consequently, existing and new security interests over Patents, Trade Marks, Designs and Plant Breeder's Rights will need to be recorded on the PPSR in order to maintain their

priority. Therefore, if you are purchasing IP assets or using IP assets to secure obligations, the PPSR will need to be consulted and your interest registered.

It is important to note that security interests already recorded on IP Australia's registers will *not* be automatically migrated to the PPSR. Fortunately, secured parties that have interests recorded on IP Australia's registers prior to 30 January 2012 will have a transitional period of 24 months to 30 January 2014 in which to record these interests on the PPSR and maintain their priority. Nevertheless, interests may continue to be recorded on IP Australia's registers for other purposes. Secured parties may record their interests on the Patents, Trade Marks and Designs Registers to allow them to receive notifications, be given an opportunity to be heard, or given the opportunity to make submissions.

The introduction of the PPSR in Australia has many implications for business. As a result, it is critical that businesses understand how to correctly utilise the legislation in respect of their IP assets.