MESSAGE FROM THE (outgoing) CHAIR: COMMERCIAL FINANCIAL SERVICES COMMITTEE

By Robert A. Zadek
Buchalter Nemer Fields & Younger
San Francisco, CA
rzadek@buchalter.com

OK. This is it. My last letter as Chair of the Commercial Financial Services Committee, since my term ends in August. Since I have so much enjoyed serving you, my friends and colleagues, for the past four years, it is not easy to step down. I actually considered refusing to do, banking on the likelihood that the ABA would not commence legal proceedings to compel me to surrender the scepter, but I thought better of it. I also considered simply taking all of you with me to form a rump Committee outside the ABA, but dismissed that as well. So here I am, packing it in.

I would like to express my deepest gratitude to the staff of the ABA, who provided selfless support for the work of the Committee, and to the Leadership who were always generous with their time. It

MESSAGE FROM THE CHAIR: UNIFORM COMMERCIAL CODE COMMITTEE

By Linda J. Rusch
Hamline University School of Law
St. Paul, MN
lrusch@gw.hamline.edu

This is my first message to all of you since the Spring meeting in Philadelphia in March 2001. That was a great meeting!!! The programs and the meetings were well attended and interesting. A special thank you to all of you who worked so hard to make it happen. The subcommittees and task forces are moving ahead on a number of interesting topics that you can read about in this newsletter or on the UCC Committee website at http://www.abanet.org/buslaw/cfs-ucc/home.html

I also encourage each of you to get in touch with the leadership of the subcommittee or task force in the area in which you are interested if you want more information or want to get involved in the ongoing projects. The leadership list for the UCC Committee is located at http://www.abanet.org/buslaw/cfs-ucc/ucc/leadersh.html
made the Chair’s job pretty easy.

**Message from CFS Chair, Con’t.**

Mostly, however, I want to thank all of you, our members, for the friendship and scholarship which you offered to me and to the other members. In my view, without this Committee or other organizations like it, law is just a job. With the Committee, it is a life.

I leave you in the incredibly capable hands of Jeff Turner as incoming Chair, and Chris Rockers as incoming Vice Chair. Leaving the Chairmanship is much easier with these guys at the helm. The Committee will continue to grow and provide fun and knowledge to all of you with the new leadership. Jeff and Chris will continue the tradition of encouraging newer members (we do not have a Generation X problem) to become active as Subcommittee Chairs, as program panelists or as speakers.

I consider myself most fortunate in having the opportunity to serve you. Thank you all for being members and giving me that chance. I feel that I have gotten so very much more from the Committee that I have given.

I shall of course maintain my involvement in Committee affairs, and to nurture the friendships I have developed through it.

It was quite a run.

**Message from UCC Chair, Con’t.**

We have another interesting meeting planned for the ABA Annual Meeting in August 2001. The subcommittees and task forces will be meeting to continue their work. At the UCC Committee meeting on Saturday, August 4 from 2-4 p.m. we will have an presentation of the highlights of the proposed amendments to UCC Article 2-Sales of Goods and UCC Article 2A-Leases of Goods. The amendments have been approved by the American Law Institute and are up for final approval by the National Conference of Commissioners on Uniform State Laws in August. In addition we will be sponsoring the following programs on Sunday August 4:

10:30 a.m.  Under the Surface of Revised Article 9: Non-Uniformity and Filing Office Procedures  
Program Chair: Lynn Soukup

2:30 p.m.  Why Didn’t the Court Enforce Your Agreement? A Litigator’s Advice to Attorneys Drafting Transactional Documents  
Program Chair: Jeffrey Wong

Another reason to attend, other than attendance at the meetings and obtaining CLE at the programs, is the great opportunity to meet other attorneys in your area of practice. We all know that opportunities to network are very valuable for professional development. The Business Law Section meetings at the Spring and Annual ABA Meetings are wonderful opportunities to make contact with people who are experienced in a wide variety of practice areas. I hope to see you in Chicago in August!
MESSAGE FROM THE (incoming) CHAIR: COMMERCIAL FINANCIAL SERVICES COMMITTEE

By Jeffrey S. Turner
Kaye Scholer LLP
Los Angeles, CA
jturner@kayescholer.com

We are all sad to see Bob Zadek’s term as Chair draw to a close. Bob has brought tremendous energy, enthusiasm and capability to the Committee’s leadership for the past several years, during which it has grown into one of the preeminent committees of the Business Law Section, with over 1,300 mostly active members and about 15 subcommittees and task forces. Not only did Bob manage the committee well, but he did so with his typical good humor and inclusiveness. On behalf of all the Committee members, I would like to thank and commend Bob for his many contributions, and accept his offer of continuing involvement.

I was honored to be asked by Bob and others, including incoming Section Chair Tom Ambro, to take over leadership of the Committee. My only stipulation was to have an equally energetic, enthusiastic and capable Vice Chair to help ensure that the Committee continues to grow and build upon its accomplishments. I am delighted that Chris Rockers is stepping into that role, having done a tremendous job as the Program Subcommittee Chair.

The August meeting schedule already is planned, as you can see from the Annual Meeting materials you will receive from the ABA, but Chris and I are in the midst of planning the Committee’s October 24 meeting in San Francisco (in conjunction with the CFA Convention), and next year’s Spring Meeting in Boston. At this point, the tentative plans for the October meeting include presentations on lending to trusts under Revised Article 9, developments in personal property leasing, and choice of law issues relating to the adoption of Revised Article 9. As always, other ideas are most welcome. Volunteers and speakers are also sought and welcome.

Our Committee will be having a joint dinner with the UCC Committee at 8 pm on Sunday, August 5, 2001 (following the Section Reception) in Chicago. Details and an invitation will be included in a forthcoming mailing. While we recognize that attendance at the Annual Meetings typically is less than at the Spring Meetings, we hope that many of you will choose to come to Chicago, and we hope you will join us for dinner on Sunday night. We have done our best to make the dinner affordable and convenient, and hope to see as many of you there as possible. We have some good meetings and programs on the schedule for August.

The adoption and impending effectiveness of Revised Article 9 will have a major effect on the commercial financial services community, and I am excited to be at the helm of the Committee during this time of change and opportunity. Our Committee is reassessing its mission and priorities. Our Subcommittees are reevaluating their leadership and agendas. It is a good time to become active in the Committee and its Subcommittees. There will be lots of interesting challenges and opportunities for commercial finance lawyers in the next few years. I look forward to working with all of you.
Security Interests in Patents after Cybernetic Services

Jeffrey S. Turner

Important New Ninth Circuit Case on Security Interests in Patents

On June 6, 2001, the United States Court of Appeals for the Ninth Circuit decided Moldo v. Matsco (In re Cybernetic Services, Inc.), ___ F.3d ___, No. 99-56856 (9th Cir., June 6, 2001) (“Cybernetic Services”), holding for the first time at the circuit court level that a security interest in patents may be perfected by filing a financing statement under the Uniform Commercial Code (“UCC”), and that recordation of the security interest in the United States Patent and Trademark Office (“PTO”) is neither necessary nor sufficient to perfect the security interest. To reach this conclusion, the Ninth Circuit held that the recording provisions of the United States Patent Act of 1952, as amended (the “Patent Act”) do not preempt the UCC with respect to perfection of security interests. This article discusses the state of

1 Jeffrey S. Turner is Counsel to Kaye Scholer LLP, resident in its Los Angeles, California office. Mr. Turner is incoming Chair of the Commercial Financial Services Committee of the American Bar Association Section of Business Law, and a Fellow of the American College of Commercial Finance Lawyers. He was the Official Observer of the California State Bar Business Law Section to the Drafting Committee to Revise Article 9 of the Uniform Commercial Code. He has written and lectured extensively on the subjects of secured transactions and intellectual property financing, participated in the activities of the ABA Joint Task Force on Intellectual Property Financing, and assisted in drafting proposed Congressional legislation to amend federal intellectual property laws. His practice emphasizes commercial financial transactions, secured lending, and intellectual property secured transactions.

2 Article 9 of the UCC, which governs secured transactions, was extensively revised in recent years. Revised Article 9 went into effect in almost every state on July 1, 2001. References herein to the UCC include Revised Article 9 unless otherwise indicated. Although Revised Article 9 made many changes to Former Article 9, most are not directly relevant to the subject matter of this article.

the law governing security interests in patents in the wake of this important new decision.

Background

Traditionally, personal property-secured asset-based loans were secured primarily by conventional collateral like equipment, inventory, accounts and chattel paper. In recent years, however, particularly with the explosive growth of technology-based industries in the United States, a significant and ever-growing part of the value of many businesses now consists of intellectual property rights. In addition to ownership of intellectual property, significant value also may be attributable to a borrower’s rights as a licensor or licensee of intellectual property under exclusive or nonexclusive licenses. In addition, intellectual property rights may be essential to realize the full value of other collateral (for example, patents or patent licenses may be essential to manufacture or distribute many goods). At present, asset-based financing based on intellectual property or derivative intellectual property rights such as royalties resulting from licensing is fraught with legal uncertainty, much of which is the product of various conflicts and inconsistencies in the federal and state laws governing intellectual property secured transactions. This article focuses on issues relating to security interests in patents.

The evolution of property rights over time has been characterized by a gradual but
inexorable shift in value from tangible to intangible property rights. Prior to the industrial revolution, most property value and wealth adhered in real property. With the advent of the industrial revolution, the value of equipment and inventory assumed increasing importance. In the 20th Century, as credit for businesses became more readily available, intangible rights to payment, such as accounts and chattel paper, assumed increasing importance. With the adoption of the UCC nearly 50 years ago, which greatly facilitated the ability to take and perfect floating liens on intangible rights to payment, such financing became an increasing component of asset-based lending.

