

# Article 9 Financing Statement Searches: Is a Rose by Any Other Name Still a Rose?

## I. INTRODUCTION

Is a rose by any other name still a rose? Article 9 of the Uniform Commercial Code establishes a system by which creditors can record a security interest in collateral by filing a financing statement in the public records and subsequent creditors can receive notice of this interest by searching these records. However, the drafters of the Uniform Commercial Code also included a provision which seeks to forgive creditors for minor errors in the financing statement.

This Note first establishes the background of secured transaction law under the Uniform Commercial Code and then evaluates the current standards applied by the courts in this area. Next the effect of computerization on financing statement searches is analyzed, and the Note concludes by proposing a new standard for evaluating misnomers. Namely, that since financing statements are indexed under the debtor's last name, the courts should require absolute precision in order to protect the integrity of the notice system and to promote judicial economy.

## II. OPERATION OF ARTICLE 9

Prior to the adoption of the Uniform Commercial Code [hereinafter "U.C.C." or "Code"], the process of obtaining a security interest varied greatly depending on the type of collateral involved and the state in which the interest was sought.<sup>1</sup> As a result, a wide variety of security devices was developed for the differing collateral. Among the more prominent security devices were the chattel mortgage, the pledge, the conditional sale (*i.e.* the reservation of title until full payment is received), and trust receipts.<sup>2</sup> However, even with numerous security devices, it was still unclear exactly how to obtain a security interest in certain collateral.<sup>3</sup> To rectify these problems, Article 9 of the U.C.C. was adopted to "provide a simple and unified structure within which the immense variety of present-day secured financing transactions can go forward with less cost and with greater certainty."<sup>4</sup>

Under Article 9 of the U.C.C., the general rule is that filing a financing statement<sup>5</sup> is required in order to perfect the security interest.<sup>6</sup> However, as

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1. Uniform Commercial Code [hereinafter U.C.C.] § 9-101 Official Comment. All citations to the Uniform Commercial Code are to the Official 1989 edition.

2. WHALEY, PROBLEMS AND MATERIALS ON SECURED TRANSACTIONS 5-14 (2 ed. 1989).

3. U.C.C. § 9-101 Official Comment uses motion picture rights as one example of collateral which caused problems.

4. U.C.C. § 9-101 Official Comment.

5. U.C.C. § 9-402. The financing statement is a short form used merely to impart notice on searchers. The requirements are the names of the debtor and secured party, both the debtor's and secured party's addresses, a description of the collateral by item or type, and the debtor's signature. U.C.C. § 9-402. The model form of a financing statement is the U.C.C.-1.

6. U.C.C. § 9-302.

with any rule, there are exceptions.<sup>7</sup> The financing statement is then indexed in the public records under the debtor's name<sup>8</sup> and serves as notice to subsequent creditors of the existing security interest.<sup>9</sup> Realizing that if absolute precision were required harsh results would occur as the result of only minor errors,<sup>10</sup> the drafters included paragraph 8 of Section 9-402 which reads: "[a] financing statement substantially complying with the requirements of this section is effective *even though it contains minor errors which are not seriously misleading.*"<sup>11</sup>

### III. ADOPTION AND THE OPERATION OF SECTION 9-402(8)

The Official Comment to U.C.C. Section 9-402(8) lays out the policy objective the drafters sought to achieve by the inclusion of Section 9-402(8) in the Code. The comment reads: "[s]ubsection (8) is in line with the policy of this Article to simplify formal requisites and filing requirements and is designed to discourage the fanatical and impossibly refined reading of such statutory requirements in which courts have occasionally indulged themselves."<sup>12</sup> The official comment is a clear instruction to judges that strict adherence to the requirements of U.C.C. Section 9-402 is not to be required. Further, in what appears to be an attempt to prevent any misunderstanding of the underlying policy, the Code drafters included an example of the type of reasoning that was specifically rejected.<sup>13</sup> The example given was *General Motors Acceptance Corp. v. Haley*.<sup>14</sup>

In *Haley*, General Motors Acceptance Corporation (GMAC) entered into a financing arrangement with the E.R. Millen Co., Inc. (Millen) through the use of a trust receipt. The agreement allowed Millen to acquire various types of merchandise and attempted to reserve a security interest in the merchandise in favor of GMAC.<sup>15</sup> GMAC filed a statement with the Secretary of the Commonwealth of Massachusetts as the Uniform Trusts Receipts Act required,<sup>16</sup> however, the filings were in the name of E.R. Millen Company rather than E.R. Millen Co., Inc.<sup>17</sup> Subsequently, Millen assigned all the merchandise to the defendant Haley.<sup>18</sup>

The court held that GMAC did not have a security interest in the merchandise because the filings were not under the correct name.<sup>19</sup> This result was achieved even though the lower court made a finding of fact that one month

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7. U.C.C. § 9-302 lists the circumstances when filing is not required.

