

Creditors and Intellectual Property

by Windtberg & Zdancewicz, PLC on October 17, 2013

Intellectual property (IP) can be defined as the product that results from the use of intellectual capacity. Some recognizable examples of IP include:

- A specific recipe, pattern, device or formula, including copyrights, patents, trademarks
- Other proprietary information (“trade secrets”) vital to the success of the company that possesses it

Within bankruptcy proceedings, the role and assignment of intellectual property can prove quite complex. The proliferation of IP, IP license agreements and the increase in business bankruptcies have presented more frequent conflicts between what bankruptcy law directs and how non-bankruptcy law affects both debtors and creditors.

Under Federal Bankruptcy Code Section 365, intellectual property falls under the penumbra of executory contracts, which as part of the bankruptcy estate are assumed, terminated, or assigned at the discretion of the bankruptcy trustee. However, the specifics of the IP covenants themselves may determine what legal directives affect their disposition: bankruptcy law, state property law, or other law. Intellectual property generally found to be assignable within a bankruptcy includes:

- Non-exclusive patents
- Non-exclusive patent applications
- Non-exclusive IP licenses
- Intellectual property generally considered non-assignable:
 - Trademarks
 - Trademark applications
 - Trade names
- Exclusive IP licenses

It is important to note that if a debtor holds an exclusive IP license to a certain property, that debtor may opt to sell that particular property to someone other than the creditor or the bankruptcy estate.

Creditors involved in disposition of intellectual property within a bankruptcy should obtain as much as information as possible about the types of IP and licenses that relate to their claims.

The assistance of an experienced, knowledgeable Arizona creditor’s rights attorney can be essential towards pursuing claims on intellectual property. If you would like more information about IP in bankruptcy, creditors’ rights, or if you need assistance from an attorney, **contact [Windtberg & Zdancewicz](#) to schedule an initial consultation.**

The attorneys at [Windtberg & Zdancewicz, PLC](#), provide clients with experienced legal representation in all collection matters. We are experienced in creditor's rights including garnishments, charging orders, attachment, property execution, trustee's sales, foreclosures, judgments, judgment collection, domestication of foreign judgments, and creditor's issues in bankruptcy cases. If you need assistance with your collection matters, please contact us at [\(480\) 584-5660](#).

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