While patents have long been recognized by the law, in recent years they have become increasingly important and increasingly valuable as collateral for secured financings. With the expansion of technology-based industries, and with the increasing recognition of new types of patentable inventions and processes, the “universe” of patents has grown at a dizzying pace. Unfortunately, the state of the law relating to the ability to provide financing secured by patents has not kept pace, due in large part to the fact that patent law did not originally contemplate the practical requirements of financing transactions, and has not been amended to facilitate financing transactions.

Security Interest Perfection Generally

In general, security interests in most types of personal property are governed by Article 9 of the UCC as separately enacted in each state. However, some types of intellectual property, such as patents, also are subject to federal laws (the Patent Act in the case of patents). To the extent that federal law “preempts” the UCC, the UCC is not applicable.

Under Article 9, patents will generally be classified as general intangibles, although certain derivative rights to payment (such as, under Revised Article 9, the right of a licensor to receive royalties payable under a license of a patent) may be classified as accounts (or, in appropriate cases, as an instrument if evidenced by a writing falling within that category of collateral, or even as chattel paper if coupled with a security interest in or a lease of goods). If Article 9 alone is applicable, the lender may perfect its security interest by filing a financing statement in the jurisdiction where the borrower is located. A single financing statement will suffice to perfect a blanket security interest in all the borrower’s patents and related rights. The filing fee is nominal. In most jurisdictions, financing statements are indexed promptly, official searches are easily obtainable, and summaries of financing statement filings are readily available online from independent search companies. The threat of federal preemption, and the possibility of required federal recordation, has made the job of secured lenders considerably more complicated.

The Importance of Perfection in Bankruptcy

“Perfection” of the lender’s security interest in patents is critical to preservation of the lender’s interest in those patents in the event of the borrower’s bankruptcy. When a borrower files a bankruptcy petition, an estate is created which includes substantially all of the borrower’s property interests, including its patent rights. Property of the bankruptcy estate includes property subject to liens and security interests, although a creditor holding a valid prepetition lien or security interest is entitled to receive the value of its security upon distribution of the estate assets. While in general the determination of property rights and the status of liens and security interests in the borrower’s property are left to applicable

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non-bankruptcy law,\(^6\) the Bankruptcy Code does invest the bankruptcy trustee or debtor-in-possession with a series of extraordinary powers including the so-called “strong-arm” power of Bankruptcy Code §§ 544(a)(1) & (2) to avoid unperfected security interests in personal property.\(^7\) As a result of the trustee’s strong-arm power, an unperfected security interest is generally avoidable in a borrower’s bankruptcy case. A creditor with a security interest that has been avoided by the bankruptcy trustee or debtor-in-possession is on a par with unsecured creditors and may, as a practical matter, recover little or nothing on its claim.

With respect to the rights of licensees of patents, the interplay of the Bankruptcy Code and the Patent Act creates additional issues relating to the rejection of executory licenses, and the ability of a debtor to assume, or assume and assign, executory licenses.\(^8\)

**Federal Preemption of Article 9**

Article VI, Clause 2 of the United States Constitution provides that “[t]his Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” State law on any subject may be preempted (a) by the express language of a federal statute, (b) by implication, depending on the scope of federal regulation of the subject matter and the nature of the federal interest involved, or (c) to the extent that an actual conflict between federal law and state law exists.\(^9\)

**Article 9 Provisions Addressing Preemption**

Article 9 of the UCC is subject to federal preemption in the same manner as any other state law. The original drafters of Former Article 9 addressed the possibility of federal preemption in two so-called “step-back” provisions. The first, and the broader of the two, is F.U.C.C. § 9-104(a), which addressed the general applicability of Former Article 9. Section 9-104(a) provided that Former Article 9 did *not* apply to security interests subject to any federal statute *to the extent that* such statute governed the rights of parties to, and third parties affected by, transactions in the type of property subject to the statute.

The corresponding provision of Revised Article 9, Section 9-109(c)(1), is drafted in a less elliptical fashion as follows: “This Article does not apply to the extent that . . . a statute, regulation, or treaty of the United States preempts this Article . . . .” The drafters of Revised Article 9 clearly stated in the Official Comments their intent that Revised Article 9 will defer to federal law “only when and to the extent that it must - i.e., when federal law preempts it.”\(^10\)

The secondFormer Article 9 “step-back” provision, Section 9-302(a), was more narrowly focused on the requirements for perfection of security interests in certain specific types of

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\(^7\) With respect to personal property, the bankruptcy trustee has the legal status of a hypothetical creditor with a judicial lien on or unsatisfied execution against property of the debtor.

\(^8\) While beyond the scope of this article, an excellent discussion of these issues may be found in “Transfer of Intellectual Property Rights in Bankruptcy,” *Ronald Leibow, Ashleigh Danker, and Keith Murphy, 820 PLI/Comm 1141* (April 2001).


\(^10\) Official Comment 8 to U.C.C. § 9-109. Official Comment 8 suggests that the text of Former Article 9 § 9-104(a) had been interpreted in a manner that was unduly deferential to federal law.
property regulated by federal law. F.U.C.C. § 9-302(a) provided that the filing of a financing statement was “not necessary or effective” where perfection of a security interest in property was subject to a statute or treaty of the United States which provided for national or international registration or a national or international certificate of title or which specified a place of filing different from that specified in Article 9 for the filing of the security interest. Section 9-302(a) addressed perfection only, and rendered state-level UCC financing statements ineffective to the extent they covered property subject to the type of federal laws or treaties described.

The corresponding provision of Revised Article 9 is Section 9-311(a)(1), which provides that the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to a statute, regulation or treaty of the United States whose requirements for a security interest’s obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9-310(a).

The new language of Revised Article 9 represents an attempt on the part of the drafters to limit the instances of federal preemption to federal statutes that specifically address the rights of “lien creditors.” This term of art includes attaching creditors, judgment lienholders, bankruptcy trustees and debtors-in-possession, but does include buyers of ownership rights in the property in question or Article 9 secured creditors. Notwithstanding this effort by the drafters of Revised Article 9, the ultimate scope of federal preemption is a matter of federal law determined by the language of the federal statutes in federal court decisions interpreting those statutes.

**Federal Patent Law Issues Generally**

Patent rights are created by, and subsist under, federal law exclusively. A patent is a federal grant under the Patent Act of 1952, as amended, of a monopoly to an inventor for a limited period of time covering the right to use, manufacture, license or sell an invention. As the holder of a federally authorized monopoly, the owner of a patent has the right to prevent any other person from manufacturing, using, licensing or selling the invention for the duration of the patent. A utility patent may cover any new and useful process, machine, manufacture or composition of matter, or any new or useful improvement to any of these categories. A design patent may cover a design if it is innovative, nonfunctional and part of a functional manufactured product.

The Patent Act does not specifically address security interests in patents, but Section 261 of the Patent Act generally governs patent title transfers, and separately addresses priorities between specified competing claimants. Regulations issued under Section 261 state that assignments will be recorded and “[o]ther documents, accompanied by completed cover sheets . . . will be recorded as provided in this Part or at

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11 This distinction is relevant because, as noted below, the Patent Act protects “purchasers” and “mortgagees” of patents and trademarks, but not “lien creditors.” By contrast, the Copyright Act, which uses different terminology and definitions than the Patent Act, has been construed broadly to permit involuntary liens to be recorded in the Copyright Office, and therefore to protect lien creditors. See National Peregrine Inc. v. Capitol Fed. Savings and Loan Assn. of Denver (In re Peregrine Entertainment Ltd.), 116 B.R. 194 (C.D. Cal. 1990) (“Peregrine”).

12 It is of critical importance that Section 261 was first enacted in 1870, long before the enactment of Article 9, and has never been amended (despite numerous amendments of other provisions of the Patent Act), prompting the Cybernetic Services court to preface its decision with the statement "[a]s is often true in the field of intellectual property, we must apply an antiquated statute [the Patent Act] in a modern context."

13 Section 261 of the Patent Act provides in part that "[a]n assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the [PTO] within three months from its date or prior to the date of such subsequent purchase or mortgage."
the discretion of the Commissioner."\textsuperscript{14} The form of cover sheet utilized by the U.S. Patent and Trademark Office ("PTO") for documents to be recorded therein (Form PTO-1619A) requests a description of the "Conveyance Type" being recorded, and lists "Security Agreement" as an option. Therefore, as a practical matter, a security agreement with respect to a patent may be recorded in the PTO. The unclear effect of such recordation will be discussed below.

The legislative history of the Patent Act (enacted prior to the UCC at a time when patents were not a prevalent form of collateral for ordinary-course financing transactions) does not indicate whether Congress intended to include the equivalent of "security interests" within the meaning of the term "assignment."\textsuperscript{15} Under a earlier version of the Patent Act, the U.S. Supreme Court held that the grant of a patent "mortgage," involving transfer of title to a patent from the mortgagor to the mortgagee, was subject to Section 261.\textsuperscript{16} As discussed in Cybernetic Services, however, a mortgage differs from an Article 9 security agreement, because an Article 9 security agreement ordinarily does not transfer title to the collateral to the secured party. Modern security interests are enforceable even if the secured party does not obtain title, and need not be structured as absolute assignments.\textsuperscript{17} At least until the very recent decision in Cybernetic Services, there was a great deal of confusion concerning the reference in Section 261 to a "mortgagee." Given the uncertainties discussed below, the Patent Act would benefit from updating to reflect current practice regarding security interests in patents and to incorporate modern terminology from Article 9 of the UCC.