8. U.C.C. § 9-403(4).

9. McLaughlin, "Seek But You May Not Find": Non-U.C.C. Recorded, Unrecorded and Hidden Security Interests Under Article 9 of the Uniform Commercial Code, 53 FORDHAM L. REV. 953, 953 (1985).

10. U.C.C. § 9-402 Official Comment 9.

11. U.C.C. § 9-402(8) (emphasis added).

12. U.C.C. § 9-402 Official Comment 9.

13. *Id.*

14. 329 Mass. 559, 109 N.E.2d 143 (1952).

15. *Id.* at 560, 109 N.E.2d at 144.

16. MASS. GEN. L. (Ter. Ed.) ch. 255A § 8, inserted by St. 1936, c. 264. This statute has been repealed by Article 9 of the U.C.C. See U.C.C. § 9-102 (note to legislatures accompanying statute).

17. 329 Mass. at 560, 109 N.E.2d at 144.

18. *Id.* at 561, 109 N.E.2d at 144.

19. *Id.* at 566, 109 N.E.2d at 147-48.

prior to incorporation, Millen was in fact doing business in the same location under the name of E.R. Millen Company.<sup>20</sup>

When faced with these facts, it is understandable why the Code drafters chose *Haley* as an example of the apparent harshness of an exactness standard. However, to stop one's inquiry into *Haley* here would be doing injustice to Justice Wilkins, who authored the *Haley* opinion.

At first glance it appears that Justice Wilkins was exalting form over substance and arriving at an inequitable result; however, the reasoning of the opinion tells a very different tale. After acknowledging GMAC's argument that no one could be deceived under the facts of the case (similarity of the names, addresses, and goods involved)<sup>21</sup> Justice Wilkins noted the ambiguities that would result by ruling for GMAC by stating:

Any relaxation in strict interpretation tends, in a given case, to carry in the opposite direction and, for future cases, to open the door wider to still other variations. Even if we assume that a person consulting the index would find the way to the particular statement with which we are now concerned, we nevertheless are not sure how great a duty of investigation the statute fairly intended should be imposed upon the public . . . .<sup>22</sup>

Thus, the example the drafters used in justification of Section 9-402(8) was, in fact, decided based on the same policy that Article 9 of the U.C.C. sought to further.<sup>23</sup>

#### A. *Filing Location Under Section 9-401*

Through the adoption of U.C.C. Section 9-401, the drafters established a public filing system which, like other filing systems, is designed to give notice to searchers.<sup>24</sup> U.C.C. Section 9-401 designates the place in which a financing statement should be filed, and in a digression from the uniformity which is characteristic of most sections of the Code, gives the states three alternatives.<sup>25</sup> The first alternative designates the Secretary of State's office for the given state as the primary place of filing. The only exceptions to this filing location are for filings where the collateral consists of minerals, uncut timber, interstate accounts, or fixtures, and in these cases the filing location is in the office for real estate mortgage filings.<sup>26</sup>

In the second alternative, the primary place of filing is again the Secretary of State's office, and the same exceptions also are carried over. However, the second alternative adds a filing in the county office where the debtor is located

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20. *Id.* at 561, 109 N.E.2d at 144.

21. *Id.* at 564, 109 N.E.2d at 146.

22. *Id.* at 564, 109 N.E.2d at 146.

23. U.C.C. § 9-101 Official Comment lists the aim of Article 9 as "a simple and unified structure . . . with less cost and with *greater certainty*." U.C.C. § 9-101 Official Comment (emphasis added).

