



European Communities Trade Mark Association

**General Assembly of the United Nations Commission on International Trade Law  
Forty-Third session  
New York 21 June to 9 July 2010**

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From 21 June to 9 July, 2010, the 43th session of the United Nations General Assembly on International Trade Law took place in New York, where, amongst other matters, the draft Supplement to the UNCITRAL Legislative Guide on Secured Transactions dealing with security rights in intellectual property had to be finalized and adopted.

This Supplement to the Guide aims at providing adjustments that would need to be made to the Guide in order to address issues specific to the use of intellectual property rights in financing. Please refer to previous ECTA Flashes for earlier reports on the subject matter.

After reviewing the draft Supplement as prepared by the Working Group VI (Security Interests) and resolving outstanding issues, the Supplement was finally adopted on 29 June 2010.

The major remaining issue related to the question of choice of law rule for transactions creating a security interest over an IP right where the Financial and the IP sectors were in disagreement. Indeed, the Financial sector favoured the law of the grantor's location whereas the IP sector favoured the *lex protectionis* namely the law of the IP right's location.

On the table for discussion were four proposals coming from the last session of the Working Group with two further proposals made respectively by the Canadian delegation and the Permanent Bureau of the Hague Conference on Private International Law together with the Commercial Finance Association and the American Bar Association.

The aim of the discussion was to try to find an acceptable compromise to both sectors and to narrow down as much as possible the alternatives to be included in the Supplement.

The Assembly finally was able to agree on a single solution which reads as follows:

*The law should provide that 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.*

*The law should in addition provide that 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.*

*The law should provide that 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.*

This solution was most satisfactory to the IP sector.



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The Assembly then discussed the possible further work to be conducted by the Working Group such as:

- Security rights in non-intermediated securities
- Registration of security rights in movable assets
- Security rights in movable assets: a model law
- Rights and obligations of the parties to a security agreement
- Implementation of UNCITRAL texts on secured transactions

The Assembly noted the interest of each subject matter but agreed that priority should be given to the Registration of security rights in movable assets.

- And last but not least, intellectual property licensing.

This subject matter led to various discussions and divergences throughout the delegates. For example, the US is against whereas Spain is in favour. WIPO also strongly objected.

Not only is the question whether this matter has to be tackled, the US having been exposed to some domestic difficulties and failures in the past on this subject matter, but also is the question as to whether UNCITRAL is the right place for such work to be carried out (shouldn't it for instance be WIPO).

It was finally concluded that further information is needed by the Assembly before deciding on whether there is a need to work on the subject matter and, that should there be a need, the mandate that would be given should not go beyond the mission of UNCITRAL which is to harmonize and unify trade law.

Therefore, the Secretariat has been given the mandate to come sometime in the future (this may take years) with a report on suggestions, if any, on what might be appropriately, suitably and usefully done by UNCITRAL.

The IP sector will therefore have to keep an eye on this issue.

All relevant documents can be retrieved on UNCITRAL's website at:

[www.UNCITRAL.org](http://www.UNCITRAL.org)

Working Group VI:

[http://www.uncitral.org/uncitral/en/commission/working\\_groups/6Security\\_Interests.html](http://www.uncitral.org/uncitral/en/commission/working_groups/6Security_Interests.html)

43th Commission Session:

<http://www.uncitral.org/uncitral/en/commission/sessions/43rd.html>

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