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2016 – Study Question (General)

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Security interests over intellectual property

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I. Current law and practice

You are reminded that **IPRs** refers to patents, trademarks and registered designs only.
If more than one type of security interest is available under your Group's current law, please answer the questions for each type of security interest, as applicable.

Availability of security rights

1)	Does your Group's current law provide for the possibility of creating security interests over IPRs?

yes

Please explain:

Yes, Danish law provides for the possibility of creating security interests over IPRs.

If yes, please answer Questions 2) to 14) inclusive before proceeding to question 15) and following.
If no, please proceed directly to question 15).

2)	Are the available types of security interests defined by specific provisions relating to security interests over IPRs or by general commercial law principles (e.g. specific provisions in your Group's patent legislation rather than general commercial provisions that are applicable to tangible personal property as well as to patents)?

yes

Please explain:

The available types of security interests are defined by general commercial provisions that are applicable to tangible personal property as well as to IPRs.

The Danish Registration of Property Act (*tinglysningsloven*) provides for the creation of a security interest over IPRs. The Act defines the relevant act of perfection (*sikringsakt*) in relation to fixed charges (*underpant*) and floating charges (*virksomhedspant*). It further defines what type of assets a floating charge can comprise.

The enforcement of security interests over IPRs is governed by the general rules on enforcement in the Danish Administration of Justice Act (*retsplejeloven)*.

3) Under your Group's current law, what types of security interests are available for IPRs?
In addressing the questions in sub-paragraphs a) to c) below, please specify briefly the main characteristics and differences of the available types of security interests.

a) Does your law provide for security interests which are characterized by the full assignment of the underlying IPR to the security taker? For example, an assignment of the IPR for the purpose of security or authorization to dispose/use fully in the event of default.

no

Please explain:

In general, security interest over IPRs can be made by way of fixed charges (*underpant*) or floating charges (*virksomhedspant*). The main characteristics of the two types of security interests are set out in below.

Fixed charge

Mortgage of an IPR in the form of a fixed charge is possible pursuant to section 47 of the Danish Registration of Property Act. A fixed charge only comprises the IPR that is specified in the security interest agreement (as opposed to a floating charge). A fixed charge can be in the form of a mortgage deed (*pantebrev*), in the form of mortgaging of an owner's mortgage (*underpantsætning af et ejerpantebrev*) or in the form of a letter of indemnity with a specific creditor (*skadesløsbrev*). An owner's mortgage is granted to the owner allowing the owner to mortgage the owner's mortgage to one or more security takers and to reuse the owner's mortgage. A letter of indemnity is granted to a specific creditor to provide security for a continually outstanding account e.g. an overdraft facility.

The three forms of fixed charge must be registered in the Danish register of marriage contracts, chattel mortgages and declarations of legal incapacity (*personbogen*) to be binding on third parties (the only exception being mortgage of EU trademarks and EU designs in the form of a fixed charge that are to be notified to EUIPO in order to be effective against third parties in Denmark and the rest of the European Union).

Floating charge

A floating charge can be made by the owner of a business enterprise pursuant to section 47c of the Danish Registration of Property Act. A floating charge may comprise a number of assets owned by the company, including IPRs, see section 47c, subsection 3, no. 7, which specifically mentions intellectual property rights. A floating charge often comprises a number of assets and not just the actual IPR, as opposed to a fixed charge. However, a floating charge cannot comprise EU trademarks or EU designs (or intellectual property rights obtained in foreign jurisdictions).

A floating charge can be made in the form of a letter of indemnity with a specific creditor (*skadesløsbrev*) or in the form of mortgaging of an owner's mortgage (*underpantsætning af et ejerpantebrev*). The act of perfection is registration hereof in the Danish register of marriage contracts, chattel mortgages and declarations of legal incapacity.

A floating charge is characterized by being "floating" and it can thus comprise assets owned by the company as well as future acquisitions. However, the charge does not prevent assets from being released from the floating charge as long as the release takes place in the course of the regular operation of the company. If the release of assets is not part of the regular operation of the company, the assets sold will be deemed unreleased from the floating charge and the charge can still be claimed by the security taker - also in relation to a *bona fide* purchaser. It is in this regard relevant to consider whether the IPR can be categorized as a current asset or a fixed asset (often, an IPR is a fixed asset). If an IPR is a fixed asset, it will normally not be part of the regular operation of the company to release it. However, if an IPR is categorized as a current asset it will generally be part of the regular operation of the company to release it.