24. Donnellan, *Notice and Filing Under Article 9*, 29 Mo. L. REV. 517, 517 (1964).

25. U.C.C. § 9-401(1).

26. U.C.C. § 9-401(1) Alternative 1. Among the states adopting the first alternative are Delaware, Georgia, and Wisconsin.

for filings in which the collateral is farm equipment, farm products, or accounts receivable from farming operations.<sup>27</sup>

The third alternative given to the states keeps the same filings as were present in the second alternative and also adds a duplicative filing in the office of county records for all collateral that under alternatives one and two would have been filed only in the Secretary of State's office.<sup>28</sup>

As a result of the variation in size and sophistication of counties throughout the United States, as well as the variation in the amount of automation that counties have implemented, a great deal of variety in the indexing mechanisms presently used under U.C.C. Section 9-401 is also present. Some of the more common searching variations include: alphabetically arranged filing cabinets, daily computer printouts for the searcher to view, computer terminals for the searcher to personally perform searches, and U.C.C.-11 forms for the searcher to request office staff to perform searches.<sup>29</sup>

As a result of these variations, any discussion of searches must be generalized, and not all observations made in this Note will be applicable in every jurisdiction.

Though a simple notice filing system with greater certainty was the goal of the Article 9 drafters,<sup>30</sup> the system in practice has yielded many situations in which a simple search of the filing records, even with all of the financing statements correctly completed and filed, may not yield all of the security interests present for any given collateral.<sup>31</sup> As such, uncertainty is present in most filings, resulting in anxiety for the practitioner who must assure clients (who are contemplating entering into transactions) that there are no existing security interests in the proposed collateral.

Further, commentators have noticed problems in the operation of certain Article 9 priority sections when there is a deviation from Article 9's general rule of giving priority to the first creditor to file or perfect.<sup>32</sup> Examples of such deviations include U.C.C. Section 9-308 which deals with the purchase of chattel paper and instruments, and U.C.C. Section 9-306(5) which deals with the transfer of accounts or chattel paper following a sale of goods.<sup>33</sup>

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27. U.C.C. § 9-401(1) Alternative 2. Among the states adopting the second alternative are California, Illinois, and New York.

28. U.C.C. § 9-401(1) Alternative 3. Among the states adopting the third alternative are Ohio, Pennsylvania, and Massachusetts. For a complete listing of the alternatives selected by each state and any variations added, see 9 ANDERSON, UNIFORM COMMERCIAL CODE 380-91 (1985).

29. In Ohio, the Secretary of State has an office designated for U.C.C.-1 filings and searches. This office implements a variety of techniques which may be used for searching. One method implemented is filing a U.C.C.-11 form with the applicable debtor information and fee. The state employees will then perform the search and the results are mailed to the search requester. (The search will be performed at the time of request if the search has been requested in person.)

If a searcher is at the Secretary of State's office in person, he or she also has the option of typing in his or her own search and visually receiving the information on the computer screen.

Additional search information is available from a booklet entitled *The Ohio Uniform Commercial Code Checklist* issued by the Office of the Ohio Secretary of State.

30. See *supra* note 4.

31. See generally McLaughlin, *supra* note 9.

32. See U.C.C. § 9-312(5).

33. See Note, *Priority Contests Under Article 9 of the Uniform Commercial Code: A Purposive Interpretation of a Statutory Puzzle*, 72 VA. L. REV. 1155 (1986).

A practitioner filing a financing statement for a client and rendering an opinion must not only deal with the problems mentioned above, but also with a host of others; however, the focus of this Note is the result reached when a subsequent creditor does not locate a previously filed financing statement due to the prior creditor misnaming the debtor on the financing statement.<sup>34</sup> As such, the effects of the other possible pitfalls are beyond the scope of this Note and will not be addressed in any detail.

#### IV. JUDICIAL INTERPRETATION OF SUBSTANTIAL COMPLIANCE

Numerous jurisdictions have had the opportunity to apply and interpret U.C.C. Section 9-402(8) since the adoption of the Code, and the results have not always been uniform. Professors White and Summers have responded to the varying results by noting, "[i]t will come as no surprise that, for example, errors which are regarded as minor and not seriously misleading in Pennsylvania are treated as major and misleading in Maine."<sup>35</sup> The following discussion will analyze some of the decisions and evaluate the extent by which the policy objectives of the Code were furthered by them. The cases discussed herein are not all-inclusive; the number of cases decided in this area is said to exceed one hundred.<sup>36</sup>

##### A. *Misnomers and the Notice System*

There is no general rule by which a party can be sure that the error present in the debtor's name on a financing statement will or will not be declared seriously misleading.<sup>37</sup> However, it has been suggested that a misspelling in the debtor's last name is usually considered seriously misleading.<sup>38</sup>

