



DUALE, OVIA &
ALEX-ADEDIPE

Using Intellectual Property as Security



Introduction

Intellectual Property ("IP") is a term associated with intangible assets owned by individuals or companies. These assets are privately owned and legally protected from outside use or implementation without consent. The use of intellectual property as security can be a complex process requiring planning, documentation, registration, and perfection.

Commonly Used Intellectual Property

Common types of intellectual property used in business include copyrights, trademarks, patents, and goodwill.

1. Copyright refers to any work of art created by an individual. It seeks to protect works such as films, novels, poetry, website content, etc. Copyright protection gives the author/ creator the exclusive right to duplicate, distribute, adapt, and perform the work.



2. Trademarks are recognizable symbols, names, or phrases that identify and distinguish a company's products or services from those of others. They include brand names and logos.
3. A patent is an exclusive right granted for inventions. Patent protects inventions, industrial designs, computer code, etc.
4. Goodwill refers to the value a company gets from its brand, customer base, and reputation associated with its intellectual property.

Economic Rights

Intellectual property comes with economic rights. Economic rights in this context are described as rights that permit the owner of a work to derive financial reward from the use, reproduction, or exploitation of the work by others. These economic rights include rights of reproduction, rights of distribution, rights related to renting or lending, rights of adaptation and translation, etc.



Using Intellectual Property as Security

Using IP as collateral is an evolving business alternative that may offer a financing prospect for companies with valued IP assets looking for alternative sources of capital. IP can be used for financing a business enterprise over a secured transaction. In other words, IP can be used as collateral when applying for a loan.

To start with, a lender needs to conduct proper due diligence (DD) before accepting any IP(s) as security. The DD should address some key questions, including whether the debtor is the legal owner of the relevant IP rights (as opposed to using them under a license from the owner); the compliance status of the IP – whether all the fees have been paid in respect of the registered IP in order to maintain their registrations; whether the IP rights subject to any pre-existing mortgages or charges or any other claims of any kind; if the IP is subject to expiration (like patents and trademarks), whether the unexpired term (including renewals if applicable) is sufficient to secure the transaction, etc.



Valuation of Intellectual Property

The process of using IP as security is more complicated than using physical or tangible assets like equipment or machinery, buildings, and inventory. The value of IP can be hard to determine, and lenders may be hesitant to accept IP as security because it is not a tangible asset that can be easily sold if the borrower defaults on the loan. To use IP as security, the borrower must have a registered patent, trademark, or copyright, and must provide documentation of the intellectual property's value.

Perfection of Intellectual Property Security Interest in Nigeria

Perfection of a security interest in IP is important because it gives the secured party priority over the creditors in the event of default. It also helps to ensure that the secured party can enforce its rights in the collateral. The Secured Transaction in Movable Assets Act provides the procedure and requirement to be used to create and perfect a security interest in intellectual property. An application of the Act can be utilized for financing and protecting IP assets.



Conclusion

From the foregoing, using intellectual property as a security interest can be a valuable tool for financing and protecting your business or project in Nigeria. However, it is important to conduct due diligence with respect to the intellectual property and ensure that the security interest is properly created and perfected.

