

Thisday Lawyer Journal 9th, December, 2008

Trademarks, Patent, Copyright and Designs

I am making my debut on these pages today, and together we shall voyage on the fascinating, and some would say esoteric, world of intellectual property. This is an area in which I have had extensive practice and exposure over the past 10 years. It is still a fraction of general legal practice; but it is growing, and the potentials are immense.

While most Nigerians are not sensitive to the demands and operation of intellectual property, they have in recent years become increasingly aware, especially as the Nigerian Copyright Commission in concert with artistes and other copyright holders has begun waging sustained battle against the infringement of the copyrights in artistic works.

But as we shall see in the course of our interaction on these pages, intellectual property goes beyond copyrights. I am of the firm belief that economic growth and development will raise the profile of intellectual property in the environment. Right now, because of the overwhelming reliance on crude oil as the major driver of the economy, there is little diversification, and therefore little incentives for people to put on their thinking caps and create a new range of ideas, designs, marks and products that confer intellectual property rights.

You can be sure that with economic boom, more companies and enterprises will spring up. They will create new designs and logos, and these have intellectual property content. In the same vein, when policy makers get to grips with adequate funding of research and tertiary education, there can be no question that the creativity of the Nigerian will be made manifest in the series and number of inventions that will flow from this country.

I think it is beyond dispute that our prevailing

economic agony has seriously affected our growth in the arena of intellectual property. With serious infrastructural challenge, the most common of which is the crisis in the power sector, it would require extraordinary determination for the Nigerian to still bury himself in research with the hope of a successful outcome that may be an invention. A good many who could not withstand the stress of living and working in the environment have since relocated in the so-called brain drain.

Our present condition notwithstanding, no nation is immune from the demands and challenges of intellectual property, which is governed by a number of conventions and protocols.

To get down to business, this introductory instalment is aimed at providing readers with a general knowledge of what Intellectual property is, the laws that regulate them, the statutory protection afforded Intellectual property rights and the differences between the various types of intellectual property rights and their economic value to its owners and the nation.

Intellectual Property is a term used to describe the legal right that rewards people for their creative ideas and expressions. Intellectual property rights have commercial value and they receive the legal protection of a property right.

The four main types of Intellectual Property are:

Patent – 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. A patent provides protection for the invention to the owner of the patent.

A patent owner has the right to decide who may or may not use the patented invention for the period in which the invention is protected. Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. The patent owner may however give permission to, or license, other parties to use the invention on mutually agreed terms.

The patent owner may also sell the right to the invention to someone else, who will then become the new owner of the patent. Patent protection is granted for a limited period of twenty years. Once a patent expires, the protection ends, and an invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention, which become available to commercial exploitation by others.

Patents provide incentives to individuals by offering them recognition for their creativity and material reward for their marketable inventions. These incentives encourage innovation, which ensure that the quality of human life is continuously enhanced. Patent inventions in fact have a significant role in every aspect of human life from electric lighting, plastics, ballpoint pens, drugs etc

For an invention to be protected by patent, it must fulfil the following conditions i.e it must be of practical use, it must show an element of novelty, that is, some new characteristic which is not known in the body of existing knowledge of its technical field (prior art)

the invention must show an inventive step which could not be deduced by a person with average knowledge of the technical field and the subject matter of the invention must be accepted as “patentable” under law.

One of the most frequently asked questions inventors always ask is whether they can discuss details of their new invention with a potential investor before it is filed at the patent office. I advise that it is prudent to file the patent application before publicly disclosing the details of the invention. A disclosure in some countries may be considered prior art as it may not be considered a novelty requirement.

If it is inevitable to disclose your invention to a potential investor or a business partner, before filing the patent application such a disclosure should be accompanied by a confidentiality agreement.

In the next edition, I shall write about how trademarks emerged to become valuable business assets for companies, how they increase profitability of business, why trademark owners should protect their trademarks and the actions that constitutes an infringement of a registered trademark. I shall also write about the other types of Intellectual property rights (copyright, trademarks and design) relate them to our society and explain the difference between them.