In *First Agri Services, Inc. v. Kahl*,<sup>39</sup> the court was considering whether financing statements that were initially correctly filed under the names of Gary and Dale Kahl were to remain valid to cover future advances that were made when the two formed a partnership and thus the debtor became Kahl Farms.<sup>40</sup> In reaching its decision, the court described the issue of whether a name was seriously misleading as a mixed issue of law and fact.<sup>41</sup> The court further stated that:

The notice filing system was adopted to create a simple system to provide reliable basic information to third persons without unduly burdening secured creditors. A financing statement failing to convey the information which a *reasonably diligent third*

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34. U.C.C. § 9-402(1) requires the name of the debtor to be placed on the financing statement and U.C.C. § 9-403(4) requires indexing by the debtor's name. "Misonaming," as used in this Note, refers not only to typographical errors, but also to errors caused by a creditor failing to obtain the appropriate name or spelling from the debtor.

35. J. WHITE AND R. SUMMERS, *UNIFORM COMMERCIAL CODE* at 954 (2d ed. 1980).

36. 9 HAWKLAND, *UNIFORM COMMERCIAL CODE SERIES* 409 (1986).

37. *Id.*

38. Hillman, *Financing Statements: Errors and Omissions*, 5 U.C.C. L.J. 209, 215 (1973).

39. 129 Wis. 2d 464, 385 N.W.2d 191 (Wis. Ct. App. 1986).

40. *Id.* at 467-68, 385 N.W.2d at 192.

41. *Id.* at 471, 385 N.W.2d at 194.

person requires to identify potential competing security interests in the debtor's assets is "seriously misleading."<sup>42</sup>

Thus, the court seemed to base its decision on whether a third person would be misled when formulating a search. This standard appears to be in line with the purpose of the notice system, but does little to advance the goal of certainty that the drafters had in mind.<sup>43</sup> Whether a third party would be misled during a search is an extremely subjective standard that creates uncertainty in the secured transaction arena. Such a standard would require a searcher to measure his searching abilities against what he perceives to be the ability of other searchers in order to evaluate the thoroughness required.

The test of whether a third party would be misled when performing a search<sup>44</sup> would seem to explain the decision reached by the court in *Reisdorf Bros., Inc. v. Clinton Corn Processing Co.*,<sup>45</sup> where a creditor with a security interest in crops misfiled a financing statement under the name of "Dragon Grain Farms and Peter Dragon, individually" instead of "Dragan."<sup>46</sup> However, any such explanation of the court's decision would be conjecture, as the court offered no explanation into its logic nor guidance for future resolution of such matters, and simply stated that the misnomer was seriously misleading.<sup>47</sup>

Such declarations by courts do little in the way of establishing effective precedent for the future resolution of these issues. If a later court was called upon to resolve the issue of whether a misnomer of "Simms" instead of "Sims" was seriously misleading, little guidance could be extracted from the *Reisdorf Bros.* opinion. Although the avoidance of admittedly harsh results is an admirable goal, doing so at the expense of certainty may prove to be a price that is too high to pay. In an alphabetical filing system where all of the records are visible to the searcher either on screen or by hard copy (thus allowing a searcher to view the names which precede and follow the name being searched), one would doubt that a searcher would be misled during the "Simms" search; however, the generalization that misspellings in the last name of the debtor are seriously misleading<sup>48</sup> would seem to support the conclusion that the error would in fact be held to be seriously misleading. Such speculation is an inescapable side effect of the flexible language of U.C.C. Section 9-402(8). In a system that requires absolute precision, however, a searcher would know that all financing statements filed under anything but the correct name and spelling would result in the mistaken party holding a junior interest. This type of uncertainty was the type of variation feared by Justice Wilkins in his *Haley* opinion.<sup>49</sup>

In a similar case, the Superior Court of New Jersey was called upon to decide whether a financing statement filed under the name of "Kapas" rather

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42. *Id.* at 472, 385 N.W.2d at 194 (emphasis added).

43. *See supra* note 23.

44. *See supra* note 42.

45. 130 A.D.2d 951, 516 N.Y.S.2d 375 (1987).

46. *Id.* at 951, 516 N.Y.S.2d at 375.

47. *Id.*

48. *See supra* note 38.

