

LEGAL LANDSCAPE FOR PROTECTION OF INDUSTRIAL DESIGNS IN NIGERIA*

Abstract

Industrial designs are features incorporated into mass produced products that aim to enhance their attractiveness by their appearance. The law protects novel designs for the benefit of the ingenious creator. The Nigerian economy which is still developing acknowledges the potential for industrial designs. The country embarked on an economic transformation agenda styled Vision 20:2020 put in place 21 years ago as an industrialization strategy that has obviously not been impactful. Despite this and other pitfalls in industry, the Nigerian creator has trudged on in producing brands that are unique and in demand internationally. However, adequate legislation is as much needed for technological advancement as introduction of ground-breaking machinery or epoch-making products. The drive for rapid industrialization of Nigeria is paramount to break the dominance of oil exploration and exportation as major source of national revenue. The nation has a wealth of enterprising and innovative creators of industrially replicated products with the potential of being an industrial power where these talents are harnessed. This discourse made a brief tracing of the history of industrial designs; an analysis of the legal regime in Nigeria for industrial designs; the challenges to proper protection of industrial designs and makes recommendations for improvement of the current situation including upgrade of national security, human capital development, tax holidays for creative minds and the promotion or celebration of artisanal activities.

Keywords: Industrial Designs, Protection, Legal Landscape, Nigeria

1. Introduction to Industrial Property

Intellectual property simply refers to intangible products of the mind. It is broadly divided into 'Industrial property' (consisting of Trademarks, Patents, Designs, Utility Models, and Geographical indication of source), and 'Copyright' (consisting of literary works, artistic works, musical works, broadcasts and cinematographs). They are regarded as property as owners of the right can exclude others from their orbit or alienate same. Industrial designs can be seen in various manufactured goods like shape of phones, toys, laptops shoes, cars etc. The law protects the design of these goods in recognition of the efforts and resources invested by designers in the concept and aesthetics applied to those products. A design is an aspect of or features applied to an article; it is not the article itself¹. Industrial Property Law aims at protecting the moral and economic rights of the inventor from being infringed by an unauthorized person². Being intangible rights, industrial property law therefore has a unique and peculiar nature. It is a chose in action as well as an incorporeal hereditament. As a developing area of Law in Nigeria, reliance is placed on foreign (particularly English authorities) because of the dearth of Nigeria authorities³. The Patent and Designs Act⁴ defines Industrial Designs as 'any combination of lines or colors or both, and any three-dimensional form, whether or not associated with colors ... 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'⁵. The Industrial Design/Registered Design is referred to as a 'Design Patent' in the United States of America⁶. Functional shapes of goods cannot be protected as trademarks. However, if the shape has ornamental elements in addition to the functional elements, the shape is protectable as trademark as well as design⁷. Where the design is not intended to be multiplied for industrial process or used as a model⁸, copyright is the appropriate intellectual property to protect such designs⁹. In the American case of

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¹ Nwabachili C & Nwabachili C 'Challenges to Effective Legal Protection of Industrial Designs in Nigeria' in *Journal of Law, Policy and Globalization*. Vol 33, 2015 .www.iiste.org. ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) <file:///C:/Users/user/AppData/Local/Temp/19580-22000-1-PB.pdf>

²National Open University of Nigeria.<https://nou.edu.ng/sites/default/files/2017-03/LAW%20436%20INDUSTRIAL%20PROPERTY%20II.pdf>

³NATIONAL OPEN UNIVERSITY OF NIGERIA 2017.<https://nou.edu.ng/sites/default/files/2017-03/LAW%20436%20INDUSTRIAL%20PROPERTY%20II.pdf>

⁴ Hereinafter referred as the 'PDA'

⁵ Section 12 PDA

⁶ *Puma v Forever 21 Inc.* – No. CV17-2523 PSG Ex, 2017 U.S Dist. LEXIS 211140 (C.D.V Cal. June 29, 2017) court ruled that to properly plead design patent infringement, a plaintiff need only allege ownership of the patent, name each defendant, cite the patent, state the means by which the defendants allegedly infringes and point the Sections of the patent law invoked.

⁷ *Super Smelters Limited and Ors v SRMB Srijan Private Limited*, MANU/WB/2975/2019.

⁸ As in sculpture, drawings, carvings and handcraft protected as artistic works under Section 1 (1) and section 51 of the Nigerian Copyright Act.

*Carol Barnhart, Inc v Economy Cover Corp.*¹⁰ an attempt was made to copyright the appearance of a mannequin used to display clothes. The Copyright Office had refused to register the mannequin design, and the court agreed. The Court of Appeals for the Second Circuit, found that the 1976 Copyright Act and related legislative history clearly limited protection of useful article designs to ones that can be conceptually separated from the product configuration. Therefore, the court held that the mannequin was created for a useful purpose, and there was no basis for expanding copyright protection, notwithstanding that the mannequin alone could be used as an artistic display, without clothes. In *Mazer v Stein*¹¹, a significant Supreme Court decision allowed copyright protection for a statue of a very attractive of a woman's figure to be used as a lamp base. The Mazer statue was an artistic work, independent of any useful purpose, and the fact it was part of a lamp did not exclude copyright protection. Since the application for registration was for the statue only, Mazer left room for debate on the proper scope of copyrightable subject matter for industrial designs¹².

Industrial design in *Re Clarke Registered Design*¹³ was defined as a pattern or representation which the eye can see and which can be applied to a manufactured article. Industrial designs refer to the shape, color and other aesthetic characteristics of industrially produced products. It is the aspect of product or article which is only ornamental such that it relates to the façade of the product and not its functionality. In *F.O Ajibiowo & Co Ltd v Western Textiles Mills Ltd*¹⁴ the court held that what constitutes the design is the arrangement of lines in a textile material referred to as Kentucky, Check or Prince of Wales. In the *Tecnica v Chiara Ferragni*, concerning the famous Moon Boots, the Court of Milan on 21st January 2021, granted copyright protection on the grounds that the Moon Boots had 'artistic value', taking it for granted that 'artistic value' was still a requirement for the protection of works of industrial design¹⁵. In *Morbier v Societe Fromagere du Livradois SAS*¹⁶ the CJEU held that the reproduction of the shape or appearance of a product which has a protected name – protected designation of origin (PDO) as prohibited. Industrial designs are different from patents since they protect the features of a product while the latter protects its functionality¹⁷. In *Lucky Exports v The Controller of Patents and Designs and Ors*¹⁸ the Calcutta High Court further pointed out that a design may be protectable if some of its feature's appeal to the eye even if the design is functional. Therefore, industrial design rights do not prevent others from manufacturing the product as do patents but can stop them from commercially dealing with a product that embodies the particular protected design without authorization¹⁹.