A floating charge is "floating" until the security taker "takes possession" of the charge *("tiltræder*" *pantet*) or if the security provider has defaulted on the underlying obligation and/or if insolvency proceedings are commenced against the security provider. At this point in time the charge crystallises, and the assets comprised by the floating charge are thus ascertained. The security taker can then realize the assets in question.

When drawing up the parties' mortgage deed, specific standard conditions must be included before registration in the Danish register of marriage contracts, chattel mortgages and declarations of legal incapacity pursuant to Danish Act No. 213 of 15 March 2011 (concerning registration in the Danish register of marriage contracts, chattel mortgages and declarations of legal incapacity). However, besides few exceptions, the standard conditions can be deviated from by mutual agreement between the parties (see also our comments to Question 11).

Generally, the parties enjoy freedom of contract to a wide extent in relation to the drawing up of the security interest agreement. Such freedom is only limited by the general rules concerning unfair contracts and contracts void by public policy (contracts contra bonos mores). Thus, the parties have wide access to agree on the extent of the security provider's use of the encumbered IPR etc., which will be explained further in the following questions.

The above-mentioned forms of securities can be recorded in the trademark, patent or design register upon request. However, such record of the security has no binding effect as it is not the adequate act of perfection.

In Denmark, security interests can also be found by way of pledge (*håndpant*). However, a pledge in an IPR is rarely relevant since the relevant act of perfection is dispossession. Actual copies of works protected by intellectual property rights can be pledged. It is also possible to pledge derivative rights of the IPR, e.g. revenues from the IPR. In that case it will be categorized as a pledged claim (*håndpant i en fordring*) for which the relevant act of perfection is notification of assignment pursuant to section 31 of the Danish Debt Instruments Act. Since pledge of IPRs is not in practice relevant, the answers to the Study Question will in the following focus on fixed charges and floating charges.

3 a

No. Neither a fixed charge nor a floating charge is characterized by the full assignment of the underlying IPR.

b) Does your law provide for security interests that authorize the security taker to realize the security interest only in the event of default? For example, a pledge over an IPR that authorizes the pledgee to liquidate the pledged IPR in the event of default (but not to otherwise dispose of the IPR).

yes

Please explain:

Yes, it is only in the event of default that the security taker can realize the security interest.

c) Does your law provide for security interests that authorize the security taker to use the underlying IPR? For example, usus fructus rights that authorize the creditor to use and/or realize proceeds from the exercise of the IPR only during the term of encumbrance. Is any right to use the encumbered IPR conditional upon default of the security provider?

no

Please explain:

No, the security taker cannot use the encumbered IPR unless otherwise agreed (cf. the parties' freedom of contract, see our comments above).

4) If more than one type of security interest is available under your Group's current law, what types are commonly used for IPRs? Please also specify if certain types of security interests are exclusively used for certain types of IPRs in your country. For example, patents may commonly be encumbered with pledges, while trademarks may commonly be assigned to the security taker.

The use of security interest will often depend on the actual situation. The legal literature refers to the mortgage of trademarks in the form of a fixed charge, as being in general very impractical unless the charge is part of a more comprehensive pledge of a company's assets, cf. "Intellectual Property Rights" by Jens Schovsbo et al. (2015), page 589.

Security interests over IPRs as part of a floating charge is very often done, but this does not necessarily mean that any specific considerations have been made as to the actual charge of the IPR. This may be part of a semi-automatic procedure, where an IPR is selected along with most of the other assets that can be charged as part of the floating charge, without much considerations as to the value of the IPR - if any.

If the security provider wants to provide a security interest over an IPR registered in foreign countries, this can only be done by a fixed charge.

Effects of security interests

5) Is the security provider restricted in their right to use their IPR after providing a security interest over that IPR? For example, in respect of their right to grant licenses, or the right to use the protected subject matter. Please answer for each available type of security interest.

no

Please explain:

The security provider is generally not restricted by law in its use of the IPR after providing a security interest over that IPR, regardless of the security interest being in the form of a fixed charge or a floating charge. However, the security provider and the security taker can agree that the security provider is to be restricted in its use (cf. the parties' freedom of contract, see our comments to Question 3).

6) May encumbered IPRs be assigned to third parties by the security provider?

yes

Please explain:

Yes, encumbered IPRs may under certain conditions be assigned to third parties by the security provider.

7) If yes:

a) under what conditions may an IPR be assigned (e.g. obligation to obtain consent from the security taker, public notification or registration)?

