

A Rose by Any Other Name Would Smell as Sweet (or Would It?): Filing and Searching in Article 9's Public Records

*Margit Livingston***

I. INTRODUCTION

The fourteenth century concept of parsimony known as Occam's Razor states, "Entities should not be multiplied unnecessarily."¹ This idea of simplicity—of stripping away the nonessential—has informed Article 9 of the Uniform Commercial Code from its inception. Among the great beauties of Article 9 is its simplification of the requirements for giving notice to third parties of security interests in personal property or fixtures.² Before Article 9, personal property secured transactions were governed by a myriad of state laws.³ Many of these laws required

* In her famous balcony scene, Juliet pines for her lover, Romeo, whose relatives are enemies of her own: "What's in a name? That which we call a rose / By any other word would smell as sweet." WILLIAM SHAKESPEARE, *ROMEO AND JULIET* act 2, sc. 2.

** Professor of Law, DePaul University College of Law. The author gratefully acknowledges the most capable research efforts of DePaul law students Brian Hanlon, Timothy J. Mullens, and Cherie Travis, whose dedicated work was vitally important in the creation of this article.

1. Philosopher William of Occam developed this principle, the Latin version of which is *Pluralitas non est ponenda sine necessitate*. Phil Gibbs & Sugihara Hiroshi, *What is Occam's Razor?*, <http://math.ucr.edu/home/baez/physics/General/occam.html> (last visited Feb. 8, 2007).

2. One commentator described this simplification of the older personal property security law:

Article 9 . . . is considered by many to be the signal achievement of the Code. Taking the confused state of prior law relating to chattel mortgages and conditional sales, the Reporters reduced to black letter principles a Code which permitted easy and effective financing secured by accounts receivable and chattels, including inventories. Charles A. Bane, *From Holt and Mansfield to Story to Llewellyn and Mentschikoff: The Progressive Development of Commercial Law*, 37 U. MIAMI L. REV. 351, 374 (1983).

3. Grant Gilmore, one of the principal drafters of Article 9, recounted the drafting committee's high expectations regarding the unifying and simplifying effect of Article 9 on secured transactions law:

Pre-Code personal property security law may be described as closely resembling that obscure wood in which Dante discovered the gates of hell. We thought that, with a little pruning and clearing, we could turn the obscure wood into a people's park where widows and orphans and country bankers could enjoy their innocent pleasures, safe from the

secured parties to give notice of their interests through extensive and detailed public filings that the courts subjected to hypercritical scrutiny.⁴ Minor errors on the public documents caused judicial nullification of the filing and resulted in loss of perfection, subordination, and bankruptcy destruction of the security interest.

The original Article 9 Reporters sought to simplify the notice requirements and developed the concept of notice filing. Rather than demanding that lenders file complicated documents filled out with exacting precision, Article 9 only required certain basic pieces of information in the publicly recorded financing statement. The goal of filing was merely to put third parties on notice that security interests might exist as opposed to providing detailed information about the nature and extent of the secured party's financing arrangement with the debtor. It was then up to interested third parties to seek out further information from the debtor, the secured party, or another source.

Along with the adoption of notice filing came the doctrine of substantial compliance. If a financing statement substantially complied with Article 9, it was valid "even though it contain[ed] minor errors which are not seriously misleading."⁵ The drafters adopted the position that absolute precision on a financing statement was not necessary. As long as third parties were receiving sufficient information to engage in further inquiry, the public filing system was fulfilling its function.⁶

attack of ravening wild beasts and trustees in bankruptcy. The sad truth is that personal property security law is well on the way to becoming quite as fragmented and quite as complex as it ever was in the bad old days before the Code.

Grant Gilmore, *The Good Faith Purchase Idea and the Uniform Commercial Code: Confessions of a Repentant Draftsman*, 15 GA. L. REV. 605, 620 (1981).

4. Professor Karl Llewellyn, in an early article on the codification of security law, noted the considerable disadvantages created by the helter-skelter collection of pre-Code statutes and case law governing security devices: "What is not minor is the price in complexity, inconvenience, and often in unfairness which must be paid when legal patterns of happenstance origin are taken in all their history-ridden detail as the basis for the doing of remodeling jobs which are themselves piece-work." Karl N. Llewellyn, *Problems of Codifying Security Law*, 13 LAW & CONTEMP. PROBS. 687, 688 (1948).

5. U.C.C. § 9-402(8) (1995). Unless otherwise indicated, all citations to Article 9 will be to Revised Article 9, which was promulgated by the National Conference of Commissioners on Uniform State Laws in 1999 and has been adopted by all fifty states, the Virgin Islands, and the District of Columbia. Revised Article 9 has an effective date of July 1, 2001, in almost all states. References to prior versions of Article 9 will indicate the year of that particular version in parentheses. The phrase "pre-revision Article 9" refers to the 1972 version of Article 9, as amended, which was in effect in all states until Revised Article 9 became effective in 2001.

6. Filing a financing statement was and remains the chief method by which secured parties achieve perfection of their security interests. As will be discussed in more detail later, perfection leads to essential benefits for secured parties—namely, priority over other claimants to the same

In the 1990s, the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI) decided to overhaul Article 9 in an attempt to further modernize and simplify the law governing secured transactions.⁷ The end product of their efforts was Revised Article 9, which was adopted by all fifty states (with an effective date of July 1, 2001, in most states).⁸ Revised Article 9 retained, with a small modification in wording, the substantial compliance standard regarding the sufficiency of financing statements.⁹ The new law, however, carved out an exception to the substantial compliance doctrine for the debtor's name on the financing statement.¹⁰ While new Article 9 as a whole has not generated much cutting-edge litigation in the five years since its adoption, the issue of the debtor's name on the financing statement has produced significant and sometimes conflicting case law.

This Article will examine the debtor-name issue as it developed under prior law and is developing under the new version of Article 9.¹¹

property of the debtor and survival of the security interest in the event of the debtor's bankruptcy. Although Revised Article 9 provides for other methods of perfections for certain types of collateral, such as possession or control of the collateral by the secured party, filing of a financing statement is still the primary method of perfection. *See* U.C.C. § 9-310(a) (2001) ("Except as otherwise provided in subsection (b) and Section 9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.").

7. Article 9 is the joint product of the ALI and NCCUSL. *See generally* Steven O. Weise, *An Overview of Revised UCC Article 9*, in *THE NEW ARTICLE 9 UNIFORM COMMERCIAL CODE 1* (Corinne Cooper ed., 2d ed. 2000) [hereinafter *THE NEW ARTICLE 9*]. The ALI and NCCUSL appointed a study committee in 1990 to assess Article 9 and recommend possible revisions. *See generally* Edwin E. Smith, *An Introduction to Revised UCC Article 9 (1999)*, in *THE NEW ARTICLE 9, supra*, at 17. In its final 1992 report, the Study Group recommended changes to Article 9 that would increase its scope, simplify perfection, and clarify enforcement rules. PERMANENT EDITORIAL BD. FOR THE UCC, PEB STUDY GROUP: REPORT ON UNIFORM COMMERCIAL CODE ARTICLE 9, at 10-11 (1992) [hereinafter *UCC REPORT*].

8. Only four states adopted a non-uniform effective date: Connecticut, Alabama, Florida, and Mississippi. ALA. CODE § 7-9A-701 (2005) (adopting Revised Article 9 on January 1, 2002); CONN. GEN. STAT. § 42a-9-702 (2006) (adopting Revised Article 9 on October 1, 2001); FLA. STAT. § 679.701 (2006) (adopting Revised Article 9 on January 1, 2002); MISS. CODE ANN. § 75-9-701 (2006) (same).

9. Revised U.C.C. § 9-506(a) provides that "[a] financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading." Thus, Revised Article 9 seemingly emphasizes that the grievousness of the errors is to be judged by whether they render the financing statement as a whole seriously misleading as opposed to whether the errors themselves in isolation might be regarded as misleading.

10. *See* U.C.C. § 9-506(b)-(c) (setting forth a strict rule regarding the accuracy of the debtor's name); *see also infra* text accompanying notes 59-65.

11. A number of scholars have tackled the problem of the debtor's name on a financing statement over the years. *See, e.g.*, Todd D. Penney, *Article 9 Financing Statement Searches: Is a Rose by Any Other Name Still a Rose?*, 51 OHIO ST. L.J. 1415 (1990); Paul J. Ricotta & Adrienne K.

This Article explores the issue from the perspective of allocating burdens appropriately between filing parties and searching parties and concludes that while the case law interpreting former Article 9 put too much of the burden of debtor-name errors on the searching party, courts applying Revised Article 9 have gone too far the other way in invalidating financing statements that contain extremely small errors. Granted, in most cases, the filing party can reduce the overall costs of the filing system by assuring the accuracy of the debtor's name *ex ante* at the time of the initial filing. However, assuring accuracy in the debtor's name is sometimes more easily said than done, particularly where a debtor has more than one name and even more than one "legal" name. Hence, this Article suggests that Article 9 should be amended to clarify that, as most courts have assumed, the debtor's legal name is required on the financing statement, regardless of the debtor's status as an individual, registered organization, unregistered organization, or other type of entity. Article 9, however, should provide a safe harbor to filers attempting to ascertain the debtor's legal name. Furthermore, this Article argues that the computer search logic employed by the secretary of state offices for their Article 9 records should be refined to assist searchers in finding financing statements that contain minor errors in the debtor's name.

Part II of this Article reviews the law regarding the debtor-name issue under prior versions of Article 9. Part III examines the changes wrought by Revised Article 9. Part IV summarizes recent developments in the case law in this area, and Part V advances a proposal for further modification of the statute to clarify which of multiple debtor names should be used on financing statements and to mandate refinement of computerized searching techniques to assure greater accuracy of the filing system and to reduce future litigation.

II. THE NATURE OF THE PROBLEM AND SOME HISTORY

A. Historical Treatment of Security Interests

In the early nineteenth century when creditors first began to use widely nonpossessory security devices involving debtors' personal

Walker, *What's in a Name? (Apparently, a Lot)*, 24 AM. BANKR. INST. J., May 2005, at 26; Julianna Zekan, *The Name Game—Playing To Win Under § 9-402 of the Uniform Commercial Code*, 19 HOFSTRA L. REV. 265 (1990).

property, the courts reacted with suspicion and hostility.¹² Whereas real estate liens required some sort of public notice to be effective,¹³ there was initially no similar mechanism for giving notice of nonpossessory security interests in personal property. Courts had an instinctive abhorrence for these so-called secret liens—privately created security interests in favor of a particular lender that were hidden from view because the debtor retained possession of the encumbered property.¹⁴ The only antecedent for personal property security devices—the ancient practice of pawning or pledging one's goods—did not present the same problem of secrecy. Because the debtor had to surrender physical possession of the goods to the pawnbroker, that action by itself put third parties on alert that the debtor had already given an interest in its property to someone else.¹⁵

Legislatures reacted to judicial nullification of security interests by passing a number of statutes that required secured lenders to file a document in the public records or otherwise to give effective notice to the world of their interests.¹⁶ These statutes took a variety of forms and were tailored to specific types of secured transactions, such as accounts factoring, conditional sales, chattel mortgages, and trust receipt arrangements.¹⁷ But despite ongoing developments, the law always remained a step or two behind commercial lending practices.¹⁸ As

12. This hostility is evident as far back as the early seventeenth century in England. In 1601, the Star Chamber convicted a debtor of making a fraudulent conveyance where he retained possession of goods after purporting to make a “general deed of gift” to a creditor. *Twyne's Case*, (1601) 76 Eng. Rep. 809 (Star Chamber).

13. See, e.g., CONN. STAT. tit. 56, ch. 1, § 9 (1821) (requiring recordation in town where land lies); *Dana v. Newhall*, 13 Mass. (1 Tyng) 498, 501 (1816) (referring to the legal necessity of recording transfers of land in the public records).

14. See Douglas G. Baird & Thomas H. Jackson, *Possession and Ownership: An Examination of the Scope of Article 9*, 35 STAN. L. REV. 175, 180 (1983) (“Separation of ownership and possession has been viewed as a source of mischief toward third parties and, for that reason, as fraudulent.”).

15. See *id.* at 181 & n.24. One scholar, however, has disputed the widely accepted notion that before the advent of the chattel mortgage acts in the nineteenth century, nonpossessory security interests in personal property were unenforceable as fraudulent conveyances. See George Lee Flint, Jr., *Secured Transactions History: The Fraudulent Myth*, 29 N.M. L. REV. 363, 366 (1999) (stating that pre-nineteenth century “opinions reveal many courts enforcing the nonpossessory secured transaction against third parties prior to the passage of the respective chattel mortgage act”).

16. 1 GRANT GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY § 2.1 (1965).

17. See Homer Kripke, *Some Reflections After a Quarter-Century of the Uniform Commercial Code and on the Inception of a New Bankruptcy Code*, 87 COM. L.J. 124, 125–26 (1982).

18. Article 9 drafter Grant Gilmore noted that the industrial revolution created the “demand that all types of personal property be made available as security even though, because of the nature

creditors developed different security devices to compensate for the legal vacuum, legislatures responded by validating such devices but imposing certain restrictions on them designed to protect other creditors and third parties. One of the difficulties that lenders faced under these new statutory regimes was that each type of security device had its own legal requirements, and even the legal requirements for each particular type of transaction could vary from state to state.¹⁹ In the late nineteenth and early twentieth centuries there were selective efforts to modernize and standardize the law, but it remained largely a tangled mess.²⁰

B. The Uniform Commercial Code

The idea of a unified commercial code now seems commonplace, but it was revolutionary for its time.²¹ Article 9 replaced the myriad of inconsistent state laws governing different security devices with a single statute that applied to any consensual secured transaction involving personal property or fixtures, “regardless of its form.”²² Along with its comprehensive scope, Article 9 championed a particular form of giving public notice of security interests. For most transactions, the creditor would have the option to file a simple document, the financing statement, in the public files—either at the state or county level.²³

Financing statements, in contrast to earlier filed documents required by most states,²⁴ were simple affairs requiring only minimal pieces of

of property or because of its intended use, it was not possible or feasible for the lender to take it in pledge.” 1 GILMORE, *supra* note 16, § 9.1.

19. *Id.* § 2.2.

20. See Karl N. Llewellyn, *Why We Need the Uniform Commercial Code*, 10 U. FLA. L. REV. 367, 379 (1957) (arguing for the overhaul of the chattel security laws).

21. See John L. Gedid, *U.C.C. Methodology: Taking a Realistic Look at the Code*, 29 WM. & MARY L. REV. 341, 386 (1988) (discussing the history of the UCC and noting its uniqueness as the first “realist” statute).

22. U.C.C. § 9-102(1)(a) (1962).

23. Pre-revision Article 9 offered the states three alternative versions of the basic filing office provision. U.C.C. § 9-401(1) (1995). The three versions contained progressively greater amounts of local, as opposed to central, filing. The First Alternative Subsection of UCC § 9-401(1), for example, provided that all non-real-estate related financing statements were to be filed with the central filing office, normally, the secretary of state. In contrast, the Third Alternative Subsection of UCC § 9-401(1) required county-level filing for all transactions involving farm equipment, farm products, farm-related accounts, and consumer goods as well as those where the debtor had a place of business in only one county in the state.

24. See, e.g., *Crane v. Chandler*, 5 Colo. 21, 21–22 (1879) (describing the complicated recording process for chattel mortgages, including filing of the chattel mortgage itself in the public record).

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information, such as the parties' names, addresses, signatures, and a description or indication of the collateral. The financing statement embodied the notion of "notice filing."²⁵ It was designed merely to signal that certain assets of a particular debtor might be encumbered in favor of a particular creditor.²⁶ Third parties searching in the public filing system could only expect enough information to set them on a "trail of inquiry"²⁷ to find all the facts necessary to make an informed decision about their own course of action.²⁸

C. The Debtor's Name

The linchpin of the Article 9 filing system has been and remains the debtor's name. The debtor's name has always been mandated on a financing statement, even as successive versions of Article 9 have winnowed away the amount of information required for the public record.²⁹ In addition, the filing officer is required to index financing statements according to the debtor's name.³⁰ Thus, searching parties

25. See U.C.C. § 9-502 cmt. 2 (2001) (commenting on the Code's explicit adoption of the "notice filing" concept).

26. I say "might" be encumbered because there was no guarantee that the parties listed on the financing statement had in fact executed a security agreement or, even if they had, that the description of collateral on the financing statement matched that on the security agreement. In most cases, a written security agreement is a necessary element for attachment and enforceability of a security interest. U.C.C. § 9-203(a), (b)(3)(A). See *Merrill Lynch Bus. Fin. Servs. v. Swersky (In re Swersky)*, No. 3:98-CV-0587-G, 1999 U.S. Dist. LEXIS 2860, at *15 (N.D. Tex. Mar. 4, 1999) (holding that the parties had failed to execute a proper security agreement).

