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Nelson Diabetes Cure why Nigeria may be losing out

I was elated when I read THIS DAY Newspaper of 4th February, 2009 wherein it reported a breakthrough in medical history by a Nigerian named Dr. Louis Obyo Obyo Nelson, a Molecular and Computational Chemist who found a cure for Diabetes, a potentially life threatening condition in mammals brought about by an inability of mammals to produce Insulin. This disease is said to be the 6th largest killer in Nigeria and the discovery has been described as "epoch" and "historical" by The Minister of State for Health Dr. Aliyu Idi Hong.

Whilst reading this story, I was immediately thinking how this breakthrough would raise the profile of our intellectual property administration in Nigeria; As with all new inventions, the inventor is expected to secure a patent right over the invention which will give him an exclusive right to decide who may or may not use the patented invention for the period in which the invention is protected. (***A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general a new way of doing something or offers a new technical solution to a problem***) This new discovery could favorably increase the fortunes of Nigerian pharmaceutical companies who market the drug by generating a substantial income annually. My excitement was however short lived as the report further stated that the United States Patent Office has granted Dr. Nelson a U.S patent with Number US 6,531,441 B1

This piece of information led to today's editorial column, why was the patent not registered here in Nigeria? What are the modalities for registering a patent in Nigeria? A quick review of the laws relating to Patent registration and its administration discussed below should shed some light on these questions

The substantive law on Patents in Nigeria is the Patents and Designs Act of 1970 (the P & D Act). The P & D Act repealed both the Patents Proclamation Ordinance No.27 of 1900 and the Patents Proclamation Ordinance No 12 of 1902

In recognition of the importance of patents and technology in the development of indigenous technological activities in Nigeria, Federal Government has taken various steps to stimulate technology development that includes creation of a separate ministry and development activities in science and technology.

However, looking at the P & D Act *vis a vis* how it suits the local requirement of registrability, the following can be pointed out:

- The test of a patentable invention is newness, which is universal; however the novelty of an invention under Nigerian law is assessed against the background of prior knowledge through use or publication anywhere and at anytime through any means whatsoever. Thus an indigenous invention might be disqualified, as it will not be considered the subject of a valid patent, if it is not

known, in use or otherwise available anywhere in the world prior to the application for patent, no matter how remote. What this means in relation to Dr. Nelson's invention is that his patent application may not have been accepted for registration in Nigeria, as there will be no prior invention to be used as a basis for assessment.

- One of the requirements of patentability is the presence of an inventive step. This requirement is deemed to have been met when the invention is not an obvious one, in the light of what was previously known or used. However, given the usually limited information and facilities at disposal, the invention may not be considered a feat.

- The P&D Act does not make provision for thorough examination of a patent Claim. Under section 4(2) of the P & D Act, the Registrar is expressly precluded from examining the description in the invention, which has been filed pursuant to the patent application whether or not it satisfies the requirement of completeness and clarity. There is therefore, no way of ensuring that a prospective patentee complies with this requirement before the grant of the patent.

- The question of accessibility of information contained in the Register of patents is another limitation to patent administration in Nigeria. The difficulty encountered in obtaining needed information due to lack of proper data storing system makes whatever information secured questionable.

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There are no trained patent attorneys at the patent office with scientific background that can give reports on patent claims and specifications based on examinations carried out. What operates at the patent office is the filing of an application which is examined as to its conformity with the required information and documentation, prescribed fee and foreign priority claim application under the P& D Act.

These problems persist largely to the extent that the patent system was introduced at a time when Nigeria was a colony of Britain and the provisions for patentable inventions were framed in a manner not conducive to the enhancement of indigenous inventions. The efficacy of the P & D Act achieving its full potentials is therefore severely curtailed. These amongst others are all obstacles that we must overcome, if investor's confidence and economic growth are to be achieved.

With the existing dominance of the P &D Act, it may have been unprofitable for Dr. Nelson to gain the much needed confidence and support of the international community with a Nigerian patent registration.

It is suggested that a proposal to include the law of utility models in our industrial property legislation should be considered as a possible way out of this onerous requirement of patentability. This is because it affords some measures of protection to inventions that cannot satisfy the stringent tests of patentability.

It is further suggested that the law should be altered in some essential respects as already stated above, while the machineries for administration particularly the Patents registry needs to be revitalized

Whilst we as a nation are basking in the glory of this medical milestone which will bring reprieve to a lot of diabetic sufferers all over the world, it is important to note the implication of every potential new invention being registered outside the country which says a lot to be desired about the accomplishment of our national administrative policies.