2. The Development of Industrial Designs in Nigeria

The development of indigenous industry and industrial designs in Nigeria went on a downward spiral after colonialism and emergence of independent states. This may also not be unconnected to westernization that saw the abandonment of local techniques and processes²⁰. Today however, African industrial designers²¹ have a renaissance and a strong presence in the international markets with other famous industrial designers from

⁹ Section 1(3) of the Copyright Act specifically excluded designs intended to be used as a model or multiplied by an industrial; process from copyright protection.

¹⁰ 773 E2d 411 (2d Cir. 1985). 72. Id. at 418. See also *Star Athletica, LLC v Varsity Brands Inc.* 580 U.S. (2017), called 'the cheerleader case', Plaintiff accused its smaller rival of infringing five of its designs. The US Supreme Court held that aesthetic design elements on useful articles like clothing can be copyrightable if they can be separately identified as art and exist indecently of the useful article.

¹¹ 347 U.S. 201, 221 (1954).

¹² Fryer, William T. III (1989) 'Industrial Design Protection in the United States of America—Present Situation and Plans for Revision,' in *University of Baltimore Law Review: Vol. 19: Iss. 1, Article 9.* <<http://scholarworks.law.ubalt.edu/ubl/vol19/iss1/9>> Accessed 20/8/21

¹³ (1896) 2 Ch.38

¹⁴ [1976] 7 S.C 97

¹⁵ Riccardo Perotti. Court of Cassation, 30 April 2020. 'The Court of Milan on the impact of Cofemel on The Copyright Protection of Industrial Designs in Italy. A new CJEU referral on the horizon?' <<https://iplens.org/2021/06/22/the-court-of-milan-on-the-impact-of-cofemel-on-the-copyright-protection-of-industrial-designs-in-italy-a-new-cjeu-referral-on-the-horizon/>> Accessed 20/8/21

¹⁶ CASE NO C-490/19, ECL: EU:C.2020: 1043

¹⁷ See *Chevron Global Energy Inc. v Ampol Australia Petroleum Pty Ltd* [2021] FC 617 (8 June 2021)

¹⁸ MANU/WB/1173/2019

¹⁹ Orikhogba D & Olubiyi. I. *Intellectual Property Law in Nigeria: Emerging Trends, Theories and Practice.* Chapter 19 p. 268

²⁰ See generally, Nwosu E. 2001. 'A Study Of Colonialism And Change In Igboland : A Case Study Of The Mbaise Area Of Owerri Division 1902-1934'. A Thesis Submitted The Faculty Of History, School Of Post Graduate Studies, Ahmadu Bello University, Zaria. Available online at <<http://kubanni.abu.edu.ng/jspui/bitstream/123456789/3153/1/A%20STUDY%20OB%20COLONIALISM%20AND%20CHANGE%IN%20IGBOLAND.pdf>> Accessed 16/8/21

²¹ Chris Amuah. 'Eight Products by African Designers selected by Africa by Design'. 22 June 2020. <<https://www.dezeen.com/2020/06/22/africa-by-design-sub-safaran-africa-chrisa-amuah/>> Accessed 16/8/21

different cultures worldwide. Well known Nigerian industrial designers include Architect Moyo Ogunseinde, Furniture Designer Oreoluwa Oluwatobi, Product Designer Nifemi Marcus-Bello²². Famous international industrial designers include Ingo Maurer for lamps, Alexander Touguet for mobile and head phones, Sebastine Bergen for unique kitchenware, Karim Rashid for brand packaging, Marc Altan for perfume bottles, Phillippe Starck for furniture, and Ceceile Manz for prototypes of unique sculptures²³. However, that it must be noted that beyond fame as a factor, there are many ordinary ingenious Nigerians that produce industrial designs but it is in doubt as to whether they realize that it is an intellectual property protected by law.

The law in Nigeria on industrial designs encourages creativity of diverse products by granting exclusive rights for a limited period and has as its goal, the reward of ingenuity, recouping of investments and access of such models to entrepreneurs for national development. The Industrial Design Law in Nigeria has origins in the English legal system. As received English law, The Designing and Printing of Linens, Cottons, Calicoes and Muslins Act 1787²⁴ automatically protected designers of new patterns for two months. The law was more of an extension of copyright than design rights. First design right statutes were The Copyright of Designs Act, 1839²⁵ and Designs Registrations Act 1939 that required registrations for novel designs of all items and display of name, registration number and date of registration on the article. This was followed by The Ornamental Designs Act 1842 which protected patterns, shapes or ornaments applied to products, The Utility Designs Act 1843, The Copyright of Designs Act 1850²⁶, creation of the Patents Office in 1852 for registration of designs and Patents and Design and Trademarks Act 1883. The foregoing were part of the Received English law in force in England on 1st January, 1900 and applicable in Nigeria²⁷. However, The United Kingdom Designs (Protection) Ordinance (NO. 36) of 1936 also protected Nigerian designs registered the United Kingdom²⁸. Such designs were protected in Nigeria as if they were initially registered in the country. The Registered Designs Act 1949 was later made and remains in force in The United Kingdom subject to amendments made in The Copyright, Designs and Patents Act 1988²⁹. After Nigeria's independence in 1960, the first indigenous legislation on industrial designs was the Patents and Designs Act 1970 which remains in force.³⁰

3. Protection of Industrial Designs in Nigeria

Industrial designs can be registered in the Nigerian Patents and Designs Registry where they are new, have individual character, dictated exclusively by the technical function of the product, not include protected official symbols or emblems such as the national flag, the coat of arms etc. and not contrary to public order or morality³¹. Generally, a person who creates a design or, in cases of contract work, his employer can apply for registration. The applicant can be a natural or artificial person/corporation. In either case, the application may be made directly or through an agent. Foreign applicants are also required to be represented by an agent duly authorized by a Power of Attorney³².

4. Criteria to Register Industrial Design

To be eligible for registration, the creation must conform to ideals of originality/newness and public morality as discussed below:

Originality/Newness

Designs are considered as 'original' if they have been independently created by the designer and are not a copy or an imitation of existing designs³³. A registrable industrial design has to differ substantially from the prior art.

²² Ayodeji Rotinwa. September 28, 2018. 'Meet the Nigerian product designers behind a new brand of minimalism'. <<https://www.vogue.com/article/meet-the-nigerian-product-designers-behind-a-new-brand-of-minimalism>> Accessed 20/8/21

²³ Tabatha Johnson. May 1, 2019. Top 30 Famous Industrial Designers And Product Developers Worldwide. <www.cadcrowd.com/blog/top-30-famous-industrial-designers-product-developers-worldwide/> Accessed 16/8/21

²⁴ Made after textile makers lobbied parliament to protect them as it did printers under The Engravers Act, 1735.