27. See *Magna First Nat'l Bank & Trust Co. v. Bank of Ill.*, 553 N.E.2d 64, 66 (Ill. App. Ct. 1990) ("The purpose of the financing statement is to put third parties on notice."); RAY D. HENSON, *HANDBOOK ON SECURED TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE* 64 (2d ed. 1979) ("The purpose of a financing statement is simply to give notice to the world that designated parties have entered into a secured transaction covering described collateral. The details must be learned from the parties.").

28. The Code provides a mechanism by which the debtor (and thereby the debtor's other creditors and purchasers) may obtain information from the secured party. See U.C.C. § 9-210 (requiring the secured party to respond to a debtor request for accounting of the unpaid secured obligation and/or for a list of collateral). Secured parties who fail to respond in a timely manner to debtor requests for information may be liable for actual and statutory damages and may also be limited to the collateral or the amount of debt listed in the debtor's request. *Id.* § 9-625(f), (g).

29. Compare U.C.C. § 9-502(a) (2001), with U.C.C. § 9-402(1) (1972). Interestingly, the 1962 version of Article 9 did not expressly require the debtor's name on a financing statement, only the debtor's signature. U.C.C. § 9-402(1) (1962). Even so, courts frequently required the debtor's name as well. *McMillin v. First Nat'l Bank & Trust Co. (In re Fowler)*, 407 F. Supp. 799, 802 (W.D. Okla. 1975); *In re Firth*, 363 F. Supp. 369, 371-72 (M.D. Ga. 1973); *In re Levins*, 7 U.C.C. Rep. Serv. (Callaghan) 1076, 1078 (Bankr. E.D.N.Y. 1970).

30. See U.C.C. § 9-519(c) (2001); U.C.C. § 9-403(4) (1972); U.C.C. § 9-403(4) (1962).

inevitably search for financing statements under the name of the person with whom they are contemplating a transaction to determine whether prior secured creditors claim an interest in any or all of that person's assets.

1. Pre-revision Article 9 requirements

Given the prime importance of the debtor's name as the gateway to the filing system, many pre-revision Article 9 disputes centered on the sufficiency of the debtor's name on the financing statement. Whereas the 1962 version of Article 9 did not require any particular name of the debtor, the 1972 version offered a simple, if only marginally helpful, statement as to which name of a debtor should be used on a financing statement: "A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners."³¹ The Official Comment to that section emphasized that secured parties should not use debtor trade names alone on financing statements: "Trade names are deemed to be too uncertain and too likely not to be known to the secured party or person searching the record, to form the basis for a filing system."³²

In addition to the meager identification of the debtor name and the warning about trade names, the 1972 Code carried forward from the 1962 Code the "substantial compliance" standard for filed financing statements: "A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading."³³ The Official Comment to that provision made it clear that courts should not hold filing creditors to an inhuman standard of precision, noting that Article 9 "is designed to discourage the fanatical and impossibly refined reading of [filing] requirements in which courts have occasionally indulged themselves."³⁴

In applying these provisions to debtor name disputes, courts confronted basically two types of errors committed by secured parties in putting the debtor's name on a financing statement. The first error involved selecting an "incorrect" name of the debtor to put on the public documents. Secured creditors committing the first error might use a trade

31. U.C.C. § 9-402(7) (1972).

32. *Id.* § 9-402 cmt. 7.

33. *Id.* § 9-402(8).

34. *Id.* § 9-402 cmt. 9.

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name of a debtor by itself—e.g., the creditor uses the debtor's trade name, "Hilton Inn," rather than its official partnership name, "Beacon Realty Investment Company."³⁵ The second error consisted of selecting the "correct" name but spelling it incorrectly on the financing statement.³⁶

2. Early pre-revision cases

For many years, courts were divided on the first issue regarding the use of trade names, nicknames, prior names, and so forth on a financing statement. Some courts were sympathetic to the filing creditor and upheld financing statements containing trade names or nicknames, particularly where the debtor was primarily known by these "non-legal" names.³⁷ In addition, courts could be somewhat forgiving where the name used was similar to the debtor's legal name—e.g., Platt Fur Co. for Henry Platt.³⁸ Many courts, however, took to heart the Official Comment discouraging the use of trade names and held that the debtor's trade name

35. *Pearson v. Salina Coffee House, Inc.*, 831 F.2d 1531, 1536–37 (10th Cir. 1987) (holding a financing statement using debtor's trade name to be fatally defective); *see also* *Brown v. Belarus Mach., Inc. (In re Serv. Lawn & Power, Inc.)*, 83 B.R. 515, 520 (Bankr. E.D. Tenn. 1988) (holding that a financing statement listing the debtor's president as the debtor rather than the legal name of the corporate debtor was legally insufficient).

36. For example, the secured party might set forth the debtor's name as "Silvermine Company" when its legal name was "Silverline Company." *See* *District of Columbia v. Thomas Funding Corp.*, 593 A.2d 1030, 1036 (D.C. Ct. App. 1991) (holding that such an error rendered a financing statement legally insufficient); *see also* *In re Brawn*, 6 U.C.C. Rep. Serv. 1031, 1037–39 (Bankr. D. Me. 1969) (containing a financing statement that misspelled Brawn as Brown); *Bank of N. Am. v. Bank of Nutley*, 227 A.2d 535, 538–39 (N.J. Super. Ct. Law Div. 1967) (containing a financing statement that misspelled Kaplan as Kaplas); *Nat'l Cash Register Co. v. Valley Nat'l Bank*, 5 U.C.C. Rep. Serv. 396, 396–97 (N.Y. Sup. Ct. 1968) (containing a financing statement that misspelled Borgwald as Boywald).

37. *Brushwood v. Citizens Bank of Perry (In re Glasco, Inc.)*, 642 F.2d 793, 796 (5th Cir. 1981) (observing that the debtor was universally known by the community as "Elite Boats, Division of Glasco, Inc." even though its legal name was "Glasco, Inc."). A couple of pre-UCC cases also adopted this point of view. *See* *Seder v. Zakaras*, 35 F.2d 729, 730 (1st Cir. 1929) (stating that a chattel mortgage would be more effective filed in the debtor's trade name than in his individual name); *Refrigerator Disc. Corp. v. Tatelbaum (In re Nickulas)*, 117 F. Supp. 590, 594 (D. Md. 1954) (noting that creditors were more likely to know the debtor by his trade name rather than his individual legal name).

38. *In re Platt*, 257 F. Supp. 478 (E.D. Pa. 1966); *see also* *Star Auto. Warehouse, Inc. v. Spears (In re Thriftway Auto Supply, Inc.)*, 156 B.R. 300, 302 (Bankr. W.D. Okla. 1993) (holding that the use of the debtor's trade name, Thriftway Auto Stores, was adequate where the debtor's legal name was Thriftway Auto Supply, Inc.); *In re Clairmont Pharmacy, Inc.*, 8 B.R. 695, 696 (Bankr. N.D. Ga. 1981) (stating that the use of the debtor's trade name, Clairmont Skyland Pharmacy, was sufficient where the debtor's legal name was Clairmont Pharmacy, Inc.).

used alone rendered a filed financing statement seriously misleading.³⁹ Furthermore, some judicial decisions invalidated financing statements using a debtor's nickname instead of his or her legal name.⁴⁰ In both instances, the antipathy to trade names and nicknames seemed to be based on the concern that future searching parties would not know those names or think to search under them.⁴¹

The second principal type of error found on financing statements consisted of misspelling, or setting forth incorrectly, the "correct" debtor name. In other words, the secured party attempted to use what it believed was the proper legal name of the debtor but ended up omitting or adding words or misspelling the name. For example, one secured creditor listed the debtor as "Raymond F. Sargent Co., Inc." when the debtor's correct legal name was "Raymond F. Sargent, Inc."⁴² Another secured lender set forth the debtor's last name as "Brown" whereas it was actually spelled "Brawn."⁴³ Courts deciding these cases did not appear to be any more tolerant of the second kind of error than the first, focusing on the magnitude of the error rather than the type of error.⁴⁴

39. See *Van Dusen Acceptance Corp. v. Gough* (*In re Thomas*), 466 F.2d 51 (9th Cir. 1972) (holding that use of trade name and omission of debtor's real name was a fatal defect); *In re Firth*, 363 F. Supp. 369 (M.D. Ga. 1973) (holding that a financing statement that shows the name of the debtor only in his unregistered trade name is legally insufficient to create a security interest); *Bank of Miss., Tupelo v. Pongetti* (*In re Hill*), 363 F. Supp. 1205 (N.D. Miss. 1973) (holding that a financing statement giving only debtor's trade name without cross-filing under debtor's individual name constituted a fatal defect).

40. See *Burnett v. J. I. Case Credit Corp.* (*In re Arnold*), 21 U.C.C. Rep. Serv. (Callaghan) 1479 (W.D. Mich. 1977) (deciding that the use of the debtor's nickname, Jack Arnold, invalidated the financing statement where the debtor's legal name was Herschel J. Arnold); *Cent. Nat'l Bank & Trust Co. of Enid v. Cmty. Bank & Trust Co. of Enid*, 528 P.2d 710, 713 (Okla. 1974) (holding that the use of the debtor's nickname, Lee Anderson, was insufficient where the debtor's legal name was James L. Anderson).

41. *Citizens Bank v. Ansley*, 467 F. Supp. 51, 55 (M.D. Ga. 1979), *aff'd*, 604 F.2d 669 (5th Cir. 1979).

42. *In re Raymond F. Sargent, Inc.*, 8 U.C.C. Rep. Serv. (Callaghan) 583, 593 (D. Me. 1970) (holding such a mistake fatal to the financing statement's effectiveness).

43. *In re Brawn*, 6 U.C.C. Rep. Serv. (Callaghan) 1031, 1033 (D. Me. 1969). In cases involving "pure" misspellings, it is often difficult to determine whether the mistake occurred because of a typographical error or because of a misunderstanding as to the proper spelling. For example, setting forth "Kapas" rather than "Kaplan" is perhaps more likely to be a typographical error—i.e., accidentally striking the wrong key on the keyboard—whereas setting forth "Tri-State Moulded Plastics" as "Tri-State Molded Plastics" is perhaps more likely the result of a misunderstanding of the proper spelling of the debtor's name. It is not apparent that the cause of the error, typographical or otherwise, should have an effect on the outcome of the case.

44. Some courts adhered to the almost curiously quaint doctrine of *idem sonans*, under which a misspelled name was adequate if it was pronounced more or less the same as the properly spelled name. See, e.g., *Corporate Financers, Inc. v. Voyageur Trading Co.*, 519 N.W.2d 238, 242–43

Two different approaches to applying the substantial compliance standard to debtor-name errors emerged in the pre-revision cases. Under the first approach, courts determined whether the error was minor or significant, based primarily on the extent to which the name on the financing statement differed from the debtor's actual name.⁴⁵ In applying this approach, judges focused almost mechanically on whether the financing statement name differed by one or several letters from the debtor's real name, whether the error occurred at the beginning of the name or the end, and so forth.⁴⁶

In some cases, the court went further and analyzed the deviation in light of the filing system involved—i.e., computerized versus manual,⁴⁷ searcher access versus call slip method,⁴⁸ large versus small database.⁴⁹ For example, spelling the debtor's name "Kaplam" rather than "Kaplan" would probably not thwart future searchers in a small, rural county using

(Minn. Ct. App. 1994) (holding that "Voyager" was adequate on a financing statement where the debtor's name was spelled "Voyageur"); *Starbuck v. Esparza* (*In re Esparza*), 821 P.2d 1216, 1220–22 (Wash. 1992) (holding that "Esparsa" was adequate on a financing statement where the debtor's name was spelled "Esparza").

45. One court stressed that the search methodology employed by the filing office could not determine whether or not a financing statement was defective and suggested that there should be an absolute standard of legal sufficiency divorced from a particular state's filing and searching procedures: "A financing statement cannot be misleading to some but not to others. If a defective financing statement is not misleading, it imparts notice to the world." *Pongetti v. Deposit Guar. Nat'l Bank* (*In re Strickland*), 94 B.R. 898, 903 (Bankr. N.D. Miss. 1988).

46. *See, e.g., In re Clairmont Pharmacy, Inc.*, 8 B.R. 695, 696 (Bankr. N.D. Ga. 1981) (finding, without any particular analysis, that the debtor's name on the financing statement was sufficient because it deviated from the debtor's true name merely by the addition of the word "Skyland" after the first word of the debtor's name).

47. *See, e.g., Star Auto. Warehouse, Inc. v. Spears* (*In re Thriftway Auto Supply, Inc.*), 156 B.R. 300, 302 (Bankr. W.D. Okla. 1993) ("It is fatuous, especially in the commercial context, for one to argue that searching for one narrow entry in an electronic database is a reasonable search.").

48. *See, e.g., In re Reeco Elec. Co., Inc.*, 415 F. Supp. 238, 241 (D. Me. 1976) (describing the call slip method of access to the public files); *Cain v. L.B. Smith, Inc.* (*In re Stebow Constr. Co.*), 73 B.R. 459, 461 (Bankr. D.N.J. 1987) (same). Under the call slip method, searchers do not have direct access to the UCC filings. Instead, they must fill out a call slip with the name that they want searched and then submit that slip to the clerk in the secretary of state's office. The clerk will normally search only for financing statements on which the debtor's name exactly matches the name on the call slip. *Reeco Elec.*, 415 F. Supp. at 241. Obviously, clerks in their individual discretion could call the searchers' attention to a financing statement with a debtor name that is similar to but not exactly the same as that on the call slip.

49. *See, e.g., In re A.C. Ballard*, 100 B.R. 526, 531 (Bankr. D. Nev. 1989) (citing *Kay Auto. Warehouse, Inc. v. McGovern Auto Specialty, Inc.* (*In re McGovern Auto Specialty, Inc.*), 51 B.R. 511, 514 (E.D. Pa. 1985)) (noting the impact of the size of the filing database on the ease of searching); *In re Wishart*, 10 U.C.C. Rep. Serv. (Callaghan) 1296, 1298 (Bankr. W.D. Mich. 1972) (distinguishing filings in small county office from "numerous financing statements . . . filed statewide in one office as in Michigan").

a manual filing system where the searcher could physically access the records. In that scenario, the searcher looking for “Kaplan” would be “riffing”⁵⁰ through a set of financing statements or index cards, would presumably see “Kaplam” before it reached “Kaplan,” and would not be confronted with many names spelled similarly or identically. On the other hand, the same error might be highly significant in a central computerized filing system in a populous state. A searcher entering the name “Kaplan” in a computerized database would probably not be led to the filing under “Kaplam”; in addition, the searcher would have any number of filings under “Kaplan” to go through before finding the appropriate party without having to worry about “Kaplam” or other misspellings.

3. *Evolution of pre-revision standards*

The mechanistic comparison of the debtor’s correct name and the one used on the financing statement gradually yielded to a more holistic standard based on the “reasonably diligent searcher.”⁵¹ Under the latter standard, courts examined whether or not a reasonably diligent searcher employing accepted search techniques would likely find the financing statement with the incorrect debtor name.⁵² The application of the standard was heavily dependent on all the facts and circumstances of a particular case.⁵³

Whether the evolution away from the mechanical comparison of names toward the seemingly more flexible “reasonably diligent searcher” standard actually affected the resolution of individual cases is debatable. It is apparent that many courts simply applied the old standard under the guise of a new name. In fact, some courts applying the “reasonably diligent searcher” standard still made a superficial comparison between the debtor’s actual name and the name on the financing statement to

50. See *Kay Auto.*, 51 B.R. at 514 (describing the card “riffing” technique).

51. *E.g.*, *Unsecured Creditors Comm. v. Marepcon Fin. Corp. (In re Bumper Sales, Inc.)*, 907 F.2d 1430, 1434–35 (4th Cir. 1990).

52. *TMMB Funding Corp. v. Associated Food Stores, Inc.*, 523 N.Y.S.2d 161, 163 (App. Div. 1988) (citing JAMES J. WHITE & ROBERT S. SUMMERS, *UNIFORM COMMERCIAL CODE* § 23-16, at 957–58 (2d ed. 1980)).

