

INDIGENOUS KNOWLEDGE SYSTEMS IN TRADITIONAL TEXTILE TECHNIQUES AND INTELLECTUAL PROPERTY: PERSPECTIVES FROM NIGERIA

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Abstract

The terms “indigenous knowledge” and “traditional knowledge” are often used interchangeably to describe the knowledge systems developed by a community¹. Indigenous knowledge makes a tremendous contribution to the economic development of communities. This knowledge is passed on from generation to generation and forms part of a people’s cultural and spiritual identity.²It exists in diverse contexts including agricultural, medicinal, ecological, but also technical. Traditional textile techniques of dyeing, weaving and embroidering are part of a

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¹ Ajibade, L.T., 2003: A methodology for the collection and evaluation of farmers’ indigenous environmental knowledge in developing countries. *Indilinga: African Journal of Indigenous Knowledge Systems*, 2, 99–113.

² WIPO (2018), Traditional Knowledge at <http://www.wipo.int/tk/en/tk/> “(Accessed on 30 June 2023)

relevant example in indigenous communities of Nigeria. The practices have evolved over the centuries out of communities' interaction with the local environment. The present paper underlines indigenous knowledge in textile techniques in Nigeria. The paper firstly provides a survey of the traditional textile techniques from knowledge systems within few regions of Nigeria. The paper then questions the capacity of the patent system to enhance local economic development through the recognition of such knowledge systems. The paper concludes with recommendations for appropriate safeguard and protection for indigenous knowledge” and “traditional knowledge” systems in line with international standards in the field by foreign jurisdictions and the African Regional Organisation of Intellectual Property, ARIPO.

Keywords: Indigenous Knowledge, Traditional Textile Techniques, Intellectual Property.

Introduction

Traditional textile techniques are an indispensable part of the cultural heritage of indigenous communities. The African fabric is reputed to be ancient and dates as far back as 5,000BC.³ Nigeria's renowned textile industry has contributed

³ Dr. Y. (2013) “History of African fabrics and Textiles” at <https://afrolegends.com/2013/05/17/history-of-african-fabrics-and-textiles/> (Accessed on 30 June 2023)

tremendously to its heritage. The indigenous communities in the western parts of Africa have intensely made use of traditional textile techniques in the making of reputed clothing such as *Adire*, *Bogolan*, *Ase Oke*, or *Kente*. The textile industry is a symbol of Africa's distinct cultural and ethnical varieties. In South-West Nigeria for example, because of its natural characteristics, wood has been extensively used over by the indigenous communities in the crafts industry.⁴ Local indigenous knowledge systems include mastering the art of woodworking from a clothing perspective. Indigenous communities have therefore developed tools and techniques with which to exploit the nature of different surrounding trees. Traditional textile techniques are borne out of adaptation of the local communities to the cultural and ecological environment. The management of evolving realities and extensive use of natural tools have resulted in techniques and innovations to provide the community's needs. Aso Oke of the Yorubas, Akwete of Abia, Aniocha of Delta, Ukara from Imo State, and Hausa mean weavers, are relevant examples.⁵

Indigenous knowledge refers to knowledge and technologies about communities indigenous to a particular space and context.⁶ Indigenous communities in the Western and Eastern

⁴ Bealer, A. W. (2009). *Old Ways of Working Wood: The Techniques and Tools of a Time Honored Craft*. *Castle Books*. Revised Edition.

⁵ Nigerian Textiles – Art365 at <https://art635.gallery/art/nigerian-textiles#:~:text=There%20are%203%20different%20resist,create%20patterns%20on%20the%20cloth>

⁶ Mazonde, I. and Pradip, T. (2007). Indigenous Knowledge System and Intellectual Property Rights in the Twenty-First Century. Perspectives from Southern Africa. *CODESRIA*. 140 p. 7.

parts of Nigeria have as integral part of their cultural patrimony, traditionally inherited textile techniques of dyeing and weaving. Those techniques are mostly based on textile weaving, knitting, bonding, felting, embroidering, or tufting⁷. It portrays an integral part of centuries of cultural clothing traditions, passed from generation to generation in the secret of traditional customs. Knowledge transmission usually includes rituals. Practising is done either within production groups or an individual basis.⁸

Unfortunately, today, with the global recognition of the cultural value impact on economic output⁹, indigenous peoples are struggling to improve their socio-economic circumstances.¹⁰ The question arises whether indigenous participation in the global economy can be enhanced through the recognition of their traditional textile techniques under intellectual property law.

