SUMMARY OF THE COLLOQUIUM
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Notes of Michel Deschamps

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1. Creation

The panellists who addressed the issue of the creation of a security right in intellectual property said that (i) the only requirement needed for the creation of such a right is the existence of an agreement between the parties (that is, an agreement to grant security), and (ii) no other formality should be required. There appears to be a consensus in this regard as no criticism was voiced against those statements.

Two remarks made on several occasions are worthwhile to repeat in this summary because they indirectly relate to the issue of creation:

(a) a grantor cannot grant better rights than he has (the *nemo dat* principle) so that a secured creditor cannot obtain more rights than those enjoyed by the grantor.

(b) The unassignability of a licence may result in a security right purported to be granted in the licence being of little value. In that connection, it was agreed to modify the definition of "receivable" in the Guide to make clar that the Guide does not invalidate an anti-assignment clause in a licence agreement.

2. Applicable law (or conflict-of-laws) issues

On the question of the determination of the law applicable to the creation, third-party effectiveness and priority of a security right in intellectual property, many speakers have reminded the audience that intellectual property law is based on the principle of territoriality. In the area of secured transactions, the consequence would be that the foregoing issues would be governed by the law of the jurisdiction in which the creditor would want to exercise its security right.

Other speakers have proposed that the law of the location of the grantor (corporate domicile, centre of main interests or habitual residence) should rather apply to the effectiveness against third parties and the priority of a security right, subject however to the following exception: a priority contest between a secured creditor and an assignee under an outright assignment (that is, an assignment not made for security purposes) would be governed by the law of the jurisdiction where the intellectual property is used or protected. For example, if a debtor located in state A grants a security right in trademarks registered in state B and thereafter assigns the trademark to a third party who registers the assignment in state B, the law of state B would determine the priority of the assignee.

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