53. One court chided judges in other cases who had mistakenly decided that the debtor name question was an issue of law and had “ignore[d] the essentially factual nature of the inquiry.” *Kay Auto.*, 51 B.R. at 513–14; accord *Huntington Nat’l Bank v. Tri-State Molded Plastics, Inc. (In re Tyler)*, 23 B.R. 806, 809 (Bankr. S.D. Fla. 1982) (“The determination of whether or not an error is seriously misleading is essentially a factual one.”).

determine whether the two names were “close enough.”⁵⁴ Criticism of both approaches, however, began to emerge as courts⁵⁵ and commentators⁵⁶ found fault with the subjectivity inherent in them. Both the “reasonably diligent searcher” standard and the “close enough” standard allowed judges to second-guess what searchers should or should not have been able to discover had they tried hard enough. This subjectivity cut against the core UCC principle of promoting certainty and efficiency in commercial transactions.⁵⁷ This uneasiness about the existing law regarding debtor names on financing statements drove the revisers of Article 9 toward a more objective standard—one that courts could apply, it was hoped, with consistency and precision.⁵⁸

III. THE DEBTOR'S NAME UNDER REVISED ARTICLE 9

Revised Article 9 adheres to the substantial compliance standard for measuring financing statement adequacy that existed in the old law. Under this standard, financing statements “substantially satisfying” Article 9 requirements are still effective even if they contain “minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.”⁵⁹ The revised statute, therefore, still permits small mistakes by the secured party, provided that the financing statement gives adequate notice to third parties.

54. See, e.g., *Scott Truck & Tractor Co. v. Alma Tractor & Equip., Inc.*, 35 S.W.3d 815, 818 (Ark. Ct. App. 2000) (stating that a reasonably diligent searcher would find a financing statement with a debtor name error because “[b]oth names begin with the same letter and both names contain ‘M.P.G. Enterprises’”).

55. See, e.g., *Transamerica Commercial Fin. Corp. v. Gen. Elec. Capital Corp. (In re Wardcorp, Inc.)*, 133 B.R. 210, 217 (Bankr. S.D. Ind. 1990) (criticizing the reasonably diligent searcher standard as fostering “post hoc balancing of equities”); *First Nat’l Bank v. Strong*, 663 N.E.2d 432, 435 (Ill. App. Ct. 1996) (faulting any rule that “would burden a searcher with guessing at misspellings and various configurations of a legal name”).

56. See, e.g., Steven L. Harris & Charles W. Mooney, Jr., *Choosing the Law Governing Perfection: The Data and Politics of Article 9 Filing*, 79 MINN. L. REV. 663, 666 (1995) (noting that the reduction of costs associated with the filing system is “an overriding issue in the [Article 9] revision process”); Penney, *supra* note 11, at 1422 (“Requiring absolute precision in the debtor’s name on financing statements would provide a workable standard in both individual, as well as corporate debtor situations.”).

57. See Margit Livingston, *Certainty, Efficiency, and Realism: Rights in Collateral Under Article 9 of the Uniform Commercial Code*, 73 N.C. L. REV. 115, 178–84 (1994) (discussing the effect of Karl Llewellyn’s jurisprudence on the formulation of the U.C.C.).

58. In its final report, the Article 9 Study Group, appointed in 1990 by the NCCUSL and the ALI, recommended changes to Article 9 and specifically recommended that state filing systems increase the utility of those systems. See UCC REPORT, *supra* note 7, at 88–90 (1992).

59. U.C.C. § 9-506(a) (2001).

Regarding the specific issue of the debtor's name, however, new Article 9 takes a stronger stand. In an apparent attempt to resolve any ambiguities in the old law, the revision states that "a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a) [the Code provision defining the debtor's name] is seriously misleading."⁶⁰ The phrase "fails sufficiently to provide the name of the debtor" implies that errors in the debtor's name are fatal to the financing statement's effectiveness, whether the error is minor or not. All debtor name mistakes presumptively render the financing statement seriously misleading.⁶¹ This change in the law singles out the debtor's name as the most important piece of information on the financing statement.⁶²

A. The Single Search Standard

But, despite this new emphasis on complete accuracy, the revisers recognized that secured parties may be excused from some mistakes in setting forth the debtor's name if those errors do not affect a searcher's ability to find the financing statement in the official public database. Hence, the new statute provides a safe harbor that saves financing statements with errors in the debtor's name. If "a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor . . . , the name provided does not make the financing statement seriously misleading."⁶³

60. *Id.* § 9-506(b). Section 9-503(a) specifies which name of the debtor is required on a financing statement. *See infra* notes 69–72 and accompanying text. For example, "a financing statement sufficiently provides the name of the debtor . . . if the debtor is a registered organization, only if the financing statement provides the name of the debtor as indicated on the public record of the debtor's jurisdiction which shows the debtor to have been organized." U.C.C. § 9-503(a)(1).

61. *See* 4 JAMES J. WHITE & ROBERT S. SUMMERS, UNIFORM COMMERCIAL CODE § 31-12, at 174–75 (5th ed. 2002) ("[I]f the standard search logic . . . fails to find a financing statement because the name is incorrect, that renders the financing statement not only non-compliant with 9-502 and 9-503, but also means that it fails 'substantially' to satisfy the 'requirements of this Part' under 9-506 and so is 'seriously misleading.'").

62. From time to time, some commentators have suggested that taxpayer identification numbers ("TINs") be required on financing statements as a means of ensuring absolute identifiability of particular debtors and thus improving the accuracy of the search process. Others have noted the problems associated with mandating TINs on financing statements, including, in particular, privacy concerns with respect to Social Security Numbers. Edward S. Adams et al., *A Revised Filing System: Recommendations and Innovations*, 79 MINN. L. REV. 877, 899–900 (1995). Although Revised Article 9 does provide a space for a TIN on the model form, it does not go so far as to require inclusion of the debtor's TIN on the financing statement. U.C.C. § 9-521(a).

63. U.C.C. § 9-506(c).

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This provision might be denominated the “single search standard” in contrast to the pre-revision “reasonably diligent searcher standard.” Thus, under Revised Article 9, a third party must only search once for financing statements for any particular debtor.

This “single search” should consist of entering the debtor’s “correct” name into the filing office’s database and observing whether that search produces any recorded financing statements. If it does, then a searcher presumably must take the additional step of determining whether the financing statements found pertain to the person or entity with which they are dealing.⁶⁴ If the search does not produce any matches, then, under the “single search” standard, the searcher has finished searching and may assume that there are no filed financing statements recorded against that particular person or entity. Hence, the new law impliedly defines reasonable diligence by searchers as the undertaking of a single search under the debtor’s correct name.⁶⁵

B. The Debtor’s Name Defined

Revised Article 9 also elaborates on the question of what constitutes the debtor’s “name” for filing and searching purposes. As discussed previously, the 1962 Code was silent on which debtor name should be used on the financing statement, most likely because the statute did not require the debtor’s name as such on the financing statement, only the debtor’s signature.⁶⁶ The 1972 version of Article 9 added the simple statement that “[a] financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or names of partners.”⁶⁷ One could infer from this statement that filers should use the individual’s name for an individual debtor, the partnership name for a partnership, and the corporate name for a corporation. Left unanswered was the

64. For example, if a search under the name “Mary P. Anderson” produced three financing statements, the searcher would have to determine whether they pertained to the “Mary P. Anderson” in whom the searcher was interested. This determination would most likely be made by checking the debtor’s address on the financing statement or making further inquiry of the debtor or the listed secured party.

65. Even before the revision of Article 9, some courts were already defining a “reasonably diligent search” as one in which the searcher made a single search under the debtor’s legal name. *See, e.g.*, *Transamerica Commercial Fin. Corp. v. Gen. Elec. Capital Corp. (In re Wardcorp, Inc.)*, 133 B.R. 210, 216–17 (Bankr. S.D. Ind. 1990); *First Nat’l Bank v. Strong*, 663 N.E.2d 432, 435 (Ill. App. Ct. 1996).

66. U.C.C. § 9-402(1) (1962).

67. U.C.C. § 9-402(7) (1972).

appropriate name to use for unincorporated associations, trusts, estates, and other entities.

Revised Article 9 tackles this issue in somewhat more detail. For registered organizations,⁶⁸ for example, a financing statement sufficiently sets forth the debtor's name "only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized."⁶⁹ The revised statute also sets forth the appropriate name to use for estates and trusts.⁷⁰ Finally, in the catchall provision for "all other cases," the new law requires that the secured party set forth the individual or organizational name of the debtor, if the debtor in fact has a name.⁷¹ If the debtor does not have a name, then the secured party should list the names of the "partners, members, associates, or other persons comprising the debtor."⁷²

Taken as a whole, Revised Article 9's provisions regarding the debtor's name appear to shift most of the burden of dealing with errors squarely onto the filing secured creditor's shoulders. Filing creditors must set forth the debtor's name accurately on the financing statement or risk lack of perfection. Searching parties need only perform a "single search" to identify prior secured parties. They are not expected to search in a database other than the filing office's official database, to search

68. A registered organization is defined as "an organization organized solely under the law of a single State or the United States and as to which the State or the United States must maintain a public record showing the organization to have been organized." U.C.C. § 9-102(a)(70) (2001). The Official Comments suggest that this term will ordinarily include corporations, limited partnerships, and limited liability companies. *Id.* § 9-503 cmt. 2; *see, e.g.*, CAL. CORP. CODE § 15621(a) (West 2006) (requiring registration with the Secretary of State for limited partnerships); FLA. STAT. § 608.407(1) (2005) (requiring registration for limited liability companies); 805 ILL. COMP. STAT. 5/2-10 (2006) (requiring registration for corporations); N.Y. P'SHIP LAW § 121-1500(a) (McKinney 2005) (requiring registration for limited liability partnerships). This definition presumably would not include general partnerships and unincorporated associations.

69. U.C.C. § 9-503(a)(1). "Jurisdiction of organization" is defined as "the jurisdiction under whose law the organization is organized." *Id.* § 9-102(a)(50). *See* Harry C. Sigman, *The Filing System Under Revised Article 9*, 73 AM. BANKR. L.J. 61, 72 (1999) (commenting that the new rule regarding registered organization names "enables filers and searchers to rely with certainty on the debtor's exact name obtained from an objective and publicly available source").

70. For estates, the financing statement should provide the decedent's name and also indicate that the debtor is an estate. U.C.C. § 9-503(a)(2). For trusts and trustees, the financing statement should provide "the name specified for the trust in its organic documents or, if no name is specified . . . the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors." *Id.* § 9-503(a)(3)(A). In addition, the financing statement should indicate the debtor's status as a trust or trustee. *Id.* § 9-503(a)(3)(B).

71. *Id.* § 9-503(a)(4)(A).

72. *Id.* § 9-503(a)(4)(B).

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using any method other than that office's "standard search logic,"⁷³ or to use anything other than the debtor's "correct" name in their search requests.⁷⁴ For registered organizations, such as corporations and limited liability companies, the debtor's correct name is clearly, and solely, its official registered name.⁷⁵ For other types of organizations and for individuals, the correct name of the debtor is not defined, and that issue, as will be seen, quickly generated litigation.⁷⁶

C. The Policy Behind Revised Article 9

The apparent rationale for Revised Article 9's rules regarding debtor names can be found in a number of pre-revision cases and reflects the attitude that filing creditors should bear the burden of accuracy rather than searching parties bearing the burden of inaccuracy.⁷⁷ Article 9 itself is fairly silent as to its policy perspective, but pre-revision courts often took the view that because so little is required of the secured party using the filing system, it is appropriate to demand precision in setting forth the debtor's name.⁷⁸ Additionally, the secured party has the means by which to find out the debtor's correct name before filing whereas searchers can only guess at various possible misspellings or variations of the debtor's name that might exist in filed financing statements.⁷⁹ In other words, it is more efficient and equitable to require accuracy by the filing creditor

73. The Official Comments to section 9-506 emphasize the singularity of the searcher's anticipated search: "A financing statement that is seriously misleading under this section is ineffective even if it is disclosed by (i) using a search logic other than that of the filing office to search the official records or (ii) using the filing office's standard search logic to search a data base other than that of the filing office." *Id.* § 9-506 cmt. 2.

74. *Id.* § 9-506(c)-(d).

75. *Id.* § 9-503 cmt. 2.

76. *See infra* notes 89-106 and accompanying text.

77. *See, e.g.,* Transamerica Commercial Fin. Corp. v. Gen. Elec. Capital Corp. (*In re* Wardcorp, Inc.), 133 B.R. 210, 215 (Bankr. S.D. Ind. 1990) (expressing this view).

78. *See, e.g.,* Huntington Nat'l Bank v. Tri-State Molded Plastics, Inc. (*In re* Tyler), 23 B.R. 806, 809 (Bankr. S.D. Fla. 1982) ("[E]rrors should be judged strictly against the secured party, exactly because so little *is* required of the creditor.").

79. For example, should a searcher who knows the potential debtor as "William Johnson" be required to search under "Johnsen," "Jonson," and "Jonsen" as well as various versions of the first name, such as "Will," "Bill," and "Billy"? *See* First Nat'l Bank v. Strong, 663 N.E.2d 432, 435 (Ill. App. Ct. 1996) ("[A] rule that would burden a searcher with guessing at misspellings and various configurations of a legal name would not provide creditors with the certainty that is essential in commercial transactions.").

than to demand “reasonable diligence,” however defined, from searching creditors.⁸⁰

IV. POST-REVISION CASE LAW

Since Revised Article 9 went into effect over five years ago, courts have had several opportunities to apply the new rules regarding the accuracy of debtor names on financing statements. Though a few courts are still holding tight to the “reasonably diligent searcher” standard,⁸¹ most have seemingly read new Article 9 as it is written and have dropped the hammer on the filing creditor who has made an error in the debtor’s name that prevents subsequent searchers from finding the financing statement using a single search under the debtor’s correct legal name. Though a few pockets of resistance to the new regime remain, the days of latitude for the filing party are largely over. The following review of the case law reveals that various courts have treated the debtor name issue more or less consistently, regardless of whether the debtor is an individual or a registered organization.

A. Cases Involving Individual Debtors

In three post-revision cases involving the Kansas filing system, the courts confronted the question of what errors are acceptable where the debtor is an individual. The first court to address the issue applied the pre-revision “reasonably diligent searcher” standard,⁸² but in the next case, the Tenth Circuit Bankruptcy Appellate Panel used the strict

80. One of the drafters of Revised Article 9 recently summarized on a UCC listserv the assumed cost effectiveness of requiring the secured party to be accurate in setting forth the debtor’s name on a financing statement:

[T]he Drafting Committee for revised Article 9 made a judgment call that the overall secured lending system would be better off by imposing a one-time cost on a secured party filing a financing statement to get the debtor’s name right, thereby improving transparency and relieving the system of the cost of a searching secured party making multiple searches and having to retain the residual risk that there might be one more search under a “close enough” name that it could have done.

Posting of Steven Weise to ucclaw-l-bounces@lists.washlaw.edu (Oct. 25, 2006) (on file with author); see also G. Ray Warner, *Using the Strong-Arm Power To Attack Name Errors Under Revised Article 9*, 20 AM. BANKR. INST. J., Oct. 2001, at 22 (stating that new Article 9 “replaces [the] reasonableness standard with a *precise* standard based on the computerized search logic used by the relevant filing office”) (emphasis added).

81. See, e.g., *In re Summit Staffing Polk County, Inc.*, 305 B.R. 347, 355 (Bankr. M.D. Fla. 2003); *Nazar v. Bucklin Nat’l Bank (In re Erwin)*, No. 02-10227, 02-5176, 2003 WL 21513158, at *7-8 (Bankr. D. Kan. June 27, 2003).

