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An e-Alert from the Intellectual Property Group

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PPS and Intellectual Property

It is expected that the Personal Properties Securities (PPS) reform will commence in ***January 2012.***

The PPS reform introduces the *Personal Property Securities Act* 2009 (Cth) (**the Act**) and a single national online PPS Register for security interests. The Act provides the rules for:

- Taking property free of security interests;
- Priority between competing security interests; and
- Enforcement of security interests.

For the purposes of the Act the definition of Personal Property includes Intellectual Property (**IP**) and the rights granted under an IP licence. The definition of Intellectual Property under the Act includes:

- Designs
- Patents
- Trade marks
- Copyright
- Circuit Layouts
- Plant Breeder's rights

The introduction of the Act means that companies with any interests in existing or future IP rights will be affected by the changes.

Key changes to be aware of include the following:

- Secured parties such as financiers and other lenders will be able to register their IP security interests on the PPS Register.
- It will be possible to search the PPS Register for details of IP security interests.
- The IP registers maintained by IP Australia will continue to record security interests but only security interests that have been recorded on the PPS Register will be relevant. There will be no migration of the IP Australia registries to the PPS register. To maintain priority, all existing and new security interests in IP must be recorded on the PPS Register as well as through IP Australia.
- The registration details on the PPS Register will need to be renewed from time to time.
- The Act provides that the goods provided as a security interest can include the IP associated with it. Therefore, security agreements will need to be checked carefully to determine what IP rights form part of the goods.
- The inclusion of IP in the definition of "personal property" will make it easier for individuals and businesses to use IP as security when raising capital.
- All future due diligence searches should include both IP Australia and the PPS Register.

Preparing for the change

Companies must begin preparing for the reforms if they have not already done so to protect their interests and minimise risk. Preparation should include checking the effect of the Act on their IP and any IP related transactions.

Should you have any questions or would like further advice, please contact:

Rick Goldberg | Partner, T 61 3 9242 4734, E rick.goldberg@madgwicks.com.au

Linda Di Trocchio | Lawyer, T 61 3 9242 4765, E linda.ditrocchio@madgwicks.com.au

For information on Madgwicks' Intellectual Property Group, please click here