49. *See supra* notes 14-22 and accompanying text.

than "Kaplan" was seriously misleading.<sup>50</sup> The court, in holding that the filing was in fact seriously misleading, emphasized the effect on searchers by stating, "[t]hat error was seriously misleading since it deprived subsequent creditors about to furnish credit to Kaplan of the *opportunity of discovering defendant's security interest . . .*"<sup>51</sup> At the same time, the court held that having an erroneous digit in the serial number of the description of the collateral was not seriously misleading.<sup>52</sup> This holding seems sound because the financing statement is indexed under a debtor's name and not under the description of the collateral.<sup>53</sup> Any prospective creditor that located a financing statement covering collateral that is similar to the proposed collateral would be on notice to further inquire from the debtor into the nature of the previous collateral. A misnamed debtor on the financing statement, however, will eliminate the opportunity for further inquiry as the prospective creditor will not have any indication of the existence of the other creditor.

Whether a misnomer seriously misleads a third party searcher would seem to be a factor of both the mistake in spelling, as well as the location of the error within the name of the debtor. Thus, the addition of the extra "m" in the name "Sims" would be considered less misleading by most courts than a mistake of the first letter of a last name.

Although it is arguable that no searcher would be seriously misled in the "Sims" example, this argument assumes that both financing statements are visible to the searcher. Under certain searches, this assumption may be the fatal link in the logic.<sup>54</sup>

Similarly, few would argue that an error in the first letter of the debtor's last name, such as the slight procedural error of one key (on the standard keyboard) which would transform "Jones" into "Kones," would not result in a seriously misleading error.

Such fine line drawing would be unnecessary under a system that required absolute precision. Any error, however slight or wherever located, would result in the holder of the security interest being found to be junior to any subsequent creditor who correctly files. Although this result could yield harsh results for the party with only a slight clerical error, it is no more harsh than the results experienced by the searcher who after *correctly* searching under the debtor's correct name, is found to have a junior interest to the party whose slight error is found not to be seriously misleading by the courts.

The above discussion has focused upon debtor filings that revolved primarily around a single debtor name. These problems are relatively simple compared with the complexity that is added when the names of business entities are used. Courts have been presented with such complicated issues as where debtors, who are individuals and have never been in certain lines of work, have had financing

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50. *Bank of No. America v. Bank of Nutley*, 94 N.J. Super. 220, 227 A.2d 535 (1967).

51. 94 N.J. Super. at 226, 227 A.2d at 539 (emphasis added).

52. *Id.*

53. See *supra* note 8.

54. See *infra* Part V.

statements filed under a business name,<sup>55</sup> corporate misnomers,<sup>56</sup> and a host of problems associated with trade names.<sup>57</sup>

Any rule adopted to resolve the relatively simple problems of single debtor misnomers must be arrived at after due consideration is given to the application of such a standard to the more complicated problems that arise concerning business entities. 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. This is not the standard endorsed by Professors White and Summers, however, who prefer the "reasonably diligent searcher test."<sup>58</sup> In their discussion of U.C.C. Section 9-402(8) and debtor names, Professors White and Summers note that a variety of empirical facts affect the probability of finding a financing statement,<sup>59</sup> and encourage the courts to focus on whether a "reasonably diligent searcher" would locate the financing statement considering these empirical facts.<sup>60</sup>

Although this approach may yield what many consider the more equitable result, these results come at the expense of certainty and judicial economy. Few individuals will be able to successfully reach an amicable agreement on whether a given financing statement is seriously misleading absent resorting to the litigation process. Under an absolute precision standard, two creditors interested in the same collateral will be able to arrive at their relative priority rankings, with little intervention of counsel, by simply establishing the date of filing and whether there is an error in the debtor's name. Thus, the costs to the creditors, as well as the costs to society due to a smaller case load in the courts, are decreased by the exactness standard.

Reported decisions give little attention to the types of searches that were used in the jurisdiction in which the disputes have arisen; however, the types of searches available are extremely important in determining whether a financing statement will actually be located.

## V. COMPUTERIZATION AND FINANCING STATEMENT SEARCHES

Presently, a wide variety of searching techniques are being used throughout the country.<sup>61</sup> However, the complexity and precision that computerization

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55. *Citizens Bank v. Ansley*, 467 F. Supp. 51 (M.D. Ga.), *aff'd* 604 F.2d 669 (5th Cir. 1979). (International Harvester Company filed under Ansley Farms when Emory Ansley was never in the farming business).