**Case Law on Perfection of Security Interests in Patents**

Cybernetic Services is the most recent in a relatively sparse, but nevertheless consistent, line of cases holding that a creditor may perfect a security interest in a patent by filing a financing statement under applicable state law and is not required to record its security interest in the PTO.\textsuperscript{18} In Cybernetic Services, the court construed Section 261 of the Patent Act as applicable to outright transfers of title to patents, and as not intended to include Article 9 security interests. The court held that the Patent Act does not preempt Article 9 with respect to perfection of security interests in patents, nor was the Patent Act intended to provide a federal filing system for perfection of security interests in patents that would supplant Article 9's provision for the filing of financing statements. Cybernetic Services, while very good for secured parties because it is the first circuit-level case to address the preemption issue and squarely hold that Article 9 governs the perfection of security interests in patents, nevertheless perhaps indirectly raises more questions than it answers, leaving many questions relating to security interests in patents unanswered. Some of the unresolved questions raised by Cybernetic Services are discussed below.

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\textsuperscript{14} 37 C.F.R. § 3.11(a). Consistently, Section 313 of the Manual of Patent Examining Procedure (7th Ed., July 1998) states that "some documents which relate to patents or applications will be recorded, although they do not constitute a transfer or change of title. Typical of these documents which are accepted for recording are license agreements and agreements which convey a security interest. Such documents are recorded in the public interest in order to give third parties notification of equitable interests or other matters relevant to the ownership of a patent or application."

\textsuperscript{15} Note that Cybernetic Services specifically holds that Congress intended for Section 261 to apply only to transfers of title and not to Article 9 security interests.


\textsuperscript{17} As noted below, secured parties may have good reasons to avoid becoming "absolute" assignees, including the desire to avoid liability for patent infringement.

Similar results were reached in the Otto Fabric and Transportation Design and Technology cases cited above. The current state of the somewhat sparse case law would seem to be that perfection is accomplished by filing a financing statement under Article 9 of the UCC, sufficient to defeat the strong-arm powers of a bankruptcy trustee or debtor-in-possession, but recordation in the PTO may be advisable to attempt to preserve rights against subsequent purchasers for value of the patent who might otherwise not know of the lender’s security interest.

Current Uncertainties and Practice in the Wake of Cybernetic Services

Recording patent security agreements in the PTO constitutes a significant extra step that can result in additional cost and delay in lending transactions. Recordation of documents in the PTO requires a specific description of the affected patents, preparation of detailed cover sheets, and payment of fees for each patent involved, and therefore is more cumbersome and more expensive than blanket state level UCC filings. PTO recordings will not cover patents acquired by the borrower after the loan closing, necessitating periodic updates.

Because Section 261 of the Patent Act provides for a three-month “grace period” after execution of a patent assignment before it must be recorded in the PTO to impart constructive notice to subsequent purchasers, a search of the records of the PTO will not necessarily disclose all potentially effective assignments of a patent. Any patent assignment that is signed within the three-month period before a security agreement is recorded in the PTO could take priority over the security interest if the assignment is recorded within three months after it is signed.

Historically, many lenders required borrowers to execute separate mortgages or collateral assignments of patents for recordation in the PTO that were “absolute” in form with a license back to the borrower. This practice represented an attempt to fit the transaction within the literal language of Section 261 of the Patent Act but, in recent years, has come into disfavor. An absolute assignment transfers record title to the patent and could subject the lender to liability for patent infringement. A lender that is a patent assignee may be an indispensable party in any patent infringement action. A lender/assignee could become liable for maintenance expenses relating to the patent. Therefore, the current prevalent practice is not to record an absolute assignment of the patent to the secured party, but rather merely to record a counterpart of the security agreement itself in the PTO or, alternatively, a short form document that restates the grant of the security interests, identifies the patent in compliance with PTO recording requirements, and cross-references the security agreement; however, the implications of Cybernetic Services, discussed below, may cause lenders to re-think their options and practices.

As noted above, Cybernetic Services may raise more new questions than it answers. The first such question is whether recordation of a patent security agreement (that is not an

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19 See n. 18, supra. Note that Peregrine not only reached a different result in the context of copyrights, but also, in a footnote, criticized the reasoning of Otto Fabric with respect to patents.

20 Note that “purchaser” has a more narrow meaning when used in the Patent Act (where it refers to an assignee of an ownership interest in or title to a patent) than when used in the UCC (where it also includes a secured party that does not acquire an ownership interest or title). Unless otherwise noted, references in this article to “purchasers” of patents contemplate the narrower Patent Act meaning (and, in some cases, the term “buyer” is used to minimize confusion).

21 A person with “constructive notice” of an interest is deemed to know of the interest by virtue of its recordation in the public record without regard to the person’s actual knowledge (or lack thereof).
absolute “mortgage”) is effective to give constructive notice of the lender’s security interest. Although under current practice the PTO will permit secured parties to record patent security agreements when accompanied by a properly completed cover sheet, a careful reading of Cybernetic Services suggests that such recordation may be ineffective to give constructive notice of the lender’s security interest. The court in Cybernetic Services repeatedly cited and relied on cases involving nonexclusive patent licenses (which do not involve transfers of title), and came to the conclusion that “a security interest in a patent that does not involve a transfer of the rights of ownership is a ‘mere license’ and is not an ‘assignment, grant or conveyance’ within the meaning of 35 U.S.C. § 261.” The court later noted that the recordation of a license, not being legally required, is not constructive notice “to any person for any purpose.” Presumably, therefore, that court believes that recordation of a security agreement likewise would not give constructive notice of a secured party’s security interest in a patent.

If recordation of a patent security agreement does not give constructive notice, a logical second question is, what purpose, if any, may be accomplished by recording patent security agreements with the PTO? Aside from the fact that Cybernetic Services is only one case, and other courts could reach a different result, a lender still might wish to record a patent security agreement to give actual notice to any person that actually searches in the PTO and discovers the security agreement. Most bona fide purchasers of patents do in fact conduct PTO searches as part of their due diligence (indeed, they would be foolish not to), and therefore are likely to acquire actual notice of a recorded patent security agreement even if its recordation does not constitute constructive notice.

A third logical question stemming from Cybernetic Services is whether a subsequent purchaser or mortgagee of title to a patent will take subject to a security interest in the patent that was not recorded in the PTO. Conventional wisdom, and the belief of most lenders, has been that bona fide purchasers for value of patents without notice of security interests in the patents take free of those security interests. Cybernetic Services, however, strongly implies a contrary result. As noted above, the court’s holding relies heavily on an analogy to patent licenses. The court emphasizes repeatedly in its opinion that purchasers and mortgagees of patents take their title “subject to prior licenses of which the assignee must inform himself as best he can, and at his own risk.” By extension, the court’s logic seems to imply that purchasers and mortgagees of patents will take subject to prior security interests of which they “must inform themselves as best they can, and at their own risk.” This probably will come as quite a shock to the patent bar, many of whom do not wish to be burdened with searching for and obtaining releases of security interests perfected solely under the state law filing provisions of the UCC.

Of course, the court did not have to address that question directly, nor did it have occasion to consider the applicable UCC rules (or whether they are preempted by Section 261 of the Patent Act in the context of determining the rights of a subsequent purchaser or mortgagee of title to a patent). For example, U.C.C. § 9-317(d) (and its former counterpart, F.U.C.C. § 9-301(1)(d)) provides that a buyer for value of a general intangible (including a patent) will take free of an unperfected security interest of which the buyer does not have actual knowledge. If the UCC is applicable, a logical extension of Cybernetic Services would suggest that a subsequent purchaser or mortgagee of a patent is subject to any security interest in a patent perfected by the filing of a financing statement under the UCC (even if not recorded in the PTO), and, in addition, even to unperfected security interests of which it has actual knowledge (which emphasizes why secured parties may wish to continue to record
their patent security agreements with the PTO even if recordation does not impart constructive notice). The foregoing assumes that the UCC is applicable. It is conceivable, notwithstanding Cybernetic Services, that a court could hold that Section 261 of the Patent Act preempts the UCC on this issue, since the issue relates to the effect of a transfer of title to a patent (although, in the author’s view, the better result would be to apply the UCC because application of the UCC would provide additional protection to purchasers and mortgagees of patents in this context and would not conflict with the purposes of the Patent Act).