⁷ Shaker, Khubab, Umair, Muhammad, Ashraf, Waqas and Nawab, Yasir. "Fabric manufacturing" *Physical Sciences Reviews*, vol. 1, no. 7, 2016, pp. 20160024. <https://doi.org/10.1515/psr-2016-0024>

⁸ Ogbonna, O.G. (2010). Indigenous Knowledge System on Traditional Textile Weaving Technology among The People of Aku in Igbo-Etiti L.G.A. of Enugu State, *Ikenga International Journal of Institute of African Studies* UNN Vol. 12 No 2. p. 3.

⁹ Hezel, F.X. (2009). The Role of Culture in Economic Development" *Micronesian*, Issue 77, pp. 3–4.

¹⁰ Anderson, R. (2008). Indigenous Communities, Entrepreneurship and Economic Development in the New Economy, *USASBE Proceedings*, P. 7

Intellectual property is the branch of law which enhances the rewarding of creations of the human mind such as innovations and creations.¹¹ Subject to their protection as intellectual creativities, this article argues for the important role that indigenous textile techniques play in enabling improvement of life conditions within communities. Such techniques can be used to develop the domestic economy, and as a reaction to the global economic crisis.¹² Part 1 presents cases of traditional textile techniques drawn from indigenous communities in few regions of Nigeria. Part 2 analyses the intellectual property aspects of traditional textile techniques and questions their patentability. In part 3, this paper harnesses the economic incentive of traditional textile techniques beyond patents, under other categories of intellectual property rights. Safeguarding measures are also considered in order to prevent the traditional knowledge from dying out. An illustrative example is provided from indigenous textile weaving recognition in the Hansan region in South Korea. The paper concludes with the need to decolonise the patent system to enhance the participation of indigenous knowledge holders in the global economy, and Nigeria joining the African Regional Organisation of Intellectual Property (ARIPO) which has

¹¹ WIPO Booklet No1, Intellectual Property and Traditional Cultural Expressions/Folklore, p. 5

¹² Duangbubpa, C., Chantachon, S. and Pratumnet, N. (2015), Application of traditional knowledge to create indigo-dyed fabric products in Sakon Nakhon Province, Thailand. *Asia Pacific Journal of Multidisciplinary Research*, Vol. 3, No. 3, p. 6

established a relevant protection regime of traditional knowledge.

In a topic as exceptionally important as indigenous knowledge in the Nigerian context, great reliance is placed on primary sources. Data for this investigation was collected from document analysis and field research. Textile dyeing, embroidering, and weaving communities in few regions in Nigeria and South Korea have been purposively assessed to encompass the research area for this examination. The communities were selected based on the indigenous knowledge displayed, and the intellectual property impact on the economic life of the regions. In addition, legal instruments and documents of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore were accessed, as well as legislation, documents and regional agreements of the African Regional Organisation of Intellectual Property (ARIPO).

1. Indigenous Textile Technique Systems and Intellectual Property Law: A Necessary Linkage

Indigenous traditional creativity is marked by a dynamic interplay between collective and individual creativity¹³ sometimes using symbolic and simple geometric motifs¹⁴. Methods of manufacturing vary from one region to the

¹³ WIPO Booklet No1, Intellectual Property and Traditional Cultural Expressions/Folklore, p. 5

¹⁴ Williams, G. (1971), African Designs from Traditional Sources, *Dover Publications*.

other¹⁵ and sometimes relate to natural factors. Traditional textile techniques such as those practised by the indigenous communities in Nigeria include creation of skills arising from experimentation and experience over decades. It is an informal process which is exclusively based on artisanal means. Textile techniques include spiritual elements and sometimes religious practices which are elements of the communities' cultural heritage.

Intellectual property (IP) refers to the creations of the human mind such as innovations and creations¹⁶. IP protects those innovations and creations from misappropriation, and unauthorised use¹⁷. The processes or techniques used in textile making could be patented. Trademarks could be used to distinguish the resulting textiles from other textiles in the market place. Trademarks emphasise the commercialisation of indigenous textiles through the creation of a brand that can be affixed on inventive products¹⁸. The ornamental appearance could be secured under industrial design systems. In case of dishonest commercial practices, unfair competition laws could be used to safeguard indigenous interests.¹⁹

¹⁵ Gillow, J. (2003), African Textiles, *Chronicle Books*, p. 12.

¹⁶ WIPO DL101

¹⁷ Wendland, W. (2013). Intellectual Property Rights in Intangible Cultural Heritage, *ICHCAP Conference Proceedings*, p. 2

¹⁸ Ghosh, S. (2016). "Competition, Markets, and Trademark Transaction" in Caboli I. and Dewerra, J. (2016). *The Law and Practice of Trademark Transactions. Edward Elgar*. p. 121. Ghosh, S. (2016). "Competition, Markets, and Trademark Transaction" in Caboli I. and Dewerra, J. (2016). *The Law and Practice of Trademark Transactions. Edward Elgar*. p. 121.

