



## Protection of Innovation and Inventions in Intellectual Property Rights: Whither Nigeria.

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### ABSTRACT

The prevalent and current trend in technological education for national development is the promotion of research for much needed technologist innovations and invention. The scourge of innovations and inventions in research generally is the protection of title or property or ownership of intellectual property. This paper looks at the legislations covering intellectual property in Nigeria with emphasis on invention and the adequacy of the provisions thereof in securing the proprietary rights of the Inventors in order to provide the necessary motivation to come up with more. It concludes that there is a need to further strengthen the protection given to intellectual property rights in Nigeria in order to boost research innovations.

**Keywords:** Intellectual Property; Intellectual Property Rights; Inventions; Patents; Designs.

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#### iSTEAMS Proceedings Reference Format

Dawodu, H.O. (2019): Protection of Innovation and Inventions in Intellectual Property Rights: Whither Nigeria..

Proceedings of the 16<sup>th</sup> iSTEAMS Multidisciplinary Research Nexus Conference, The Federal Polytechnic, Ilaro, Ogun State, Nigeria, 9<sup>th</sup> – 11<sup>th</sup> June, 2019. Series 2, Pp 209-214. [www.isteam.net](http://www.isteam.net) - DOI Affix - <https://doi.org/10.22624/AIMS/iSTEAMS-2019/V16N2P24>

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### 1. INTRODUCTION

In this global digital era, technology is key to the growth and sustenance of national economies. Nations therefore invest heavily on technological education and research as the needed panacea for economic growth. The expectation from this breakthrough in research in form of physical innovations i.e. inventions. The impetus to dedication in this regard is knowing that the result of one's efforts are exclusive. This is the realm of intellectual property right: the protection of the creativity of the mind. This paper examines the laws on intellectual property with emphasis on inventions in Nigeria viz-a-viz their provisions and application whilst juxtaposing these two factors with the adequacy of such legislations to address the issue of the security of innovations and inventions.

### 2. INTELLECTUAL PROPERTY (IP).

This refers to creations of the mind: inventions, literary and artistic works symbols, names image and designs used in commerce (WIPO, 2014). It is referred to as the category of intangible rights protecting commercially viable and valuable products of the human intellect (Mafua & Oluwasanmi, 2010). In this regard it can then be taken to be referring to a number of distinct types of creations of the mind for which a set of exclusive rights are recognized, including copyrights, trademarks, patents, industrial design rights even extending to trade secrets.



In all these definitions, the abstract nature of IP comes to the fore. To protect these “creations of the mind” therefore, there is need to classify them as property, which in the widest sense includes all of a person’s legal right. A man’s property in law is all that is his. This is in the general sense. In a stricter sense property incuses not all a person’s rights but proprietary interest exercisable by him. Generally speaking, there are two classes of intellectual property to wit: copyright and industrial property. Copyright is basically concerned with literary artistic and musical creations whilst industrial property covers patents trademarks, industrial designs, utility models, etc. (WIPO, 2014).

## 2.1 Intellectual Property Rights

These are the categories of rights that could be vested in a person to protect intellectual property. These right are established statutorily through intellectual property laws. This is the area of Law that deals with oversees the creation of intellectual property i.e. patents, copyrights Trademarks and Trade Secret Laws; the protection of those listed rights, and the legal pursuit of those who infringe on another’s rights on such matter (Garnham, 2005). The thrust of these rights is to enable people who have tasked their intellect to earn recognition or financial benefit from what they have invented or created. By striking the right balance between the interests of innovations and the wider public interest, the IP (right) system aims to foster on environment in which creativity and innovation can flourish (WIPO, 2014).

Intellectual property Law encompasses that body of rules and regulations governing the creation, acquisition and protection of these rights (earlier mentioned) as well as adjudication over allegations of their infringements (Olubanwo and Oguntuase, 2016). This is because the right is to the owners thereof over intangible assets which are innovative products of the brain or the mind, as opposed to personal or real properties (Olubanwo and Oguntuase, 2016).

These rights vary in each jurisdiction and not all the rights operate in every jurisdiction. Trade Secret which is a recognized intellectual property in advanced countries is yet to be protected under Nigeria Law. A mention is herein made of five major IP rights:

### Copyrights

This is an IP conferred on the owner of a Literary or artistic work. It is an exclusive right to control the publication, distribution and adaptation of creative works. It is a right vested in the owner for a certain period of time at the end of which time the work may be lawfully reproduced. In some jurisdictions, the right may extend through the lifetime of the owner and more than two decades after his dismiss (Oluwasanmi and Mafua, 2010). The primary source of Copyright Law is the Copyright Act 1988 (as amended), which empowers the Nigerian Copyright commission to make subsidiary legislation in the form of orders and regulations.

### Patents

This is a right synonymous with new inventions. It is granted to protect an invention which is new or essentially better in some way than what was made before or for a better way of making it (Oluwasanmi and Mafua, 2010).