56. *See, e.g., National Cash Register Co. v. Mishkin's 125th St., Inc.*, 65 Misc. 2d 386, 317 N.Y.S.2d 436 (1970).

57. The problems associated with misfilings when trade names are involved are so voluminous that they are beyond the scope of this Note. However, for a discussion of this topic see Note, *Trade Name Filing: Should it be Sufficient to Perfect a Security Interest Under U.C.C. Section 9-402?*, 35 CASE W. RES. L. REV. 51 (1984).

58. *See* 2 J. WHITE & R. SUMMERS, UNIFORM COMMERCIAL CODE, 374-75 (3d ed. 1988) (Practitioner's Ed.). Professors White and Summers, in endorsing this approach, stated that this approach was favored "[p]artly because we are persuaded that few creditors are misled by the misfilings which occur as a result of misspellings and misplaced names . . ." *Id.*

59. These empirical facts include: 1) Geographical location of filing, 2) Does name used sound like real name? 3) Is the name highly unusual? *Id.* at 375.

60. *Id.*

61. *See supra* text accompanying note 29.



brings to the practice of financing statement searches requires a reevaluation of the current standards that are applied to financing statement errors.

Computerization of Article 9 financing statement records is not a new concept. A recommendation toward the computerization of such records was directed to the Mississippi Secretary of State in 1968.<sup>62</sup> Further, the computerization of the practice of law in general is becoming a way of life with innovations occurring on a regular basis.<sup>63</sup> Because of technological advances, the law must sometimes change to meet the challenges of a changing society or it may burden the society it serves.<sup>64</sup>

The constructive notice imputed on a searcher by the courts has severe ramifications if the searcher did not actually locate the financing statement. Such a ruling often determines the outcome of the conflict due to the operation of the first to file or perfect priority rule.<sup>65</sup> A lender, entering into a transaction after a seemingly thorough search and with the mistaken belief that he has the only security interest in the collateral, may find himself subordinate to a prior creditor's security interest. This could result in the debt being uncollectible in the event of a debtor bankruptcy.<sup>66</sup> As such, any standard adopted by a state must perform equally well under either a computerized or manual system until all systems within the state have been computerized.

Professors White and Summers have proposed that computerization of Article 9 financing statement indexes should not result in a need to replace the "reasonable search" standard,<sup>67</sup> and further added that "computer searches will often be just as practical and sometimes easier than manual searches."<sup>68</sup>

Although it is extremely difficult to generalize about any computerized search due to the wide variation in software used by the various filing agencies, certain searches may become more difficult due to the advent of computerization. In discussing computerized searching, Professors White and Summers criticize the decision of the court in *Huntington National Bank v. Tri-State Molded Plastics, Inc.*<sup>69</sup> In *Huntington*, the debtor changed its corporate name from Tri-State Moulded Plastics, Inc. to Tri-State Molded Plastics, Inc. and the court was called upon to decide whether the name change caused the financing statements filed under "Moulded Plastics" to be seriously misleading.<sup>70</sup> In reaching its conclusion that the name change was seriously misleading, the

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62. Robertson, *Application of Data Processing Techniques to the Uniform Commercial Code Filing System: A Modern Proposal For Mississippi*, 39 Miss. L.J. 173, 186 (1968). Mr. Robertson gave credit for the idea of computerization of the records to Professor Grant Gilmore.

63. See, e.g., Polansky, *Technology Drives the Future*, JUDGES' J., Spring 1989, at 1.

64. Modern advances are not only affecting secured transactions law. Changes in technology have resulted in changes in nearly all areas of practice. For example, in the area of probate law see *Alexander v. Alexander*, 42 Ohio Misc. 2d 30, 537 N.E.2d 1310 (1988), in which the Franklin County Probate Court ordered disinterment of a body in order to allow DNA tests in order to establish paternity.

65. See *supra* note 32.

66. If the collateral has a value of less than or equal to the debt owed to the prior creditor, the subsequent creditor will receive nothing when the collateral is sold.

67. 2 J. WHITE & R. SUMMERS, *supra* note 58, at 377. However, it was noted that after time, it may become necessary to redefine "reasonable search" due to the effects of computerization. *Id.*

68. *Id.* at 377.

69. 23 Bankr. 806 (Bankr. S.D. Fl. 1982).