¹⁹ Art. 10bis Paris Convention, 1883

While indigenous textiles have been a source of inspiration in the fashion industry, unfortunately, it has sometimes been done without acknowledgement of the origin. Rampersadh²⁰ notes:

“Examples of the adoption of cultural elements in high fashion which have come under scrutiny include Louis Vuitton’s Basotho blanket inspired men’s collection of 2017 and Urban Outfitters’ use of the mark NAVAJO and the tribal patterns of the Navajo Nation in relation to, inter alia, clothing and jewelry designs.”

The history of textiles in Africa is one in which distinct genres have developed, becoming a springboard for others. *Since the discovery of African art by the Cubists, the primitive strength of its motifs has held a fascination for contemporary artists and designers and has exercised considerable influence on the development of modern art.*²¹ Brigitte Vézina, purposely emphasises that the fashion industry has developed a noticeable appetite for all things traditional, ethnic, folkloric or indigenous.²² This is noticeable over the past two decades in the fashion industry, ranging from luxury designers to mainstream retailers. Hermès for example has launched a *Ndop*

²⁰ Rampersadh, K. (2018). What Role do Intellectual Property Rights have in discouraging cultural appropriation? *Adams & Adams* at <https://www.golegal.co.za/cultural-appropriation/>

²¹ Williams, G. (1971), *African Designs from Traditional Sources*, Dover Publications.

²² Brigitte Vézina, *Curbing Cultural Appropriation in the Fashion Industry*. CIGI Papers No. 213 — April 2019

textiles collection inspired from Cameroon textiles.²³ Nigerian textiles can be easily tailored and are consequently used often in the fashion industry. Fashion has an important role to play, hence the importance of preserving African handcrafted cloth making traditions²⁴. Indigenous textiles can become an authoritative reference for designers and artists, especially in a context of market demand for natural products such as natural dyes. Ringuede²⁵ notes that the market demand has led to diversification of the indigo textile production to meet Western tastes and high-level standards. Protection of traditional textile techniques could be granted under intellectual property provided through national laws and conventional international intellectual property treaties. In view of the prescribed requirements for IP protection, the question arises whether the existing Patent legal framework can protect traditional textile techniques from misappropriation and misuse.

1.1. Incompatibility between the features of indigenous textiles manufacturing techniques and the requirements under Patent Law

For indigenous textiles manufacturing techniques to be welcomed under the Patent system, the requirements of

²³ Hermes launches a collection (Ndop) inspired from the Cameroonian traditional attire <https://www.businessincameroon.com/index.php/culture/2003-7889-hermes-launches-a-collection-ndop-inspired-from-the-cameroonian-traditional-attire>

²⁴ Gillow, J. (2003), African Textiles, *Chronicle Books*, p. 12.

²⁵ Ringuede, A. (2016). West African Indigo Textiles under Influences. The Fouta-Djallon wrapper & the Mauritanian melhafa, *Textile Society of America Symposium Proceedings*. 1006. p. 384.

novelty, non-disclosure, and registration must be fulfilled.²⁶ However, there is no sustainability for indigenous knowledge under the Patent criterion of inventiveness, novelty, and non-disclosure. Traditional knowledge is Community-Based property, usually inherited, and while Patent law requires individual innovation otherwise referred as inventive activity.²⁷

Professor Adejoke Oyewunmi purposely mentions that “the requirement of inventive activity deals with the extent of the difference between what was previously known and what the inventor claims to have devised.”²⁸ There is a conflict of right ownership between both systems: Individual versus Community. On another side, Patent law does prescribe a limited duration of protection, while indigenous knowledge constitutes a property owned by traditional Communities without restriction of term, and of which the cultural exploitation can constitute harm in regard to the customs and beliefs.²⁹ In addition knowledge within indigenous systems is often passed on in a manner that renders it part of the public domain.

²⁶ s. 1(1) Patents and Designs Act

²⁷ Adejoke O. Oyewunmi, *Nigerian Law of Intellectual Property*. UNILAG Press & Bookshop, p. 153

²⁸ Ibid.

²⁹ Joelle Nwabueze, *opcit.* WIPO Publications, P. 413

Such regime is not only inaccessible to most traditional knowledge holders, but also does not guarantee the preservation or safeguarding of the knowledge.³⁰

The current legal state of the law of patent is not favourable for the protection of traditional indigenous textile techniques. On the one hand, as far as traditional knowledge which is not currently publicly available is concerned, there is a risk that its publication and dissemination could defeat any potential patent right over it. In other words, publication of previously undisclosed knowledge will prevent any finding of novelty over the claimed invention when seeking a patent and will therefore annihilate the opportunity for its owners to exploit it commercially, if they so wish.