The foregoing analysis produces a result that might surprise many patent attorneys, but the UCC cannot be blamed for the result; rather, the result is a consequence of Congress’ failure to amend the Patent Act to keep pace with current financing practices. As the Cybernetic Services court observed, “we must interpret 35 U.S.C. § 261 as Congress wrote it. The Constitution entrusts to Congress, not to the courts, the role of ensuring that statues keep up with changes in financing practices. It is notable that Congress has revised the Patent Act numerous times since its enactment, most recently in 1999, . . . but it has not updated the Act’s recording provision. We decline the Trustee’s invitation to do so in Congress’ place.” Perhaps Cybernetic Services will motivate the patent bar to push for needed legislative updates that thus far have met with political opposition.22

Yet another issue that is left uncertain in the wake of Cybernetic Services is that of the rights among competing secured parties, where the first secured party perfected by filing a financing statement but did not record in the PTO, but the second secured party took both steps. Some would argue that the second secured party, by taking the extra step, should beat the secured party who would otherwise have priority under the UCC. Cybernetic Services suggests otherwise. A literal reading of the case suggests that only UCC priorities are relevant between secured parties, and that the PTO recordation by the second secured party would not give it superior rights over the first secured party.23

There is yet a further area of uncertainty engendered by Cybernetic Services. What happens in the following scenario: Borrower grants a security interest to lender in a patent. Lender perfects by filing a financing statement. Lender does not record in the PTO, because Cybernetic Services says it is not required to do so, and that doing so would not give constructive notice in any event. Subsequently, borrower transfers title to the patent to a buyer, who records in the PTO. According to the logic of Cybernetic Services, the buyer takes subject to the perfected security interest even if it did not know about it. Then, at a later date, borrower defaults on its obligations to lender, and lender forecloses its security interest in the patent and sells the patent for value to a bona fide buyer at a foreclosure sale. Let’s say that the foreclosure sale buyer didn’t have actual knowledge of the first buyer, but did have constructive notice because the first buyer recorded in the PTO. After the foreclosure sale, lender records an assignment of the patent to the foreclosure buyer in the PTO. Who wins? Does the foreclosure buyer beat the first buyer because the first buyer was subject to the perfected

22 Prior efforts by such groups as a Joint Task Force of the American Bar Association Sections of Business Law and Intellectual Property Law to amend the federal intellectual property laws to facilitate secured financing of intellectual property, including patents, have not met with success in Congress, due to differing perceptions of the proper resolution and opposition by various industry groups.

23 Of course, a subsequent “mortgagee” of the patent who recorded an assignment of title to the patent as security could argue that it should prevail over the first secured party by virtue of Section 261 (as noted above, however, Cybernetic Services casts doubt upon this argument). Perhaps, despite the drawbacks of patent mortgages discussed above that have caused them to fall into disfavor, Cybernetic Services may cause some secured lenders to reevaluate their usefulness.
security interest? Or, does the first buyer beat the foreclosure buyer because the first buyer's assignment was recorded first and the foreclosure buyer had constructive notice of it? Neither result is entirely satisfactory. If the foreclosure buyer wins (even though the security interest was not recorded in the PTO), then buyers of patents aren’t well protected by PTO searches alone and must also do UCC searches against everyone in the chain of title. On the other hand, if the first buyer wins, then the secured party’s “perfected” security interest nevertheless is subject to being defeated by a subsequent pre-foreclosure buyer from borrower. And, to add to the “Catch-22” nature of the situation, arguably it wouldn’t have helped the secured party to record its security interest in the PTO because that wouldn’t have given constructive notice anyway, based on Cybernetic Services. The secured party would have to try to show that the first buyer had actual notice of the security interest.

Conclusions

Most of the “blame” for these uncertainties and arguably “bad” potential results is attributable to the inadequacy of the provisions of the Patent Act to deal with these issues. It can be argued, however, that Cybernetic Services is partly to blame by failing fully to appreciate the distinction between a security interest and a “mere license.” While a security interest is not a transfer of title, and while the court was almost certainly correct that Congress, in 1870, did not anticipate the UCC, which wasn’t enacted until nearly a century later, nevertheless a security interest differs in important respects from a nonexclusive license and arguably “affects title” to the patent to a much greater extent. A licensee typically only gets limited use rights granted in the license, and has no ability to affect title to the patent. A secured party, by contrast, gets a property interest under state law (to the extent that the debtor had the right to grant a property interest). Even though that property interest at its inception is less than title or full ownership, it has the potential to become title or full ownership, such as, in the above example, following a foreclosure sale after a default. This possibility that a security interest may blossom into full ownership, and its implications, was not adequately considered by the court in Cybernetic Systems.

This author has asserted for many years that an “ideal” system would involve federal and state law working in tandem. Security interests in patents would be perfected under state law, but secured parties who took the extra step of recording with the PTO as to specific patents would trump those who did not, and recodarion with the PTO would be required to preserve rights against subsequent bona fide purchasers and mortgagees. Cybernetic Systems stands as an object lesson that such an “ideal” system is not likely to be forthcoming without federal legislation to update the “antiquated” provisions of the Patent Act as they relate to secured financing.

INTERNET SITES OF INTEREST

- ABA Business Law Section: www.abanet.org/buslaw
- CFS Master Calendar: https://extranet.rc.com/aba/pubCalendar.asp
- ABA Joint Committee on Electronic Financial Services: www.abanet.org/buslaw/efss/home.html
- UCC Revisions Drafts: www.law.upenn.edu/library/bll/ulc/ulc-frame.htm
- NCCUSL Home Page: www.nccusl.org
- Series of Papers on UCITA Issues: www.nccusl.org/pressrel/UCITAQA.HTM
- NCCUSL Meeting Schedule: www.nccusl.org/meetings.html
- Uniform Electronic Transactions Act: www.abanet.org/nccusl/home.html
- UNIDROIT and UNCITRAL web pages for ongoing international commercial law projects are located at www.unidroit.org/ and www.uncitral.org/
Revised Article 9 is expected to have an immediate impact on commercial transactions. One of the first indications of market reaction to Revised Article 9 came from the rating agency Standard & Poor's. Standard & Poor's announced on June 6 that it will no longer review Article 9 security interest opinions in most structured finance transactions. The timing of the announcement coincides with the July 1, 2001 effective date. Revised Article 9 is expected to become effective in substantially all of the states on July 1.

In place of the security interest opinion, Standard & Poor's will instead focus on the Article 9 related representations and warranties in the underlying transaction documents. Standard & Poor's has prepared forms of representations and warranties to be included in the transaction documents for rated deals. The representations and warranties are divided by asset type and address various facts relevant to the soundness of the security interest for each asset type. Standard & Poor's lawyer Dina Moskowitz says: "The rating process never relied solely on legal opinions. We believe that the representations and warranties, combined with Revised 9's simplified perfection rules, should give us the same comfort on security interest matters as the Old 9 security interest opinions."

A complete article explaining Standard & Poor's new rating approach, together with the model representations and warranties, is located on Standard & Poor's homepage at www.standardandpoors.com.

DON'T LEAVE YOUR OFFICE WITHOUT IT!

The NEW Article 9, Second Edition, is the "must have" reference and accessory for the UCC lawyer this year! Whether you see it as red or pink, it will definitely go with everything.

You may want extra copies, to keep at your bedside, in the car, at the office, at the beach house, so that you will never be without it!

The index alone is invaluable for finding quick answers, or at least the right sections, for those pesky questions clients throw at you.

The Second Edition, of course, contains all the amendments to the text and comments of revised Article 9 made after the initial promulgation date, and all the corrections of the errors in the version originally promulgated.

Corinne Cooper, Editor, Steven O. Weise and Edwin E. Smith, Contributing Authors

See the “Business Law Publications” column in this newsletter for ordering information, or visit the website: ababooks.org.

THE COMMERCIAL LAW NEWSLETTER is published approximately three times a year by the American Bar Association Section of Business Law Commercial Financial Services and Uniform Commercial Code Committees. The views expressed in the Commercial Law Newsletter are the author's only and not necessarily those of the American Bar Association, the Section of Business Law, the Commercial Financial Services Committee or the Uniform Commercial Code Committee. If you wish to comment on the contents, please write to the Commercial Financial Services and Uniform Commercial Code Committees, Attn: Commercial Law Newsletter, American Bar Association, Section of Business Law, 750 North Lake Shore Drive, Chicago, IL 60611.
SUBCOMMITTEE REPORTS

UCC: SUBCOMMITTEE ON ARTICLE 1

David V. Snyder, Chair
Cleveland-Marshall College of Law
Cleveland State University

Margaret L. Moses, Vice-Chair
Loyola University
Chicago IL

Annual Meeting

The Subcommittee on Article 1 will meet during the annual meeting in Chicago from 9:00 to 10:00 a.m. Monday morning, August 6, 2001. We will have a status report on revised Article 1. The latest version, dated April 5, 2001, has been tentatively approved by the ALI, and will be considered by NCCUSL at its August meeting. If approved by NCCUSL as presented, or if changed in any way, revised Article 1 will still need to be approved by the ALI Council before it can be sent to the states for enactment.

At the subcommittee meeting on August 6, 2001, we will discuss specific steps for developing a guide to revised Article 1. The purpose of this guide will be to explain the changes in the provision, explain what the various issues were, and present a balanced view of the different perspectives involved. We will also discuss plans for presenting an educational program on revised Article 1 at the next spring meeting. These agenda items are based on proposals made at the subcommittee meeting held during the spring meeting of the Business Law Section in March 2001 in Philadelphia.

Report from Spring Meeting

The meeting was called to order by David Snyder, chairman. Professor Neil Cohen, the Reporter for Revised Article 1, gave a report on the status of the revisions. He stated that it appeared that the current draft of Article 1 would be presented to the ALI at its May meeting and to the National Conference of Commissioners of Uniform State Laws at its August meeting. If Articles 2 and 2A are approved, Article 1 would probably be sent along with those articles to the state legislatures as a package.

Professor Cohen stated there was not a great deal of controversy about Article 1 revisions except for the provision on choice of law. Other changes included an expanded definition of good faith, the addition of course of performance to rules governing course of dealing and trade usage, elimination of the statute of frauds provision that only applied outside of the code.

As to choice of law, Professor Cohen said the choice of law issues are two-fold. When the parties have made no choice of law, the courts should apply the choice of law rules of their own jurisdiction. When the parties choose a law for their transaction, the revised version permits choice of a law without a reasonable relationship to the transaction, with three limitations. First, if a contract is with a consumer, there has to be a reasonable relationship to the consumer's jurisdiction. Second, the law of a foreign country can be designated only if the transaction is international. Third, the parties cannot choose a law which would offend public policy.