In relation to a fixed charge in an IPR, the IPR may be assigned without the consent from the security taker. However, the IPR remains encumbered with the original security interest for the benefit of the security taker, and the buyer of the IPR will thus have to respect the fixed charge in the IPR. Further, it is noted that according to the specific standard conditions, which have to be included in the mortgage deed (see our comments to Questions 3 and 11) the security taker may in such situation require that the debt secured by the charge be repaid. The standard conditions can be deviated from by mutual agreement.

If a security interest over an IPR is provided in the form of a floating charge, the IPR may be assigned if the assignment takes place in the course of the regular operation of the company. In this situation, the IPR will no longer be comprised by the floating charge. However, assignment of IPRs to third parties will often not be considered to be a part of the regular operation of the company since IPRs are normally considered to be fixed assets (see our comments to Question 3). In assessing whether the assignment

has taken place in the course of the regular operation of the company, it is important whether the assignment had any commercial reasons and whether the assignment happened as part of the ordinary business of the company as opposed to a winding-up of the company.

b) does the IPR remain encumbered with the original security interest for the benefit of the security taker?

yes

Please explain:

If a security interest is provided in the form of a fixed charge, the IPR remains encumbered with the original security interest for the benefit of the security taker after assignment to a third party if the security interest was perfected or the third party was in bad faith about the security interest.

If a security interest over an IPR is provided in the form of a floating charge and the IPR is assigned to a third party in the course of the regular operation of the company the IPR in question does not remain encumbered (see our comments to Question 3).

8) What are the rights of the security taker before default (e.g. entitlement to damages, injunctions against infringers, or license fees)?

The security taker generally has no rights by law over the encumbered IPR before default. Hence, the security taker is not entitled to any damages from infringement of the encumbered IPR, license fees from the encumbered IPR or to initiate injunction proceedings against infringers of the encumbered IPR.

This applies to both security interests in the form of fixed charges and floating charges.

9) Who of the security provider or the security taker is responsible for maintenance and defence of the IPR provided as collateral?

The security provider is entitled to maintain and defend the IPR provided as collateral unless otherwise agreed. The question whether the security provider has any specific responsibilities regarding maintenance and defence of the IPR, and hence having a risk of becoming liable for not acting in accordance with its responsibilities, is considered to be outside the scope of the question.

This applies to both security interests in the form of fixed charges and floating charges.

10) What are the legal consequences if the underlying IPR expires or is revoked? For example, the security right lapses simultaneously; the creditor has a compensation claim against the security provider.

If the underlying IPR expires or is revoked the security right lapses simultaneously. The security taker has no compensation claim because of a lapse or a revocation of the underlying IPR. However, if the security taker suffers a loss as a consequence of the security provider's negligence or willful misconduct, the security taker may possibly claim damages from the security provider corresponding to the amount lost as a consequence. If the security provider is a company, the management of the company can under certain conditions be held personally liable for such a loss.

This applies to both security interests in the form of fixed charges and floating charges.

11)	Can any of these effects of security interests over IPRs before default be modified by contractual provisions between the parties? If so, which effects?

yes

Please explain:

It follows from section 13 of Danish Act No. 213 of 15 March 2011 concerning registration in the Danish register of marriage contracts, chattel mortgages and declarations of legal incapacity that specific standard conditions must be included in the mortgage deed (standard conditions regarding chattel ("Almindelige betingelser (LØSØRE)") and in the letter of indemnity concerning floating charge (standard conditions regarding floating charge ("Almindelige betingelser (VIRKSOMHEDSPANT)") before registration in the register is possible. Nonetheless, the standard conditions can be deviated from by mutual agreement between the parties. The only exception is a few conditions that cannot be deviated from in disfavor of the security provider. With the exception of these provisions, the security provider and the security taker enjoy a freedom of contract to a wide extent (see our comments to Question 3).

The following of the effects mentioned in Question 5 – 10 can thus be modified by contractual provisions between the parties:

- Restrictions on the security provider's right to use its IPR after providing a security interest over that IPR (Q5).
- The security provider's possibility to assign encumbered IPRs (Q6).
- The conditions under which encumbered IPRs may be assigned (Q7a).
- Whether the IPR remains encumbered with the original security interest for the benefit of the security provider after assignment to a third party (Q7b).
- The rights of the security taker before default. However, please note the fact that the security taker has no right to initiate any proceedings (e.g. injunction proceedings) against infringers unless authorised by the security provider (IPR owner) (Q8).
- Which of the parties that is responsible for the maintenance and defense of the IPR provided as collateral. The security taker can thus maintain and defend the IPR on the basis of a power-o--attorney from the security provider (Q9).
- The legal consequences if the underlying IPR expires or is revoked (Q10).

