

APPENDIX 13 - LOCATION RULES FOR GENERAL INTANGIBLES

When the debtor’s intellectual property collateral is defined as “general intangibles,” the proper place to file for perfection under current Article Nine is “the jurisdiction in which the debtor is located”¹ The current location rules require some analysis of the debtor’s operation and manner of doing business. Under section 9-103(3)(d), the debtor is “deemed located at his place of business if he has one, at his ‘chief executive office’ if he has more than one place of business, otherwise at his residence.”² If the debtor has only one location at which business with the public is conducted however, the debtor lives and conducts financial affairs of the business from a home office in a different state, it would be prudent to file the security interest in the general intangibles in both states. If the home office is not considered a “place of business,” and the debtor has only one “place of business” (the state in which the public operations take place) the location of that business is the proper place to file a security interest in general intangibles. If the home office is also considered a “place of business,” it will probably be considered the “chief executive office.” The “chief executive office” is the executive headquarters for the debtor's multi-state operation, not necessarily the location which generates the largest business volume.³ If the debtor clearly has more than one “place of business,” it would be prudent to file in all of those states which could be considered the “chief executive office.”⁴ If the debtor has ceased operations and has no place of business, the debtor's residence is the proper location.⁵

¹ U.C.C. § 9-103(3)(b).

² U.C.C. § 9-103(3)(d). *But see* U.C.C. [Revised] § 9-307. Under the “location” rules in Revised Article Nine, a “registered organization,” such as a corporation, is located in the state under whose laws it is organized. In the case of a corporation this is the state of incorporation. U.C.C. [Revised] § 9-307(e). An “individual debtor” is located at his or her principal residence. U.C.C. [Revised] § 9-307(b)(1). A business debtor that is not an individual or a registered organization is located at its “place of business” if it has only one such place, and at its “chief executive office” if it has more than one such place. U.C.C. [Revised] § 9-307(b)(2)&(3).

³ U.C.C. § 9-103, Official Comment 5(c). *See* J.A. Thompson & Sons, Inc. v. Sheperd Machinery Co., 665 F.2d 941, 949-50 (9th Cir. 1982); *In re* Golf Course Builders Leasing, Inc., 768 F.2d 1167, 1169-70 (10th Cir. 1985).

⁴ U.C.C. § 9-103, Official Comment 5(c). *See* National Peregrine, Inc. v. Capital Federal Savings & Loan Ass'n., 116 B.R. 194, 198 (C.D. Cal. 1990)(The collateral consisted of the debtor’s library of copyright protected films. The secured party filed in Colorado, California and Utah in an effort to make sure that it hit the debtor’s *location*. Unfortunately, the secured party did not record in the Copyright Office).

⁵ U.C.C. § 9-103. *Cf. In re* C Tek Software, Inc., 117 B.R. 763, 770-71 (Bankr. D.N.H.

Under the “location” rules of Revised Article Nine, a “registered organization,” such as a corporation, is located in the state under whose laws it is organized. In the case of a corporation this is the state of incorporation.⁶ An “individual debtor” is located at his or her principal residence.⁷ A business debtor that is not an individual or a registered organization is located at its “place of business” if it has only one such place, and at its “chief executive office” if it has more than one such place.⁸ Location issues are still of concern to secured parties, however, because those who own rights in collateral often change their location. This change can occur when the debtor’s corporate structure changes (e.g., by merger) even if nothing tangible moves. When the debtor who holds intellectual property collateral changes location, perfection continues for either four months or one year, depending on the nature and circumstances of the change.⁹ However, the secured party must file in the new location must occur before the old perfection expires under the law of the old location or before the grace period expires, whichever is earlier.¹⁰ If a new timely filing is not made in the new location, perfection in the intellectual property is lost.¹¹

1990). *But see* U.C.C. [Revised] § 9-307(g)(location of registered organization in state of organization continues after dissolution).

⁶ U.C.C. [Revised] § 9-307(e).

⁷ U.C.C. [Revised] § 9-307(b)(1).

⁸ U.C.C. [Revised] § 9-307(b)(2)&(3).

⁹ U.C.C. [Revised] § 9-316(a)(2)&(3)& cmt. 2, Examples 1 and Example 4. *See also* U.C.C. [Revised] § 9-508(b).

¹⁰ U.C.C. [Revised] § 9-316(g).

¹¹ *Id.*