70. *Id.* at 807-08.

court gave great weight to the fact that under the Ohio Secretary of State's computerized system, the financing statements were not located.<sup>71</sup> The impact of the searching system is further emphasized by the fact that some of the same financing statements were located in searches of the county filing system.<sup>72</sup>

Professors White and Summers base their criticism of the *Huntington* decision on the fact that a "reasonably diligent searcher" would have searched for, and located, the misnomer due to the closeness of the two spellings.<sup>73</sup> However, requiring protracted searches of possible misnomers will greatly increase the time and expense of searches, even assuming all reasonable misnomers could be thought of.

An additional justification for not requiring absolute precision of debtor names is the availability of wildcard characters in many computer searches.<sup>74</sup> However, any rule which is adopted based upon a blind assumption that a wildcard is available on every computer system could result in inequitable results in many circumstances.<sup>75</sup>

Even assuming that there is no increase in searching difficulty due to computerization, requiring the debtor's name to be precisely correct on a financing statement will minimize the amount of search time for the computerized searcher just as it would with the manual search—eliminating the need to search under any name other than the debtor's exact name. Also, by allowing both parties to the dispute to know the results of a priority dispute without incurring the expense of litigation, the transaction costs are lowered for the entire system.

## VI. PROPOSED ADOPTION OF EXACTNESS STANDARD

By adopting U.C.C. Section 9-402(8), the drafters sought to avoid the harshness that appeared to result when only a very minor error was present in the financing statement.<sup>76</sup> Oftentimes, this works to the detriment of the subsequent creditor who has found the correct debtor's name and correctly searched under that name.<sup>77</sup> While it would be difficult to argue that equity would never allow such a result, such a rule should be adopted only after a thorough investigation of all of the policy considerations. Once the policy considerations indicate that such a result is desirable, it is necessary to consider whether the policies sought to be furthered by the adoption of the standard are in fact furthered.

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71. *Id.* at 809-10.

72. *Id.* at 807.

73. 2 J. WHITE & R. SUMMERS, *supra* note 58, at 377.

74. One example of such a wildcard given by Professors White and Summers is the "\*" used in Lexis searches. *Id.* at 377.

75. Although the computer system used by the Ohio Secretary of State's office has a wildcard (the "%" for the on-line searches) this information is not provided to searchers in *The Ohio Uniform Commercial Code Checklist*, which is the guide provided by the Secretary of State to searchers. The wildcard information is only provided after a specific request for the information is made to the office staff.

76. *See supra* text accompanying notes 12-23.

77. *See supra* note 32, by operation of the first to file or perfect priority rule.

In the matter at hand, the drafters sought to replace the variety of pre-Code techniques for reserving a security interest in commercial transactions<sup>78</sup> with a simple system that added greater certainty.<sup>79</sup> From a policy perspective, this goal was both laudable and necessary. With regard to U.C.C. Section 9-402(8) specifically, the policy objective of the drafters was to avoid the harshness of the strict construction as was used in *Haley*.<sup>80</sup> It is the contention of the author that these two policy objectives may run counter to each other, and thus the avoidance of a strict interpretation may breed uncertainty rather than certainty.

A strict interpretation of the requirements for a financing statement<sup>81</sup> would result in a maximum amount of certainty. A creditor who files a financing statement under Article 9 would know, prior to the filing, that if one letter in the debtor's name is incorrect, regardless of location, then the financing statement will be ineffective against subsequent creditors.<sup>82</sup> Similarly, all subsequent creditors will know that by obtaining the correct name of the debtor and searching under that name, they are assured protection from misfilings. This interpretation of Section 9-402(8) would ease the pressure on creditors caused by the uncertainty of current searches, as well as the pressure on the courts to try to formulate a logical and workable standard for deciding whether any given error is seriously misleading.<sup>83</sup> Such a standard would also resolve the issue of to what extent a creditor must search for misnomers of the debtor's name.<sup>84</sup> This standard was exactly the workable standard on which the decision was based in *Haley*,<sup>85</sup> in which Justice Wilkins stated "there is no hardship for an entruster to see that the statutory requirements are met and the documents accurately executed."<sup>86</sup>

Although such a result may appear to be harsh at first glance, in operation it is no more harsh than declaring that a subsequent creditor has constructive notice of a misfiled financing statement which was never actually seen—and hence loses in a priority contest—even though all actions taken were correct. At least under the exactness standard, the party who is punished by the harsh operation of the law is the party who in fact made the mistake that causes the problems in the first place.