²⁵ Which extended protection to include wool, silk n, hair or mixed fabrics

²⁶ Which introduced the concept of grace period or provisional registration of designs.

²⁷ See Section 14 of the Supreme Court Ordinance

²⁸ As part of English Statutes made before October 1, 1960 and extending to Nigeria which were not repealed at the relevant time.

²⁹ Which introduced the concept of an unregistered design in the United Kingdom.

³⁰ Babafemi J, (2006) *Intellectual Property: The Law and Practice of Copyright, Trademarks, Patents and Industrial Designs in Nigeria*. Justinian Books Ltd.

³¹ Section 13 (1) and (2) PDA. See also *Clark's Design* [1896] 13 R.P.C. 351, Per Lindley L.J

³² See 'Looking Good: An Introduction to Industrial Designs for Small and Medium sized Enterprises'. *WIPO Publication No. 498*.

³³ Woye Famojuro 21 October 2019. Registration of Industrial Design in Nigeria. <<https://www.mondaq.com/nigeria/trademark/855394/registration-of-industrial-design-in-nigeria>> Accessed 18/8/21

Duckley L.J. in the English case of *Dower Limited v Numberger*³⁴ said the word 'original' contemplates that the person has originated something by exercise of intellectual activity which idea has not occurred to anyone before. To be considered new, the design must not have also been in the public domain³⁵. The design must not be dictated exclusively by the technical function of the product. If this is the case, the design registration is not the appropriate form of intellectual property. A more relevant application would be a patent application. Newness was explained in *Controlled Plastics v Black Horse Plastic Ltd*³⁶ as meaning novelty in pattern, shape or ornament or in the way in which an old pattern, shape or ornament is to be applied to some special subject matter. It should not be another version of an existing design³⁷. *Crocs Inc. USA v Bata India Ltd. and Ors*³⁸, the Court held that, as the designs claimed were mere modifications of pre-existing designs, the Court stated that novelty of the designs was in question. In *Preethi Kitchen Appliances Pvt. Ltd v Baghyaa Home Appliances & Anor*³⁹ the judge stated that examination for newness is with 'the eye of the Judge' as well as 'from the eye of a common man.... who may or may not be discerning? I have no hesitation in coming to the conclusion that the second defendant's products suffer from the vice of what is being referred to as 'sameness' even to the eye of a person who may not be very discerning'.

In *Densy (Nig.) Ltd. v Uzokwe*⁴⁰ the court held that mere trade or business variation without more is a mere garb which is incapable of wearing the nomenclature of 'new'. Before the date of application or registration had not been made available to the public anywhere and at any time by means of description, use or in any other way, unless it is shown to the satisfaction of the registrar that ten creator of the design could not have known that it had been made so available⁴¹. In *West African Cotton Company Limited v Hozelock Excel*⁴² the court clarified that the expression 'anywhere' means worldwide not just Nigeria. The design must not include protected official symbols or emblems such as the national flag, the coat of arms etc. Similarly, the court in *Iyeru Okin Plastic Industries Ltd v Metropolitan Industries Ltd*⁴³ held that prior publication includes making design available to the public by sale or use where plastic sandals were published by selling same one year before application for registration of the design. In *Glaxo Smithkline Consumer Healthcare GMBH & Co. KG v Amigo Brushes Private Limited & Anor*,⁴⁴ the plaintiff filed a suit for permanent injunction for restraining the defendant from manufacturing and selling offending toothbrushes, which infringed the registered design of the plaintiff as an obvious imitation. However, the proceedings for relief for infringement of the registered design could not be perused in that suit owing to the fact of the registration became invalid on account of prior publication of the plaintiff's own design in India. It is sufficient where the design is disclosed to some individuals who have no obligation of secrecy and not just to the whole world such that even a test run to determine its potential success in the market may defeat the requirement of newness⁴⁵.

A creator can put up a defense of newness where he could not have reasonably known that it had been made available to the public⁴⁶ or the design was disclosed by the manufacturer without his consent⁴⁷ or where the

In *AFX Licensing Corporation v HJC America, Inc.*, 2016 FC 435 (CanLII), the court decided that AFX's industrial design registration was valid but was not infringed by the HJC product because the court saw 'substantial differences' between the two designs.

³⁴ [1910] Ch. D.25 at p 29

³⁵ In the Indian case of *Crocs Inc. USA v Aqualite India Limited & Anor*.CS (COMM) 903/2018 & IA 16586/2018 (u/O XXXIX R-4 CPC) Plaintiff applied for an for interim relief, restraining the defendants from passing off its/their footwear as that of the plaintiff under the trade mark -CROCS', by adopting and copying the shape. However, the court noted that a registered design owner facially only satisfies the test of novelty (of the product's design) if it is not in the public domain.

³⁶ (1990-1991) FHCLR 180. See also *Saunders v Wiel* (1893) 10 RPC 29 where the court held that a representation of the Westminster abbey applied to a handle of a spoon was new.

³⁷ In *International Cycle Gears v. The Controller of Patents and Designs and Ors*. MANU/WB/1174/2019, a design called Russian Model, which was similar to the registered design was published in Velo Bike Special Issue before date of filing by the design holder. On a comparison of the two designs, the Court felt that the designs were similar.

³⁸ MANU/DE/0309/2019

³⁹ Case no 26 of 2018, High Court Of Madras India

⁴⁰ (1999) 2 NWLR [pt 591] 392

⁴¹ Section 13 (3) PDA

⁴² Unreported SUIT NO. FHC/L/CP/1240/2013

⁴³ (1986) FHCLR 336

⁴⁴ 109 (2004) DLT 41, 2004 (28) PTC 1 Del.

⁴⁵ *Peter E. Venture (Nig.) Ltd v Gazasonmer Ltd & Anor* [1998] 6 NWLR [Pt 555] 619

⁴⁶ In *Spivap (Nig) Ltd v Bola Alaba Ltd & Ors* (1991) FHCLR 181 a worker sworn to secrecy or under an implied obligation of confidence revealed the design without the knowledge or consent of the creator.

⁴⁷ In *Ajibowo & Co Ltd v Western Textile Mills Ltd* (1976) 7 SC 97, the appellant disclosed he design to the respondent- a textile manufacturer, stating that it should be used solely for their company. The court held that this disclosure was made in confidence and does not defeat the newness of the design upon registration.

design was shown to a commission agent with sole right of selling the goods in England⁴⁸ or where it was part of an official recognition fair or exhibition; sold, displayed at a trade show, or are published in a catalogue, brochure or advertisement prior to filing an application within 6 months preceding application⁴⁹. In this grace period⁵⁰ of six months the creator may market the design without it losing its 'novelty' as required for registration. However, it is often advisable to keep the design confidential until application for design protection as the creator will have no exclusive design rights during the grace period.

