

Financing Innovation in the Global Arena : The Law Applicable to Security Interests in Intellectual Property Rights

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論 文 内 容 の 要 旨

Title: Financing Innovation in the Global Arena: the Law Applicable to Security Interests in Intellectual Property Rights

In today's information and technology driven economies, intellectual property rights (hereafter "IPRs" or "IP") have become a crucial asset component for many potential borrowers who have been engaging in innovative activities. Without a sound and feasible financial scheme, it would be difficult, if not impossible, to "promote the progress of science and useful arts" in any society. As a result, this research would like to study the possibility of utilizing IPRs as collaterals in crosser-border secured transactions, while focusing particularly on the issue of conflict-of-laws in the international context.

As of today, not only is it true that national laws rarely address security rights in IPRs, but also nearly no provisions are provided on the international level to determine the law applicable to such kind of security interests. On the other hand, the tension between the protecting state (*i.e.* the underpinning *lex loci protectionis* principal of traditional IPR jurisprudence) and the efficiency goal of secured transaction law has started to be recognized. Hence, initiatives of academic debates were stimulated in the past years, whilst the UN Commission for International Trade Law (UNCITRAL)'s legislative endeavor is finally ready in 2010.

This project would like to take a comparative approach to observe and analyze the theory and practice of how a security interest in IPR can be created in various jurisdictions in the world. The United States, Japan, Canada, UK (to some extent the European Union as well), Taiwan and China will be the main concentration in consideration of their impact on the global economy. The UNCITRAL Legislative Guide on Secured Transaction and its IP Supplement will also be examined and carefully revised, as a final recommendation and proposal from this thesis.