82. *In re Erwin*, 2003 WL 21513158, at *8.

standard suggested by Revised Article 9.⁸³ The Kansas Supreme Court soon followed with another decision applying that strict standard.⁸⁴

In the first case, *Nazar v. Bucklin National Bank (In re Erwin)*,⁸⁵ the debtor's legal name was "Michael A. Erwin," and the secured party had filed a financing statement setting forth the debtor's name as "Mike Erwin."⁸⁶ In the debtor's bankruptcy, the trustee tried to avoid the bank's security interest as unperfected because the debtor's name was listed incorrectly.⁸⁷ The bankruptcy court held that the secured party's financing statement was valid, even though an electronic search of the filing records under the name "Michael A. Erwin" did not reveal the financing statement.⁸⁸

The court stated that the traditional "reasonably diligent searcher" test survived the enactment of Revised Article 9, at least with respect to debtors who are individuals.⁸⁹ Article 9, the court noted, does not define "correct name" or even "name" for individual debtors,⁹⁰ and there is no reason to think that the drafters necessarily meant "legal name" when they required filing parties to place the debtor's name on a financing statement.⁹¹ In this case, the debtor frequently used the name "Mike Erwin,"⁹² and the court held that his nickname was in fact one of his "names" or a "correct name" for him.⁹³ As such, it was sufficient for use

83. Clark v. Deere & Co. (*In re Kinderknecht*), 308 B.R. 71, 75 (B.A.P. 10th Cir. 2004).

84. Pankratz Implement Co. v. Citizens Nat'l Bank, 130 P.3d 57, 59 (Kan. 2006).

85. *In re Erwin*, 2003 WL 21513158, at *1.

86. *Id.* at *2.

87. *Id.* at *3.

88. *Id.* at *12.

89. *Id.* at *8. Interestingly, the court applied Revised Article 9 in judging the sufficiency of the Bank's financing statement even though it was filed in 1999. Referring to one of the new law's transition rules, the court stated that "if the pre-enactment security interest did not satisfy the perfection requirements of revised Article Nine, the creditor had one year from enactment, or until July 1, 2002, to satisfy the perfection requirements of revised Article Nine." *Id.* at *1 (citing KAN. STAT. ANN. § 84-9-703(b)(3) (2002 Supp.), which is basically Kansas's version of U.C.C. § 9-703(b)(3) (2001)). The court ignored, however, the transition rule that allows pre-enactment financing statements to remain effective for the normal five-year period without re-filing by the creditor. U.C.C. § 9-705(c). Arguably, the Bank's financing statement should have been evaluated by old Article 9 standards. Given that the court employed the "reasonably diligent searcher" standard, its reliance on Revised Article 9 did not determine the case's outcome.

90. *Id.* at *6.

91. *Id.* at *10.

92. The debtor's name on all of the Bank's loan documents was "Mike Erwin," including the W-9 tax form request for the debtor's taxpayer identification number and certification. *Id.* at *2.

93. *Id.* at *11. The court emphasized that nothing in Article 9 mandates the use of an individual debtor's full legal name on a financing statement. *Id.* at *10. In fact, the Kansas

on a financing statement. According to the court, searchers could fairly be required to use “reasonable diligence” in seeking out financing statements naming the debtor, and such diligence demanded searches under alternative names such as “Erwin” or “M. Erwin,” both of which would have revealed the Bank’s financing statement.⁹⁴ Thus, the first post-revision court to tackle the debtor name question seemed wedded to the pre-revision standard, at least with respect to the names of individuals.

In the second Kansas case, *Clark v. Deere & Co. (In re Kinderknecht)*,⁹⁵ the debtor’s legal name was “Terrance Joseph Kinderknecht,” but the secured party filed a financing statement against him under his nickname, “Terry J. Kinderknecht.”⁹⁶ Following the reasoning of the *Erwin* case, the bankruptcy court held that the filing was sufficient under Article 9.⁹⁷ The court stressed that Article 9 did not define “correct name” for individuals nor did it expressly require the use of legal names for individual debtors.⁹⁸ In this case, the court found that “Terry J. Kinderknecht” was undoubtedly a name that the debtor used—in fact, he signed his bankruptcy petition as such.⁹⁹

Additionally, the court compared in some detail the two computerized Article 9 databases available in Kansas—one official and one unofficial.¹⁰⁰ The unofficial database’s flexible search parameters made it more likely that a searcher would find a financing statement against any particular individual. After noting the availability of the more flexible unofficial search mechanism, the court held that a financing statement filed under a debtor’s nickname could never be seriously misleading if a reasonable searcher could find it in the unofficial database, if not the official database.¹⁰¹

administrative regulations implementing new Article 9 suggest that “human judgment still plays a role in searches for individual debtor names ‘that are not automated.’” *Id.* at *7.

94. *Id.* at *2.

95. *Clark v. Deere & Co. (In re Kinderknecht)*, 300 B.R. 47 (Bankr. D. Kan. 2003), *rev’d*, 308 B.R. 71 (B.A.P. 10th Cir. 2004).

96. *Id.* at 48.

97. *Id.* at 55–56.

98. *Id.* at 49.

99. *Id.* at 48.

100. *Id.* at 51–56. The official database, maintained by the Kansas Secretary of State’s office, generates state-certified search results, as described in U.C.C. § 9-506(c) (2001). *Kinderknecht*, 300 B.R. at 51. An “unofficial” search or database refers to any other electronic information retrieval system, whether maintained by the Secretary of State or a private entity. *Id.* at 51–56.

101. The court stated:

The bankruptcy court decision in *Kinderknecht* was short-lived, however. Six months after it was rendered, the Bankruptcy Appellate Panel for the Tenth Circuit reversed it, relying on several policy considerations and a close reading of the Article 9 name provisions.¹⁰² The panel concluded that the Article 9 requirement of the debtor's name on a financing statement, in fact, means that the debtor's "legal name" must be used.¹⁰³ Noting that Article 9 makes the use of business entities' trade names by themselves on financing statements legally insufficient, the panel decided that a "different standard should not apply to individual debtors."¹⁰⁴ In addition, the suggested statutory forms for a financing statement have a space entitled "DEBTOR'S EXACT FULL LEGAL NAME."¹⁰⁵ The suggested forms, though not mandated by the statute, clearly indicated to the panel that the drafters disapproved of nicknames.¹⁰⁶

In addition to relying on statutory interpretation, the panel advanced four policy considerations to justify its holding. First, requiring the debtor's legal name simplifies filing; and second, it simplifies searching.¹⁰⁷ Strict enforcement of the rule means that secured parties know that they need to use the debtor's legal name on the financing statement, and third parties know that they need to search the public records only under the debtor's legal name.¹⁰⁸ Third, mandating the use of the debtor's legal name will reduce future litigation about the sufficiency of a particular non-legal name (such as a nickname) on a financing statement and about the ability of a "reasonably diligent

[A] searcher must use reason and select alternative names as search criteria to ensure a realistic possibility of finding a financing statement. When a bankruptcy petition in the legal name of the debtor is signed with a nickname representing the debtor's first name, . . . the searcher must use that nickname as a search criterion to be considered as having acted reasonably.

Id. at 56. Of course, even a reasonably diligent third party searching the files before the debtor's bankruptcy would have no way of seeing a bankruptcy petition signed by the debtor. The court, however, seems to be suggesting that if the debtor signed official documents such as his bankruptcy petition with his nickname, then he would be likely to use that name in some capacity in his dealings with the third party searcher.

102. Clark v. Deere & Co. (*In re Kinderknecht*), 308 B.R. 71, 72 (B.A.P. 10th Cir. 2004).

103. *Id.* at 75.

104. *Id.*

105. *Id.* at 76 (quoting KAN. STAT. ANN. § 84-9-521 (Supp. 2005) (showing UCC Financing Statement)).

106. *Id.*

107. *Id.* at 75.

108. *Id.*

searcher” to locate the financing statement with that name.¹⁰⁹ Finally, the panel observed that requiring the filing creditor to use the debtor’s legal name is not unduly difficult or burdensome.¹¹⁰ In fact, because filing creditors conduct their own searches before entering into a secured transaction with the debtor, they should already be aware of the debtor’s legal name.¹¹¹

The third Kansas case involving an error in an individual debtor’s name cemented the position developed by the Tenth Circuit Bankruptcy Appellate Panel in *Kinderknecht* that the secured party must set forth the debtor’s legal name on a filed financing statement with complete accuracy. In *Pankratz Implement Co. v. Citizens National Bank*, the Kansas Supreme Court held that a one-letter omission in the debtor’s name rendered a financing statement seriously misleading.¹¹² In *Pankratz*, the first secured party had filed a financing statement listing the debtor as “Roger House,” a misspelling of his actual legal name, “Rodger House.”¹¹³ The second secured party, which had spelled the debtor’s name correctly, challenged the sufficiency of the filing.¹¹⁴ The lower court granted summary judgment in favor of the first secured party based on its earlier filing.¹¹⁵

On appeal, the Kansas Court of Appeals first noted that the omission of a single letter from the debtor’s first name would seem to be a “minor error or omission” under the substantial compliance standard of UCC § 9-506(a).¹¹⁶ The real question, the court stated, is not the magnitude of the error but “whether a reasonably diligent searcher would find the prior security interest.”¹¹⁷ Under the strict requirements of Revised Article 9, the “reasonably diligent searcher” need make only a single search under the debtor’s correct legal name in the official public database.¹¹⁸ The

109. *Id.* at 75–76.

110. *Id.* at 76.

111. *Id.*

112. *Pankratz Implement Co. v. Citizens Nat’l Bank*, 130 P.3d 57, 59 (Kan. 2006).

113. *Id.*

114. *Id.* at 59–60.

115. *Id.* at 59. The general rule for priority among two or more secured parties with security interests in the same collateral is that the first to file a financing statement against the debtor or the first to perfect the security interest, whichever occurs earlier, has the first priority. U.C.C. § 9-322(a)(1) (2001). Of course, the first filer must have recorded a *valid* financing statement to gain this priority position.

116. *Pankratz Implement Co. v. Citizens Nat’l Bank*, 102 P.3d 1165, 1167 (Kan. Ct. App. 2004) (emphasis omitted), *aff’d*, 130 P.3d 57, 59 (Kan. 2006).

117. *Id.*

118. *Id.* at 1168.

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court rejected any notion that a third party was expected to search under various possible names of the debtor or under variant spellings of the debtor's legal name.¹¹⁹ Additionally, a reasonable searcher is required only to seek financing statements in the official UCC database, normally maintained by the Secretary of State, as opposed to any unofficial electronic databases that may exist.¹²⁰

Applying a de novo standard of review, the Kansas Supreme Court affirmed the appellate court's decision against the first secured creditor,¹²¹ though the supreme court's reasoning differed slightly. The supreme court rejected the "reasonably diligent searcher" standard altogether and noted that Revised Article 9 sought to impose a "bright line" rule regarding the sufficiency of the debtor's name on a financing statement.¹²² By requiring that filing creditors set forth the debtor's name correctly, the new law has "the effect of shifting the responsibility of getting the name on the financing statement right to the filing party, thereby enabling the searching party to rely upon that name and eliminating the need for multiple searches using variations of the debtor's name."¹²³ The ultimate result of the bright line standard, the court noted, will be to promote certainty in commercial transactions and to reduce litigation regarding financing statement adequacy.¹²⁴

The Kansas Supreme Court also agreed with the appellate court that searches in unofficial databases do not qualify as searches under Article 9's safe harbor provision. The court held that it is legally irrelevant that a searcher could find the erroneous financing statement in a database other than the official one maintained by the filing office.¹²⁵ In addition, the court hewed to the Tenth Circuit Bankruptcy Appellate Panel's *Kinderknecht* decision in holding that even where individual debtors are involved, the debtor's full legal name must appear on the financing

119. *Id.*

120. *Id.* In addition to the official Secretary of State database, Kansas maintained an unofficial database on a temporary internet site, found at <http://www.accesskansas.org>, during the Article 9 transition period. *Id.* at 1167–68. This site provided a more flexible search logic that disclosed the financing statement with the debtor's name spelled as "Roger" rather than the actual spelling "Rodger." *Id.* at 1168.

121. *Pankratz Implement Co. v. Citizens Nat'l Bank*, 130 P.3d 57, 59 (Kan. 2006).

122. *Id.* at 62–63 (observing that the amendments to Article 9 "eliminat[ed] the need to conduct diligent searches").

123. *Id.* at 63.

124. *Id.*

125. *Id.* (noting that the official filing office search is the "only search that determines whether a name is seriously misleading" under Article 9).

statement.¹²⁶ Taken together, the Kansas Supreme Court's pronouncements tighten the compliance standard for the filing secured party: in all cases the secured party must use the debtor's legal name on the financing statement and set forth that name in such a way that it can be found in the official filing office database by a searcher employing the debtor's exact legal name.¹²⁷ No exceptions will be permitted.

A Georgia appellate court recently adopted the same unforgiving attitude toward debtor name errors in a case involving an individual debtor. In *All Business Corp. v. Choi*, the secured party indicated the debtor's name on the financing statement as "Gu, SangWoo" and the debtor's trade name as "CCO Check Cashing-Buford."¹²⁸ The debtor's name was in fact "Sang Woo Gu," and the trade name was "CCO Check Cashing."¹²⁹ A third party searched for financing statements under the debtor's correct legal name and trade name, and the filing office's standard search logic did not reveal the secured party's financing statement.¹³⁰ The secured party argued that a "simple stem search"¹³¹ under the terms "CCO" and "Gu" did disclose the financing statement.¹³²

Notwithstanding the success of the "stem" search, the court ruled that the creditor's security interest was unperfected, relying on a strict reading of Article 9 and Georgia case law.¹³³ Again, the errors in question were extremely slight. The mistake in the trade name was, in fact, irrelevant since a trade name filing by itself is insufficient.¹³⁴ The

126. *Id.* at 66–67 (quoting *Clark v. Deere & Co. (In re Kinderknecht)*, 308 B.R. 71, 75 (B.A.P. 10th Cir. 2004)).

127. For a recent case adopting the Tenth Circuit Bankruptcy Appellate Panel's holding and reasoning in *Kinderknecht*, see *Genoa National Bank v. Southwest Implement, Inc. (In re Borden)*, No. BK05-41272, 2006 Bankr. LEXIS 2911, at *13–15 (Bankr. D. Neb. Nov. 2, 2006) (holding that a filing under "Mike Borden" was insufficient where the debtor's legal name was "Michael Borden").

128. *All Bus. Corp. v. Choi*, 634 S.E.2d 400, 401 (Ga. Ct. App. 2006).

129. *Id.*

130. *Id.* at *15.

131. A stem search involves searching under only part of a name. For example, for "Bates Auto Sales, Inc.," one might conduct a stem search using only "Bates." In searching for "Terrance Joseph Kinderknecht," one might enter a search for "Kinderknecht" alone or even "Kinder!". Stem searches, of course, increase the number of financing statements retrieved and also augment the possibility of finding a financing statement with an error in the debtor's name.

132. *All Bus. Corp.*, 634 S.E.2d at 405.

133. *Id.* (citing *Receivables Purchasing Co. v. R & R Directional Drilling, LLC*, 588 S.E.2d 831 (Ga. Ct. App. 2003)).

134. U.C.C. § 9-503(c) (2001); see also *In re Cruz*, No. 04-43119-13, 2005 Bankr. LEXIS 866, at *6–7 (Bankr. D. Kan. May 12, 2005).

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error in the debtor's legal name was merely the omission of a space in the debtor's first name: "SangWoo" rather than the correct "Sang Woo."¹³⁵

B. Cases Involving Registered Organization Debtors

Predictably, the first few post-revision cases involving the debtor's name on a financing statement involved individual debtors. Because new Article 9 does not specify what constitutes the "correct" name for individual debtors, courts have leeway to interpret the requirement in various ways. On the other hand, with the new law's insistence on use of the publicly registered name of registered organizations, one would not expect much litigation involving corporate debtors. Presumably, the secured party knows which name to use where the debtor is a registered organization—the name on the public registry—and can ensure that the name is spelled correctly by merely copying the public registry name onto the financing statement. As one might expect, two post-revision cases involving registered organization debtors indicate that Article 9 is to be taken literally when it requires absolute precision with respect to the names of those debtors.

In *Receivables Purchasing Co. v. R & R Directional Drilling, LLC*, the secured party had set forth the debtor's name on its financing statement as "Net work Solutions, Inc." when the debtor's legal name was "Network Solutions, Inc."¹³⁶ The Georgia appellate court held that under Revised Article 9, the financing statement was seriously misleading.¹³⁷ The parties did not dispute that a search in the filing office using the debtor's correct name did not disclose the secured party's financing statement.¹³⁸ Despite the seemingly small error, the

135. This case illustrates the occasional difficulty of ascertaining the proper way to set forth a non-Anglo name. See *infra* note 224. It also illustrates the need for the filing office's search mechanism to accommodate these types of errors. See *infra* Part V.