The grantee or holder of a Patent has an exclusive right to control every other person on the making, selling, using or distributing the patented invention without his permission. The Patents and Designs Act 1990 is the governing Law on Patents in Nigeria.

### Trademarks

A Trademark is a symbol that is generally used to identify a particular product which indicate its source. It can be a combination of words, phrases, symbols, logos, designs, images or devices used by an individual legal entity or business organization to distinguish their products form that of others (Oluwasanmi and Mafua, 2010).



### Industrial Design Rights

This is a right granted to protect the usual design of objects that are not purely utilitarian, but have an aesthetic or ornamental value. It could pertain to the creation of a shape, color, pattern or be a combination of all the above. It could also be an industrial commodity or handicraft. This right is granted based on a number of considerations on the subject matter including but not limited to novelty, originality, applicability (to the industry in question), disclosure and physical / visual appeal. The holder of this right is conferred with the exclusive right to make or sell any object which carries the design or in which the design is applicable.

### 3. LEGISLATIONS

It suffices to say that IP rights in Nigeria are majorly protected by the following laws:

Patents and Designs Act Cap P2 LFN 2001

Copyrights Act (as amended) Cap C28 LFN 2004

Trade Marks Act, Cap T13 LFN 2004

Merchandise Marks Act Cap M10 LFN 2004

Trade Malpractice Marks (Miscellaneous Offence) Act Cap T12 LFN 2004

It should also be noted that there are some international IP regimes in form of treaties which are applicable in Nigeria by virtue of their ratification by the successive governments in Nigeria. Some of these are:

- a) The Paris Convention for the protection of industrial property (ratified in 1963);
- b) The Berne convention (1986)
- c) The Rome Convention (Performers, Producers of Phonograms and Broadcasting Organization) (ratified in October 1993);
- d) The Patent Law Treaty (ratified in April 2005);
- e) The Patent Cooperation Treaty (ratified in May 2005).

To strengthen the resolve of protecting IP rights, Nigeria is also a member of WIPO (since 1993), and WTO (since 1995). The thrust of this paper is on inventions under IP, therefore the Patents and Designs Act 1990 is the fulcrum upon which this paper is based. Section 1 of the Act states clearly the kind of inventions that could be patented and explains that the invention, the result of an inventive activity must not only be of industrial application, but must also be an improvement on an earlier patent, or new.

Section 1(4) states that Patents cannot be validly obtained in respect of plants and animal varieties, and inventions the publication or exploitation of which would be contrary to public order or morality.

Section 2 through 5 provides for matters as the right to patent, patent application, the consideration and or examination of the application for grant of patent as well as the form of the grant, its registration and publication. The focus of this paper is the protection of the inventor, therefore the right conferred by patent as provided for by Section 6 (1-4) of the Act.

Section 6 provides:



1. A patent confers upon the patentee the right to preclude any other person from doing any of the following acts:
  - (a) Where the patent has been granted in respect of a product, the act of making, importing, selling or using the product, or stocking it for the purpose of sale or use; and
  - (b) Where the patent has been granted in respect of a process, the act of applying the process or doing, in respect of a product obtained directly by means of the process, any of the acts mentioned in paragraph (a) of this subsection.
- ❖ The scope of the protection conferred by a patent shall be determined by the terms of the claims; and the description (and the plans and drawings, if any) included in the patent shall be used to interpret the claims.
- ❖ The right under a patent-
  - a. Shall not extend only to acts done for industrial or commercial purposes; and
  - b. Shall not extend to acts done in respect of a product covered by the patent after the product has been lawfully sold in Nigeria, except in so far as the patent makes provision for a special application of the product, in which case the special application shall continue to be reserved to the patentee notwithstanding this paragraph,
- ❖ Where, at the date of the filing of a patent application in respect of a product or process or at the date of a foreign priority validly claimed in respect of the application, a person other than the applicant-
- ❖ Was conducting an undertaking in Nigeria; and
- ❖ In good faith and for the purpose of the undertaking, was manufacturing the product of applying the process or had made serious preparations with a view to doing so, then, notwithstanding the grant of a patent, there shall exist a right (exercisable by the person for the time being conducting the undertaking, and not otherwise) to continue the manufacture or application, or to continue and complete the preparation and thereafter undertake the manufacture or application, as the case may be, and in respect of any resulting products to do any other act mentioned in subsection (1) of this section.

The determination of the period for which the patent shall operate is provided for by section 7 of the Act at 20 years from the date of filing of such application. The Act goes further to provide a cover for Designs, and in Section 12 through 20 explains the following: Nature of Design, designs capable of registration and the right to such registration, remuneration of registration etc. Pertinent to this paper is Section 19 which provides the rights conferred by the registration of a Design:

#### Section 19.

- a) Registration of an industrial design confers upon the registered owner the right to preclude any other person from doing any of the following acts-
  - (1) Reproducing the design in the manufacture of a product;
  - (2) Improving selling or utilizing for commercial purposes a product reproducing the design; and
  - (3) Holding such a product for the purpose of selling it or utilizing it for commercial purposes.
2. The reproduction of a registered industrial design is not lawful for the purpose of subsection (1) of this section merely because it differs in minor or inessential ways from the design or because it concerns a type of product other than the type with which the design is concerned.
3. The rights conferred by this section-
  - a. Shall extend only to acts done for commercial or industrial purpose; andShall not extend to acts done in respect of a product incorporating a registered industrial design after the product has been lawfully sold in Nigeria.

