

Protecting the Rights of Proprietors or of Industrial Designs in Nigeria: An Appraisal

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Abstract

This article examined the rights and protection of owners or proprietors of designs under Nigerian and international law. It explored available legal provisions for the protection of such rights and the remedies available to statutory creators, true owners or licensees in cases where such rights are infringed. The article explained and distinguished industrial designs from other intellectual property rights or works of artistic nature and the implication that comes with such contrast or variation. The article discussed the concept of ownership with emphasis on industrial design and the procedures of registration, duration and the nature of the rights and protections conferred on the owner or proprietor of an industrial design. Motivated to probe the ineffective utilization, enjoyment and protection of industrial designs in Nigeria, the article employed the doctrinal methodology of research otherwise called armchair research in undertaking the study. It found that lack of awareness of the economic and technological benefits derived from designs as well as the conjoined nature of the Patents and Designs Act Cap. P2 Laws of the Federation of Nigeria 2004 created problems for effective enjoyment of the rights and protections provided by law. It recommended amendments to the Nigeria legislation to cover other categories of users and creators of designs such as persons with disabilities under the Discrimination against Persons with Disabilities (Prohibition) Act, 2018 on how best the rights of owners and proprietors of designs may be protected.

Key words: Rights, patents, industrial designs, protection, owners

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Introduction

A registered design gives protection to the shape of products such as lines, colours or any two or three-dimensional forms. The protection and rights provided for industrial designs as intellectual property rights under Nigerian and international law underscore its importance to artists, textile manufacturers, lace designers and other types of designs on products like ceramic and marble- tiles, earthenware products, carpets, rugs, leather products and plastic products¹. Industrial designs as a form of property derived from the creative imaginations or innovative actions of their makers are applied to a wide variety of products of industry and handmade items such as packages, containers, household goods, jewelry, electronic devices and textiles. Industrial designs may also be relevant to graphic symbols, graphical user interfaces (GUI), and logos.

The aim or objective of the protection provided under the law for industrial designs is to secure the rights that the law generally recognizes and attaches to the concept of ownership or proprietorship. The right of proprietorship, ownership and use of industrial designs is grounded on the need to prevent others who have no legal authorization or basis from reproducing them for commercial or industrial use or to make use of such designs before the expiration of the period for which such rights are protected.

The owner of a registered design who may either be the statutory owner or registered owner can in exercising his ownership rights prevent others from reproducing, importing, illicitly profiting, selling or utilizing it for commercial purposes. Although the importance of industrial design may not be well appreciated by everyone, hence appreciation of their importance comes in different perspectives.

To a common man, a design is colour or pattern or outer covering of a product or how a product looks. From this perspective, a design is not different from the use to which it is put, hence we often hear people say that the car is designed to carry only four passengers, but because the taxi driver wants to make more money,

¹ FO Babafemi, *Intellectual Property: The Law and Practice of Copyright, Trademarks, Patents and Industrial Designs in Nigeria*. (Justinian Books Ltd, 2007) 412. 24

he has overloaded it with six passengers. From a company's perspective, a design is often considered a strong advertising and marketing strategy, while from the consumer's perspective; it helps the consumer to distinguish and makes his choices and preferences from a selection of different or similar products especially in these days of deceptive advertising².

Contextual Clarifications

Ownership and Proprietorship of Industrial Designs

'Ownership' and 'proprietorship' are twin concepts that attract a lot of attention and have encouraged further and continuing debate. As closely related concepts, both terms are used interchangeably in this article. This is partly because both are broad concepts that assume several other dimensions and also because they embrace other concepts such as responsibility, accountability and capacity to make decisions on things or matters that a person has control over or those to which others acknowledge such control.³ Jowitt's Dictionary of English Law considers 'ownership' as the most extensive right allowed by law to a person for dealing with a thing to the exclusion of all other persons except one or more specified persons⁴. It is essentially indefinite in its nature but in its most absolute form, it involves the right to possess and use or enjoy the thing, the right to its produce and accessions and the right to destroy, encumber or alienate it.

The Black's Law Dictionary defines 'ownership,' as the bundle of rights allowing one to use, manage and enjoy property including the right to convey it to others⁵. It also implies the right to possess a thing regardless of any actual or constructive control. The Nigerian Judicial lexicon⁶ defines ownership as the totality of and the bundle of rights of the owner over and above every other person on a

² EF Okpanachi, "The Law and Practice of Protection of Industrial Designs in Nigeria". (2016) (3) (3) *The Gwagwalada Law Journal*:105 - 113

³ IA Umezulike, *ABC of Contemporary Land Law in Nigeria* (Revised edn, Snaap Press, Enugu: 2014) 5

⁴ J Burke, *Jowitt's Dictionary of English Law*. 2nd edn. (Sweet and Maxwell) 1301

⁵ *Black's Law Dictionary*. (2009 . 9th edn) P1215

⁶ RN Ukeje, *The Nigerian Judicial Lexicon* (Ecowatch Publications Nigeria, Ltd, Lagos, 2006) p354-365

thing. The property begins with and also ends with him unless he transfers his ownership of the property to a third party.⁷