136. *Receivables Purchasing Co. v. R & R Directional Drilling, LLC*, 588 S.E.2d 831, 832 (Ga. Ct. App. 2003).

137. *Id.* at 833. Although the financing statement in question was filed on April 2, 2001, before the effective date of new Article 9, the court measured its legal sufficiency under the revised statute. *Id.* The secured party filed its financing statement in Bartow County, presumably to comply with old Article 9. *Id.* at 832. Under new Article 9, almost all filings are made with a central filing office, and county filings, with a few exceptions, have been eliminated. See U.C.C. § 9-501(a) (mandating central filings for all transactions except fixture filings and those involving as-extracted collateral or timber to be cut). Given the move away from county filings, one might question the level of sophistication of the county's computerized UCC database at the time the test searches were made in this case.

138. *Receivables Purchasing*, 588 S.E.2d at 833.

court found that Revised Article 9's insistence on precision causes a secured creditor to "act[] at his peril if he files the statement under an incorrect name."¹³⁹

In a more recent case, a court once again demanded that the secured party get a corporate debtor's name absolutely correct, down to the inclusion of periods in the proper places. In *Host America Corp. v. Coastline Financial, Inc.*, the secured party's assignor had filed a financing statement listing the debtor as "K W M Electronics Corporation" with no periods between the initials even though the debtor's legal name contained periods between the initials.¹⁴⁰ The debtor's lessor asserted a lessor's lien on certain property belonging to the debtor.¹⁴¹ The secured party claimed that its assignor's earlier perfected security interest in the same property had priority over the later asserted lessor's lien.¹⁴² The court, however, held that the assignor's financing statement was seriously misleading based on two grounds. First, the secured party conceded that the financing statement did not contain, as required by Article 9, the debtor's exact legal name because of the omission of the periods.¹⁴³ Second, the secured party could not save the financing statement through the "single search" exception of UCC § 9-506(c).¹⁴⁴ Evidence procured from the Utah Secretary of State's office clearly showed that a search under the debtor's correct name using the office's standard search logic would not have revealed the filed financing statement.¹⁴⁵

The federal district court in *Host America* observed the miniscule nature of the secured party's error as well as the extreme limitations of Utah's standard search logic.¹⁴⁶ But Revised Article 9, the court stated, is clearly designed to place the burden of accuracy on the filing creditor

139. *Id.*

140. *Host Am. Corp. v. Coastline Fin., Inc.*, No. 2:06-CV-5, 2006 U.S. Dist. LEXIS 35727, at *3 (D. Utah May 30, 2006). There was some question as to whether there were spaces after the periods in the debtor's names—in other words, "K.W.M." or "K. W. M."—but the court stated that it did not need to address that issue because the secured party's financing statement contained no periods whatsoever. *Id.* at *12.

141. UTAH CODE ANN. § 38-3-1 (1953) provides lessors with a lien for unpaid rent on nonexempt property of the lessee located on the leased premises.

142. *Host Am.*, 2006 U.S. Dist. LEXIS 35727, at *7.

143. *Id.* at *12.

144. *Id.* at *14–15.

145. The parties apparently submitted affidavits from the director of the Utah Division of Corporations and Commercial Codes. *Id.* at *13.

146. *Id.* ("[T]he filing office's standard search logic was not capable of compensating for even minor errors in a debtor's name.").

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and to eliminate the need for fact-intensive inquiries as to whether a reasonably diligent searcher could uncover a financing statement with an error in the debtor name.¹⁴⁷ The court also noted that the “escape hatch” of section 9-506(c) is at present tied to the filing office’s electronic sophistication: “By necessity, the breadth of the safe haven . . . will either expand or contract as the capabilities of the state’s standard search logic change over time.”¹⁴⁸

C. Federal Tax Lien Filings

The decisions in *Receivables Purchasing* and *Host America* should come as no surprise, despite their seemingly draconian results. They represent a straightforward application of sections 9-503 and 9-506 of Revised Article 9. But not all courts have followed that straight and narrow path. The Sixth Circuit Court of Appeals recently set searchers’ teeth on edge with a decision concerning the recording of federal tax liens by applying the “reasonably diligent searcher” standard from the pre-revision law.¹⁴⁹ Although the decision concerned only federal tax lien filings, it arguably has broader implications for Article 9 searchers.

In *Crestmark Bank v. United States (In re Spearing Tool & Manufacturing Co.)*, the secured party, Crestmark, attempted to contest the validity of a previously filed federal tax lien.¹⁵⁰ Before advancing additional funds to the debtor under their security agreement, the creditor had submitted a lien search to the State of Michigan, using the debtor’s registered name, “Spearing Tool and Manufacturing Co.”¹⁵¹ The search results indicated no liens, and Crestmark lent the debtor additional monies.¹⁵² Previously, the Internal Revenue Service had filed two notices of federal tax liens with the Michigan Secretary of State, using the name “Spearing Tool & MFG Company, Inc.”¹⁵³

After the debtor filed for chapter 11 bankruptcy protection, Crestmark filed a complaint to determine priority to certain pre-petition accounts receivable collections. Crestmark argued that Revised Article 9

147. *Id.* at *15.

148. *Id.* at *14.

149. *United States v. Crestmark Bank (In re Spearing Tool & Mfg. Co.)*, 412 F.3d 653, 655–56 (6th Cir. 2005).

150. *Crestmark Bank v. United States (In re Spearing Tool & Mfg Co.)*, 292 B.R. 579 (Bankr. E.D. Mich. 2003), *rev’d*, 302 B.R. 351 (E.D. Mich. 2003), *rev’d*, 412 F.3d 653 (6th Cir. 2005).

151. *Id.* at 580.

152. *Id.*

153. *Id.*

essentially allows searching parties to use only the debtor's precise legal name in their searches, and if such a search does not reveal a filing, the filing is invalid.¹⁵⁴

Apparently relying on preemption doctrine, the bankruptcy court held that federal, not state, law dictated the form of the notice that must be filed by the IRS asserting a tax lien against a particular taxpayer.¹⁵⁵ Treasury regulations under the federal tax lien statute required only that the lien notice "identify the taxpayer."¹⁵⁶ The court found that the name used by the IRS sufficiently identified the taxpayer since it was close to the debtor's legal name, it contained a commonly used abbreviation for "Manufacturing," and a reasonable search of the records would have uncovered the IRS's filing.¹⁵⁷

On appeal, the federal district court reversed the bankruptcy court's decision and held the IRS filing insufficient to give notice to subsequent parties.¹⁵⁸ The court acknowledged that federal law governed the adequacy of the federal tax lien notice.¹⁵⁹ Under federal law, according to the court, the applicable test is one of "reasonableness"—i.e., "whether a reasonable search of the index would have disclosed the error-laden federal tax lien."¹⁶⁰ Reasonableness, however, must be analyzed in light of the recording and searching systems in place in a particular jurisdiction.¹⁶¹ Although Article 9 as state law does not control in this instance, it can provide guidance as to "what is reasonable behavior for searchers in today's environment."¹⁶² Given the rigidity of the computerized search logic, under which only exact matches are retrieved, a searcher trying to find tax lien notices with possible errors in the taxpayer's name would have to search under variant spellings of that

154. Crestmark argued that under Revised Article 9, a financing statement must use the debtor's official legal name. *Id.* at 582 (citing MICH. COMP. LAWS ANN. § 440.9503(1)(a) (West 2002), which is essentially Michigan's version of U.C.C. § 9-503(1)(a) (2001)). If the financing statement sets forth the debtor's name incorrectly, then it is invalid unless "a search of the records of the filing office . . . using the filing office's standard search logic, if any, would disclose [the] financing statement" *Id.* (citing MICH. COMP. LAWS ANN. § 440.9506 (West 2002), which is essentially Michigan's version of U.C.C. § 9-506(b)-(c)).

155. *Id.* at 582-83.

156. *Id.* at 582. (citing Treas. Reg. § 301.6323(f)-1(d)(2)).

157. *Id.* at 583.

158. Crestmark Bank v. United States (*In re Spearing Tool & Mfg. Co.*), 302 B.R. 351, 357 (E.D. Mich. 2003), *rev'd*, 412 F.3d 653 (6th Cir. 2005).

159. *Id.* at 355.

160. *Id.*

161. *Id.* at 355-56.

162. *Id.* at 356.

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name.¹⁶³ Imposing such a burden on searchers would be unreasonable, the court concluded, and thus the IRS filing was insufficient.¹⁶⁴

The Sixth Circuit Court of Appeals reversed the district court's decision and affirmed the bankruptcy court's grant of summary judgment in favor of the government.¹⁶⁵ Like the two lower courts, the Court of Appeals held that federal law controlled the content of the IRS tax lien notice,¹⁶⁶ and that under federal law, the test for notice sufficiency was the reasonable search standard.¹⁶⁷ The court then stated that the searching creditor in this case did not conduct a "reasonable and diligent electronic search."¹⁶⁸ A reasonable, diligent party would have searched for "Spearing Tool & Mfg.," the name used in the IRS filing, as well as "Spearing Tool and Manufacturing," the company's legal name, because the ampersand and "Mfg." are common, standard abbreviations for their respective words, "so common that, for example, we use them as a rule in our case citations."¹⁶⁹

This decision, though not surprising, has ramifications for secured or would-be secured creditors attempting to ascertain the existence of prior interests in the debtor's property. Undoubtedly, Revised Article 9 has simplified the search process for inquiring parties, but those parties will still need to think creatively about the debtor's name in conducting searches for federal tax liens. Anticipating common variant spellings (e.g., "MFG" for "Manufacturing") and using truncated portions of the debtor's name (e.g., "Spearing Tool") will continue to be useful searching techniques. If searchers are using various permutations of the debtor's name in their searches for federal tax liens, the argument becomes that it is not much, if any, additional burden for them to use such variations in their searches for Article 9 security interests. Creditors

163. *Id.* at 357.

164. *See id.* ("Fairness to third parties dictates that in cases like this, where a reasonable searcher would not have notice of the federal tax lien, the IRS's liens should not have priority over other lenders.").

165. *United States v. Crestmark Bank (In re Spearing Tool & Mfg. Co.)*, 412 F.3d 653, 657 (6th Cir. 2005).

166. *Id.* at 655–56.

167. *Id.* at 656. In contrast to the typical pre-revision Article 9 cases, which adopted the reasonably diligent searcher standard, this court, citing federal precedent, applied the "reasonable and diligent" search test. The difference between these two tests is not readily apparent. The state law test seems to apply one factor—whether a searcher who is "reasonably diligent" could find the filing in question. Arguably, the federal test uses two factors—whether a searcher who is both "reasonable" and "diligent" could locate the disputed record.

168. *Id.*

169. *Id.*

contemplating a loan to a potential debtor will need to search for both federal tax liens and Article 9 security interests to assure themselves that the proffered collateral is unencumbered. Arguably then, the search technique that a creditor will use to find federal tax liens could be readily employed in the Article 9 records as well. Courts accepting that logic may be drawn irresistibly back to the “reasonably diligent searcher” standard even though the new statute rejects it.

D. Cases Resisting the Strict Standard

Two additional post-revision cases illustrate some courts’ inherent sympathy for the filing creditor in its attempt to get the debtor’s name right on the financing statement. They reflect a judicial desire to allow secured parties some degree of fallibility in filling out the financing statement, even where an error occurs with respect to the debtor’s name. They may also represent a *sub rosa* resistance to the strict interpretation of Revised Article 9’s standard for accuracy in debtors’ names on financing statements.

1. Fraud claims

In *Miller v. Van Dorn Demag Corp. (In re Asheboro Precision Plastics, Inc.)*, the bankruptcy court correctly applied the “single search” standard of Revised Article 9 to invalidate a financing statement that listed the debtor under its trade name, “Wade Technical Molding, Inc.,” as opposed to its legal name, “Asheboro Precision Plastics, Inc.”¹⁷⁰ While acknowledging that a “prudent searcher” would have discovered the financing statement in question because of certain cross-references on other financing statements,¹⁷¹ the court held that Revised Article 9 mandated a different result.¹⁷² Because a search under the debtor’s legal name would not have revealed the financing statement in question, it was invalid.¹⁷³

But the court then seemingly carved out an exception to the general rule. The secured creditor argued that because the debtor had

170. *Miller v. Van Dorn Demag Corp. (In re Asheboro Precision Plastics, Inc.)*, No. 03-11319C-7G, 2005 Bankr. LEXIS 1091, at *19–25 (Bankr. M.D.N.C. Mar. 1, 2005).

171. Three of the seventeen financing statements filed under the debtor’s legal name also cross-referenced the trade name, “Wade Technical Molding.” A prudent searcher, the court suggested, would have looked for financing statements under that name as well. *Id.* at *24–25.

172. *Id.* at *25.

173. *Id.*

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misrepresented its legal name to the creditor, the debtor had committed fraud.¹⁷⁴ The fraud, in turn, caused the creditor to use the incorrect debtor name on the financing statement, resulting in a lack of perfection and avoidance by the bankruptcy trustee.¹⁷⁵ The fraud, the creditor asserted, entitled it to a constructive trust on the collateral.¹⁷⁶ A constructive trust would give the secured party an equitable interest in the collateral and allow it to recover the proceeds from the sale of the collateral.¹⁷⁷ The court held that the trustee was not entitled to summary judgment on this issue and that the secured creditor should have the opportunity to prove its fraud claim at trial.¹⁷⁸

By recognizing the creditor's potential claim for fraud and constructive trust, the court essentially opened the door to reviving the creditor's interests that had previously foundered under Article 9 perfection requirements. Bankruptcy courts have been known in the past to seek to avoid harsh results for secured parties by utilizing equitable concepts, such as a constructive trust, to remove the collateral from the bankruptcy trustee's reach.¹⁷⁹ Whether the secured party will succeed ultimately in establishing its fraudulent misrepresentation claim remains to be seen. Any secured creditor asserting such a claim may have difficulty establishing that it reasonably relied on the debtor's false statements concerning its legal name. But even the court's willingness to entertain fraud/ constructive trust claims reveals perhaps its resistance to the stricter name standard under new Article 9.

174. According to the secured party, the debtor falsely represented its legal name to be "Wade Technical Molding, Inc." when no such entity existed. *Id.* at *25–26.

175. *Id.* at *27–28.

176. *Id.* at *26. Equity courts use constructive trusts "to prevent unjust enrichment to a title holder of property when the title holder acquired that title through fraud . . . that makes it inequitable for the title holder to assert a claim to that property against the beneficiary of the constructive trust." *Id.* at *29.

177. The secured party's "equitable" title to the collateral would trump the trustee's legal title. *Id.* at *34.

178. *Id.*

179. See, e.g., *Sanyo Elec., Inc. v. Howard's Appliance Corp.* (*In re Howard's Appliance Corp.*), 874 F.2d 88, 94 (2d Cir. 1989) (imposing a constructive trust on the collateral in favor of the secured creditor where the debtor, by secretly relocating the collateral to another state, had caused the creditor's security interest to lose its perfection). For a review of the case law relating to constructive trusts in bankruptcy, see generally Robert J. Keach, *The Continued Unsettled State of Constructive Trusts in Bankruptcy: Of Butner, Federal Interests and the Need for Uniformity*, 103 COM. L.J. 411 (1998).

2. Reasonable diligence revisited

In another post-revision case, the court adhered to the “single search” standard of Revised Article 9 but imposed some duty on searchers to use reasonable diligence within the confines of that standard.¹⁸⁰ In the case of *In re Summit Staffing Polk County, Inc.*, the secured party had filed a financing statement correctly listing the debtor as “Randy A. Vincent” and adding the debtor’s trade name, “Summit Staffing.”¹⁸¹ Thereafter, the debtor incorporated his business under the name “Summit Staffing of Polk County, Inc.”¹⁸² The secured party did not file an amended financing statement to reflect the name change.¹⁸³ In the debtor’s ensuing bankruptcy, the trustee argued that the creditor’s security interest was unperfected and therefore avoidable under the Bankruptcy Code’s “strong arm” clause because the original financing statement had become seriously misleading following the debtor’s name change.¹⁸⁴

In applying Florida’s version of UCC § 9-506(c), the court first examined whether a search under the debtor’s actual name in the official Florida database using the filing office’s standard search logic brought up the secured party’s financing statement.¹⁸⁵ The answer to that question was not as straightforward as the revisers perhaps hoped it would be. A search under the name “Summit Staffing of Polk County, Inc.,” the debtor’s current legal name, produced an alphabetical list of debtor names with twenty names displayed on each computer screen.¹⁸⁶ Although the test search did not disclose any exact matches to the debtor’s current legal name, it did reveal a number of financing

180. *In re Summit Staffing Polk County, Inc.*, 305 B.R. 347, 355 (Bankr. M.D. Fla. 2003).