The duration of the rights and time for renewal is provided for by Section 20 at five years at first instance, and further



two five – years periods.

#### 4. CONCLUSION

It is clear that there are laws protecting the IP regimes and rights in Nigeria as well as the concerted efforts aimed at strengthening such right ad protection. Apart from legislations there has been on the part of both government and the private sector the establishment of agencies and organizations aimed at monitoring and enforcing IP rights in Nigeria.

These include, but is not listed to the following:

- ❖ The Trademarks, Patents and Design Registry: under the Federal Ministry of Commerce, pursuant to the Trade Mark Act;
- ❖ The National Office for Technology Acquisition and Promotion (NOTAP) to register technology transfers and allied matters;
- ❖ The Nigerian Copyright Commission (NCC) established under the Copyright Act to cater for creative activities such as music, artistic and literary works:
- ❖ The Nigerian Broadcasting Commission (NCC) established under the NBC Act Cap N11, LFN 2004.

The Intellectual Property Law Association of Nigeria is also enjoying great support from the Federal Government and is gaining more grounds in creating awareness on IP rights.

There are however notable hindrances which constitute limitations to the effective protection of IP right in Nigeria. The usual clogs in the wheel take the form of piracy, counterfeiting, unlicensed and unauthorized use which goes seemingly unchecked.

Another factor is that the registration of IP is hindered by a seemingly inefficient administrative system in Nigeria. This is pronged on the following:

##### Legal Issues

The majority of the Laws on IP rights are archaic and outdated, therefore not in time with modern trends. The Trade Marks Act was enacted in 1967 (an adoption of the 1938 UK Trade Marks Act) whilst the Patents and Design Act was in 1971 (Olubanwo and Oguntuase, 2016). There is the lack of coordination amongst regulatory agencies on IP rights in Nigeria and the fallout of this scenario is a loophole in the protective cover offered to IP rights owners. For instance, there is no visible mechanism for the enforcement of prohibition or restriction of Registered Names between the Corporate Affairs Commission and the Trade Marks Registry; as envisaged by CAMA 1990. Also in the registration of a regulated product, the Notice of Acceptance of Trademark which is one of the documents accepted by NAFDAC for Registration of the Product, if opposed pursuant to the Trade Marks Act may not be known to NAFDAC. Still a relatively new field of law, there is a shortage of judicial pronouncements on IP rights and its enforcement thereby leading to little knowledge about sanctions and the deference value of the enforcement of judgments for violation of IP Rights.

Nigeria as a country under International Law has also glaringly omitted to ratify recent international Treaties and Conventions on IP to which it is a signatory in accordance with section 12 of the 1999 Constitution thereby rendering such treaties and convention provisions ineffectual. The Designs Registry (for Patents and Design) still accepts “priority applications” i.e. despite there being no legal basis to do so, any new design may be secondary in title to an earlier one as far back as 1971 when the Act came into effect.



### Administrative Issues

The Trademarks, patents and Design Registry is prone to a lot of bottlenecks including lack of adequate funding for effective and efficient operation, lack of adequate space for operations, lack of competent personnel and training, and a lack of updated database.

### Political Issues

There is a glaring absence of ministerial declarations viz a viz Nigeria and convention countries which hinders the inventor or right owner to take maximum advantage of the protection inherent in such pronouncement as between citizens of member countries.

There is also the fact that Nigeria is not a member of some prominent multilateral organizations that provide for regional and international registration of IP rights amongst which are

- (a) African Regional Intellectual Property Organization (ARIPO)
- (b) Organization Africaine de la propriete intellectuelle (OAPI) (based in Yaounde)
- (c) International Patent Cooperation Union (IPCU) (based in Geneva) etc.

## 5. RECOMMENDATIONS

In order to strengthen the rights offered by the legislations on IP in Nigeria there is a need to adopt accepted global practice in IP regimes in the advanced countries obtainable now. This should start with the digital infrastructure for IP i.e. the database as well as creating the agencies managing IP rights as statutory and autonomous bodies rather than underfunded appendages of a supervising Ministry.

There is also the need to review the legal framework in order to create a two-way benefit:

- (1) To provide a substantive and comprehensive cover for the right of inventor and innovations.
- (2) To provide an efficient enforcement structure to clearly show the deference element in the protection of IP rights.

Lastly, the Intellectual Property Commission Bill which dated back to 2006, should be given its rightfully consideration and passage in order to afford creators inventors and or innovators, their hard carried protective.

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