Not contrary to public order/ morality

Public order or public morality are the ethical standards/ rules of conduct of a society enforced by law that encompass the virtues of good governance, administration of justice, public services, national policy and the interest of the State. While the Act made no rendition of matters that may be adjudged contrary to public order or morality, designs that are offensive to the honor or image of any age group, gender, ethnic group, race, religion, persons, institutions, nationality etc. could be rejected. Public morality and order are also enforced by legislations under the general law such as the Public Order Act⁵¹ or the Criminal Code.⁵² Section 45 of the 1999 Constitution⁵³ provides that nothing in Sections 37-41 thereof shall invalidate any law reasonably justified in a democratic society in the interest of defense, public safety, public order, public morality or public health or of the purpose of protecting the rights and freedoms of other persons. This is called the 'morality exception'.⁵⁴ In *The Masterman's Design*⁵⁵ the question of whether a design of a furry adult doll that had the representation of a tiny penis was contrary to morality. The hearing officer exercised his discretion to refuse the registration. The appeal tribunal allowed the appeal. The boundaries of morality are however constantly changing in the society.⁵⁶ In *Association Eglise de Scientologie de Paris and Scientology International Reserves Trust v Prime Minister*⁵⁷, the European Court of Justice ruled that its member states have a right to take measures justified on grounds of public security or public policy. However, in ruling on what falls under the ambit of public order or morality, discretion must however be judicially and judiciously exercised using the acceptable rules of interpretation/ canons of construction, as the deciding body cannot afford to go on 'an unguarded voyage of discovery'⁵⁸ or ignore the cultural circumstances of the Nigerian people⁵⁹. There is a possibility of offending registered designs leading to affray, riots etc. in a Nigeria of complex traditional and religious makeup.

Eligible Applicant

By Section 14 (1)⁶⁰, the right to registration of an industrial design shall be vested in the statutory creator, that is to say, the person who, whether or not he is the true creator, is the first to file, or validly to claim a foreign priority for an application for registration of the design. The true creator shall be entitled to be named as such in the Register and the entitlement in question shall not be modifiable by contract⁶¹. If the essential elements of an application for the registration of an industrial design have been obtained by the purported applicant from the creation of another person without the consent of that other person both to the obtaining of those essential elements and to the filing of the application, all rights in the application and in

⁴⁸ *Bank v Footman, Pretty & Co* (1888) RPC 653

⁴⁹ Section 13 (4) PDA Cap. P2 Law of the Federation of Nigeria 2004

⁵⁰ Looking good. An introduction to industrial designs for small and medium –sized enterprises in Nigeria. <https://www.wipo.int/export/sites/www/sme/en/documents/guides/customization/looking_good_nig.pdf> Accessed 21/8/21

⁵¹ Cap. 382, laws of the federation of Nigeria, 1990 is presently undergoing amendment via The Public Order (Amendment) Bill 2006

⁵² Offences against unlawful assembly or breaches of the peace in Sections 69- 88 A; offences morality in Sections 214 to 233A; obscene publications in Section 233B.

⁵³ Cap. C. 23 Laws of The Federation of Nigeria, 2004.

⁵⁴ Saelens C. 2018. 'Ordre Public' And Morality As A Bar To Obtaining Intellectual; Property Rights'. A Dissertation Submitted To The Ghnet University Faculty Of Law And Criminology. <https://libstore.urgent.be/fulltxt/RUG01/002/479/279/RUG01-002479279_2018-0001-AC.pdf> Accessed 21/8/21

⁵⁵ [1991] RPC [No.5]

⁵⁶ See *New Patriotic Party v Inspector General of Police* 1992-93 GLR 585- (2000) 2 HRLRA 1. Where the trial court held that police permits for peaceful demonstrations, rallies and processions are things of the past and the brain child of the colonial era that ought not to remain in our statute books today. See also *Kenechukwu Okeke v Deji Adeyanu & 49 Ors.* (SUIT NO. CR/49/2020) where the court halted criminal complaints against 50 Nigerian celebrities that took part in the #EndSARS protests. In *Pamela Adie v Corporate Affairs Commission* (Suit No. FHCI ABJICS182712018), the Nigerian court dismissed the application because the same sex marriage (prohibition) act did not support the registration of 'Lesbian Equality and Initiatives Association' for advocacy of rights of female sexual minorities at the Corporate Affairs Commission, Abuja.

⁵⁷ Case c-54/99, judgment delivered 14 March, 2000.

⁵⁸ *Attorney General of Abia State v Attorney General Of The Federation* (2006) 16 NWLR (PT. 1005) 265

⁵⁹ *Attorney--General of The Federation v Abubakar* (2007) 10 NWLR (PT .1041) 1

⁶⁰ PDA

⁶¹ Section 14 (2)

any consequent registration shall be deemed to be transferred to that other person⁶². Where an industrial design is created in the course of employment or in the execution of a contract for the performance of specified work, the ownership of the design shall be vested in the employer or as the case may be, in the person who commissioned the work: Provided that, where the creator is an employee, then if his contract of employment does not require him to exercise any creative activity but he has in creating the design used data or means that his employment has put at his disposal- (a) he shall be entitled to fair remuneration taking into account his salary, and the importance of the design which he has created; and (b) the entitlement in question is not modifiable by contract and may be enforced by civil proceedings⁶³.

5. Registration of Industrial Design

A registered design is protected for a period of 5 years from the date of the application for registration. Protection may be renewed for two further consecutive periods of 5 years but may be extended for two further periods each of five years. Therefore, the total period any product can be registered for protection is 15 years. The Trademarks, Patents and Designs Registry domiciled in the Commercial Law Department of the Federal Ministry of Industry, Trade and Investment is saddled with the responsibility for registration of industrial design⁶⁴. The procedure for registration of an industrial design is provided under the Patents and Design Act requiring an Applicant:⁶⁵