On the other hand, all the criteria founded on assessment of the value of the work are unsatisfactory. Techniques used by indigenous communities are ancient, not new; collective, not individual; and artisanal, incapable of industrial applicability.³¹ Ancient textiles manufacturing techniques practiced by local communities over decades, have become part of the state of art by virtue of the fact that they have been in use. Under Section 1(1)(a) of the Patents and Designs Act an invention is

³⁰ Panza, X. (2014), *Intellectual Property Laws and the Protection of Traditional Knowledge in South Africa: An evaluation of the current Intellectual Property system and its protection of Traditional and Indigenous Knowledge*, University of KwaZulu-Natal, LLM Thesis p. 7.

³¹ Nwabueze, J. (2010). *The protection of traditional cultural expressions in OAPI states*. Geneva, Switzerland: WIPO, World Intellectual Property Organization. *WIPO publication*; no. 797E/10..

patentable if it is new, and a new invention is not anticipated a prior art; which means by a knowledge that existed prior to the relevant filing or priority date of a patent application. Ancient textile manufacturing techniques are part of the state of art, and consequently not new.³² The legal perception of the state of art under the Patent system discriminates against traditional-based knowledge. Communities innovations and skills are defeated by their mere inclusion in the state of art which is defined as *‘everything concerning the art or field of knowledge which has been made available to the public anywhere and at any time whatever, by means of a written or oral description, by use or in any other way.’*³³

A system creating rights in a developing country like Nigeria with enormous cultural potential, must accommodate the features of indigenous innovations and skills to enable protection in the field. The regulatory legal framework cannot be based on principles or concepts set apart from the socio-economic and cultural realities related to the origin of such knowledge.

Nigeria like many African States refer to the protection of “folklore” as a means to enhance the protection of traditional productions which originates from indigenous communities. Generally, all productions involving aspects characteristic of traditional cultural heritage, produced and perpetuated by a community and reflecting the expectations of such community

³² s. 1(1)(b) Patents and Designs Act

³³ Ibid.

are protected under Copyright Law³⁴. In Senegal, folklore belongs to the national cultural heritage.³⁵ In Burkina Faso, traditional expressions of unknown authors, presumed to be nationals of Burkina Faso, are part of national cultural heritage.³⁶ Unfortunately, like in the case of patent, traditional creations do not conform to the features of copyright.³⁷

Meanwhile, ARIPO is mandated under the Swakopmund Protocol on the Protection of Traditional Knowledge and Expression of Folklore to protect the indigenous knowledge holders against any contravention of their rights and protecting expressions of folklore against misappropriation, ill use and unlawful exploitation. Nigeria is yet to join ARIPO as a member.

1.2. Decolonizing the National Patent Act to enhance proper protection of traditional knowledge

The standards of novelty and creativity can barely sustain identification and protection of indigenous knowledge. In addition, the high cost of registration procedures constitutes a fundamental hindrance for traditional right holders. In this respect South Africa, a country with highly valuable traditional knowledge, has set the standards with established mechanisms for protecting indigenous communities' knowledge. To curb

³⁴ See 2022 revised Copyright Act

³⁵ Senegal Copyright Act 1986, Art. 9.

³⁶ Art.88, Burkina Copyright law, N° 032/99/AN du 22 Décembre 1999

³⁷ Nwabueze, J. (2010). The protection of traditional cultural expressions in OAPI states. Geneva, Switzerland: WIPO, World Intellectual Property Organization. *WIPO publication*; no. 797E/10.

further misappropriation of the TK existing in its territory, the South African Government has passed an Act for the protection of the intellectual property rights related to indigenous knowledge systems. The Act – the Protection, Promotion, Development and Management of Indigenous Knowledge, 2019³⁸ –is not based on the recognised types of IP, which are incompatible with this protection. The South Africa sui generis protection law of indigenous knowledge is drafted in line with the model of the Swakopmund Protocol of the African Regional Organisation of Intellectual Property. It does not entail legal protection of indigenous knowledge by patent, but by sui generis rights. The issues addressed include:³⁹ use of terms, beneficiaries, subject matter of protection, scope and conditions of protection, databases, exceptions and limitations, term of protection, and trans-boundary cooperation.