181. *Id.* at 349.

182. *Id.*

183. *Id.* at 349, 351–52 (citing FLA. STAT. § 679.508, which essentially is Florida’s version of U.C.C. § 9-508 (2001)). Normally, failure to file an amended financing statement reflecting a seriously misleading debtor name change causes the secured party to lose perfection in collateral acquired more than four months after the name change. U.C.C. §§ 9-507(c)(2), 9-508(b)(2). Of course, here the secured party had included a version of the debtor’s new name on its original financing statement, and thus, arguably, the name change did not render the filed financing statement seriously misleading.

184. *In re Summit Staffing*, 305 B.R. at 350, 352–53 (citing 11 U.S.C. § 544(a) (2000) and FLA. STAT. § 679.506 (2002), which is Florida’s version of U.C.C. § 9-506).

185. *Id.* at 352.

186. Any exact matches to the search request appeared at the top of the list; if there was no exact match, then the next closest name alphabetically was displayed at the top of the list. Computer commands appeared on the screen directing the searcher who wished to see additional names to use the “Previous” or “Next” buttons to move backward or forward alphabetically through the list. *Id.* at 353–54.

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statements with similar names, including the one filed by the secured party.¹⁸⁷ The court held that the “reasonably diligent searcher” standard survived the enactment of Revised Article 9, not with respect to the initial search, but with respect to the actions taken by the searcher in evaluating the search results.¹⁸⁸

The court stated that a searcher must use reasonable diligence in moving forward and back through the list of names produced by the computer, using the “Previous” and “Next” keys to scan the list.¹⁸⁹ Had the searcher employed such reasonable diligence, the searcher inevitably would have seen the secured party’s filing against “Summit Staffing” with the same address as the successor corporate debtor.¹⁹⁰ Thus, the court held that the secured party’s financing statement was not seriously misleading.¹⁹¹

A review of the post-revision case law addressing the issue of the debtor’s name on financing statements reveals that many, but not all, courts are embracing the “single search” standard’s simplicity and elegance and applying that standard, more or less, as set forth in the statute. A few courts, however, are seemingly grieving the loss of the equitable contours of the old standard and are finding ways to save secured parties whom they perceive to have made relatively small mistakes in the debtor’s name. For these courts, the “reasonably diligent searcher” standard is not completely dead.

V. DEFINING THE DEBTOR’S NAME AND REFINING THE STANDARD SEARCH LOGIC

This Article has identified at least two troublesome debtor name issues that survive the enactment of Revised Article 9. First, it is unclear, with the exception of registered organizations, what name should be used on a financing statement where a debtor has multiple names. An individual debtor and even an unregistered organization, such as a general partnership, may have multiple names and, in some cases, even

187. *Id.* at 353.

188. *Id.* at 355.

189. *See id.* at 354–55 (“Certainly the searcher should do this.”).

190. *Id.* at 355. In this case, there were only three names listed that began with “Summit Staffing,” and included among them was the secured party’s filing. The court observed, however, that there were several screens—with twenty names on each screen—with debtors’ names beginning with “Summit.” The court suggested that the issue of “reasonableness” in the search process becomes much more difficult where there are dozens of entries to peruse. *Id.* at 354.

191. *Id.* at 355.

multiple “legal” names. Second, the safe harbor provision of UCC § 9-506(c)—the “single search” standard for saving faulty financing statements—is dependent on the breadth and flexibility of the computerized search logic employed by individual filing offices. As a result of the uncertainty surrounding multiple-named debtors and varying filing office search logic, Article 9 loses some of its heralded uniformity and predictability. In addition, the strictness of the “single search” standard runs counter to the general pro-secured party stance of Article 9 and thus is inconsistent with one of its overarching policies—to protect the senior secured party from demotion.

In the following sections, this Article will explore Article 9’s pro-secured party flavor in more depth, offer a solution to the problem of debtors with multiple names, discuss the transition into computerized filing, and propose the adoption of a more flexible search logic by public filing offices as a means of enhancing the notice-giving function of the filing system. Any proposed changes in the law should be evaluated in terms of whether they advance the time-honored policies behind the Article 9 scheme and, more generally, whether they promote fairness and efficiency.

A. Article 9’s Preference for Secured Parties

Article 9 has always, at its core, attempted to make the world good and true and beautiful for the perfected Article 9 secured party—especially the *senior* perfected secured party.¹⁹² Under the statutory scheme, filing is fairly straightforward for secured parties, and indexing errors within the filing office fall on the shoulders of later searching parties.¹⁹³ Post-filing changes in information on the financing statement require re-filing only if significant changes in the debtor’s name occur,¹⁹⁴ and then only with respect to a segment of after-acquired collateral.¹⁹⁵

192. Scholars have commented that a first-in-time priority scheme, such as that adopted by Article 9, solves the risk alteration problem experienced by early lenders and encourages creditors to lend to debtors at an earlier point in time when debtors are more likely to invest in projects with higher expected returns. *See, e.g.,* Hideki Kanda & Saul Levmore, *The Politics of Article 9: Explaining Creditor Priorities*, 80 VA. L. REV. 2103, 2113–14 (1994).

193. *See* U.C.C. § 9-517 (2001) (“The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.”).

194. *See id.* § 9-507(b) (stating that, apart from certain exceptions, “a financing statement is not rendered ineffective if, after the financing statement is filed, the information on the financing statement becomes seriously misleading”).

195. If a debtor name-change renders a financing statement seriously misleading, then the secured party must re-file in the debtor’s new name to avoid loss of perfection in collateral acquired

The senior perfected secured creditor prevails against most of its competitors—unsecured creditors,¹⁹⁶ lien creditors,¹⁹⁷ non-ordinary-course buyers,¹⁹⁸ unperfected secured parties,¹⁹⁹ and later perfected secured parties.²⁰⁰ Even the foreclosure process is designed to be flexible and efficient for secured parties. Self-help repossession is perfectly permissible so long as one does not breach the peace,²⁰¹ and a foreclosure sale only requires reasonable notice to certain parties²⁰² and a commercially reasonable disposition.²⁰³

Revised Article 9 undoubtedly continues this theme of pampering the senior perfected secured party and carries it even further. The information required on a filed financing statement has been stripped down to the bare minimum,²⁰⁴ and filing in multi-state transactions has

more than four months after the name-change. The original financing statement continues to perfect the secured party's security interest in collateral acquired by the debtor before the name change or within four months thereafter. *Id.* § 9-507(c); *see also id.* § 9-508 (adopting a similar rule for transfers of collateral to a new debtor).

196. *Id.* § 9-201(a) (granting the secured party priority over “creditors”).

197. *Id.* § 9-317(a)(2).

198. *Id.* § 9-317(b). A non-ordinary-course buyer would include, for example, someone who bought a piece of equipment from a widget-manufacturer who did not ordinarily sell equipment. *See id.* § 1-201(9) (defining buyer in ordinary course of business). A buyer in ordinary course of business has priority over even perfected security interests created by their seller. *Id.* § 9-320(a).

199. *Id.* § 9-322(a)(2).

200. *Id.* § 9-322(a)(1).

201. *Id.* § 9-609(a)–(b). Of course, the scope of what constitutes a breach of peace varies widely across jurisdictions, and the issue is heavily fact-dependent. *See, e.g.,* *Giles v. First Va. Credit Servs.*, 560 S.E.2d 557, 563–66 (N.C. Ct. App. 2002) (discussing various case lawstandards and adopting a five-factor balancing test to determine whether repossession without confrontation constitutes breach of the peace).

202. *See* U.C.C. § 9-611 (requiring that “reasonable authenticated notification of disposition” be sent to the debtor, any secondary obligor, other perfected secured parties, etc.). Revised Article 9 has further simplified the notification process by providing a ten-day safe harbor period for notice and supplying legally sufficient notification forms. *Id.* §§ 9-612 to -614.

203. *See id.* § 9-610(b) (authorizing dispositions “by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms”).

204. *See id.* § 9-502(a) (mandating only the debtor's name, the secured party's name (or the name of its representative) and an indication of the collateral on a financing statement). New Article 9, however, does require additional information on the financing statement, such as the party's addresses and the debtor's organizational information, and filing officers are required to refuse financing statements without this additional information. *Id.* §§ 9-516(b)(4)–(5), 9-520(a). If, for some reason, the filing officer accepts and files a financing statement without the additional information, the filing is effective as long as it contains the three basic elements required by section 9-502(a). *Id.* § 9-520(c). Even if the additional debtor information is incorrect at the time of filing, the financing statement is still effective except against certain subsequent parties who reasonably relied on the incorrect information. *Id.* § 9-338. Thus, for example, an incorrect debtor address

been greatly simplified.²⁰⁵ A financing statement unjustifiably refused by the filing office is still effective, except as against certain reliance parties.²⁰⁶ New Article 9 creates “partial strict foreclosure” as a further post-default option for the secured party trying to avoid possible litigation over what constitutes a commercially reasonable disposition.²⁰⁷ All in all, the world continues to be a fine place for perfected Article 9 secured parties.²⁰⁸

Many of these pro-secured creditor rules are designed to help security interests stand up against the debtor’s trustee in bankruptcy. Under the “strong arm clause” of the Federal Bankruptcy Code, the trustee has the power to avoid unperfected security interests.²⁰⁹ Thus, the easier it is for a secured lender to achieve and maintain perfection of its security interest, the more likely that the creditor will still be able to enforce the security interest in the event of the debtor’s bankruptcy. With a valid security interest, a creditor will often be able to satisfy fully the debt owed to it by seizing and selling the collateral.²¹⁰ Without a security interest, the creditor is like all the other general unsecured creditors,

would not invalidate the financing statement unless a subsequent secured party or buyer was misled by it.

205. Compare U.C.C. § 9-301(1) (2001) (providing that, generally, the law of the debtor’s location governs perfection and priority issues), with U.C.C. § 9-103 (1995) (describing complex choice-of-law rules).

206. See U.C.C. § 9-516(d) (2001) (providing that an improperly rejected financing statement “is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the records from the files”).

207. See *id.* § 9-620(a) (“[A] secured party may accept collateral in full or partial satisfaction of the obligation”); see also Donald J. Rapson, *Default and Enforcement of Security Interests Under Revised Article 9*, 74 CHI.-KENT L. REV. 893, 923 (1999) (commenting that strict foreclosure “provides a method of enforcement that is nonadversarial, requires lower transaction costs, and is not likely to result in litigation”).

208. Congress has seemingly jumped on the secured party’s bandwagon in its recent amendments to the Federal Bankruptcy Code. The grace periods for perfection have been extended from ten to thirty days in one instance and from twenty to thirty days in another. See 11 U.S.C. § 547(e)(2)(C)(ii) (2000 & Supp. 2006) (allowing secured parties thirty days from the time of attachment to perfect their security interests without qualifying as a preference); *id.* § 547(c)(3)(B) (providing purchase money secured parties a thirty-day perfection window after the debtor’s possession of the collateral to qualify for a preference safe harbor). Secured parties now have more time after signing the security agreement to get to the filing office without fear of having their security interests avoided as preferences.

209. 11 U.S.C. § 544(a) (2000).

210. See RAYMOND T. NIMMER ET AL., *COMMERCIAL TRANSACTIONS: SECURED FINANCING* 251–52 (3d ed. 2003) (describing the secured party’s ability to enforce its security interest in bankruptcy).

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which take their pro rata share of nonexempt assets²¹¹ and often recover very little in bankruptcy.²¹²

This pro-secured party stance is often justified on the basis that the secured party has bargained for the privilege of its priority position.²¹³ For example, the secured party will usually have offered a lower interest rate to the debtor in exchange for the security interest.²¹⁴ Thus, the secured party should enjoy the benefits of the security interest unless that enjoyment would unfairly harm other parties. Avoiding the secured party's security interest results in redistribution of the collateral to the unsecured general creditors. The unsecured creditors normally have already compensated themselves for their increased risk through higher interest rates and, in addition, usually do not search the public records before engaging in a transaction with the debtor.²¹⁵ Because these creditors have not bargained for security and do not rely on the public notice system before lending, it makes no sense to penalize the secured party for mistakes in perfection.²¹⁶

Revised Article 9's new provision regarding debtor names on financing statements, as discussed, apparently abandons the "reasonably diligent searcher" test and imposes the stricter "single search" standard, which demands an extremely high degree of exactitude in setting forth the debtor's name, especially where the debtor is a registered organization. This new provision, then, is somewhat at odds with Article 9's overall pro-secured party tenor.²¹⁷ No longer can the filing creditor

211. DOUGLAS G. BAIRD, *ELEMENTS OF BANKRUPTCY* 99 (3d ed. 2001).

212. See NIMMER, *supra* note 210, at 256 ("[In over] 95% of all consumer bankruptcies . . . [t]he debtor has no unencumbered, nonexempt assets.").

213. John C. McCoid II, *Bankruptcy, the Avoiding Powers, and Unperfected Security Interests*, 59 AM. BANKR. L.J. 175, 190 (1985).

214. Alan Schwartz, *The Continuing Puzzle of Secured Debt*, 37 VAND. L. REV. 1051, 1054 (1984).

215. See Thomas H. Jackson & Anthony T. Kronman, *Secured Financing and Priority Among Creditors*, 88 YALE L.J. 1143, 1147-48 (1979) (discussing the ways in which unsecured creditors adjust for their risk).

216. See NIMMER, *supra* note 210, at 287-88 (advocating the priority of unperfected secured parties over lien creditors, including the trustee in bankruptcy); James J. White, *Revising Article 9 To Reduce Wasteful Litigation*, 26 LOY. L.A. L. REV. 823, 827 (1993) ("Neither the plumber, carpenter, accountant, Commonwealth Edison nor any other thousands of general creditors check the files to determine who has a financing statement on file.").

217. One, perhaps partially unintended, byproduct of Revised Article 9 is the increased number of secured transactions that escape filing requirements. See Jonathan C. Lipson, *Secrets and Liens: The End of Notice in Commercial Finance Law*, 21 BANKR. DEV. J. 421, 455-67 (2005) (discussing the secret liens potentially created in transactions involving data, intellectual property, investment property, deposit accounts, electronic chattel paper, and letter-of-credit rights).

commit small errors in the debtor's name and still achieve perfection through the substantial compliance standard.

The Article 9 revisers clearly made a policy choice that despite the statute's generally pro-secured party slant, precision with respect to the debtor's name was essential to maintaining a viable filing system, even if such precision adds burdens to the filing creditor and sometimes invalidates financing statements with relatively small errors. Behind that policy choice was, no doubt, an assessment that any additional burdens placed on filing creditors were outweighed by the benefits to the filing system as a whole and, more particularly, to searching parties. In other words, it is much easier for the filing creditor to get the debtor's name right than for searching parties to find a financing statement with an error in the debtor's name. The latter task necessitates either trying variant names or variant spellings of names in the search query (e.g., Erickson, Ericson, Ericksen, Ericson) or tendering a broad search inquiry (e.g., Smith Auto! for Smith Auto Supplies & Service) and then wading through a multitude of responses (Smith Auto Body, Smith Automobile Supply, etc.) to determine whether there is a true match.

Certainly, this implicit cost-benefit analysis is borne out where the debtor is a registered organization. By consulting the appropriate Secretary of State registry, a filing party can easily determine the debtor's official registered name on the public records of the debtor's "home" jurisdiction—i.e., the jurisdiction under the law of which the debtor is organized. The filing creditor then simply needs to spell that name correctly on the filed financing statement.²¹⁸ A few states even have "point and shoot" computerized systems where a creditor can transfer the official registered name directly onto a financing statement or plug the official name into the filing office database to undertake a search.²¹⁹

The burden on the filing creditor increases, however, when the debtor is an unregistered organization (such as a general partnership) or an individual. Determining the debtor's "legal" name may be

218. Even though the statute is explicit on what is required for registered organization debtors, secured parties apparently are having trouble getting the debtor's name right. An analysis of filings in Vermont revealed that over half of the financing statements listing registered organization debtors used names that did not correspond to the officially registered names for those entities. Telephone Interview with Carl R. Ernst, CEO, Ernst Publishing Co., LLC, in Scottsdale, Ariz. (July 17, 2006).

