

THE CONCEPT AND FIELDS OF INTELLECTUAL PROPERTY LAW: A MARK OF WEALTH IN NIGERIAN ECONOMY¹

Abstract

The growth and development of Intellectual Property law has assumed a worldwide dimension to the extent that its growing importance has become a subject of discourse among countries, in the protection of individuals and group intellectual activities. Countries take special interest in the development and protection of intellectual Property Rights (IPR) for some of these obvious reasons; to give legal expressions to the moral and economic works of creators in their endeavour, to put up their creative minds for the benefit of society, to protect society in lawful use of such creations, this may result to further creations, to promote creativity as a deliberate act of government policy and finally to enhance and encourage fair trading or competition with the aim to contribute to economic and social development of the Country² All over the world, people are born with one endowment or the other. As people are endowed, so are Families, Villages, Towns, States, Nations and Corporate bodies. It is this endowment that creates wealth or otherwise, for whoever that is so endowed. This endowment comes in the nature of Allied Rights, Copyrights, Patents, Trademarks among others, when perfected and all these are called Intellectual Property and economic development of most countries of the world³. The methodology employed for this work is doctrinal method of research which involves the use of primary sources of law such as the Constitution of the Federal Republic of Nigeria 1999 (as amended), Copyright Act 2022, etc. This work also examined secondary sources such as internet materials, Law Journals, Articles and Textbooks of renowned authors and Lecture Notebooks of some selected lecturers. The study also identified the various kinds of Intellectual Property Acts and 'who creates' and also identified the processes of investing in Intellectual Property. It also stated now more than ever that Intellectual Property is an important part of any country's mark of wealth, whether developed or developing, whether civilised or uncivilised whether in Africa or any continent of world. It is more obvious in Nigeria especially, judging from the entertainment industry, wherein it has become the highest source of both employment and income. Intellectual Property covers a wide spectrum of activities of intellectual endeavour; the list of which is not exhaustive. It is however narrowed to Patent, Copyright, Industrial Designs, Trademarks, and to some extent Trade Secrets or Confidential Information.

Keywords: Concept, Fields, Mark of Wealth, Economy of Nigeria, Intellectual Property.

1. Introduction

The growth and development of intellectual Property law has assumed a worldwide dimension to the extent that its growing importance has become a subject of discourse among countries, in the protection of individuals and group intellectual activities⁴ The grant of a Statutory right of protection is subject to the fulfilment of the conditions and requirements of the law. An intellectual work will be accorded recognition if the creator fulfils the condition set by the relevant law of the Country for its protection. There are various number of reasons why countries take special interest in the development and protection of intellectual Property Rights⁵ The intellectual property law, in essence, bestows exclusive rights to the creators or inventors, giving them the power to reap benefits from their inventions or creative works. Intellectual property rights foster an environment that encourages innovation and creativity⁶

2. Definition of Terms

Concept: To conceive an idea which is to think of something in the mind that can be developed for useful purpose. Intellectual Property is a conception of the mind, hence, the word 'intellectual'. Concept is someone's idea of how something is, or should be done⁷

Fields: Field entails a subject that people study or are involved in as part of their work. In this sense, it represents the mix of intellectual Property, and comprises such elements as Patents, Copyright, Industrial Designs, Trade Secrets (Confidential information) and Trademarks. Though the field of intellectual Property is not exhaustive, it is herein confined to defined elements for practical purpose⁸

*By Hilary Chimezie OKOLOMA, LL.M, B.L, LL.B, B.Th, Dip. Theol, Lecturer, Department of Customary and Religious Law, Faculty of Law, Nnamdi Azikiwe University Awka, Anambra State, Nigeria, Tel: +2348035091482, Email: hc.okoloma@unizik.edu.ng, hilmeziem4law@gmail.com

² Umekwe Desmond C. Iheanyichukwu, LL.M. Thesis Faculty of Law, University of Jos, December 2006, p 4

³ Summers D. Longman, Dictionary of Contemporary English (New Edn) (1995) Pg 279

⁴ Kamil I. World Intellectual Property Organisation (WIPO) *Intellectual Property: Reading Material* (Geneva 1988 March Edn) p 1