- (a) Not to publicize the design prior application to register.
- (b) Fill an application form furnishing basic information such as the name of the applicant, address, an indication of the kind of products associated with the design, and the title of the design.
- (c) File a written description or statement of novelty of the industrial design(s). It should adequately cover all the distinctive aesthetic features of the design and describe which feature(s) is/are most important.
- (d) Attach a sample of the design and provision of a specimen/sample of the design, drawings and/or photograph of the design(s) in question.
- (e) Pay application fee and other professional fees.
- (f) Submit of a Power of Attorney, if application is being made by an agent.
- (g) Attach a certified copy of the priority document if claimed.
- (h) Attach receipt of an acknowledgement notice from the Registrar confirming the receipt of the application as filled with supporting documents.
- (i) Undergo examination and acceptance to ensure the formal requirements are met and that the design does not contravene public order or morality.
- (j) Get approvals or not of registration. If the application meets the requirements then an Acceptance Notice will issue. Otherwise, a refusal notice will be issued.
- (k) Certificate will be issued.
- (l) A duplicate of the design certificate will be included in the Register of Industrial Designs. In the Malaysian case of *Honda Giken Kogyo Kabushiki Kaisha v Allied Pacific Motor (M) Sdn Bhd & Anor*⁶⁶ the famous Japanese maker of bikes and cars applied for an interlocutory injunction against a local manufacturer of motorcycles in respect of two models manufactured by them. The court held that once a design has been gazetted, the court will presume that the administrative work gearing towards the registration was duly performed by the Registrar in a regular manner and that all the necessary documentation was filed and that it complied with the legal requirements of the law pertaining to registration. Therefore there is a presumption of regularity in registration until proven otherwise. A registered design may be canceled⁶⁷. In *Whirlpool Of India Ltd v Videocon Industries Ltd*⁶⁸ registration of a design which may be granted is at all material times 'subject to the provisions of the Act and such a registration may be cancelled if the Registrar or a Court finds that the registration of a design is not valid under the Act. A third party can also file an application for a declaration of invalidity of the design in order to have examined whether it is wrongly registered. This would be the case if, contrary to the provision of the Act, it was not eligible for protection in the first place. In 1996, Danish toy manufacturer- LEGO that produces play bricks sought to register a three-dimensional trademark but an application for its revocation was granted. LEGO achieved a surprising victory On 24 March 2021 before the General Court of the European

⁶² Section 14 (3).

⁶³Section 14 (4).

⁶⁴Woye Famojuro 21 October 2019. 'Registration of Industrial Design in Nigeria'. <<https://www.mondaq.com/nigeria/trademark/855394/registration-of-industrial-design-in-nigeria>> Accessed 18/8/21

⁶⁵ Sections, 15, 16, 17 and 18

⁶⁶ [2005] 3 MLJ 30

⁶⁷ *Croc Inc. v Haley Soles Holdings Ltd.* [2010] ECDR 11; *Faber-Castell & Anor v Pipken (P.) Ltd.* 2004 54SCL397 Bom

⁶⁸ (L) No.554/2012. Decided by the Bombay High Court on 27 May, 2014

Union that annulled the previous decision of the Third Board of Appeal of the EUIPO⁶⁹ on the invalidity of a Community design for the toy⁷⁰.

- (m) In furtherance of the designs for commercial purposes, of the Act⁷¹ allows for class application with a single application for any number of industrial designs not exceeding fifty, if the products to which the designs relate are of the same kind or, where a classification has been prescribed, of the same class.⁷² In some countries in the world, the Applicant will need to specify what ‘class’ he/she is registering for protection under the Locarno Agreement Establishing an International Classification for Industrial Designs administered by the World Intellectual Property Organization. However, Nigeria is not a signatory to the above Agreement and has no classes of registration for designs⁷². A special note must be made of the procedure for an international registration under the Hague Agreement Concerning the International Deposit of Industrial Designs⁷³. An applicant under the treaty can also file for a single international deposit with WIPO or with the national office in a country party to the treaty. The design will then be protected in as many member countries of the treaty as desired. Unfortunately, Nigeria is not a part of the Hague System.
- (n) There will priority given to a foreign application that was made 6 months earlier in any other state that is a party to an international treaty without affecting conditions of newness in other countries⁷⁴.

6. Rights that Accrue to the Owner of a Registered Industrial Design

A party who alleges the earlier existence of a design must certainly prove such existence and the most fundamental way of proof is the tendering of the design in court. It is only when the court physically sees and examines the earlier design along with the other one that a judicious conclusion will be drawn. It is not enough to tender the product and present same as a legal substitute for the design in question. The physical inspection of the design is crucial⁷⁵. Under the Patents and Designs Act⁷⁶, the owner of a registered industrial design has the following exclusive rights to-

- (a) reproduce the design in the manufacture of products
- (b) import, sell, or utilize for commercial purposes, a product reproducing the design
- (c) hold products for the purpose of selling or utilizing them for commercial purposes
- (d) make or import for sale or hire, or for use for the purposes of any trade or business, or to sell, hire or to offer or expose for sale or hire, any article to which the registered industrial design has been applied.
- (e) prevent copies by another person without the consent of the registered owner.
- (f) assign, in writing, license and transmit by operation of law of their intellectual property.
- (g) institute legal proceedings against any person for infringement of his rights at The Federal High Court who may sit and be advised by two (20 assessors having expert knowledge⁷⁷.

A person infringes the rights conferred by the registration of an industrial design if he, without the license or consent of the owner of the industrial design, does any of the following things while the registration is still in force. The court will put designs side by side in a comparison to determine evidential value⁷⁸. In the case of *Castrol India Ltd. v Tide Water Oil Co. (I) Ltd.*⁷⁹ The Court further held that in cases of infringement of design the question is not whether the similarity has or is likely to cause confusion or deception of a purchaser but whether the similarity is an imitation of the registered design sufficient to destroy the exclusive right of user of the proprietor despite the fact that no confusion is or may be caused as to the source of the goods. Under Section 25(2)⁸⁰ remedies for infringement include damages, Anton Piller Orders, injunction, accounts and other ancillary reliefs or actions that may be available to similar intellectual property rights. In *Troikaa*

⁶⁹ of 10 April 2019 (Ref: R 31/2018-3)

⁷⁰ (See T-515/19, 24 March 2021).

⁷¹ Section 15 (2)

⁷² <https://lawpadi.com/register-design-nigeria/> Accessed 18/8/21

⁷³ Also known as The Hague System took effect from 1ST June 1928 is a WIPO-administered treaty. The Hague agreement consists of several separate treaties such as the Hague Agreement of 1925, the London Act of 1934, the Hague Act of 1960 (as amended by the Stockholm Act), and Geneva Act 1999.

⁷⁴ Section 27 (2)(b) PDA, Article 4 Paris Convention for the Protection of Industrial Property 1883 which has 177 contracting member countries including Nigeria.

⁷⁵ Gilbert Tor 2019 ‘Protecting the Rights of Proprietors or of Industrial Designs in Nigeria: An Appraisal’ in *Benue State University Law Journal*. <<https://bsum.edu.ng/journals/files/law/vol9/article18.pdf>> Accessed 18/8/21

⁷⁶ under Sections 19 (1) 23 (1) (a) and 24

⁷⁷ Sections 25 and 26 PDA

⁷⁸ *Controlled Plastics Ltd v Black Horse Plastics Ltd.* (1009-91) FHCLR 180.