This brilliant initiative from the South African Government echoes developments at the international level, where the United Nations CBD Convention and WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore⁴⁰ has made indigenous peoples and local communities central to the development of the post-2020 global diversity framework.⁴¹ Nigeria derives her law on patents from the English law, and because of her colonial background, Nigerian patent law finds its roots in received English laws and practices in Nigeria. The

³⁸ Act No. 6 of 2019

³⁹ <https://wipolex.wipo.int/en/text/565105>

⁴⁰ WIPO/GRTKF/IC/36/5

⁴¹ www.cbd.int

first patent legislation enacted in Nigeria was the Patents Ordinance No. 17 of 1900 and the Patents Proclamation Ordinance No. 27 of 1900. These statutes applied to the colony of Lagos and the Southern protectorate of Nigeria. It was a foreign law with concepts incompatible with the nature of traditional knowledge that substantially applied to patent in Nigeria. It is expected that the country will take advantage of standards in the field set at the international level, and successfully implemented by countries like South Africa.

2. Protection Initiatives in other Fields of Intellectual Property

This section examines the protection of textiles manufacturing techniques under Petty Patents and in other fields of intellectual property, beyond the Patent System.

2.1. National Patent System vs Petty Patents

Generally, traditional knowledge (TK) includes valuable knowledge systems with practical, technological and cultural value.⁴² TK is diverse and effectively applied in textile industries and craftsmanship. It comprehends various technological innovations, and textile manufacturing processes especially in South West and South East regions of

⁴² World Intellectual Property Organisation Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (2008), Thirteenth Session. Recognition of Traditional Knowledge within the Patent System. WIPO/GRTKF/IC/13/7. Annex p. 1.

Nigeria.⁴³ As above underlined, the ancient nature of TK and its intense prior use precludes its recognition under the patent system based, most importantly, on the requirements of novelty and inventive steps.

Besides the patent system, another means for strengthening exclusivity and innovators' market power is through petty patents. Petty patents or utility models generally apply to the protection of adaptations of existing products or innovations with fewer improvements.⁴⁴ This is a suggested guideline under the Paris Convention.⁴⁵ There is nevertheless no obligation for the members of the Union to protect utility models within national legal frameworks, nor to provide any minimum substance of protection.⁴⁶ The Trade Related Aspects of Intellectual property Rights (TRIPS Agreement)

⁴³ U. Ekpe and G. Nnochiri, "Textile and fashion production skills for sustainable development in the Niger Delta", *Global Journal of Humanities* Vol. 8, No 1&2, 2009: 63-6

⁴⁴ What is utility model? at https://www.wipo.int/patents/en/topics/utility_models.html

⁴⁵ Art. 1(2) of the Paris Convention reads as follows: 'The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.'

⁴⁶ *Ibid.* Art. 2.1. 'Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with.'

does not legislate on utility models, with the scope of protection under TRIPS accommodating Articles 1 through 12, and Article 19, of the Paris Convention (1967).⁴⁷ This implies that the same freedom and flexibility under the Paris Convention as regards utility models subsists through TRIPS.⁴⁸ Within the European Community Law, there is no widely adopted utility model legislation. The 1999 proposed model directive has not received the necessary consensus for its amendment.⁴⁹ Nevertheless, some nations such as Germany have established a sound utility model system which serves as a catalyzer for the growth of smaller companies.⁵⁰

German utility models have several advantages, which changed their initial role as a cheap and simple IP protection means for smaller companies. In the case of *Andritz Küsters GmbH Eduard-Küsters-Strasse 1 D-47805 Krefeld (opponent) v Metso Paper, Inc. Fabianinkatu 9 A FI-00130 Helsinki (patent proprietor)*⁵¹, a German utility model for a method for manufacturing calendered paper, had November 26, 1998 as its date of entry in the register of utility models of the German

⁴⁷ Art. 2(1) TRIPS Agreement

⁴⁸ Henning Grosse Ruse-Khan, 'The International Legal Framework for the Protection of Utility Models', WIPO Regional Seminar on the Legislative, Economic and Policy Aspects of the Utility Model System, Kuala Lumpur (Malaysia), 3-4 September 2012.

⁴⁹ https://ec.europa.eu/growth/industry/strategy/intellectual-property/patent-protection-eu/utility-models_en

⁵⁰ Mitscherlich Partmb B, 'Relevance of German Utility Models Further Strengthened - Federal Patent Court Opens the Door for Certain Use Claims in German Utility Models', at

⁵¹ Case number T 0355/07.

Patent and Trademark, i.e. the day before the date of filing of the European patent application. The respondent filed an appeal asking the Board of Appeal to set aside a decision of opposition and to revoke the patent for lack of novelty. The court decided that the German utility model was made available to the public as of the date of entry in the register. They therefore constituted it as valid prior art and the decision was confirmed.