This applies to both security interests in the form of fixed charges and floating charges.

Applicable law

12)	Does your Group's current law provide for conflicts of laws as to the availability and effect of security interests over IPR portfolios containing foreign as well as national IPRs?

yes

Please explain:

Yes. Under Danish law conflict of laws as to the availability and effect of security interests are generally governed by the law of the country where the relevant asset is situated (the principle of *lex loci rei*

sitae or *lex situs*). Although IPRs are by their nature not as such situated in a particular location, they will relate to a particular geographical territory. Under Danish law, disputes relating to the availability and effect of security interests over IPR will thus be governed by the legislation of the country/territory in which the particular IPR is registered.

Perfection of security interests over IPR portfolios requires that the security taker perfects the security interest over each individual IPR in the country/territory where the particular IPR is registered. As regards Danish national IPR, a security interest is perfected by registration in the Danish register of marriage contracts, chattel mortgages and declarations of legal incapacity (see our comments to Question 3).

Perfection of security interests over registered EU Trade Marks and registered EU Designs is registration with EUIPO (see our comments to Question 3).

13)	Which national law applies as to creation, perfection and effect of security interests over foreign IPRs? For example, where a US patent is provided as collateral in respect of a financial transaction in Europe.

Under Danish contract law, the contracting parties are free to include a choice of law provision in an agreement that creates a security interest over a foreign IPR. Such choice of law will, however, only be effective to some extent in the *inter partes* relationship and not against third parties. If the parties do not include a choice of law provision, a Danish court – assuming that the Danish court has jurisdiction - will decide which country's law to apply based on applicable private international law.

The choice of law in relation to perfection and effect of the securitization is not left to the discretion of the parties, but will be governed by the principle of *lex situs*. The question of whether a security interest over a foreign IPR has been perfected will be governed by the law of the country/territory in which the particular IPR is registered. Further, the Danish enforcement courts will only levy distress in relation to assets that are situated in Denmark and thus not in relation to a foreign IPR.

In the example where a US patent is provided as collateral in respect of a financial transaction in Denmark, the parties may agree on e.g. Danish law to govern the *inter partes* relationship, for example when assessing the particular financial obligations for which the security interest over the US patent serves as collateral. However, regardless of whether the parties have included a choice of law provision or not, US law will apply to the perfection and effect of the security interest over the US patent.

14)	Can a choice of law provision in a security interest agreement over IPRs overrule the applicable law as to availability and effect?

no

Please explain:

No, under Danish law a choice of law provision in a security interest agreement over IPRs cannot overrule the applicable law as to availability and effect.

A choice of law provision in a security interest agreement over IPRs will only be effective to some extent *inter partes*, i.e. between the contracting parties, for example when assessing the particular financial obligations for which the security interest serves as collateral. However, the Danish enforcement courts cannot levy distress in relation to a foreign IPR regardless of the existence of a choice of law provision. Further, a choice of law provision in a security interest agreement will not be effective in relation to a dispute with a third party. In such situations, the principle of *lex situs* will apply.

Please also see our comments to Questions 12 and 13 above.

Additional question

15)	Regardless of your Group's current law relating to security interests over IPRs, is it possible to create a solely contractual regime for security interests over IPRs (i.e. beside the types of security interests defined by law) that is enforceable between the contracting parties?

yes

Please explain:

Yes. The overriding principle governing Danish contract law is the principle of freedom of contract. There are only few mandatory rules applying to business-to-business relations as regards the formation and contents of contracts (see our comments to Question 3).

It may therefore be possible to create a solely contractual regime for security interests over IPR that is enforceable between the contracting parties. For example, in a situation where a security provider's IPR is used as collateral by formal assignment of the IPR to the security taker with a license being granted back to the security provider. The IPR will then be reassigned to the security provider when the security obligations are discharged in full. In the UK, such contractual regime is seen referred to as "legal mortgage". However, even if the IPR is formally assigned to the security taker as in the example, it is - depending on the circumstances - possible that the Danish courts will find that such contractual regime would not be effective in disputes against third parties.

It should be noted that the Danish enforcement courts will not levy distress in relation to foreign IPRs. Further, contractual regimes, where the right is not assigned in full to the security taker, will not be effective in disputes against third parties where the principle of *lex situs* would apply.