⁷⁹ reported in 1996 PTC (16) 202, the Calcutta High Court

⁸⁰ PDA

*Pharmaceuticals Ltd. v Pro Laboratories (P) Ltd. And Anor*⁸¹ the plaintiff filed for permanent injunction restraining the defendants, their servants, agents, dealers, distributors, stockists from manufacturing, marketing and using its design registered respect of D Shape Tablet and/or any tablet, which is having similar shape and configuration or material reproduction of the plaintiff's registered design. It also claimed account of profits from the defendants. The defendant raised a preliminary objection submitting that the D Shape design as claimed by the plaintiff is not a new or original design and is also not new in its application to pharmaceutical products/medicinal preparation. The D Shape design referred to by the plaintiff cannot be under any circumstances called a new or original design in as much as the very design of the tablet. D Shape is in fact a reproduction of the shape of the letter 'D' of the English Alphabet which is known to the public at large and published in tangible form. In the Indian case of *Crocs Inc. USA v Liberty Shoes Limited*⁸² Crocs (the plaintiff) held design registrations (Nos 197685 and 197686) for its perforated and non-perforated clog-type slipper/shoes. It filed several suits for infringement of its registered designs, seeking a permanent injunction against the defendants, restraining them from infringing the design of Crocs footwear. The defendants contended that there could not be piracy of the registered design as the registration granted to Crocs with respect to footwear was itself invalid as (a) the design was in the public domain prior to its date of registration and (b) it was not new or original, and therefore liable to be cancelled under Section 19 of the Act. The defendants also relied on Section 22(3) and (4) of the Act. The defendants put forth evidence to show that a design similar to the design of Crocs had been disclosed in around 2003, by Holey Shoes and also by Crocs itself on its website in 2002. The court held that the registered design of Crocs with respect to its footwear did not have the necessary novelty or originality for it to be granted protection under the Act and dismissed injunction applications filed by Crocs.

7. Challenges to Protection of Industrial Designs in Nigeria

While the Nigerian industrial designs law may have noble objectives, there are some drawbacks to protection such as-

- i. **Infrastructure deficit** -Electric energy produced was about 120.000,000 kilowatts per hour (KWh) in March 2021. This translated to just 3, 60 watts bulbs or 189w of electrical power to each of the estimated 24 million Nigerian households with access to electricity⁸³. Where creators cannot make items with support facilities in the first place, they will not apply for industrial designs.
- ii. **Endemic corruption** -Nigeria is one of the most corrupt country in West Africa and ranks 149th out of 180 countries in the global Corruption Perception Index (CPI) 2020⁸⁴. This has implication for investment and Foreign Direct Investment flows into the country. The root causes of corruption in Nigeria have been identified to include social insecurity and over-centralization of resources at the center⁸⁵. This corruption finds its way in administration and protection of industrial designs.
- iii. **Low Education**-the general population has limited knowledge if industrial design law and its benefit. Even the lawyers require regular upgrade in training to be abreast of international best practices in this area of the law.
- iv. **Dearth of Judicial Precedents**-There is also a dearth of Industrial Property cases in the country with reliance made largely on foreign decisions that are at best, persuasive in court. This problem is also exacerbated by the apathy of rights owners in approaching courts to enforce their rights and the low numbers of judges skilled in Intellectual Property laws in the Nigerian judiciary.
- v. **Backward legislations**- the laws governing industrial property are lagging behind the times and are in dire need of attention by the National Assembly.
- vi. **Piracy**- Blatant piracy of registered designs both of Nigeria creators and of foreigners is rife in Nigeria. There is a lot of unethical behavior⁸⁶. In the landmark case of *Cartier International Ag v British Sky Broadcasting Ltd*⁸⁷ Richemont the luxury conglomerate that owns Cartier, Chloé and Montblanc asked Britain's High Court for an order five of Britain's largest internet service

⁸¹ Regular Civil Suit No. 2486 of 2007

⁸² [CS (COMM) No 772/2016,

⁸³Mba C. April 16, 2021. Nigeria's Power Sector Generated 189 Watts of Electricity for Each Household In March 2021. <<https://www.dataphyte.com/economy/energy-economy/nigerias-power-sector-generated-189-watts-of-electricity-for-each-household-in-march-2021/>> Accessed 18/8/21

⁸⁴Uche J. Nigeria, Now 2nd Most Corrupt Country In West Africa- Transparency International. <<https://nairametrics.com/2021/01/28/nigeria-now-2nd-most-corrupt-country-in-west-africa-transparency-international/>> Accessed 19/8/21

⁸⁵ L. N. Chete, et al., Industrial Development and Growth in Nigeria: Lessons and Challenges. https://www.brookings.edu/wp-content/uploads/2016/07/L2C_WP8_Chete-et-al-1.pdf

⁸⁶ Caz Ozcan A.(2002) Ethics In Industrial Product Design (Good, Goods and Gods) –a paper presented at the international design conference, Dvibrovnik.<https://www.designsociety.org/download-publication/29656/ethics_in_industrial-product-design-good-goods-and-gods>Accessed 18/8/21