The relevance of petty patents or utility models for small size economies like West African states is of the essence. By virtue of their capacity to accommodate incremental innovations, petty patents can spur innovations in small-scale TK-based industries.⁵² The requirements for acquiring petty patents are less rigorous than for patents and the inventive step or requirement of non-obviousness are lower or non-existent⁵³ with simpler procedures.⁵⁴ They are suitable for minor perfections of existing products, and do not need a lot of investment in new product development.⁵⁵ Hence, their appropriateness for the protection of local community-related TK, and small business through the rewards of traditional right holders'

⁵² Uma Suthersanen, *Utility Models and Innovation in Developing Countries*, © ICTSD and UNCTAD, 2006, p. vii.

⁵³ Harper James, *Service Overview: Utility Model Solicitors* at <https://www.lexology.com/library/detail.aspx?g=2a7e8a02-f765-4739-9a76-17f19ec290af>
<https://harperjames.co.uk/services/intellectual-property/utility-model-patents/>

⁵⁴ Utility Models at https://www.wipo.int/patents/en/topics/utility_models.html

⁵⁵ Patent vs. Petty Patent: Which one is better?

efforts.⁵⁶ Petty patents allow the right holder to restrict unauthorized third-party use. Within the European Community, in Spain for example, they are granted without substantive examination, and for minor inventions.⁵⁷ Traditional innovators can still maintain a competitive edge while using petty patents in small and medium enterprises.⁵⁸

Nigeria is yet to enforce the dispositions of the Paris Convention regarding the protection of utility models.⁵⁹ The Nigerian Patents and Designs Act 1971 failed to recognize utility models as a category of IP right for small innovations. This denial of legal recognition certainly frustrated economic growth in small local enterprises unable to meet with the stringent exigencies of patentability. However, a Bill seeking the repeal of the current Act re-enacting the Patents and Designs Act, 2019, encapsulates dispositions related to utility models in clause 2.⁶⁰ The Bill awaits approval according to the country's constitutional exigencies.

⁵⁶ Joelle Nwabueze, "Heritage digitization and data driven technologies. Trends of Protection under intellectual property laws", Bern University - World Trade Institute. 2022

⁵⁷ MiquelMontañá (Clifford Chance), 'Petit Patent or Pity Patent' /October 22, 2010. Available at <http://patentblog.kluweriplaw.com/2010/10/22/petty-patents-or-pity-patents/>

⁵⁸ Field Law, Utility Models, Petty Patents & Innovation Patents: Efficient IP Protection for SMEs, March 3013, *Lexology*, at <https://www.lexology.com/library/detail.aspx?g=9a530547-c5ea-427d-af20-e9b7aa6fb2a9>

⁵⁹ Art. 4A to I, Paris Act, 1883

⁶⁰ Kehinde Akintola, Repeal Support Bill on Protection of Intellectual Property, Innovation, 20 May 2021 at <https://tribuneonline.ng.com/reps-support-bill-on-protection-of-intellectual-property-innovation/>

In Nigeria, potential protection of indigenous textile techniques could equally subsist under existing IP right categories acknowledged under the national intellectual property legal framework.

2.2. Potential use of other intellectual property right categories beyond the Patent Law system to protect indigenous textiles manufacturing techniques

In the absence of international treaties demanding rights protection of indigenous technical knowledge, intellectual property mechanisms beyond the patent system can be envisaged.

- Geographic indication: Protection based on the link between a product and specific geographical location

Geographic indication (GI) is an established intellectual property protection aimed at linking a good to its geographic origin. GIs are well recognised in intellectual property law, although they have been for the most part limited to the protection of European values and assets.⁶¹ GIs protect the quality, reputation, or other characteristics of a product having a particular origin.⁶² Their protection are suitable means to protect “informal

⁶¹ Panza, X. (2014), *Intellectual Property Laws and the Protection of Traditional Knowledge in South Africa: An evaluation of the current Intellectual Property system and its protection of Traditional and Indigenous Knowledge*, University of KwaZulu-Natal, LLM Thesis p. 7.

⁶² Art. 22, *The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*, 1995.

innovation”, particularly because the rights they accord are related to the product itself, and not to a specific right holder.⁶³ It has purposely been noted to this effect that more than other major types of intellectual property, GIs have features that respond to norms for use and management of bio resources and traditional knowledge, characteristic of the culture of many indigenous and local economies.⁶⁴ Traditional creations that can benefit from geographical indications shall be a particular product originating from a particular geographical region.⁶⁵

- **Collective marks**

Collective marks constitute a suitable tool for the protection of indigenous groups, manufacturers or craftsmen officially recognised as such. Trademark offers a suitable advantage for traditional artists organised in communities and desiring to be protected under an intellectual property right category.⁶⁶ Its rationale resides in the fact that it designates the business origin of works

⁶³ Addor, F. & Grazioli A., (2003). Geographical Indications, Important Issues for Industrialized and Developing Countries”, in *Institute of Prospective Technological Studies (IPTS) Report*, p. 25.