Requiring absolute precision in the doing of an act or having the act declared void would not be unique to secured transaction law, as such a standard is regularly applied in the process of executing a will.<sup>87</sup> Such a flexible standard as is currently applied to the debtor name in U.C.C. Section 9-402(8) is not

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78. See *supra* note 2.

79. See *supra* note 4.

80. See *supra* notes 14—23 and accompanying text.

81. See *supra* note 5.

82. Thus the creditor would be an unperfected secured creditor and would lose in a priority contest with a perfected secured creditor. U.C.C. § 9-301(1)(a).

83. See *supra* text accompanying notes 37-47.

84. See *supra* text accompanying note 73.

85. See 329 Mass. 559, 564, 109 N.E.2d 143, 146 (1952).

86. *Id.* at 565, 109 N.E.2d 143, 147 (1952).

87. See, e.g., *In Re Estate of Peters*, 107 N.J. 263, 526 A.2d 1005 (1987), in which the court stated, "[f]ailure to comply with the statutory requirements has long resulted in a will being declared invalid, no matter

without a place in Article 9. There are many requirements for a complete financing statement<sup>88</sup> and the application of the "minor error not seriously misleading" doctrine is appropriate when the issue is the incorrectness of the debtor's signature, the debtor's address, the creditor's name and address, or the description of the collateral.<sup>89</sup> In these circumstances, the error is not without importance,<sup>90</sup> but the subsequent creditor has at least received notice that there are other creditors involved with this debtor. The burden would then be on the subsequent creditor to resolve the issue or suffer the consequences of having a subordinate interest in the collateral.

By limiting the application of U.C.C. Section 9-402(8) to the items required by the financing statement other than the debtor's name,<sup>91</sup> the policy objectives of the drafters can best be served. Namely, the simple system of having one type of instrument to create a security interest will be in place,<sup>92</sup> while at the same time, certainty will be furthered<sup>93</sup> as all creditors will know that errors in the debtor's name will result in the creditor being declared unperfected.

This interpretation is superior to the present situation in which it is unknown whether any given misnomer will in fact be declared seriously misleading,<sup>94</sup> and a great deal of variation in searching procedures may dictate whether a financing statement is actually located by the creditor.<sup>95</sup>

## VII. CONCLUSION

Currently under U.C.C. Section 9-402(8) there is a great deal of uncertainty concerning the amount of precision that will be required so that the spelling of the debtor's name on the financing statement will ensure perfection.

Although the drafters sought to achieve certainty in the adoption of Article 9, the application of U.C.C. Section 9-402(8) to the debtor's name may have generated greater uncertainty in order to avoid the harshness that was often present in the pre-Code decisions.

As a result of computerization, a great deal of variation has evolved in the actual searching techniques and the results that are available.

As such, the author proposes to limit the application of U.C.C. Section 9-402(8) to situations in which the debtor's name is not involved, thus removing the error ramifications in the filing system. This limit on application would act to further the original goal of furthering certainty by allowing all creditors to

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how accurately the document may have reflected the wishes of the testator." 107 N.J. at 270, 526 A.2d at 1008 (citation omitted).

88. See *supra* note 5.

89. For an example of the application of the not seriously misleading doctrine to the description of collateral see *Bank of No. America v. Bank of Nutley*, 94 N.J. Super. 220, 227 A.2d 535 (1967).

90. A creditor may mistakenly believe that the same collateral is not involved if the description of the collateral is in error, or may not be able to request information concerning the account as is allowed by U.C.C. § 9-208 if the creditor's information is wrong.

91. See *supra* note 5.

92. See *supra* note 4.

93. *Id.*

94. See *supra* text accompanying note 37.

95. See *supra* Part V for a discussion of the effects of computerization on searching techniques.

know that an error in the debtor's name is sure to result in the creditor being declared unperfected. Such a limitation will also serve as a source of judicial economy by allowing resolution of disputes without litigation, or by reducing the scope of the litigation to establishing the financing statement and the true debtor's name.

In short, creditors in the future must heed the advice given since the adoption of the Uniform Commercial Code, that is: "[c]are and precision in the preparation, execution, and presentation of these papers for filing as the first and best step in securing the benefits of the recording statutes cannot be too strongly recommended."<sup>96</sup>

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96. Lomenzo, *Some Problems Confronting a Secretary of State in Connection With the U.C.C. Filing Process*, 5 U.C.C. L.J. 228, 231 (1973).