Professor Cohen said the provision has been criticized both for too much autonomy and for not enough autonomy.
According to Professor Cohen, the approval process could be over by the end of August. Then the enactment process would begin.

Professor Snyder asked both Professor Cohen and the members of the subcommittee how they thought the subcommittee should be spending its time in the next few months. Professor Cohen suggested that the subcommittee consider providing a guide to Revised Article 1 presenting the changes, the issues and the different perspectives involved in arriving at the changes. Professor Bill Woodward suggested that the subcommittee organize a program for the next spring meeting to discuss various issues raised in connection with the revisions.

**TASK FORCE ON CONSUMER INVOLVEMENT**

By William J. Woodward, Jr., Co-Chair
I. Herman Stern Professor
Temple University School of Law
Philadelphia, PA
woodward@vm.temple.edu

By Mark Budnitz, Co-Chair
George State College of Law
Atlanta, GA
LAWMEB@langate.gus.edu

The Task Force on Consumer Involvement has met at every meeting of the Section of Business Law since the formation of the Task Force. Whenever possible we meet on the first day of the conference and discuss the various scheduled sessions of importance to consumer advocates. We seek to ensure that at least one consumer representative is present at each of these programs. In addition, often there are meetings which have been scheduled at the last minute and we provide information about these. We also discuss significant developments which have occurred since we last met, particularly those involving the drafting of new and the revision of current uniform state laws. Members provide information about major upcoming developments which require the involvement of consumer lawyers. In addition, the Task Force often fields requests for consumer representation on various Committees and Task Forces. The most recent example is the participation of several consumer representatives on the Section's Task Force on Consumer Arbitration.

**UCC: LITIGATION SUBCOMMITTEE**

By Jeffrey J. Wong, Chair
Cooper, White & Cooper LLP
San Francisco, CA
jwong@cwclaw.com

The Subcommittee is organizing and presenting a UCC Committee sponsored program at the Annual Meeting in Chicago entitled, "Why Didn't the Court Enforce Your Agreement? A Litigator's Advice to Attorneys Drafting Transactional Documents." The panel will discuss transaction documents from a litigator's perspective. We will also have an ethics expert discuss multi-jurisdictional transactions and attorneys' fees provisions. The panelists are: Subcommittee Chair Jeff Wong, Vice-Chair Steve Sanford, Mark Tuft and Marv Heileson.

Steve Sanford also gave a presentation at the Spring Meeting in Philadelphia on current decisions relating to the economic loss doctrine. If you would like a copy of his informative outline please E-mail him at ssanford@cadlaw.com. Jeff and Steve also prepared an analysis of recent decisions for the litigation portion of the annual UCC survey for the "Business Lawyer."
UCC: SUBCOMMITTEE ON INVESTMENT SECURITIES

By Lynn A. Soukup, Chair
Shaw Pittman
Washington, DC
Lynn.Soukup@shawpittman.com

At the spring meeting, the Investment Securities Subcommittee and the Committee on Developments in Business Finance co-sponsored a program on "Finance Transactions Involving Investment Securities." Professor Walter Taggart, Howard Darmstadter and Penelope Christophorou addressed issues in taking investment property as collateral in financing transactions. The program covered Article 8 and Article 9 concepts applicable to such financing transactions, control agreements for securities entitlements and opinions on security interests in investment property. Changes to be effected by Revised Article 9 were also discussed. The materials for the program have been sent to the ABA to be posted to the UCC Committee website. (If you have difficulty accessing them please e-mail me and I will send you a copy).

Since our spring program was standing room only, the Subcommittee is planning another Article 8 program. Initially our ambition was to be ready for the 2001 annual meeting. In light of interest in the Article 9 revisions (now that the effective date is upon us) we have ceded our spot on the program (and two of our planned contributors) for a program on Revised Article 9 state variations from the official text, filing office rules and conflict of laws issues. Planning will continue for an Article 8 program in 2002, where we plan to address Article 8 issues for non-finance transactions (such as opinions in secondary offerings of securities, transfer restrictions, and treatment of partnership and LLC interests).

If you are interested in participating in the 2002 program (or have suggestions for other programs or topics to discuss at the Subcommittee's meetings) please let me know. We are also in the process of updating the subcommittee membership and mailing list. If you are interested in being a member of the subcommittee please send an e-mail to lynn.soukup@shawpittman.com.

UCC: SUBCOMMITTEE ON SALES OF GOODS

By C. Robert Beattie, Chair
Oppenheimer Wolff & Donnelly LLP
Minneapolis, MN 55402
rbeattie@oppenheimer.com

As the revision process for UCC Article 2 nears its conclusion, the subcommittee is focusing its attention on issues relating to adoption of the proposed amendments to Article 2 and issues not addressed in the amendment process. Among the items being considered in 2001 are: the role of the subcommittee in the amendment enactment process; revision of ABA publications relating to Article 2 to reflect the amended Article; and consideration of issues not addressed by the amended article or no longer addressed by the amended Article, such as shipping terms. Representatives of the subcommittee together with the subcommittee on Leasing will present a discussion of the revisions to Article 2 and Article 2A at the meeting of the UCC Committee at the annual meeting in Chicago. Consideration will also be given to presentation of a similar update program to a larger audience at a future Business Law Section meeting.

The subcommittee meets from 1:00 to 2:00 p.m. on Monday, August 6 in Chicago. An update on the enactment process will be presented and plans will be made for future activities.
The Task Force on Simplification continues its work of assisting the Article 1 and Article 2 Drafting Committees and other interested groups in developing simplified user-friendly final texts of Revised Articles 1 and 2. In this connection we note that Section 1-107 of the recently distributed Article 1 Draft, which provides that “Section captions are part of the Uniform Commercial Code,” is supplemented by the following comment:

1. Section captions are a part of the Uniform Commercial Code, and not mere surplusage. This is not the case, however, with respect to subsection headings appearing in Article 9. See Official Comment 3 to Section 9-101 (“subsection headings are not a part of the official text itself and have not been approved by the sponsors.”).

The Task Force on Simplification will continue to suggest subsection captions and, where needed, paragraph captions. We will also address use of other simplification techniques such as “state the rule first, exceptions last” and use of “descriptive” rather than merely “numerical” cross referencing techniques. At our recent program meeting in Philadelphia the distinguished Panel in particular called attention to the impact of using the caption and vertical rather than horizontal listing technique in the definition of “Buyer in Ordinary Course” in section 1-201(9). [See the following page for this illustration of the clarity that can be readily achieved by using these simplification techniques.]

A comparable simplification effort was undertaken with reference to Article 9 by the Ad Hoc Simplification Committee appointed near the end of the Article 9 revision process by William Burke, Chair of the Article 9 Revision Drafting Committee. This Ad Hoc Simplification Committee consisted of Steve Weise and Louis Del Duca as Co-Chairs, and Vincent DeLiberato, Ken Kettering and David Hostetter. The new Task Force on Simplification will continue to have the assistance of all of these individuals as well as opportunities to consult with Neil Cohen, Katherine Patchel, Linda Rusch, Ed Smith and others as it continues to participate in the Articles 1, 2, 2(A), 3, 4 and 7 revision process.

The program meeting of the Task Force on Simplification at the Philadelphia Marriott on Thursday, March 22 provided an opportunity to exchange ideas and move forward in the effort to generate user-friendly, readily understandable uniform law. The Reporter and Associate Reporter for revised Article 1 (Neil Cohen and Katherine Patchel) were part of a panel that reviewed application of simplification techniques to the current Article 1 Revision draft. Other panelists included Steve Weise, Edwin Smith, Vincent DeLiberato, and Michael Greenwald (Deputy Director of the American Law Institute and Reporter for the ALI Style Committee). As Task Force Chair Louis Del Duca served as moderator. The panelists discussed simplification techniques such as:

- tabulations (i.e., vertical lists and bullets),
- captions on subsections and also as needed on paragraphs,
- logical grouping of related rules,
- stating general rules before exceptions, and
- subject matter as well as section number cross references.

Panelists will again assemble at the ABA Meeting in Chicago on August 4, 2001. To facilitate continuing cooperation between all interested parties, we are inviting Professors Roger Henderson (Chair of NCCUSL Committee on Style) Henry Deeb Gabriel (Reporter for Articles 2 and 2A), Ronald J. Mann (Reporter for Articles 3, 4 and 4A), Drew Kershem (Reporter for Article 7), and ALI Deputy Director Michael Greenwald (also Reporter for the ALI Style Committee) to meet with our task force at that time.
### UCC: TASK FORCE ON SIMPLIFICATION—SECTION 1-201

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| (9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a pre-existing contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business. | (9) “Buyer in ordinary course of business” means a person that buys goods:  
(i) in good faith,  
(ii) without knowledge that the sale violates the rights of another person in the goods, and  
(iii) in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind.  
In connection with the definition of buyer in ordinary course of business, the following provisions shall apply:  
(A) Ordinary course. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices.  
(B) Sales at wellhead or minehead. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind.  
(C) Buying and acquiring goods or documents of title. A buyer in ordinary course of business may:  
(i) buy for cash, by exchange of other property, or on secured or unsecured credit, and  
(ii) acquire goods or documents of title under a pre-existing contract for sale.  
(D) Possessory status or right to recover goods requirement. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business.  
(E) Bulk transferees and creditors. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business. |
TASK FORCE ON FORMS UNDER REVISED ARTICLE 9 OF THE UCC

By Jonathan C. Lipson
University of Baltimore School of Law
Baltimore, MD
jlipson@ubmail.ubalt.edu

The Task Force on Forms Under Revised Article 9 of the UCC is nearly done with its book of forms. The book of more than two dozen forms should hit the stands by the end of this summer. Look for sample pages at the annual meeting in Chicago.