⁶⁴ UNICITRAD, Geographical Indications, 2018 at <https://unctad.org/en/Pages/ALDC/Technical%20Assistance/Geographical-Indications.aspx>

⁶⁵ Drahos, P. (2004). The regulations of Public Goods”, in: 7(2) *Journal of International Economic Law*, 2004, p.328. In Panizzon, M. (2006), *Traditional Knowledge and Geographical Indications: Foundations, Interests and Negotiating Positions*. NCCR Trade Regulation Swiss National Centre of Competence in Research, Working Paper No. 2005/01 p.10 Note 45.

⁶⁶ WIPO Intellectual Property Handbook (2004), p. 256.

such as traditional textiles.⁶⁷ By adopting a trademark protection, the consumer of the community products will be protected against the risk of confusion as to the origin of goods deriving from the unauthorised use of an identical or similar sign. He or she will be able to distinguish between a particular indigenous community textile and other identical or similar textiles. However, collective marks have a disadvantage. The use of a trademark does not grant protection against misuse or misappropriation of the skills, techniques or processes used in making the work in the case of reproduction by a third party.⁶⁸ This is because collective marks are only aimed at the authentication of the source of a product with certain characteristics. The collective sign serves in this case as material information used to locate the appropriate textile in the market place.

- **Certification marks**

By certification marks, the manufacturer of traditional textiles uses a mark, obtained by paying a fee to a certification organisation, to show to consumers that the products have been tested and certified. This mark or label of authenticity could be used to distinguish authentic indigenous textiles from others in the market.

⁶⁷ Bottero, N., Mangani, A. & Ricolfi, M. (2007). The Extended Protection of “Strong” Trademarks.” *Markette Intellectual Property Law Review*. Vol. 11:2. p.268.

⁶⁸ Matip, F N. and Koutouki, K. (2009). La Protection Juridique du Folklore dans les Etats Membres de l’Organisation Africaine de la Propriété Intellectuelle. *Revue québécoise de droit international*. p. 261.

There are conditions which must be fulfilled before the manufacturer uses the mark. Once a traditional producer/craftsman satisfies these conditions, he/she becomes eligible to use the mark, which evidences the genuineness of his product.

The Aboriginal and Torres Strait Islander in Australia gives one illustration of successful use of a certification mark in the protection of indigenous creations. A certification mark has been recognised as a label which proves the authenticity of any work of art, or related, purported to have been created by, reproduced or manufactured by the Australian Aborigines.⁶⁹ Certification in this case prevents traders whose goods do not comply with the certification process from using the mark. Therefore, the integrity of the indigenous traders whose goods are certified is maintained, and the traditional cultural expression is promoted.

Case study: Korean *Mosi*⁷⁰ Collective marks

Fine Ramie, otherwise called *Mosi*, is a popular textile which is traditionally manufactured in Korea. The texture is extremely light and easily breathable in hot.⁷¹ In Hansan region, South Korea, women are the most involved in the textile technique which is transmitted from generation to generation. Weaving methods are purely handmade, using sticks and thread with inherited techniques. Weavers of Hansan use a certificate of authentication to differentiate the Hansan

⁶⁹ WIPO Intellectual Property Handbook (2004), p. 256.

⁷⁰ Korean Fine Ramie at <http://www.cha.go.kr>

⁷¹ Korean Fine Ramie at <http://www.nrich.go.kr>

Mosi from similar crafts of lower quality.⁷² The Korean fabric is characterised by its lightweight and cool texture, making it ideal for wearing in hot weather.

3. Safeguarding of Traditional Textile Techniques in Indigenous Communities

The extinction or disappearance of indigenous knowledge systems have led the United Nations Educational, Scientific and Cultural Organization (UNESCO) to recommend safeguarding as a measure.⁷³ This encompasses the exploration of best means of protection of traditional knowledge in danger of dying out, of prejudicial distortion and unwanted economic exploitation. A notable example is the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage (2003). Safeguarding measures ensure the viability of the traditional knowledge and include the identification, documentation, research, preservation, digitisation, and so on.⁷⁴ Those techniques enhance the revitalisation of the various aspects of communities' cultural heritage.

Traditional textile techniques are part of knowledge, skills associated with communities, groups, and recognised as part of their intangible cultural heritage under UNESCO

⁷² Nwabueze, J. (2014). The Role of Intellectual Property in Safeguarding Intangible Cultural Heritage in Museums, *International Journal of Intangible Heritage*. Vol. 8. p. 196.

