



Intellectual Property and Bankruptcy post *Mission Products*

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Intellectual Property and Bankruptcy post Mission Products

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The Basics of Bankruptcy

An Overview of Bankruptcy Law

When a debtor files for bankruptcy:

- (i) a bankruptcy estate is automatically created, which encompasses all legal or equitable interests of debtor's property;
- (ii) a trustee (or debtor-in-possession) is appointed to administer the bankruptcy estate; and
- (iii) an automatic stay is imposed to protect the bankruptcy estate from creditors' collection activities.

Property of the estate provides the source of distributions to creditors.

Priority amongst creditors in bankruptcy is determined by applicable state and federal laws governing perfection of security interests.

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Perfecting Security Interests in Intellectual Property



Patents

File UCC-1 to Perfect Security Interest

The Patent Act does not address security interests, so a secured creditor should file a UCC-1 financing statement in the state where the debtor is located to provide notice to subsequent lien creditors.

Permissive Recordation with USPTO

License agreements and security agreements will be accepted and recorded by the USPTO to provide notice of interests in or ownership of patents or applications to bona fide purchasers and mortgagees.

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The USPTO also accepts documents that relate to interests in trademarks and trademark applications to provide notice to third-party purchasers and lien creditors.

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For Valuable Copyrights: Register the debtor's unregistered copyright and record the security agreement with the Copyright Office.

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