⁵ <https://www.apu.apus.edu/resources>. Accessed 3/10/2024

⁶ Nazwul Hasan, United International University, July 2003

⁷ Ibid, p. 513

⁸ Jeremy, P and Allison, F. *An Introduction to Intellectual Property Law* (London: Butterworth's 2nd Edition (1990)

Mark of Wealth: This is an accumulation of valuable economic resources that can be measured in terms of either real goods or money value⁹

Intellectual Property: It has two meanings, the colloquial and legal meaning. ‘In the colloquial sense, it means or comprises all those things which emanates from the exercise of the human brain such as ideas, intentions, poems, designs, microcomputers and mickey mouse. In the legal sense, it is the rights which are enjoyed in the product of the mind rather than upon the product itself’¹⁰. The ability to understand things and to think intelligently is to say that someone is an intellectual, while Property is the thing or things that someone owns. This ownership can be a piece of land, a building or an article of precise definition.

Economy of Nigeria: The economy of Nigeria is a middle-income, mixed economy and emerging market with expanding manufacturing, financial, service, communications, technology and entertainment sectors¹¹

3. Evolution of Intellectual Property Law

Intellectual property law is a complex and ongoing process that should balance the interests of creators, innovators and the public. As technology and society continue to change, intellectual property laws must adapt to new challenges and opportunities.¹² Here are some ways:

Digital Rights and Copyright: With the digital age, copyright laws need to address issues such as online piracy, digital distribution and fair use. Striking a balance between protecting creator’s rights and promoting access to information is crucial.

Fair Use and user Generated Content: As user generated content becomes more prevalent, intellectual property laws should provide clarity on fair use and how individuals can use copyrighted materials in their own creations, including memes, fan, fiction and remixes.

Patent Reform: Patent laws need to adopt to prevent ‘patent trolling’ and over-broad patents that stifle innovation. Clearer patent standards and more efficient patent registration process can be of great help¹³

Protection of traditional knowledge: Indigenous communities and traditional knowledge holders require better protection for their intellectual property as they often have unique cultural and ecological knowledge.

Bio technology and pharmaceuticals: Intellectual property laws in the fields of bio technology and pharmaceuticals are continually evolving – particularly with respect to patenting genes, genetics testing and drug access in developing countries.

Start-up and Small Business Protection: Intellectual property laws should strike a balance between protecting intellectual property and not stifling innovation in small businesses and start-ups. More cost-effective ways to protect intellectual property can be explored. **Legal Remedies and Enforcement:** The legal system must evolve to provide more efficient and accessible remedies for intellectual property disputes, including Alternative Dispute Resolution Mechanism.

The evolution of Intellectual Property Law is a multifaceted challenges; balancing the rights of creators, innovators, and the public, while considering the ever-changing technological landscape is essential. It requires input from legal experts, policy makers, industry stakeholders and public discourse to find a suitable equilibrium that supports innovation, creativity and public welfare.

4. Fields of Intellectual Property

Intellectual property is a category of property that includes intangible creations of the human intellect. Although there are many types of intellectual property, and some Countries recognise more than other countries. The best-known types are the following¹⁴

Patent

A patent is an official document giving the sole right to make, use or sell an invention and preventing others from copying.¹⁵ The main creation of a patent is the invention leading to its grant. Rather than talk of a patent, which is just an

⁹ Umekwe D. C. I.: The Concept and Field of Intellectual Property in Nigeria, LLM Thesis 2005 P 117

¹⁰ <https://www.copyright.gov/what-is-copyright/> Accessed 3/10/2024

¹¹ Umekwe Desmond C. Iheanyichukwu Ibid

¹² Sec 15 (I) & (II) Patent and Design Act, See also *Sander v Weill* (1893) 36

¹³ P. F. Zabrodskil: Saatov State Madical University

¹⁴ <https://en.m.milipedia.org.>wiki> Accessed 3/10/2024

¹⁵ Wehmeier S (Edited) *Oxford Advanced Learners Dictionary of Current English*, Special Price Edition