219. See Lynn M. LoPucki, *The Sparring Tool Filing System Disaster* 12–13 (UCLA School of Law, Law-Econ Research, Working Paper No. 06-10, 2006), available at <http://ssrn.com/abstract=890312> (describing "point and shoot" systems).

problematic if the debtor uses a variety of names in different contexts. In addition, a debtor theoretically could have more than one “legal” or “correct” name. For example, a partnership may use different names on its business cards, in its telephone listing, in advertising, on tax returns, or in registration under an assumed name statute. All of those names may be different, to a greater or lesser degree, from the name adopted in the partnership agreement shown to the filing secured party. Furthermore, the name in that partnership agreement may have been modified by an amendment not shown to the secured party. Similarly, an individual debtor may have one name on his or her birth certificate, another on tax returns, a third on a Social Security card, and a fourth on a driver’s license.²²⁰ Finally, there may be some uncertainty as to who owns particular property that is offered as collateral—an individual debtor or some “alter ego” business entity.²²¹ As a result of these factors, the filing party may not be certain which name should be placed on the financing statement. Presumably, a searching party will have the same dilemma of ascertaining which name should be used in a search request.²²²

220. At common law, an individual’s legal name is “[t]he designation of a person recognized by the law as correct and sufficient and constituting . . . one given name followed by the family name and in modern times requiring or permitting one or more middle given names or initials in abbreviation thereof” *In re Dengler*, 246 N.W.2d 758, 761 (N.D. 1976) (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, UNABRIDGED 1290 (1993)). Even the “legal” definition of legal name theoretically may permit an individual to have more than one legal name. *See* 625 ILL. COMP. STAT. 5/1-137.5 (2005) (defining legal name as the “full given name and surname of an individual as recorded at birth, recorded at marriage, or deemed as the correct legal name for use in reporting income by the Social Security Administration”). In addition, it is not entirely clear in some states whether a married woman is considered to have legally assumed her husband’s name or whether a divorced woman may resume her birth name without court proceedings. *See Jorgensen v. Larsen*, No. 90-4048, 1991 U.S. App. LEXIS 10627, at *11–19 (10th Cir. Apr. 12, 1991) (McKay, J., dissenting) (reviewing various state laws on this issue); *see also* Carl R. Ernst, *How To Adjudicate a Debtor Name Dispute Under Revised Article 9*, NABTALK, Summer 2005, at 32, 34–35 (discussing the problem of debtors with more than one correct name).

221. *See, e.g.,* *Bryan Bros. Cattle Co. v. Glenbrook Cattle Co.*, No. 2:4CV139SAA, 2006 U.S. Dist. LEXIS 29926, at *16–26 (N.D. Miss. May 1, 2006) (observing that it was somewhat unclear as to whether the individual debtor or his limited liability company owned particular head of cattle used as collateral).

222. In an interesting case involving a corporate debtor, the third party searcher argued that he knew the debtor only by its trade name and not its legal name. In fact, the debtor had used a trade name on a contract for the purchase of some land from the third party. *Panel Town of Dayton, Inc. v. Corrigan (In re Panel Town of Dayton, Inc.)*, 338 B.R. 764, 782–83 (Bankr. S.D. Ohio 2006). The bankruptcy court held that a financing statement filed in the debtor’s legal name was legally sufficient, notwithstanding the debtor’s frequent use of one or more trade names in its business dealings with others. *Id.*; *see also In re Nittolo Land Dev. Ass’n, Inc.*, 333 B.R. 237, 239, 242 (Bankr. S.D.N.Y. 2005) (noting that the record was insufficient to determine whether the debtor’s legal name was “Nittolo Land Development Associates, Inc.,” as it appeared on the secured party’s

Even where the secured party has ascertained what it believes is the debtor's correct legal name, it may still be uncertain as to how to set forth that name—that is, what is the appropriate spacing, punctuation, and capitalization of letters. In an example intimately familiar to the author, “DePaul University” can be found as “Depaul,” “De Paul,” and “DEPAUL,” depending on where one looks.²²³ Likewise, a name such as “Ter Molen” might also be set forth as “TerMolen” or “Termolen.” The problem becomes exacerbated where non-Anglo names are involved, and the secured party may be confused as to what constitute the debtor's first, last, and middle names.²²⁴

Although absolute accuracy in setting forth the debtor's name on a financing statement is desirable, placing the burden of ensuring precise accuracy solely on the filing secured party is arguably neither fair nor consistent with the overall policy thrust of Article 9. Mistakes inevitably creep in even where the secured party is attempting to get the debtor's name completely correct. The “reasonably diligent searcher” standard

financing statement, or “Nittolo Land Development Association, Inc.,” as it appeared on the debtor's bankruptcy petition).

223. The officially adopted name of that particular institution is “DePaul University” or “DE PAUL UNIVERSITY,” if all uppercase letters are used. DePaul University, Brand Standards, Writing Guidelines, <http://www.depaul.edu/brandmanual/html/writing.html> (last visited Feb. 8, 2007).

224. A recent California appellate case illustrates the difficulty of determining the last name of a debtor with a Latino name. *Corona Fruits & Veggies, Inc. v. Frozsun Foods, Inc.*, 48 Cal. Rptr. 3d 868 (Ct. App. 2006). In that case, the debtor's “full true name” was “Armando Munoz Juarez.” *Id.* at 869. The first secured party filed a financing statement listing his name as “Armando Munoz,” apparently recognizing that Spanish surnames are formed by listing the father's surname, then the mother's surname. *Id.* at 869, 871. The second secured party filed a financing statement setting forth the debtor's name as “Armando Juarez.” *Id.* at 869. The court held that the first secured party's security interest was unperfected because the debtor's name was incorrect on the financing statement and that the financing statement could not be found in the public records searching under the name “Armando Juarez.” *Id.* at 870–71. The debtor's name, stated the court, was “Armando Juarez” or “Armando Munoz Juarez” for the purposes of the UCC filing. *Id.* at 871. In support of this statement, the court observed somewhat cryptically that the “[d]ebtor's last name did not change when he crossed the border into the United States.” *Id.*

Some Asian names can present similar problems. In Chinese names, for example, the first name (reading left to right) is considered to be the surname or family name. The surname of a person named “Chen Lu” would be “Chen.” See THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 10.2.1(g), at 84 (Columbia Law Review Ass'n et al. eds., 18th ed. 2005) (commenting that the surname is given first in Chinese, Korean, and Vietnamese); Harvey Stockwin, *Vajpayee To Meet Key Players in China*, ECON. TIMES, June 14, 2003 (“[T]he Chinese surname always comes first.”). Additionally, Arabic names can be transliterated into the Roman alphabet in a number of different ways. For example, “Said al-Ghamdi” can be properly spelled “Saeed Al Ghamdi” or “Sayeed Alghamdi,” depending on the method of transliteration employed. AllExperts, Arabic Name: Encyclopedia, http://experts.about.com/e/a/ar/Arabic_name.htm (last visited Feb. 8, 2007).

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represented a judicial effort to account for the inevitability of such errors and places at least some of the burden of their existence in the system on the searching party. Human beings and human systems are fallible, and those searching such a system should reasonably expect to have to search as if they were actually trying to find complete information.

The problems with the “reasonably diligent searcher” standard were evident, however. Searchers could never be sure that they had searched “diligently enough.” Parties ended up litigating the application of this standard over and over again because of the fact-dependent nature of the inquiry. Both equitable and economic efficiency considerations suggested that it was more appropriate and more efficient for the filing creditor to get the debtor’s name right in the first place rather than force the searching party to try an indeterminate number of variations of the debtor’s name in an attempt to track down the filing party’s financing statement containing one or more errors.²²⁵

On the other hand, Revised Article 9’s adoption of the “single search” standard does not eliminate all problems, as discussed above. Filing parties may have difficulty determining the appropriate name to put on the financing statement where the debtor uses multiple names. The secured party may reasonably rely on inaccurate information supplied by the debtor itself in filling out the financing statement. Miscommunication between the secured party and the debtor or simple clerical errors may cause mistakes. In a system that attempts to allocate the burdens of using the filing system fairly and efficiently between the system’s users, some of these errors may be forgivable, and some may not be.

Further, because searchers seeking information about non-UCC liens, such as federal tax liens, are still subject to the reasonably diligent search standard,²²⁶ they will go beyond a single search in the debtor’s legal name in attempting to find these other liens. One could argue that there is little (if any) additional effort in transferring whatever kind of search that they are doing for non-UCC liens into the Article 9 system.

225. The cost of conducting a reasonably diligent search increased enormously over the years, and by 1995, it was estimated to be more than \$25,000 for loans ranging from \$20 million to \$74 million. See Peter A. Alces, *Abolish the Article 9 Filing System*, 79 MINN. L. REV. 679, 690–91 (1995) (referencing a report submitted to an ABA Task Force on 100 billings by a particular law firm).

226. *United States v. Crestmark Bank (In re Spearing Tool & Mfg. Co.)*, 412 F.3d 653, 656 (6th Cir. 2005).

Thus, the question remains whether Article 9 can be further refined to account for some of these issues. This Article posits two specific refinements to improve the efficiency and fairness of the filing system: first, a specific definition as to what constitutes a debtor's name for filing purposes, including a safe harbor for filers; and second, a requirement that state filing offices adopt a uniform, flexible search logic as part of their electronic filing systems.

B. Defining More Precisely the Debtor's Name

As discussed above, debtors that are individuals or unregistered organizations may be using more than one name at the same time. Theoretically, debtors could even have more than one legal name at any given time. For example, under common law, a natural person may adopt any name that he or she wishes, provided that there is no fraudulent or improper purpose involved.²²⁷ Although states now provide statutory procedures to change one's legal name for purposes of the public record,²²⁸ most still recognize the common law right to change one's legal name "through consistent and continuous use," again, absent any deceptive motive.²²⁹

To assist both filers and searchers, Article 9 should provide a safe harbor for selecting a debtor name, just as it creates a safe harbor for setting forth that name on the financing statement by means of the "single search" standard. In other words, the statute should specify that the debtor's legal name should be used on the financing statement whether or not the debtor is an individual, a trust, or a registered or unregistered organization. But, in addition, Article 9 should state that a secured party who uses the debtor's name as set forth on a particular verifiable source should be held to have selected the correct name for use on a financing statement. The statute already adopts that position for registered organizations by requiring the debtor's name as "indicated on

227. See, e.g., *Malone v. Sullivan*, 605 P.2d 447, 448 (Ariz. 1980); *Piotrowski v. Piotrowski*, 247 N.W.2d 354, 355 (Mich. Ct. App. 1976); *In re Miller*, 243 S.E.2d 464, 467 (Va. 1978).

228. See, e.g., ARK. CODE ANN. § 9-2-101 (2006); COLO. REV. STAT. § 13-15-101 (2006); CONN. GEN. STAT. § 52-11 (2006); FLA. STAT. § 68.07 (2006); 735 ILL. COMP. STAT. 5/21-101 (2006); MINN. STAT. § 259.10 (2005); VA. CODE ANN. § 8.01-217 (2006).

229. See, e.g., *State v. Hansford*, 580 N.W.2d 171, 178-80 (Wis. 1998) (noting that there are three methods by which one can legally change one's name: marriage or divorce; court order; and "consistent and continuous use").

the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized."²³⁰

The revised statute should list the verifiable sources that will satisfy the safe harbor. For individual debtors, a filing creditor who uses the debtor's name as it appears on the debtor's most recent federal income tax return, Social Security card,²³¹ or state-issued identification could be deemed to comply with the statute even if that name turned out not to be the debtor's actual legal name at the time of the filing.²³² For unregistered organizations, the statute could specify that a legally sufficient debtor name may be drawn from the debtor's most recent federal income tax return,²³³ its most recent organizational agreement,²³⁴ or its most recent filing under an assumed name statute.²³⁵

Under such a system, searchers would consult the same sources to determine the debtor's name for searching purposes. If the potential debtor has one name on a Social Security card, another on her most recent tax return, and yet a third on her driver's license, the searcher would need to search under all three names to ensure a complete search. Although searchers would not have a single name under which to search, as they do for registered organizations, this proposed scheme would reduce the number of names to be searched to a tolerable minimum.

230. U.C.C. § 9-503(a)(1) (2001).

231. One commentator writing on a UCC listserv has suggested a filing system organized by debtor Social Security numbers ("SSNs"). Posting of Lynn LoPucki to ucclaw-l-bounces@lists.washlaw.edu (Sept. 30, 2006, 12:03 p.m.) (on file with author). Unlike names, SSNs are presumably unique for each person and therefore completely reliable as identifiers. *See id.* To surmount privacy objections, he has urged redaction of the SSNs so that they would not be visible in the system but could be used internally as part of a search. *See id.* In response to the listserv post, others objected that sometimes individuals have more than one SSN, the IRS will not verify an SSN, and privacy concerns remain if an individual's SSN is required on a publicly filed document even if it is redacted in search requests. *See, e.g.,* Posting of George A. Hisert to ucclaw-l-bounces@lists.washlaw.edu (Oct. 3, 2006) (on file with author).

232. For example, suppose the debtor filed her 2006 federal income tax return on April 15, 2007, under the name Mary P. Anderson. In August 2007, the debtor marries, assumes her husband's surname, and becomes known as Mary A. Jones. In late August, the debtor applies for a secured loan under the name Mary P. Anderson. The debtor fails to inform the creditor of her marital status or her new name. If the creditor uses the name on her 2006 tax return, the creditor, under this proposal, would have made a legally effective filing.

233. All partnerships, whether or not they have tax liability, must file a federal income tax return for every taxable year. 26 U.S.C. § 6031 (2001).

234. *See, e.g., In re Waters*, 90 B.R. 946, 955 (Bankr. N.D. Iowa 1988) ("[T]he legal name of a partnership is the name designated by a general partnership agreement, where one exists.").

235. *See, e.g.,* 805 ILL. COMP. STAT. 405/1 (2006) (requiring filing in the county in order to conduct business under an assumed name); N.C. GEN. STAT. § 66-68 (2006) (requiring the same).

Defining the debtor's name more precisely in Article 9 would serve the policies behind Article 9 as a whole and, more particularly, the policies that inform the filing system. Article 9, at its core, protects secured creditors. In addition, the filing system is designed to allow earlier parties to communicate with later parties about the possible existence of security interests. That system, as mentioned above, should be constructed to allocate the burdens of its use equitably and efficiently. By defining what constitutes a legally sufficient debtor name for filing purposes, the system would reduce the number of choices—ex ante and ex post—that parties using the system must make with reference to the debtor's name. That reduction of choices saves labor on the part of both filers and searchers, and in an uncertain world, evenly allocates the burden of figuring out the debtor's name. Finally, this proposal protects secured parties by creating a safe harbor that allows them to enjoy some assurance that they have selected, in fact, the debtor's correct legal name.

C. The Transition to Computerized Filing

Defining more specifically the debtor's name for use on a financing statement will certainly increase the filing system's certainty and efficiency. But that step alone does not completely solve the problem of errors in public records. As will be discussed, the fundamental change in how filing records are created and maintained during the modern era has affected the ability of searchers to retrieve information. Following an overview of the historical development of the filing system, this Article will explore a potential solution to the problem of data access that involves creation and adoption of a search logic more flexible than those currently in use.

The "reasonably diligent searcher" standard espoused by the pre-revision case law developed under a largely non-computerized filing system. Filing creditors submitted paper copies of their financing statements to filing office clerks for indexing in the public records. Searching parties would go through the public index manually or would submit a request on a call slip to the clerk, who would then conduct the search on the searching party's behalf.

As states began to computerize their UCC files,²³⁶ the filer's situation remained largely the same. In addition to using paper forms,

236. As of April 1995, thirty-seven states were employing some sort of computerized filing system and four more were in the process of adopting such a system. See Edward S. Adams et al., *A Revised Filing System: Recommendations and Innovations*, 79 MINN. L. REV. 877, 889–90 (1995).

filing creditors gained the option of filling out their forms on a computer and submitting them for filing electronically. Whether the filer typed the debtor's name onto a paper form or an electronic one, the burden of getting the debtor's name correct was more or less the same. Computers neither helped nor hindered this process.²³⁷

For searchers, however, the world changed and continues to change. Rather than riffling through index cards or submitting a search request to a clerk on a slip of paper, the searching party now has the ability to enter a search term on the Secretary of State's official website and receive a computerized response within seconds. The filing office's "search logic," rather than a human being, runs the search.²³⁸ Accordingly, the searcher is no longer dependent on the judgment, skill, and work ethic of a particular agent or clerk in determining whether or not filings against a specific debtor exist in the public record. The filing office's computer, in conducting a search, presumably does not exhibit the variations in day-to-day performance that humans do and, consequently, does not make the same mistakes in searching.