Several scholars have also made their own attempts at defining the concept, but the implication of other associated or related terms and their connotations are ever expanding. Umezulike, for instance, in aligning with John Austin's position defined ownership as a right over a determinate thing, indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration⁸. It is worthy to point out that, the definition of ownership along these lines is too restrictive as it is strictly considered under English Law and also relates to disposition of only one form of property, that is land⁹. Samba, on his part posits us that 'ownership' denotes the relation between the person and an object forming the subject matter of his ownership. He added that ownership consist, in the complex of rights all of which are in rem, being good against the entire world and not merely against specific persons.¹⁰

Having explored the various definitions and perspectives of what ownership is, it is the considered conclusion and position of this article that ownership is the exclusive right and control which a person has over property. The exercise of such control or rights may be over something that is tangible such as land or real estate, or over intangibles such as industrial designs which is an intellectual form of property¹¹. The process and mechanics of ownership is also a fairly complex one as one can gain, transfer, and also lose ownership of property. It is also submitted that the concept of ownership also attaches itself to industrial designs as a form of property rights subject to some specific modifications as provided by the Patent and Designs Act. It can also safely be agreed that when applied to industrial designs, the rights granted to creators for the period of five years or within the additional renewal period, subject to the extent of the exceptions applicable under the Patents and Designs Act have all the attributes of ownership, that is: control, management, use and

⁷ Fagunwa v. Adibi 2004 17 NWLR Pt.903 544 at 565, or 39 WRN1, SC

⁸ Austin, *Jurisprudence* 7th (ed 264) cited by Umezulike, (n, 5)14

⁹ MC Okani, *Nigerian Law of Property*. (Fourth Dimension Publishing. 2000) 19-47

¹⁰ JN Samba. *Fundamental Concepts of Jurisprudence*, (Bookmakers Publishing, Makurdi .2007)136-144

¹¹ Okani, (n, 11)

exclusion of others and the application of available remedies for infringements are packages that are exercisable by statutory owners, or licensees of industrial designs.

Industrial Design

Sometimes generally called designs but specifically and within the context of this article, wherever the word design is used, it should be understood that reference is made to industrial designs. However, there is no unanimity in the definition of what an industrial design is. The lack of unanimity is due partly to the type of items or things that different jurisdictions consider as industrial designs¹². Secondly, the nature of the rights and protection provided in different countries create differences even within the international legal framework on industrial designs.

The Patents and Designs Act¹³ does not offer much to assist as it does not categorically define what Designs are rather it describes the nature of industrial designs. The relevant section of the Act states:

any combination of lines or colours or 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.¹⁴

It is humbly argued in this article that the provision of section 12 of the Act is not far reaching enough. The basis of this contention is that the section as one which provides a general character of what an industrial design is, has by the use or combination of the words and phrases: *'any combination of lines or colours or any three dimensional form whether or not associated with colour,'* cut off persons with vision disabilities. Since persons who are vision impaired cannot appreciate aesthetics, dimensions and colour they are automatically excluded or prevented from

¹² O Afori, Reconceptualizing Property in Designs [2007-2008] (25) (3) *Cardozo Arts & Entertainment*; 1105-1122.

¹³ (Cap. P2) Laws of the Federation of Nigeria, 2004

¹⁴ Section 12

benefiting or contributing to creative innovations of these nature. It is further argued that the creative abilities of persons with disabilities in intellectual property innovations should not be overlooked as they too are important constituents of society. Furthermore, section 32 of the same Act adds to the limited definition by stating that a design means an industrial design. This lack of elaborate definition limits the scope of the Patent and Designs Act to designs that are used or applied in industrial or production processes only rather than to individual handicrafts which are protected under artistic works covered by copyright law. It is to be noted, however, that where at the time of their creation, such works are intended to be models or patterns to be multiplied through an industrial process of any kind, then such works are not to be considered for protection under copyright but under industrial designs.¹⁵

The difference in defining an industrial design is also reflected in the different forms of protection in each jurisdiction. While the United States (US) Design Patent is based on Utility Patent Law, the European Union (EU) and Nigeria have introduced a freestanding sui generis form of protection, the Community Design and Patents and Design protection respectively. The difficulty in defining Industrial Design came to light in the Nigerian case of *SERG Aims Aluminum Products Ltd. v. Stanley Akagba & Ors*¹⁶ wherein the Defendant contended that ranges and dimensions were not protected under the Patents and Designs Act and that they were free materials to which the Plaintiff could not lay claim as the creator. Egbo-Egbo, J. (as he then was) held in that case as follows:

Unfortunately, I do not subscribe to such general view. It is obvious, ranges and dimensions make up what we call designs. If these designs have been registered in Exhibits B-B1, it is legally wrong for the Defendant to copy them. It is the

¹⁵ Section 1(3) of the Copyright Act Cap.C28 Laws of the Federation of Nigeria yields grounds for industrial designs and makes such works non eligible for copyright protection if the work is intended by the author to be used as a model or pattern to be multiplied by an industrial process. The distinction was clearly demonstrated in the decision in the case of *F.O. Ajibowu & Co. Ltd. V. Western Textile Mills Ltd.* (1976) 7SC 97.