II. Policy considerations and proposals for improvements of the current law

16)	Is your Group's current law regarding security interests over IPRs sufficient to provide certainty and predictability to the parties?

yes

Please explain:

Only very few cases regarding security interests over IPRs appear to have been heard by the Danish courts. Current law regarding security interests over IPRs is the same as the law regarding security interests over tangible assets. Thus, the regulation is consistent and may as such be considered to provide sufficient certainty and predictability to the parties.

17) Under your Group's current law, is there an appropriate balance between the rights between security takers and security providers? For example:

a) are there situations in which the rights of security takers should be limited or extended (e.g. if assignment of an encumbered IPR is possible by the security provider without involvement of the security taker)?

no

Please explain:

No, the Danish Group does not find that the rights of the security taker should be limited or extended by law, this may be done as part of the parties' agreement.

b) are there situations in which the rights of security providers should be limited or extended (e.g. if the security taker is authorized to dispose of existing licenses without involvement of the security provider)?

no

Please explain:

No, the Danish Group does not find that the rights of the security provider should be limited or extended by law, this may be done as part of the parties' agreement.

18) Are there any aspects of these laws that could be improved? Are there any other changes to your Group's current law that would promote transactions involving IPRs as collateral? If yes, please briefly explain.

yes

Please explain:

In Denmark, it is quite expensive to register a charge in the Danish register of marriage contracts, chattel mortgages and declarations of legal incapacity. The Danish Group considers that it might promote the use of IPRs as collateral if it was less costly to register the charge.

At an international level, the Danish Group finds that it is cumbersome that registration of security interests over IPRs has to be done in different countries as is the case now. The Danish Group considers that it might promote transactions involving IPRs as collateral if the registration process was less complicated and extensive.

The Danish Group also considers it an improvement of the current law, if, by law, the security taker was granted a right to be notified about any challenges of the encumbered IPR (see our comments to Question 27).

III. Proposals for harmonisation

19) Does your Group consider that harmonization of laws concerning security interests over IPRs is desirable?

yes

If yes, please respond to the following questions without regard to your Group's current law.
Even if no, please address the following questions to the extent your Group considers your Group's laws could be improved.

Security system regarding IPRs

20)	Should there be specific provisions regulating security interests over IPRs (i.e. separate from security interests over tangible property) generally?

yes

Please explain:

Yes, the Danish Group considers that harmonization of laws concerning security interests over IPRs is desirable.

No, there should not be specific provisions regulating security interests over (national) IPRs, unless the perfection of security interest can be harmonized, and for example performed by notification to the registration authority in the country/territory where the particular IPR is registered (see our comments to Question 32).

21)	If no, should there be general commercial law principles that also apply to IPRs? If not, why?

yes

Please explain:

Yes, there should be general commercial law principles that also apply to IPRs - as the current situation is in Denmark.

22)	What types of security interests should be available as minimum standard in all countries?

The Danish group finds that both fixed charges and floating charges should be available as minimum standard in all countries.

23)	Should the law be applied differently depending on the type of IPR? For example, should patents be encumbered exclusively with pledges, should trademarks be assigned to the security taker for the purpose of security?

no

Please explain:

No, the law should not be applied differently depending on the type of IPR.

Effect of security interests

24)	Should the security provider be restricted in their right to use their IPR after providing a security interest over that IPR (e.g. in respect of their right to grant licenses, or to use the protected subject matter)? If so, how?

no

Please explain:

No, the current situation whereby the security provider – as a starting point - is not restricted by law in its right to use its IPR after providing a security interest in that IPR strikes a fair balance since the

parties are free to modify the effects of the security interest by contractual provisions between the parties, see our comments to Question 11 and Question 29.

This answer applies to both security interests in the form of fixed charges and floating charges.

25) Should the security provider be able to assign encumbered IPRs to third parties?

yes

Please explain:

In respect of a fixed charge the current situation, where the security provider as a starting point is able to assign encumbered IPRs to third parties strikes a fair balance, since the security taker may in such situation require that the debt secured by the charge be repaid or, otherwise, the IPR remain encumbered and the buyer of the IPR thus have to accept the fixed charge in the IPR (see our comments to Question 7a).

Likewise, it is considered to be a fair balance between the parties that the security provider can assign IPRs covered by a floating charge to third parties in the course of the regular operation of the company. Consequently, the security provider should remain to have this possibility.

26) What should the rights of the security taker be before default (e.g. entitlement to damages, injunctions against infringers, or license fees)?