⁸⁷ [2014] EWHC 3354 (Ch); [2015] R.P.C. 7

- providers to utilize existing piracy laws to take down a total of seven websites that sell products that infringe upon Richemont trademarks. The court held that the ISPs must prevent access to five sites because they infringe the companies' trademarks by selling fake goods.
- vii. **Laggard litigious attitude-** The Nigerian right owners and other stakeholders do not regularly approach the courts for enforcement and this affects the development of the law. *Samsung v Apple*, the first US Supreme Court case in more than a century involving design patents. Apple iPhone's had distinctive front face and colorful graphical touchscreen user interface, which Apple protected with US design patents. Samsung allegedly copied the iPhone's features to revive Samsung's sales.' Samsung was ordered to pay \$548 million in damages to Apple. Samsung filed a request for the Supreme Court to review the decision of the District Court. An *amicus* brief was also filed in the case on behalf of 113 industrial design professionals and educators including fashion designers, design museum directors and design research professionals who 'share a strong professional interest in seeing that design patent law continues to protect investments in product design.'⁸⁸ On Dec, 6, 2016, the Supreme Court reversed the Federal Circuit. Samsung calls the ruling a victory 'for all those who promote creativity, innovation and fair competition in the marketplace.'
 - viii. **National insecurity** –Insecurity and violence from armed militia, secessionist groups and non-state actors like *Boko Haram* is severely affecting development of industrial design. Even though insecurity of lives and properties had become noticeable following the civil war and the subsequent military regimes which directly intensified urban violence, the recent upsurge of violence and insurgency in the country heightens the need to comprehensively address the persistent causes of social tension as a risk factor to Nigeria as an investment destination⁸⁹.
 - ix. **Overlap in regulation**-In Nigeria the institutions involved in product development and marketing of industrial products are mainly regulatory agencies and professional associations. These include the National Agency for Food and Drug Administration and Control (NAFDAC)⁹⁰, the Standards Organization of Nigeria (SON)⁹¹, Nigerian Investment Promotion Commission; Nigerian Export Promotion Council (NEPC); National Environmental Standards and Regulatory Agency; State Federal Environmental Protection Agencies; The Consumer Association of Nigeria and National Office for Technology Acquisition and Promotion (NOTAP) Other agencies are BOI, SMEDAN, the Nigeria Export Processing Zone Authority (NEPZA), NEPC, and the Nigerian Investment Promotion Commission (NIPC), the Raw Materials Research and Development Council and the Nigerian Customs Service. Private sector groups such as manufacturers association of Nigeria, the National Association of Chambers of Commerce, Industry, Mines and Agriculture, and the National Association of Small-scale Industrialists also make representations in committees set up to make, implement, monitor, and evaluate policies. Despite the above more needs to be done.
 - x. **Poor Research and development** – There is an unfortunate isolation of the manufacturing sector from Research & Development activities leading to non-commercialization of ideas, insufficient funding for the Science & Technology sector and non- registration of novel designs.
 - xi. **Inefficient newness and morality examination system** -Nigeria practices what is referred to as the 'deposit system' of patenting rather than the 'examination system' as obtainable in more industrialized countries⁹². The Act does not empower the Registrars of Patents and Designs to ensure conformity with requirements of newness and public order/ morality before effecting a registration. Again, the current system has little safeguards against multiple registrations.
 - xii. **Non domestication of international treaties**- international treaties on intellectual property. Nigeria is not part of the Hague Agreement Concerning the International Deposit of Industrial Designs at all that enables registration of designs simultaneous in over 70 countries. An alternative would have been multiple registrations via the Regional Route with a single application at the regional IP office concerned. Regional IP offices include the African Regional Industrial Property Office (ARIPO) for industrial design protection in English-speaking African countries; the Benelux Designs Office (BDO) for protection in Belgium, the Netherlands and Luxembourg; the Office for Harmonization in the Internal Market (OHIM) for Community designs in the 15

⁸⁸ [idsa.org. US Supreme Court Weighs in on *Samsung v Apple*. <https://www.idsa.org/news/idsa-news/idsa-weighs-landmark-us-supreme-court-design-patent-case> Accessed 15/8/21](https://www.idsa.org/news/idsa-news/idsa-weighs-landmark-us-supreme-court-design-patent-case)

⁸⁹ L. N. Chete, et al., Industrial Development and Growth in Nigeria: Lessons and Challenges. <https://www.brookings.edu/wp-content/uploads/2016/07/L2C_WP8_Chete-Et-Al-1.pdf> Accessed 16/8/21

⁹⁰ Charged with the regulation of quality of pharmaceutical and chemical products.

⁹¹ For standardization and regulation of the quality of all industrial products.

⁹² Odom A. *et al.* Protection Of Patents and Industrial designs In Nigeria: An Overview Challenges to the Patents and Designs Regime in Nigeria. file:///C:/Users/user/AppData/Local/Temp/admin,+Document_0006.pdf

countries of the European Union; the *Organisation Africaine de la Propriété Intellectuelle* (OAPI) for protection in French-speaking African countries⁹³. Nigeria is not a member of any. Creators must therefore take the National Route applying separately to the national IP offices of each country in which they intend to obtain protection. This process can be rather involves translation into the national languages and payment of administrative /legal fees.

8. Conclusion and Recommendations

Industrial design protection in Nigeria is fraught with many pitfalls. However, the law as it stands presents some solutions to the challenges of enforcement. The law requires development of indigenous case law and legal principles tailored specifically for the Nigerian market. While the system is worked as is, strategic improvements in the letters of the law and the administration of registered designs is imperative to give creations a semblance of importance in the polity and Nigeria, a chance at becoming an industrial powerhouse in the near future.

To revive the entrepreneurial spirit of Nigerians and ensure protection of their registration of industrial designs, it is necessary to pursue

- i. Deployment of critical infrastructure like power, transportation, telecommunications and road network to assist creators.
- ii. Wealth creation through skills development and the facilitation of access to credit for small- and medium-sized businesses and the self-employed
- iii. National Security comprising of physical, fiscal and food security is vital for population stability and attraction of investors.
- iv. Human capital development is needed by education of not only intellectual property professionals, but the general public on the advantages and rudimentary principles of revisiting industrial designs. This education would improve the capacity of the Nigerian judicial officers to make sound decisions for the development of the legal system.
- v. Private-public partnership is needed to encourage ingenuity of designers and promote business. This includes the development of industrial parks, industrial clusters and enterprise zones and incubator facilities created based on geographical zones⁹⁴ to focus on the development of resources in which each zone has comparative and competitive advantage. The partnerships can take advantage of results from research and development and encourage creators it investment.
- vi. Provision of incentives such as tax holiday, easier approval for all permits, operating licenses, and incorporation papers; seamless repatriation of profits for foreign investors etc.
- vii. Curbing of Corruption in both public and private sectors. This will drastically reduce incidences of piracy of the work of others.
- viii. Improvement of the law in respect regulating industrial design in Nigeria as the law is now outdated and needs to be reviewed to reflect emerging or current intellectual property issues in Nigeria and beyond.
- ix. Upgrading of The Trademarks, Patents and Designs Registry – established in 1967 pursuant to the Trade Marks Act and the Patents and Designs Act, under the Federal Ministry of Commerce to regulate the filing of trademarks, industrial designs as well as grant of patents in Nigeria⁹⁵. Registration of industrial Design is affected by archaic and not administrative methods of the Registry which has been riddled with several problems such as (i) lack of adequate funding; (ii) inadequate space for its operations; (iii) lack of well trained personnel; (iv) lack of an electronic database and record keeping of the Trademark, Patents and Design Register resulting in a disorganized filing system whereby IP files get mislaid or lost (v) long registration and opposition process (vi) inadequate number of rulings issued by the Registry, etc.
- x. Domesticating the treaties of the World Intellectual Property Organization to ease application of Trademarks and Industrial Designs in different countries. For example, the Trade-Related Aspects

⁹³Looking Good. An Introduction to Industrial Deigns for Small and Medium –Sized Enterprises in Nigeria. <https://www.wipo.int/export/sites/www/sme/en/documents/guides/customization/looking_good_nig.pdf> Accessed 20th August, 2021.

⁹⁴ North East: agriculture and solid minerals e.g. gypsum, biomass, ethanol, biodiesel, tropical fruits, etc. ;North West: gum Arabic, livestock and meat processing, tanneries, bio fuel etc. ;North central; fruit processing, cotton, quarries, furniture and minerals; plastic processing, leather goods, garments etc. ;South East: palm oil refining and palm tree processing into biomass particle boards, plastic processing, leather goods and garments ;South West: manufacturing (especially garments, methanol, etc.), distributive trade, general goods, plastic etc., and; South -South: petrochemicals, manufacturing(plastic, fertilizer, and fabrications, etc.), oil services and distribution.