The Task Force is chaired by Jonathan Lipson, who is also the chair of the UCC Committee’s Publications Subcommittee. Members of the Task Force include Sandra Rocks, Ed Smith, Lynn Soukup, Jeff Turner and Steve Weise.

Forms in the book will include: (i) Ed Smith’s all-assets security agreement; (ii) Steve Weise’s comparative security agreement; (iii) several specialty security agreements (e.g., for intellectual property collateral); (iv) a number of financing statements; (v) form control agreements; and (vi) forms to be used in the enforcement of security interests (e.g., disposition notifications, a complaint, etc). The forms have been extensively annotated. The Task Force intends to publish the book with a compact disk of the forms in a readily-usable computer format (e.g., rtf).

Questions about the Task Force on Forms Under Revised Article 9 of the UCC may be directed to Jonathan C. Lipson at jlipson@ubmail.ubalt.edu, or c/o The University of Baltimore School of Law, 1420 N. Charles Street, Baltimore, MD, 21201 (phone: 410-837-4054).

UCC: PUBLICATIONS SUBCOMMITTEE

By Jonathan Lipson, Chair
University of Baltimore School of Law
Baltimore, MD
jlipson@ubmail.ubalt.edu

The Publications Subcommittee of the UCC Committee has been focused largely on developing forms for use under Revised Article 9 of the UCC. A special Task Force has been established to develop and edit a book of forms for publication soon – perhaps by the end of this summer. The Task Force is also chaired by Jonathan Lipson. Members of the Task Force include Ed Smith, Steve Weise, and Jeff Turner.

Members of the UCC Committee are also involved in a number of other publications projects, at various stages of development, including preparation of a report on state certificate of title laws, several books on the Uniform Electronic Transfers Act and the Electronic Signatures in Global and National Commerce Act (also known as “E-Sign”), and an edition of the popular “ABC’s” series on suretyship and guaranty. The Subcommittee is also exploring the possibility of a new publication, The ABC’s of Intellectual Property for Commercial Lawyers, that would address issues involving the attachment, perfection and priority of security interests in intellectual property collateral, including patents, trademarks, copyrights, trade secrets, etc.

If you are interested in developing a UCC publication, or working on one that is already in progress, contact Jonathan C. Lipson at jlipson@ubmail.ubalt.edu, or c/o The University of Baltimore School of Law, 1420 N. Charles Street, Baltimore, MD, 21201 (phone: 410-837-4054).
Thanks to everyone who attended the Subcommittee meeting at the Spring Meeting in Philadelphia. The Subcommittee held a working session to develop input for the Articles 3/4/4A NCCUSL drafting project. While the Subcommittee had an interesting discussion of several topics that are being considered by the drafting committee, the formulation of a Subcommittee position turned out to be premature in light of the uncertainty surrounding this NCUSSL project. Specifically, after abandoning the initial mandate of the drafting committee, namely the incorporation of Regulation CC into Articles 3 and 4, the drafting committee is seeking authorization to proceed with a modified agenda. If approved at the NCCUSL annual meeting in August in the form proposed by the chair and the reporter of the drafting committee, the drafting committee's mandate would include issues such as truncation, telephonically generated checks, order of check processing, electronic checks, image returns, liability caps, duration of stop payment orders, recredit rights, statutory damages and attorneys fees, and contracting around the statute of repose. Because we anticipate that NCCUSL will authorize the continuation of the drafting project, we are looking for interested members of the Subcommittee to participate in a series of conference calls to formalize a Subcommittee position prior to the next drafting committee meeting, which has yet to be scheduled.

At the Spring Meeting in Chicago, the Subcommittee on Payments will once again be meeting jointly with the Banking Law Committee’s Subcommittee on Payments and Electronic Banking. Our meeting is scheduled for Monday August 6, 2001 at 2:00 p.m. Joseph Alexander, the new chair of the Payments and Electronic Banking Subcommittee has organized a panel discussion entitled "Economic Sanctions and the Payments System: How the Activities of the Office of Foreign Assets Control Affects Funds-Transfer Systems." The panel will explore the role of OFAC, how OFAC's regulations affect financial institutions and the Judicial Review Committee.

We also plan on having a brief round table discussion that will allow participants to share information on current matters of interest to our membership.

Paul and I hope that Subcommittee members as well as other interested parties will join us at the Annual Meeting.

JOIN THE UCC E-MAIL DISCUSSION GROUP
This free discussion group, created and moderated by the editors of the UCC Reporting Service/UCC Bulletin (and sponsored by West Group), is conducted using e-mail. Once you have joined, you receive approved messages and are able to send your messages to the group. To subscribe, go to http://lists.washlaw.edu/mailman/listinfo/ucclaw-l and follow the instructions there.

Revised Article 9 is now available in The Portable UCC

The Portable UCC, Third Edition edited by Corinne Cooper

Popular with practitioners since its first edition in 1993, this single volume contains the complete Official Text of the Uniform Commercial Code. It now includes Revised Article 9 and the conforming amendments to other articles. A completely revised, comprehensive index incorporates new terms from Revised Article 9, including new categories of collateral and other key concepts, so you can quickly and accurately locate any section. Its compact size fits easily into a pocket or a courthouse bag.

June 2001 20
CFS: SUBCOMMITTEE ON LOAN WORKOUTS

By Peter S. Clark II, Chair
Reed Smith LLP
Philadelphia, PA
pclark@reedsmith.com

The meeting of the Subcommittee on Loan Workouts in Philadelphia resulted in a lively exchange of questions and comments on the topic “How Revised Article 9 will change the Dynamics of Workouts?”. The well attended event featured a presentation by Larry Peitzman, of Peitzman, Glassman & Weg, who posited that Revised Article 9 will take away much of the debtor’s leverage in workouts since there will be little, if any, that a debtor can offer a lender in the form of additional personal property that the lender will not already have. While agreeing with Larry’s views, Peter Clark, of Reed Smith, gave a presentation on how the transition period will provide leverage opportunities for both lenders and debtors because of the complexity of the transition rules and likelihood of noncompliance. Peter Clark will be giving a presentation on workouts on behalf of the Subcommittee at the CFA Meeting in San Francisco in October, 2001. The next meeting of the Subcommittee will be at the 2002 Spring Meeting in Boston. If you are interested in giving a presentation at the 2002 Spring Meeting, please contact Peter Clark at 215-851-8142 or at PClark@ReedSmith.com.

CFS: CREDITORS’ RIGHTS SUBCOMMITTEE

By Catherine E. Bauer, Chair
United States Attorney’s Office
Los Angeles, CA
mcbauer@earthlink.net

The Creditors’ Rights Subcommittee met in Philadelphia in conjunction with the Bankruptcy Litigation Subcommittee and heard a presentation by Bankruptcy Judge Mahoney on the burdens the proposed bankruptcy legislation will impose on the courts, court clerks, debtors, and creditors. Particular mention was made of the limitations in the new law on repeat bankruptcy filings, the changes impacting leases, the payment complexities for Chapter 13 trustees, and anticipated debtor strategies. In addition, the Chapter 11 small business provisions were discussed and the current status of the legislative process.

William Zewadski, co-chair of the Bankruptcy Litigation Subcommittee, then discussed discovery and trial presentation techniques for creditors in non-dischargeability litigation, with a focus on streamlining the process.

The Subcommittee’s next meeting, to be held with the Bankruptcy Litigation Subcommittee, will be at the Annual Meeting in Chicago on Saturday, August 4, 2:00-3:30 in the Kansas City Room on the 5th floor of the Marriott. Bankruptcy Judge Corcoran has graciously agreed to speak with us about his Toy King decision and avoidance actions in general. Please join us!

CFS: SUBCOMMITTEE ON PROGRAMS AND SEMINARS

By Christopher J. Rockers, Chair
Husch & Eppenberger, LLP
Kansas City, MO
Christopher.Rockers@husch.com

Commercial Financial Services had a very exciting series of meetings and programs at the Spring Meeting in Philadelphia, Pennsylvania. Almost all of our sub-committees held informative and substantive meetings. Revised Article 9, its adoption, application and transition was a consistent theme to our sub-committee meetings and programs.

The Committee also sponsored two very successful programs. “Venture Capital and Mezzanine Finance 101 (or VC for Dummies)” was led by Jim Schulwof and Larry Flick. This Program provided a fantastic primer on venture capital and the thought process utilized business people providing these types of financial services.

As always, “Commercial Law Developments - 2000.” helped bring all attendees current on
relevant case law developments over the past year. This Program, as in years past, provided a great recap of case law developments in the commercial finance area and is a requirement for lawyers hoping to stay current on legal issues relating to commercial finance.

The Committee sponsored a Committee Forum. This Forum, entitled “Protecting Goods in Transit: Article 7, Revised Article 9 and INCOTERMS 2000”, was presented by Marcy Cohen and Mike Carsella. The Forum was a great insight into the practical process of moving good internationally.

The Annual Meeting will be held in Chicago on August 3 – 5, 2001 and, once again, Commercial Financial Services will provide substantive sub-committee meetings and programs. Our Program will be co-sponsored with the Young Lawyers Division, and it is titled “Understanding and Documenting Commercial Loan Transactions – a Beginner’s Guide”. The Program will be presented by Bob Handler, Cheryl Walker and me. Both Commercial Financial Services, and the Young Lawyer’s Division are meeting at the Chicago Downtown Marriott. This program will provide our Committee a great opportunity to provide practical information to less experienced lawyers.

