

INTELLEKTUELLA RESURSER SOM KREDITSÄKERHET  
EN FÖRMÖGENHETSRÄTTSLIG UNDERSÖKNING



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av

Jens Andreasson, jur. kand.

## Abstract

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Intellectual resources such as intellectual property rights, technology and other types of knowledge represent an immense value. However, these kinds of resources are only seldom used as credit security. The thesis' main purpose is to analyse the conditions for increased collateralisation of intellectual resources. The problem is analysed through four stages, represented by the investigation's parts 1-4.

Part 1 is concerned with societal effects. The analysis draws on a wide range of sources: Economic theory, the credit law, property law and intellectual property law discourses and lessons derived from the financial crisis that occurred in 2007. The key conclusions are: Increased possibilities to use intellectual resources as collateral is likely to entail both large economic benefits and financial and exclusivity risks. To minimise the risks new financial constructions must be simple and transparent and the control possibilities offered must be balanced.

Part 2 is about the practice of intellectual resources. The analysis draws on a number of case studies, the resource-based view on strategic management and the constructivist view on management of intellectual resources. The conclusion is that intellectual resources often are characterised by a complex interdependence. Thus, an increased use of intellectual resources as collateral probably must be driven by specialised financial market actors. Only specialists can master the management practices needed to create control and transferability. The results are concretised by two examples, Technology Display AB, an intellectual resource heavy debtor, and I-Capital, a financial market actor specialised in financing based on intellectual resources.

Part 3 is concerned with the functioning of the relevant legal constructions in relation to the societal, ideological and practical conditions presented in part 1 and 2, as concretised by the TDA and I-Capital examples. In short, the main conclusion is that the established security constructions etc. are almost exclusively targeted at *intellectual property rights*. A well functioning model for using intellectual resources as collateral must break out of the narrow rights-based perspective, replacing it with a resource and relation based view.

Part 4 presents a constructive model based on the results generated in the previous parts of the investigation. The model builds upon effective packaging, registration in a notice filing register and a graded third party protection. For the "hard" intellectual resources, i.e. the registration based intellectual property rights, a complete third party protection is possible. For "softer" intellectual resources, such as codified know-how, the protection is limited to the debtor's creditors. "Really soft" resource elements, such as the debtor's commercial relationships, are possible to transfer only with the consent of the parties concerned.

Part 5 shows how the functional and constructive approach that is applied in the investigation draws on theories such as legal pragmatics, social private law, legal constructivism and polycentric views. Part 5 also includes a presentation of the functional approach to property law that has been dominant in the Nordic countries for almost 100 years. The functional approach has been a deciding inspiration for the constructive model, acquaintance with this approach thus facilitates the understanding of the constructive model.

*Keywords: Intellectual resources, credit security, IP-financing, property law, intellectual property law, IP as collateral, IP collateralisation, functional approach.*

Jens Andreasson, Juridiska institutionen, Handelshögskolan, Göteborgs universitet. Box 650, SE 405 30  
GÖTEBORG. [www.law.gu.se](http://www.law.gu.se)