⁷³ UNESCO Protection of Folklore Initiative at <http://portal.unesco.org/culture/en/ev.php-URL-ID=10156&URL-SECTION=201.html>

⁷⁴ (Art. 2(3)).AUNESCO Convention, 2003,

Convention.⁷⁵ It is important for communities to take advantage of the convention and safeguard those techniques to prevent their disappearance. Safeguarding measures such as documentation have been acknowledged as evidence of prior art susceptible to defeat misappropriation under patent regime.⁷⁶

Documenting indigenous knowledge is an anticipatory approach to preventing the issuing of bad patents. With proper recording, TK can be evidenced as prior art and steepchases of legal challenges can be avoided. It has been suggested with regard to the Patent Cooperation Treaty that TK publications could be integrated as part of the minimum documentation requirements.⁷⁷ The WIPO-IGC Committee emphasizes the amendment of the International Patent Classification to accommodate TK, with the possibility of recognizing TK-related documents during search procedures.⁷⁸ Such standards could be made binding as a matter of law, and formally acknowledged in current international patent law standards as defensive protection.⁷⁹

⁷⁵ Ibid. Art. 2(1)

⁷⁶ WIPO, Traditional Knowledge and Intellectual Property – Background Brief, at http://www.wipo.int/pressroom/en/briefs/tk_ip.html

⁷⁷ Art. 32 WIPO Draft Gap Analysis WIPO/GRTKF/IC/37/6 Annex I.

⁷⁸ WIPO/GRTKF/IC/2/6, p. 4.

⁷⁹ Art. 33. WIPO Draft Gap Analysis WIPO/GRTKF/IC/37/6 Annex I.

Searchable databases have been used to “make relevant information easily accessible to patent examiners”.⁸⁰ General databases and registers are available worldwide.

Examples include:⁸¹ Indigenous medical registers such as (i) The Traditional Knowledge Digital Library (TKDL) in India; (ii) The online Traditional Chinese Medicine Patent Database⁸²; and (iii) The Korean Traditional Knowledge Portal.⁸³

Conclusion & Recommendations

This paper has argued that the evidence of indigenous textile techniques inherited and collectively maintained, does not guarantee protection in an intellectual property system fashioned during the age of industrialisation and drafted outside the African customary rules. Claiming protection of traditional knowledge systems under intellectual property in the case of traditional textile techniques will involve decolonising the current protection system. The role of Patent is to encourage innovation and consequently economic growth by rewarding efforts made in developing creations. To enable recognition and participation of indigenous knowledge holders as right owners in the intellectual property system and

⁸⁰ World Intellectual Property Organization (WIPO) (2017). *Key Questions on Patent Disclosure Requirements for Genetic Resources and Traditional Knowledge*. Geneva: WIPO. p. 13.

⁸¹ *The Role of Registers & Databases in the Protection of Traditional Knowledge: A Comparative Analysis*, UNU-IAS Report 2003, p. 6.

⁸² Traditional Chinese Medicine Patent Database at <http://www.sipo.gov.cn>

⁸³ KTKP available at http://221.122.40.157/tcm_patent/englishversion/help/help.html

therefore the global economy, African standards of identity⁸⁴ such as collective ownership should be taken into account.

This paper therefore recommends: Firstly, at the National level, recognition of indigenous knowledge within the Patent System, taking as example the South African Protection, Promotion, Development and Management of Indigenous Knowledge Systems Act.

Secondly, integrating petty patents in the industrial property system to enable the development of local small and medium enterprises in the textile sector.

Thirdly, internationally, the World Trade Organization (WTO) aims Liberalisation of trade, and WTO agreements and does provide the legal ground-rules for international commerce. Basic Principles of multilateral trade agreements include (i) Non-discrimination, (ii) More open trade, (iii) Transparency and (iv) Special treatment for less developed members. It is this paper's position that WIPO, WTO and regional organisations such as ARIPO, should establish a comprehensive, well-balanced and effective system for the protection and enforcement of intellectual property rights of all, indigenous communities included.

Finally, the African Regional of Intellectual Property (ARIPO) is mandated under the Swakopmund Protocol on the Protection

⁸⁴ Msila, V. (2017), Decolonising Knowledge for African's Renewal – Examining African Perspectives and Philosophies, *KR publishing* p. 60.

of Traditional Knowledge and Expression of Folklore to protect the holders of traditional knowledge against any infringement of their rights and protecting expressions of folklore against misappropriation, misuse and unlawful exploitation. It is recommended that Nigeria joins other African English speaking nations under the regional framework of ARIPO to share in the benefits of an institutional protection of traditional knowledge.