Looking ahead, Commercial Financial Services will, once again, meet on the Wednesday before the Commercial Finance Association’s annual meeting. This year the CFA meeting is October 24 - 26, 2000 in San Francisco. Each year the Committee, in addition, presents a program to the Commercial Finance Association on Friday morning. This year we are presenting a program moderated by Jeffrey Rosenthal and Peter Clark, which will deal with work-outs and related issues.

If you have any topics or issues that you would like the Committee to address, or are interested in presenting to the Committee or any of its sub-committees, please contact me.

CFS: SECURED LENDING SUBCOMMITTEE
By Meredith Jackson, Chair
Irell & Manella LLP
Los Angeles, CA
mjackson@irell.com

and

UCC: SECURED TRANSACTIONS SUBCOMMITTEE
By Peter H. Carson, Chair
Cooley Godward LLP
San Francisco, CA 94111
Email: carsonph@cooley.com

We would like to extend our sincere gratitude to Jeff Turner and Marsha Simms, our outgoing Chairs, for their inspired and dedicated leadership over the last four years. Our Subcommittees have benefited greatly from their efforts. Onward and upward.

We are delighted to announce that Leianne Crittenden has agreed to serve as Vice Chair (with Chair Peter Carson) of the Secured Transactions Subcommittee, and Ken Kettering has agreed to serve as Vice Chair (with Chair Meredith Jackson) of the Secured Lending Subcommittee. We are confident that their expertise, energy, and humor will keep our Subcommittee meetings lively. Ken most recently proved his mettle at our meeting in Philadelphia with "Apocalypse Pretty Soon", his hair-raising analysis of the "horrendous" situation which we can expect after July 1 when Revised Article 9 is not yet the law in all 50 states. At the same meeting, we were educated by Steve Weise on Eagle 9, the new UCC perfection insurance policy (it's like title insurance for personal property transactions) offered by First American.

In Chicago, we are looking forward to presentations by Steve Harris on effects of the new bankruptcy legislation and Revised Article 9 on securitization transactions, by Jim Junewicz on the surprising impact new Regulation FD may have on secured lenders, particularly on syndications and claims trading, and by Maury Poscover and Chris Rockers will navigate anticipated developments in lender liability claims under Revised Article 9. It should be a great program and we look forward to seeing you all there!
CHRONOLOGICAL SCHEDULE
OF CFS AND UCC MEETINGS AND PROGRAMS
AT ABA ANNUAL MEETING
(all at Marriott Hotel unless otherwise noted)

Friday, August 3

2:00 – 4:00 p.m. Maritime Financing
Houston Room, 5th Floor

2:00 – 5:30 p.m. Aircraft Financing
Chicago Ballroom F, 5th Floor

Saturday, August 4

8:00 – 9:00 a.m. Task Force on State Certificate of Title Laws
Denver Room, 5th Floor
Uniform Commercial Code
Chair—Alvin C. Harrell

8:30 – 10:30 a.m. Lender Liability
Chicago Ballroom F, 5th Floor
Commercial Financial Services
Chair—Paul B. O’Hearn

8:30 a.m. – Noon Open Council Meeting of the Section
Chicago Ballroom D, 5th Floor
Section Chair—Amelia H. Boss

9:00 a.m. – 12:30 p.m. Aircraft Financing
Kansas City Room, 5th Floor
Commercial Financial Services
Chair—James H. Hancock

9:15 – 11:15 a.m. Joint Meeting:
Chicago Ballrooms G/H, 5th Floor
Access to Services
Real Estate Settlement Procedures Act
Consumer Financial Services
Chairs—Steven I. Zeisel, Donald P. Brewster and Walter W. Zalenski
Topic: Predatory Lending: Seeking Solutions

10:00 – 11:00 a.m. Globalization of Commercial Law
Houston Room, 5th Floor
Uniform Commercial Code
Chair—Donald A. Cohn

Noon – 1:00 p.m. Task Force on Consumer Involvement
Navy Pier Room, 10th Floor
Uniform Commercial Code
Cochairs—Mark E. Budnitz and William J. Woodward, Jr.

12:30 – 2:00 p.m. Real Estate Financing
Minnesota Room, 6th Floor
Commercial Financial Services
Cochairs—Steven D. Fleissig and Thomas A. Snow
Saturday, August 4 (continued)

1:00 – 2:00 p.m.  
Chicago Ballroom F, 5th Floor  
Joint Meeting:  
International Commercial Law  
Uniform Commercial Code  
Chair—Sandra M. Rocks  

International Financial Services  
Commercial Financial Services  
Co-Chairs—Michael Carsella and Marcy S. Cohen

1:00 – 2:00 p.m.  
Denver Room, 5th Floor  
Task Force on Simplification  
Uniform Commercial Code  
Chair—Louis Del Duca  
**Topic:** Continuing Progress in Simplifying Uniform Legislation

2:00 – 3:30 p.m.  
Kansas City Room, 5th Floor  
Creditors Rights  
Commercial Financial Services  
Chair—Catherine E. Bauer

2:00 – 4:00 p.m.  
Chicago Ballroom D, 5th Floor  
Uniform Commercial Code  
Chair—Linda J. Rusch  
**Topic:** Are the Revisions of Article 2 and Article 2A Finished at Last?

3:30 – 5:00 p.m.  
Kansas City Room, 5th Floor  
Meeting of Subcommittee Chairs and Vice Chairs  
Commercial Financial Services  
Chair—Robert A. Zadek

4:30 – 6:00 p.m.  
Chicago Ballroom C, 5th Floor  
Joint Meeting:  
Subcommittee Chairs and Vice Chairs  
Publications  
Brown Bag Programs  
Uniform Commercial Code  
Chairs—Linda J. Rusch, David Keyes and Jonathan C. Lipson

Sunday, August 5

8:00 – 9:00 a.m.  
Denver Room, 5th Floor  
Joint Meeting:  
Domestic and International Business Transactions  
International Business Law  
Uniform Commercial Code  
Chair—Shelly G. Dedmon

9:00 – 10:30 a.m.  
Salon I, 7th Floor  
Joint Meeting:  
Secured Lending  
Commercial Financial Services  
Chair—Jeffrey S. Turner  
Secured Transactions  
Uniform Commercial Code  
Chair—Peter H. Carson  
**Topics:**  
- Securitizations and other structured financings: Looking ahead to the combined impacts of Revised Article 9 and the Bankruptcy Reform Act of 2001  
- Anticipating developments in lender liability law in light of Revised Article 9 (including the new definition of “good faith”)
Sunday, August 5 (continued)

10:30 a.m. – Noon
Salon I, 7th Floor
Loan Documentation
Commercial Financial Services
Chair—Jeffrey M. Rosenthal

10:30 a.m. – 12:30 p.m.
Chicago Ballroom D, 5th Floor
Program:
Under the Surface of Revised Article 9: Non-Uniformity and Filing Office Procedures
Presented by Committee on Uniform Commercial Code
Program Chair—Lynn Soukup

12:30 – 2:30 p.m.
Chicago Ballroom D, 5th Floor
Program:
Understanding and Documenting Commercial Loan Transactions: A Beginner's Guide
Presented by Committee on Commercial Financial Services
Program Chair—Christopher Rockers and Robert P. Handler

1:00 – 2:00 p.m.
Chicago Ballroom B, 5th Floor
Joint Meeting:
Task Force on Revised Article 9 Enactment Process
Commercial Financial Services
Uniform Commercial Code
Cochairs—E. Carolan Berkley and Edwin E. Smith

1:00 – 2:30 p.m.
Chicago Ballroom E, 5th Floor
Joint Meeting:
Electronic Financial Services
Banking Law
Business Bankruptcy
Consumer Financial Services
Credit Unions
Cyberspace Law
Uniform Commercial Code
Cochairs—Lynne B. Barr, John Jin Lee and John D. Muller

1:00 – 2:30 p.m.
Ohio State Room, 6th Floor
Intellectual Property Financing
Commercial Financial Services
Chair—Peter S. Munoz

2:30 – 4:30 p.m.
Salon II, 7th Floor
Program:
Why Didn’t the Court Enforce Your Agreement? A Business Litigator’s Advice To Attorneys Drafting Transactional Documents
Presented by Committee on Uniform Commercial Code
Program Chair—Jeffrey Wong

4:00 – 5:00 p.m.
Chicago Ballroom F, 5th Floor
Letters of Credit
Uniform Commercial Code
Chair—Janis S. Penton

6:30 – 8:00 p.m.
Adler Planetarium
Business Law Section Welcome Reception
Chair—Amelia H. Boss
Monday, August 6

8:00 – 9:00 a.m.
Chicago Ballroom C, 5th Floor
Scope of the UCC
Uniform Commercial Code
Chair—D. Benjamin Beard

9:00 – 10:00 a.m.
Navy Pier Room, 10th Floor
Article 1
Uniform Commercial Code
Chair—David Snyder

10:00 – 11:00 a.m.
Wisconsin Room, 6th Floor
Leasing
Uniform Commercial Code
Chair—Lawrence F. Flick, II

Noon – 12:30 p.m.
Chicago Ballrooms D/E Foyer, 5th Fl.
Business Law Section Lunch Reception
Section Chair—Amelia H. Boss

12:30 – 2:00 p.m.
Chicago Ballrooms D/E, 5th Floor
Business Law Section Lunch (ticketed event)
Section Chair—Amelia H. Boss