The security taker should generally have no rights over the encumbered IPR before default. The encumbered IPR is provided as a security interest and not as a licensed IPR and should thus be treated as such, unless the parties agree otherwise.

This answer applies to both security interests in the form of fixed charges and floating charges.

27) Should the security provider or the security taker be responsible for maintenance and defence of the IPR provided as collateral?

yes

Please explain:

As a starting point, the security provider should be responsible (entitled) for maintaining and defending the IPR provided as collateral.

However, the Danish Group considers it would be an improvement of the current law, if, by law, the security taker was granted a right to be notified about any challenges of the encumbered IPR (see our comments to Question 18).

Currently, the security taker is not granted a right of notification of challenges of the encumbered IPR, even if the security taker has been registered in the relevant patent/trademark register as a security

taker. Only the owner of the encumbered IPR (i.e. the security provider) and licensees (if any) are notified if the validity of the encumbered IPR is challenged.

This answer applies to both security interests in the form of fixed charges and floating charges.

28) What should the legal consequences be if the underlying IPR expires or is revoked (e.g. the security right lapses simultaneously; creditor gains a compensation claim against security provider)?

In respect of a fixed charge, should the underlying IPR expire or be revoked, the security right should lapse simultaneously.

As regards a floating charge, the security right would often comprise other assets and should thus continue to comprise these assets.

29) Should it be possible to modify these effects of security interests over IPRs before default by contractual provisions?

yes

Please explain:

Yes, the freedom of contract strikes a fair balance between the security taker and the security provider.

Applicable law

30) Which law should apply as to the availability and the effects of security interests where a foreign IPR is provided as collateral? Why?

The Danish Group finds that the principle of *lex situs*, i.e. the law of the country/territory where the foreign IPR is registered, should continue to apply as to the availability and the effects of security interests where a foreign IPR is provided as collateral. We realize that as long as the legal regimes vary from country to country, the application of *lex situs* may lead to a number of challenges. For example, it may be rather costly to perfect security interests over IPR portfolios and thus make it less attractive to use IPR portfolios as collateral. However, the principle of *lex situs* provides transparency as to which law will apply in relation to a security interest over a particular IPR. Thus, a third party will always know where to check whether there are other perfected security interests over a particular IPR. As long as the legal regimes are not harmonized, such transparency is important in order to secure the interests of third parties.

The Danish Group has also considered whether a principle, where the law of the security provider (i.e. the IPR owner) shall apply, would be appropriate. However, as long as the legal regimes on security interests vary significantly from country to country, the Danish Group does not find that such principle would be appropriate as this might lead to undesirable effects such as forum shopping.

31) Should a choice of law provision in a security interest agreement over IPRs overrule the applicable law? If yes, why?

no

Please explain:

No. Typically, the choice of law provision will only be known to the contracting parties. The Danish Group finds that a standard where a choice of law provision in a security interest agreement over IPRs overrules the applicable law would not provide a third party with sufficient transparency as to how and where to check for the existence of security interest over particular IPR.

Additional considerations and proposals

32) To the extent not already stated above, please propose any other standards your Group considers would be appropriate to harmonize laws relating to security interests over IPRs.

The Danish Group finds that it would be appropriate to harmonize laws relating to security interests over IPRs so that the perfection of security interest over a particular IPR will always be accomplished by notification to the registration authority in the country/territory where the particular IPR is registered, for example the USPTO in relation to US IPRs or the Danish Patent and Trademark Office in relation to Danish IPRs. This would make it easier to check whether there is any security interest over a particular IPR.

Such harmonization would also remove some of the challenges resulting from the application of *lex situs* (see our comments to Question 30 above).

33) Please comment on any additional issues concerning any aspect of security interests over IPRs you consider relevant to this Study Question.

Not applicable.

Please indicate which industry sector views are included in part "**III. Proposals for harmonization**" of this form:

Summary

In Denmark, it is possible to create security interests over IPRs by way of fixed charges and floating charges. Neither a fixed charge or a floating charge are characterized by the full assignment of the underlying IPR, nor does it authorize the security taker to use the underlying IPR or realize the IPR before default. However, the parties generally enjoy freedom of contract when drawing up their security interest agreement. Thus, the parties can agree *inter alia* that the security taker can use the IPR etc. The Danish Group considers it to be an improvement of the current law, if, by law, the security taker was granted a right to be notified about any challenges of the encumbered IPR. The Danish Group further considers that harmonization of laws concerning security interests over IPR is desirable and finds that both fixed charges and floating charges should be available as minimum standard in all countries.