official document granted by the State, invention is a solution to a specific problem in the field of technology. Without invention there will be no patent. Thus an invention is patentable if it conforms to the requirements of the law¹⁶ Principles and discoveries of a scientific nature are not inventions for the purpose of the Act¹⁷ Therefore, patents cannot be validly obtained in respect of such discoveries or plants or animal varieties or essentially biological process for the production of plants or animals (other than Microbiological process and their products) or inventors of publication or exploitation of which would be contrary to public order or morality (it being understood for the purposes of this paragraph that the exploitation of an invention not contrary to public order or morality merely because its exploitation is prohibited by law).¹⁸ A patent is a statutory privilege granted by the government to inventors, and to others deriving their rights from the inventor for a fixed period of years¹⁹ Patent merely creates a legal right of exploitation of a patented invention and not a monopoly to the patentee as widely envisaged. While the owner is not given a statutory right to practice his invention (or exploit its products), he is given a statutory right to prevent others from exploiting his invention, and it is up to the owner of a patent to bring an action, usually under civil law for any infringement of his patent right. The foregoing suggest that a patent is a grant of right to exclude others from making, using or selling one's invention and includes right to licence others to make, use or sell it.

Industrial Design

Designs are technical attributes, which offer distinctive features in a product of similar characteristics and appearance. Accordingly, designs are element of appearance in products. Cornish and Liewelyn opined that design appeals to the eye - a requirement which the Courts treated with notable generosity, even though 'appeal' suggests some feelings of aesthetic satisfaction which is sparked by seeing²⁰ Design then means the appearance of the whole or a part of a product resulting from the features of in particular, the lines, colours, shape, texture or materials of the product or it's ornamentation²¹ The Patent and Design Act has more concise meaning of Design that E. C. Design regulation as it provides: 'Any combination of lines or colours or both, and any three dimensional form whether or not associated with colours, is an industrial design, if it is intended by the creator to be used as a model or pattern to be multiplied by industrial process and is not intended solely to obtain a technical result'.²² The Act regards design being capable of industrial application or mass production of goods rather than a mere technical result aimed at satisfying the designer. Visual appeal is one of the considerations that influence the decision of consumers to prefer one product over another, particularly in areas where a range of products performing the same function is available in the market²³ examples are the vehicle tyres of the same fitment size produced by various manufacturers. Industrial design is also a process of any combination of lines or colours or both, and any three-dimensional form, whether or not associated with colours, is an industrial design, if it is intended by the creator to be used as a method or pattern to be multiplied by industrial process and is not intended solely to obtain a technical result²⁴ It is the creative act of determining and defining a product's form and features which takes place in advance of the manufacture or production of the product. Industrial manufacture consists of pre-determined, standardized and repeated, often automated acts of replication²⁵ while craft-based design is a process or approach in which the form of the product is determined personally by the products creator largely concurrent with the act of its production. The notable four types of Industrial Designs are: product design, transportation design, environmental design and interaction design.

Each type of the Industrial design focuses on specific aspects and objectives, allowing businesses to choose the right approach for their products. Today, when so many consumer products are technically very similar, designs become an important distinguishing factor, often not easily separated in the minds of purchasers and users: If the technical performance of the various products offered by different manufacturers is relatively equal, aesthetic appeal, along with of course, cost, will determine the consumer's choice. Designs play very significant role in product aesthetic performance and acceptability in Nigerian Legislation on designs, most of its importance was not known; and probable most designers had recourse to protection on the United Kingdom Design Act of 1949. Today, Nigeria is among the countries that have recognised design as a possible means of transfer of technology through licence²⁶

The laws regulating design among countries differ, though, they pointedly recognise the need to give the creator of a registered design, the monopoly to enjoy the fruit of his creativity for specific short-term period, while preventing others from unauthorised use of his creation. Registration is prima facie evidence that the design is valid. It is of note that what the law protects is not product or article which is the result of a design, but rather the design, which is applied or embodied

¹⁶ Sec 1(1) & (2) Patent & Design Act

¹⁷ Sec 1(5) Patent & Design Act

¹⁸ Sec 1(4) Patent & Design Act

¹⁹ August R. International Business Law (Text, Cases and Readings) Prentice Hall (1993) P599

²⁰ Kamil I. WIPO P 13

²¹ Nolane, JR et al, *Black's Law Dictionary* 6th edition, St Paul Minnesota West Publishing Coy (1999) p 1125

²² Cornish W. & Liewelyn P 14

²³ Ibid See also E. C. Designs Reg Article 3.