Thus, in some sense, the advent of the computer would seem to render the searching process more reliable and less subject to human error. However, courts quickly recognized the limitations of electronic searching.²³⁹ Depending on the parameters and, particularly, the flexibility of the database's search logic, a search request might reveal financing statements that contained certain types of errors in the debtor's name but might not reveal financing statements with other types of errors. For example, in the mid-1990s, a search request in the Texas Secretary of State's office under the name "Kaldor-Hicks Construction

237. Even a computer program with a "spell check" feature will be of marginal use to a creditor in setting forth the name of a debtor, whether it is an individual or organization. Most "spell check" programs focus on English language words and some common names, such as "Jones," "Smith," "Gomez," etc. Certainly, a "spell check" feature might be helpful in alerting a creditor that it had misspelled "Smith" as "Smitt." But, it would not flag variant spellings of names—e.g., Woodard vs. Woodward, Braun vs. Brown, Livingston vs. Livingstone. Additionally, it would tag as misspelled certain foreign or unusual names not in the program's database—e.g., Verreos, Yamaguchi, Krimitsou.

238. It may be inferred, however, that in systems where the searcher does not have direct access to the official database, a clerk may enter the search request into the system on the searcher's behalf. See Kathy Berg, *Revised UCC Article 9: Utah "Filing Office" Update*, 15 UTAH B.J., Apr. 2002, at 14, 16 ("We only search what we are given.").

239. See, e.g., *In re Waters*, 90 B.R. 946, 960 (Bankr. N.D. Iowa 1988) ("Admittedly, a computer search [as opposed to a file box search] may require more precision in requesting a name search. The entry of a single name into the computer system may retrieve only a listing of financing statements on which the name is *identical* to the name entered.").

Co.” would reveal a financing statement listing the debtor as “Kaldor Hicks Construction Co.” but would not reveal a financing statement listing the debtor as “Kaldorhicks Construction Co.”²⁴⁰

Some courts have reacted to the strictures of the computerized system with a “that’s life” attitude.²⁴¹ Limitations in the search logic simply increase the burden on the filing creditor to get the debtor’s name right in the first place. Although this rule might produce harsh results for the filing secured creditor in some cases, it honors the notice-giving purpose of the filing system.²⁴²

Other courts have regarded the advent of computerized searching with less equanimity. One bankruptcy judge held that searchers using electronic methods are still charged with finding all financing statements that a manual searcher would find under the old system.²⁴³ Otherwise, people would become “servants” to their machines: “If computers frustrate rather than fulfill this essential purpose [of enhancing productivity and efficiency], humans inevitably must either discard them or limit their function.”²⁴⁴

D. Potential Solutions that Computers Offer

Presumably, there is not much that computers can do to help the filing creditor with the first issue discussed—that of deciding which name to use on the financing statement where a debtor seemingly has multiple names. Computers and their corresponding data management techniques can assist, however, in resolving the second issue—how to assist secured parties in setting forth the debtor’s name. Revised Article 9 requires the appropriate state agency to adopt filing office rules “consistent with this article.”²⁴⁵ Most states have adopted the model

240. See *ITT Commercial Fin. Corp. v. Bank of the West*, 166 F.3d 295, 301 (5th Cir. 1999) (explaining the computer search logic in the Texas Secretary of State’s office).

241. See *Genoa Nat’l Bank v. Sw. Implement, Inc. (In re Borden)*, 353 B.R. 886, 891 (Bankr. D. Neb. 2006) (observing that a restricted search logic does not relieve the filing creditor of the burden of getting the debtor’s correct name on the financing statement nor does it impose on searchers the duty to search under possible variations of the debtor’s name).

242. *ITT Commercial*, 166 F.3d at 304.

243. See *In re Mines Tire Co.*, 194 B.R. 23, 26 (Bankr. W.D.N.Y. 1996) (“To the extent that a human searcher would inevitably examine all corporate names having certain basic components, a computer searcher should act similarly. It will not suffice to perform a word search for the precise corporate name. Rather, the interested party should expand its investigation to include all related entries through which a manual searcher might have stumbled.”).

244. *Id.* at 25.

245. U.C.C. § 9-526(a)(1) (2001).

standard search logic promulgated by the International Association of Commercial Administrators (IACA).²⁴⁶ Under the model standard search logic, the computer records the data present on filed documents in a particular way, processes data on search requests according to the same rules, and then retrieves exact matches. For example, it ignores spaces²⁴⁷ and records all characters as a single case (either upper or lower, depending on how the computer is programmed).²⁴⁸ The phrase “Network Solutions” on a filed financing statement would be recorded in the database,

if upper case is the standard case, as “NETWORKSOLUTIONS.” A search under the name “Network Solutions” would reveal the financing statement described above. The computer would convert the search request to the string of characters “NETWORKSOLUTIONS,” again removing all spaces and reading all characters as upper case. In this example, therefore, the electronic search mechanism would reveal a financing statement for this debtor, despite any errors in spacing, capitalization, or punctuation.²⁴⁹ A searcher would see this financing statement and then presumably be able to conclude, based on the debtor address recorded, that the debtor listed on the financing statement was indeed the correct party.

Unquestionably, the extent of the search results produced by a single search under the debtor’s legal name is tied to the flexibility of the filing office’s standard search logic, and a restrictive search logic will generate fewer results than a more flexible one. Arguably, the non-standardized search methodologies maintained by many states during the transition period between old and new Article 9 can provide a model by which the filing office could fashion a more responsive standardized search

246. In fact, under new Article 9, the designated state rulemaking agency must “consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators” in creating filing office rules. *Id.* § 9-526(b)(2). IACA is “a professional organization of government administrators of business organization and secured transaction record systems at the state, provincial, territorial, and national level in any jurisdiction which has or anticipates development of such systems.” Int’l Ass’n of Commercial Adm’rs, About IACA, <http://www.iaca.org/node/12> (last visited Feb. 8, 2007). IACA promulgates an Article 9 standard search logic and model forms, which many, but not all, states have adopted.

247. *See, e.g.*, CAL. CODE REGS. tit. 2, § 22601.4(f) (2006) (following the IACA Model Rules).

248. *Id.* § 22601.4(b).

249. In the actual case upon which this hypothetical is based, the filing office’s standard search logic did not retrieve a financing statement with the debtor’s name listed as “Net work Solutions, Inc.” when the search term “Network Solutions, Inc.” was entered. *Receivables Purchasing Co. v. R & R Directional Drilling, LLC*, 588 S.E.2d 831, 832 (Ga. Ct. App. 2003).

methodology. During the transition period, several states have offered searchers two options for Article 9 searches—one for standardized searches and one for non-standardized searches.²⁵⁰ The standardized search is one conducted according to the filing office’s standard search logic in the official state UCC database. The non-standardized search is usually one conducted under a more flexible search methodology in the official state UCC database.²⁵¹ States have been affording searchers the option of performing a non-standardized search during the transition period so that they can locate financing statements filed in accordance with pre-revision Article 9.²⁵² These financing statements, by and large, remained effective during the transition period,²⁵³ which ended in most states on June 30, 2006.²⁵⁴

Test searches under the non-standardized methodology tended to reveal more financing statements than those performed according to the standard search logic. For example, assume a partnership with an official name of “Walker and Hunt Log” granted a security interest in its inventory and accounts to a bank. Also assume that the bank filed the financing statement against the debtor under the incorrect name “Walker and Hunt Log and Lumber,” based on some partnership documents presented by the debtor that were subsequently amended. Subsequently, if a prospective lender does a standardized search in the official state database under the debtor’s current name, “Walker and Hunt Log,” the standard search logic will not reveal the earlier financing statement. A non-standardized search under that name, however, will produce a match

250. *Clark v. Deere & Co. (In re Kinderknecht)*, 300 B.R. 47, 51–52 (Bankr. D. Kan. 2003), *rev’d*, 308 B.R. 71 (B.A.P. 10th Cir. 2004) (describing the unofficial and official search methods available in Kansas).

251. *See Berg, supra* note 238, at 16 (noting that an official certified search is more restricted and less rapid than the unofficial flexible online search mechanism).

252. *See, e.g.*, Kentucky Secretary of State, Business Services, Revised Article 9 UCC Non-Standard Search, [http://apps.sos.ky.gov/business/ucc/\(11n4z045zfwimdiecslt55\)/searchnstd.aspx](http://apps.sos.ky.gov/business/ucc/(11n4z045zfwimdiecslt55)/searchnstd.aspx) (last visited Feb. 8, 2007) (referring searchers to the non-standard search page for filings made before June 29, 2001); Maine Department of the Secretary of State, Debtor Name Index Search, http://www.maine.gov/sos/cec/corp/debtor_index.shtml (last visited Feb. 8, 2007) (allowing searchers to use a wildcard character to retrieve debtor name variations in an “unofficial” search).

253. *See* U.C.C. § 9-705(c) (2001) (providing that financing statements satisfying the applicable requirements for perfection under former Article 9 remain effective until the earlier of “the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or . . . June 30, 2006”).

254. In three states, Alabama, Florida, and Mississippi, the transition period ends December 31, 2006. *See* ALA. CODE § 7-9A-705 (2005); FLA. STAT. § 679.705 (2006); MISS. CODE ANN. § 75-9-705 (2006). In Arizona, the transition period ends June 30, 2007. ARIZ. REV. STAT. ANN. § 47-9705 (2006).

with the earlier financing statement because of the additional flexibility of the computerized search parameters.²⁵⁵

Similarly, the design of the search page on the Secretary of State's website could assist searchers in discovering existing financing statements that may contain errors in the debtor's name. For example, one state UCC website prompts the searcher to begin a search with the first word of an organizational name.²⁵⁶ The searcher then has the option to put in additional words from the name on separate lines in the search request. This approach, of course, encourages searchers to pull up all financing statements that have debtor names containing that initial word. For instance, a search under "Bates" will reveal financing statements against Bates Auto Supply, Bates Soil & Water Testing Service, Bates Holdings, and so forth.²⁵⁷ Depending on the size of the jurisdiction involved and the commonness of the name, the searcher could have a relatively manageable number of "hits" to sort through. In addition, the use of root words in searches could aid in recovering financing statements with certain errors in the debtor's name. The search mechanism could be programmed to pull up all words containing the root word—e.g., a search under "Auto" would reveal "Auto," "Automobile," "Automotive," "Automatic," and so forth.

In the end, one might posit that the computer, which has improved the efficiency of so many of the tasks of modern life, could assist in solving the debtor name problem. A properly engineered electronic filing system conceivably could blend the "reasonably diligent searcher" and "single search" standards. As under Revised Article 9, a searcher could assure itself of having adequately searched by performing a single search. The input and output of that single search, however, could reveal financing statements that contain certain errors in the debtor's name—in other words, financing statements that would have been discovered by a reasonably diligent searcher operating under the pre-revision approach. Once having seen those financing statements, the searcher could

255. This hypothetical is based on test searches conducted on July 21, 2006, in the Kentucky Secretary of State online databases for UCC filings, which are located at <http://apps.sos.ky.gov/business/ucc> (on file with author).

256. See Wisconsin Department of Financial Institutions, UCC Filing Search, Search for Organization Name, <http://www.wdfi.org/ucc/search/default.asp?searchType=organization> (last visited Feb. 8, 2007).

257. This hypothetical is based on test searches conducted on July 23, 2006, in the Wisconsin Secretary of State online database for UCC filings, which is located at <http://www.wdfi.org/ucc/search/default.asp?searchType=organization> (on file with author).

determine relatively quickly whether or not any of those statements pertain to the individual or entity that is the subject of the search.

Such an electronic searchable database might include several specific features, some of which have already been described: a flexible search logic, a suitable list of noise words, and a search page that directs searchers to conduct their searches using initial words, root words, and/or wildcard characters. Developing this kind of system may not even necessitate creating an entirely new scheme; there are features of existing systems that could be employed or modified to create an even more sophisticated database. Upfront investment to refine the electronic filing system could be more than offset, one might hope, by efficiencies enjoyed by filers and searchers alike.

Article 9, following in the steps of its statutory predecessors, mandates that secured creditors file in a publicly created recordkeeping system. If filers and searchers could talk directly to one another, they would not need the intermediary of the legislatively spawned filing system.²⁵⁸ In keeping with its role of serving the public interest, the filing office should be required to develop a filing and searching system that reduces costs for parties forced to use that system. Such a system could go a long way toward fulfilling the goals of an ideal notice-giving mechanism: accommodating (to some extent) the inevitable failures of filers, allowing searchers to retrieve efficiently and accurately the information that they need, and reducing the amount of litigation surrounding financing statement adequacy.²⁵⁹

VI. CONCLUSION

For as long as public recording systems have existed, efficiency concerns have surrounded them—how to ensure that those using these systems are able to record and extract the appropriate information in the

258. In the best of all possible worlds, the information-seeking party would simply ask the debtor whether there were any prior security interests in particular collateral, and the debtor would respond truthfully and accurately that there were or were not. If there were prior interests, the debtor would then supply the name and contact information of the earlier creditor, whom the later party could contact directly for more information about the security interest.

259. The Article 9 Study Group, which began the revision process with its 1992 report, specifically noted the prevalence of “inadequate computer systems (both hardware and software) and insufficient staffing” in state filing offices. *See* UCC REPORT, *supra* note 7, at 88. It urged adoption of “minimum performance standards . . . to determine whether a system is functioning satisfactorily” and observed that the systemic problems of filing offices “cannot be solved through refinements to the text of Article 9.” *Id.* at 88–89.

most cost-effective way.²⁶⁰ The Article 9 filing scheme, as a public recording system, has not escaped those concerns. Because the gateway to the Article 9 filing records has always been and continues to be the debtor's name, the analysis of the system's efficiency has focused on that particular element of a financing statement. Under former Article 9, the burdens of using the system were borne more heavily by searchers. Filers were required to get fairly close to the debtor's actual name on the financing statement, but searchers had a duty to execute a reasonably diligent search to retrieve the financing statement. The revisers of Article 9 consciously shifted more of the burden of system use to filers with adoption of the "single search" standard of UCC § 9-506(c). Under this standard, secured creditors must get the debtor's name almost perfect on the financing statement to achieve perfection and to avoid complete loss of their security interests in bankruptcy.

The "reasonably diligent searcher" standard was rightly criticized: it unduly burdened searchers and it created problematic litigation in which each case had to be addressed freshly based on its idiosyncratic facts. But the "single search" standard of Revised Article 9 has seemingly created its own set of problems: it may be viewed as unfairly harsh toward filing creditors, it appears to have generated a fair amount of litigation, and it cuts against the general pro-secured party thrust of Article 9. Moreover, because the new rule is tied to the standard search logic of individual states, the uniformity that Article 9 has long sought to promote is diminished.

Accordingly, this Article has suggested that the "single search" rule may have swung the pendulum too far in the other direction. In some cases, courts have resisted it by finding an escape hatch for the filing secured party through application of constructive trust principles or resurrection of the "reasonably diligent searcher" standard for at least a portion of the search. In other cases, the courts have invalidated financing statements with minute errors in spacing or punctuation. Additionally, the full impact of the new standard has yet to be felt as the transition period between old and new Article 9 has just recently ended.

In an effort to assist both filers and searchers attempting to use the Article 9 recording scheme, this Article has argued for two additional modifications of Article 9. First, the statute should be amended to clarify

260. See George L. Haskins, *The Beginnings of the Recording System in Massachusetts*, 21 B.U. L. REV. 281, 284-88 (1941) (describing land recording systems in the early- to mid-1600s in Massachusetts and other colonies).

that secured parties must use the debtor's legal name on the financing statement and to create a safe harbor for secured parties in attempting to ascertain the debtor's legal name. Second, Article 9 should require further refinement of the electronic filing systems maintained by filing officers in the various states. Implementation of a standard flexible search logic coupled with instructions on how most effectively to search the database, it is hoped, will serve both equity and efficiency goals. The proposed changes will afford filers the peace of mind of knowing that some degree of fallibility will be tolerated and will offer searchers the simplicity of conducting a "single search" while retrieving the information of a "reasonably diligent" one.