⁹⁵ The National Office for Technology Acquisition and Promotion (‘NOTAP’) – was also established under the NOTAP Act (Cap. N62, LFN 2004) to register technical service agreements, technology transfers and know-how agreements between Nigerian and non-Nigerian parties

of Intellectual Property Rights (TRIPS) Agreement and acceding to the Hague Agreement Concerning the International Deposit of Industrial Designs. The Paris Convention for the Protection of Industrial Property has not yet been fully implemented in Nigeria, which has triggered recent calls for action by stakeholders⁹⁶. There are also certain international IP regimes in the form of treaties that have been ratified by Nigeria, such as the Paris Convention for the Protection of Industrial Property (ratified in September 1963); the Berne Convention (1986); the Rome Convention (Performers, Producers of Phonograms and Broadcasting Organizations – ratified in October 1993); the Patent Law Treaty (ratified in April 2005) and the Patent Cooperation Treaty (ratified in May 2005)⁹⁷. However, not all existing and important IP related treaties have been ratified in accordance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999.⁹⁸

- xi. Advocacy for reform of the legal framework for protecting intellectual property rights in Nigeria is growing among stakeholders and attracting more attention from the government⁹⁹. Corporation is however needed among professional bodies, regulators, and design right owners to facilitate the advancement of property. The groups include the Intellectual Property Lawyers Association of Nigeria (IPLAN); The Nigerian local chapter of the International Association for the Protection of Intellectual Property (AIPPI); Anti-Counterfeiting Collaboration (ACC) of Nigeria; The Performing Musicians Association of Nigeria (PMAN); Copyrights' Collecting Societies and the Federation of Intellectual Property Owners (FIPO). They have the potential to push for reforms from the National Assembly.
- xii. Alternative dispute resolution mechanisms ought to be incorporated in the Act and other intellectual property contracts for speedy settlements. In *BlackBerry v Typo Products*¹⁰⁰, Plaintiff complained that defendant had been selling a fitted keyboard for the iPhone, infringing on their famous QWERTY keyboard. The Judge granted a preliminary injunction in favor of BlackBerry's registered design over the keyboard. In response, Typo released a second version of its keyboard called 'Typo 2' which is claimed to not fall under the ambit of the preliminary injunction. In 2015, the parties entered into a settlement requiring Typo Products to permanently discontinue selling the products anywhere in the world for smart phones and mobile phones that have smaller than 7.9 inch.
- xiii. A Ministerial Declaration on Convention Countries- The Paris Convention for the Protection of Industrial Property (1883) permits a right owner that has filed an application in one of the contracting states, to take advantage of the filing date for the application where it applies for protection of the same rights in any of the other contracting states; provided that the application is made in those other contracting states within a certain period of time of the initial filing in the first contracting state. The subsequent application will be regarded as if it had been filed on the same day as the first application. In other words, it will have priority over applications filed by others during the said period of time. The Patents and Designs Act as well as the Trade Marks Act requires the relevant Minister (in this case the Minister of Trade & Investment) to declare by order in the Federal Gazette, that any country specified in the order is a convention country for purposes of filing convention applications and claiming priority rights. Nigeria is yet to make this declaration in respect of Trade Marks in Nigeria. Nigeria also is not a member of some prominent multilateral organizations that provide for regional and international registration of IPRs, such as the Harare-based African Regional Intellectual Property Organisation ('ARIPO'); the Yaoundé-based *Organisation Africaine de la Propriété Intellectuelle* ('OAPI'); and the Geneva-based International Patent Cooperation Union ('IPCU') formed based on the 1970 Washington Treaty – the Patent Cooperation Treaty (PCT). Neither has it ratified in accordance with Section 12 of the 1999 Constitution, recent intellectual property treaties and conventions to which it is signatory.
- xiv. Efficient law enforcement mechanisms- to enable the Nigerian Police Force and the Nigeria Customs Service carry out their policing and prosecution functions. Experience shows that insufficient finance, inadequate or obsolete equipment and lack of up-to-date skills in the use of modern technologies among the rank and file of officers; prevent the various efforts from achieving desired results.

⁹⁶ Priority claims and IP rights in Nigeria: urgent call for action. 30 July 2021. <<https://www.worldtrademarkreview.com/analysis/legal-update>> Accessed 18/8/21

⁹⁷ Olubanwo F. and Oguntuase O. (11 March 2019) Nigeria: Strengthening Intellectual Property Rights And Protection In Nigeria. <<https://www.mondaq.com/nigeria/trademark/788714/strengthening-intellectual-property-rights-and-protection-in-nigeria>> Accessed 20/8/21s

⁹⁸ Section 12(1)

⁹⁹ Olubanwo F. and Oguntuase *ibid.*

¹⁰⁰ CASE NO. 14-cv-00023-WHO

- xv. Developing a National Policy on Intellectual Property to outline the industrial property targets of Nigeria and paths that practitioners will follow to attain development in this area. Integration of the developed National Policy on Intellectual Property into national consciousness through vigorous public awareness campaigns to be championed by the National Orientation Agency and school curricula in formal education is required.
- xvi. Automation and linking of the Registry with the platforms of all regulatory bodies for trade, business and investments in Nigeria such as the Corporate Affairs Commission, Copyright Commission, Patents and Designs Registry, Trade Mark Registry, Standards Organization of Nigeria, Central Bank of Nigeria, Federal Inland Revenue Service etc. to create a database. All areas where their functions overlap should be scrutinized and amended.
- xvii. Financial autonomy for law enforcement agencies and the judiciary with adequate staff training in latest technology for both. Reforms of old IP laws and enactment of new ones in line with modern bilateral and multilateral treaties such as the TRIPS Agreement.
- xviii. Amendment of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) to create constitutionally recognized, specialized IP courts to handle IP-related matters. Competent legal practitioners skilled and experienced in IP law should be appointed both from the bar, the bench and the academia to sit at the specialized IP courts.
- xix. Practice of ethical industrial processes and revival of the African culture of respect for the proprietary rights of others. The traditional socialites in pre-colonial Nigeria had structures for informal protection of creative rights and those values must be rekindled to complement the present Nigerian legal system.
- xx. Active personal pursuit of rights enforcement in court by registered design rights holders. The first law of nature, they say is self-preservation. The right holder himself must be proactive in protecting his intellectual property and maintain a litigious stance in the Nigerian courts against infringers at all times.
- xxi. Artisanal development of Nigerian youths by giving a primacy of place to the work of artisans, technician and craftsmen. Celebration of excellent industrial designs will reward creative activity and channel the talents and strengths of young Nigerians to productive and positive pursuits.