1:00 – 2:00 p.m.
Kansas City Room, 5th Floor
Sales of Goods
Uniform Commercial Code

2:00 – 4:00 p.m.
Chicago Ballroom C, 5th Floor
Payments
Uniform Commercial Code
Chair—Stephanie A. Heller
Topic: Economic Sanctions and the payments System: How the Activities of the Office of Foreign Assets Control ("OFAC") Affects Funds Transfer Systems

3:00 – 5:00 p.m.
Chicago Ballroom H, 5th Floor
Information Licensing
Uniform Commercial Code
Chair—Mary Jo Dively

4:00 – 5:00 p.m.
Michigan Room, 6th Floor
Task Force on Article 7
Uniform Commercial Code
Chair—William Towle
ABA BUSINESS LAW SECTION PUBLICATIONS

♦ **THE PORTABLE UCC: THIRD EDITION**, edited by Corinne Cooper

The *Portable UCC* is in a compact, convenient size, and includes the complete text of the UCC as amended through 2000, including Revised Article 9 and the conforming amendments to other articles. The completely revised, comprehensive index incorporates new terms from Revised Article 9, including new categories of collateral and other key concepts. ($29.95 for 1-9 copies; $26.95 for 10 or more copies. Product Code 5070367)

♦ **THE PORTABLE BANKRUPTCY CODE 2001**, edited by Sally M. Henry

This compact, up-to-date reference will provide you with quick and easy access to relevant Code and Bankruptcy Rule provisions, U.S. Trustee Guidelines, Selected Rules of Civil Procedure and Federal Rules of Evidence. ($29.95 for 1-9 copies; $26.95 for 10 or more copies. Product Code 5070366)

♦ **THE NEW ARTICLE 9, SECOND EDITION**, edited by Corinne Cooper; Steven O. Weis e and Edwin E. Smith, contributing authors.

This handy guide provides a clear, in-depth explanation of Revised UCC Article 9, has been updated and includes with the full 1999 text and Official Comments (including the corrections and amendments after the initial promulgation date, along with the complete text of current Article 9 (1995) for comparison. With chapters by Steven O. Weise, the ABA Advisor to the Revised Article 9 Drafting Committee, and Edwin E. Smith, a member of the Drafting Committee, this book has all you need, including: a plain-English overview of Revised Article 9, a checklist of issues to consider as you move to the new rules, a detailed analysis of the complex transition provisions, extensive charts comparing significant provisions of current and Revised Article 9, and a comprehensive index, with particular attention to new terms and new rules. ($39.95 for 1-25 copies; $29.95 for 26-50 copies; $23.95 for 51 or more copies. Product Code 5070360)

♦ **THE DEFAULT PROVISIONS OF REVIS ED ARTICLE 9**, by Timothy R. Zinnecker

This guide examines each of the 28 default provisions in Revised Article 9, providing comparative analysis of current and revised law, offering drafting advice when appropriate, and discussing perceived statutory weaknesses. ($29.95 for 1-9 copies; $26.95 for 10 or more copies. Product Code 5070350)

♦ **THE ABCS of the UCC**, Series edited by Amelia Boss

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**ARTICLE 8: INVESTMENT SECURITIES**, by Sandra M. Rocks and Carl S. Bjerre (Product Code 5070314)

**(REVISED) ARTICLE 9: SECURED TRANSACTIONS**, by Russell A. Hakes (Product Code 5070365)

♦ **RELATED and SUPPLEMENTARY CONSUMER LAW**, by Fred H. Miller and Cindy Hastie (Product Code 5070340)

♦ **A COMMERCIAL LAWYER’S TAKE ON THE ELECTRONIC PURSE: AN ANALYSIS of COMMERCIAL LAW ISSUES ASSOCIATED WITH STORED-VALUE CARDS and ELECTRONIC MONEY**, by Stephanie Heller, Thomas Baxter, Jr. and the Task Force on Stored Value Cards ($29.95 for 1-9 copies; $26.95 for 10 or more copies. Product Code 5070325)

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## UNIFORM STATE LAWS SCORECARD

### 50 State Survey of Adoptions of Revised Official Text of the UCC\(^1\), UETA & UCITA

### AS OF JUNE 21, 2001

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\(^1\) UCC: Uniform Commercial Code
\(^2\) Article 2A: Markets and Exchanges
\(^3\) Articles 3&4: Leases
\(^4\) Passed by legislative body
\(^5\) Amended by legislative body
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<td>No Action</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Enacted '92</td>
<td>Enacted '96</td>
<td>No Action</td>
<td>Passed&lt;sup&gt;4&lt;/sup&gt;</td>
<td>Intro SB 55</td>
<td>No Action</td>
</tr>
<tr>
<td>Wyoming</td>
<td>Enacted '91</td>
<td>Enacted '91</td>
<td>REPEAL '91</td>
<td>Enacted '01</td>
<td>Enacted '01</td>
<td>No Action</td>
</tr>
</tbody>
</table>

Please note that the Enactment Date does not necessarily reflect the effective date. Please refer to the applicable statute for the relevant effective date.

Our thanks to John McCabe and Katie Robinson at the National Conference of Commissioners ("NCCUSL") on Uniform State Laws for their help in compiling the information above. These revisions are based on information provided by NCCUSL available as of June 21, 2001.

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<sup>1</sup> In addition to enactments noted below, (a) all states have adopted the 1995 Official Text of Article 5 of the UCC, other than Georgia (no action), Pennsylvania (Intro SB 330), Puerto Rico (no action), South Carolina (no action) and Wisconsin (no action), and (b) all states have adopted the 1994 Official Text of Article 8 of the UCC, other than South Carolina (Intro SB 498).
South Dakota has adopted only 1987 Official Text without the 1990 Amendments.

States that have repealed Article 6 are identified by indicating "Repeal" next to the state name; states adopting the revisions suggested in Alternative B to the 1989 Official Text are identified by indicating "Revise" next to the state name.

The 1998 Official Text of Article 9 of the UCC has passed both houses of the state legislature and is awaiting for governor's signature in Connecticut, Missouri, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania and Wisconsin.

Alabama, Florida and Mississippi has each adopted January 1, 2002 effective date. Connecticut has adopted October 1, 2001 effective date.

New York has adopted the Electronic Signature and Records Act.

In addition to the enactments noted, Puerto Rico has only adopted the following Articles: Article 1, Article 4A, the original versions of Article 5 and Article 7, and the 1972 version of Article 9.
UCC SCORECARD – REVISIONS

ARTICLE 1 – GENERAL PROVISIONS

Latest Draft: May, 2001
UCC Committee Contact: David Snyder (216) 687-2319 or Margaret Moses (312) 915-6430.

ARTICLE 2 – SALES

Latest Draft: May, 2001
UCC Committee Contact: Rob Beattie (612) 607-7000.

ARTICLE 2A – LEASES

Latest Draft: May, 2001
UCC Committee Contact: Larry Flick (215) 569-5556 or Ed Huddleson (202) 333-1360

ARTICLE 3 – NEGOTIABLE INSTRUMENTS

Latest Draft: March, 2001
Status: Proposal on revised scope of the project pending with NCCUSL
UCC Committee Contact: Stephanie Heller (212) 720-8198 or Paul Turner (310) 472-5802

ARTICLE 4 – BANK DEPOSITS AND COLLECTIONS

Latest Draft: March, 2001
Status: Proposal on revised scope of the project pending with NCCUSL
UCC Committee Contact: Stephanie Heller (212) 720-8198 or Paul Turner (310) 472-5802

ARTICLE 4A – FUNDS TRANSFERS

Latest Draft: March, 2001
Status: Proposal on revised scope of the project pending with NCCUSL
UCC Committee Contact: Stephanie Heller (212) 720-8198 or Paul Turner (310) 472-5802

ARTICLE 7 – WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

Latest Draft: No Draft
Status: Drafting Committee’s next meeting in fall 2001.
UCC Committee Contact: William Towle (406) 721-0720.

ARTICLE 9 – SECURED TRANSACTIONS: SALES OF ACCOUNTS AND CHATTEL PAPER

Status: Revised Article 9 is being presented to the states for adoption. The uniform effective date is July 1, 2001.
UCC Committee Contact: Steve Weise (213) 244-7831 or Pete Carson (415) 693-2000

UNIFORM ELECTRONIC TRANSACTIONS ACT

Final Version: 1999
Status: Adopted by 32 states and pending in several more
UCC Committee Contact: Rob Beattie (612) 607-7000 or Ben Beard (208) 885-6747

UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT

Final Version: 1999
Status: Adopted by 2 states and pending in several more

UNIFORM CONSUMER LEASES ACT

Latest Draft: May, 2001
Status: Up for a second reading and final approval at the NCCUSL Annual Meeting in August, 20
UCC Committee Contact: Michelle Hughes (757) 499-8800
Section of Business Law Application for Membership

☐ I, ____________________________ am applying for membership in the ABA Section of Business Law and enclose $__________ as my annual membership dues for the year 2000-2001. I understand that Section dues include $20 for a basic subscription to *The Business Lawyer* for one year and $14 for a basic subscription to *Business Law Today* for one year; these subscription charges are not deductible from the dues, and additional subscriptions are not available at these rates.

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☐ Please send me information on joining the CFS Committee.

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Chicago, IL 60611

For further information, call (312) 988-5588

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Firm: ____________________________

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City: __________________ State: ___________ Zip: ___________

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☐ VISA ☐ MasterCard ☐ American Express

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Signature ___________________________

*Please sign and date this application*

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