²⁴ Sec 12 Patent & Design Act

²⁵ Cornish, W. & Liewelyn, D. p 14

²⁶ Ibid Sec 12

in that product or article²⁷ It has been reiterated that Design must be capable of Industrial application, otherwise, it is not a design for the purpose of the Act. This is why 'Industrial Design' is used throughout the Act. A registrable design²⁸ must be new and must not be contrary to public order or morality. A design that depicts immorality and presented for industrial application and can corrupt society, thus, is not eligible for registration. At this point, it is pertinent to distinguish a conceptual design from a functional design. A design or shape or configuration that is solely meant to catch the eye and reveal the attractiveness of a product is the proprietor's design protected by law, but a design or shape which is an integral part of an article cannot perform its function, is not a design to be accorded protection²⁹ It is therefore the requirement of the law that an Industrial design be capable of identifying the product it will be applied³¹.

Copyright

A country's technology advancement depends to a general extent the intellectual creativity of its people. Copyright constitutes an essential element to progress and development of this process. The encouragement of intellectual creation is thus, one of the basic prerequisites of all social, economical and cultural development. Copyright is a type of Intellectual Property that protects original works of authorship as soon as author fixes the work in a tangible form of expression. In copyright law, there are a lot of different types of works, including paintings, photographs, illustrations, musical composition, sound recordings, computer programmes, books, poems, blog post, movies, architectural works, plays and so much more.

Originality and fixation are important features of copyright. Works are original when they are independently created by a human author and have a minimal degree of creativity. Independent creation simply means that you create it yourself, without copying. The Supreme Court has said that, to be creative, a work must have a 'Spark' and 'Modicum' of creativity. There are somethings, however, that are not creative like, titles, names, short phrases and slogans, familiar symbols or designs, mere variations of typographic ornamentation, lettering or colouring and mere listing of ingredients or contents. And always keep in mind that copyright protects expression and never ideas, procedures, methods, systems, processes, concepts, principles or discoveries. A work is fixed when it is captured (either by or under the authority of an author) sufficiently permanent medium such that the work can be perceived, reproduced or communicated for more than a short time. For example, a work is fixed when you write it down or record it. Once you create an original work and fix it, like taking a photograph, writing a poem or blog or recording a new song, you are the author and owner. Companies, organisations and other people besides the work's creator can also be copyright owners. Copyright law allows ownership through 'works made for hire', which establishes that, works created by an employee within the scope of employment are owned by the employer. The work made for hire doctrine also applies to certain independent contractor relationship, for certain types of commissioned works.

Copyright owners can also come from contracts like assignments or from other types of transfers like Wills and Bequests. Suffice to say that what the law protects is the work of the copyright, and not the idea therein.³⁰ Nasir succinctly put it that 'Copyright gives the holder or owner the right to restrict others from using the work, eg, copying without permission or authority. It does not give him or her right to prevent others from using the idea or the knowledge contained in the copyright work. Thus, the idea in a book can be used by anybody'.³¹ Copyright is the exclusive right given under the law to the owner of copyright to control the reproduction of the work, which is subject to copyright³²

5. Conclusion

Nigeria is a country with great potentials in both human and material capital. An articulated intellectual property regime is *sine qua non* to industrial growth and development of the Country Inventive process can only thrive in an environment where the inventor feels there is protection for his works. It is a comprehensive legal regime that seeks to guarantee the inventor some level of protection against unhealthy competition resulting from imitation, piracy, counterfeiting, rivalry and infringement of his works, thus, the process of industrial development starts with the nature of intellectual property regime adopted by a country.³³ The Nigerian Copyright Commission (NCC) should brace up in order to passionately carry out the functions entrusted to it by Section 30 (3) of the Copyright Act through aggressive enlightenment programmes, both the urban and rural areas, schools and colleges. They can achieve such by using the language of the people to communicate the importance of Intellectual Property to social and economic development of the country.

²⁷ Kamil I. WIPO, p. 106

²⁸ www.en.m.wikipedia.org.

²⁹ Cornish W & Liewelyn D.

³⁰ Nasir JM. *The Legal Regime for the Protection and Promotion of Industrial Design in Nigeria*.

³¹ *New Vista in Law*. Faculty of Law, University of Jos Publication (2003)

³² Nasir, JM, Lecture Notes on Intellectual Property Law, Faculty of Law, University of Jos,

³³ *Walter Hunter & Co v Folk Irk Iron Coy* (1887) 4 R.P.C. 390 at 393.