¹⁶ (1994) FHCLR 188

invention of the author, in this case the Plaintiff, which the law seeks to protect when such inventions are registered. To copy them into its almanac and advertise it is a violation of the Plaintiff's rights.

Industrial Designs may, however, be considered as things that make for the ornamental aspect of a useful article. This ornamental aspect may be constituted by elements which are three-dimensional, that is, the shape of the article, or two-dimensional lines, designs or colors, but must not be solely dictated by the function for which the article is intended¹⁷. Put in another way, an industrial design is where function meets form. Thus, the form or package in which a product comes out, which may include clothing, jewelry, footwear, basic household furniture and appliances like tables, and telephones. Industrial design is, therefore, to be identified as one of the key factors that attracts a person to a product, or leads him to make preferences for one product over others.

From the above explanation, an industrial design focuses on aesthetic value and nature of a finished product; it does not protect the technical or functional features of the product and it is distinct from any technical or functional aspects which in any case already enjoys legal protection under Patents¹⁸. Although, relevant questions may be raised to argue that a design that fails to carry with it its functionality fails in its aim or objective for its creation in the first place. More-so, from the stand point of ordinary people most of whom are non scientific or technologically-savvy consumers, it is very difficult to separate the functioning of a product from its design, except if the definition of a design vis a vis the product is to refer only to colours and not the specifications and the entire product. This difficulty can then be better illustrated by reference to our earlier analogy of passengers at motor parks or by observing the design of fabrics, clothes and footwear including applications such as mobile

¹⁷ CC Nwabachili. & CO Nwabachili, Challenges to effective Legal Protection of Industrial Designs in Nigeria' [2015](33) *Journal of Law Policy and Globalisation*.

¹⁸ AO Oyewunmi. *Nigerian Law of Intellectual Property* (University of Lagos), p205.

phones, computers and cars. Indeed, their functionality and operability are almost, if not closely, linked to their designs.

Despite the various differences in definition of an industrial design, this article takes the position that an industrial design constitutes the ornamental or aesthetic aspect of an article. The design may consist of three-dimensional features, such as the shape of an article or two-dimensional features such as patterns, lines or colours. In Nigeria, the Patents and Designs Act affords protection for these two types of designs, combination or lines or colours or both. It is also the position of this article that the usefulness of a design should also be considered alongside its overall usefulness especially when it comes to the situation of persons living with disabilities, such as the vision impaired.

Legal Framework for the Protection of Industrial Designs

The legal framework for registration and protection of industrial designs in Nigeria is the Patent and Designs Act¹⁹. In addition, the Treaties which the World Intellectual Property Organisation (WIPO) administers, together with other regional Conventions contain provisions which also make up the applicable international law on industrial designs²⁰.

Criteria or Conditions for Protection of Industrial Designs in Nigeria

To properly situate the rights of an owner of a design, it is to be understood that these rights do not become automatically operational, but only become functional upon fulfillment of

¹⁹ Cap. P.2 Laws of the Federation of Nigeria 2004

²⁰ The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) 1994 administered by the World Trade Organization (WTO) imposes minimum standards for the protection of intellectual property in general. Article. 25 of TRIPS sets forth the requirements for protection, whereas Art. 26 TRIPS defines the scope of protection. By the provisions of Art. 25 (1) of TRIPS member states are required to protect certain types of industrial designs: Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional consideration. Article 11 of the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967, and as amended on September 28, 1979

conditions for registration and when these rights are in operation, they also do not inure forever, but enjoy protection for specific durations as provided by law. To these ends, a registered design is protected for a period of 5 years from the date of the application for registration²¹. Protection may also be renewed for two further consecutive periods of 5 years. The Trademarks, Patents and Designs Registry, which is a Unit in the Commercial Law Department of the Federal Ministry of Industry, Trade and Investment has been saddled with the responsibility of registering industrial designs.

The Conditions for registration of designs are provided under section 13, while the right to registration is provided in section 14 to wit: *(1) subject to this section, an industrial design is registrable if – it is new; and it is not contrary to public order and morality.*

In order to register a design in Nigeria, there are a number of steps an applicant must first take: The applicant must consider whether or not the design is new. The procedure for registration of an industrial design is provided under sections, 15, 16, 17 and 18 of the Act, while the rights conferred by registration are provided for under section 19. The following are some of the key steps an applicant takes before getting registered.

- (a) Applicant must not publicize the design before seeking to register the design.
- (b) The applicant must provide a specimen of the design.
- (c) The applicant must also provide basic information including the name of the applicant, address, an indication of the kind of products associated with the design, and the title of the design.
- (d) The applicant will also be required to pay the application fee and other professional fees.
- (e) A Power of Attorney, if application is being made by an agent.
- (f) Certified copy of the priority document if claimed.
- (g) Acknowledgement
- (h) Once the application is filled with all the supporting documents then the Registrar will cause to issue an Acknowledgement Notice confirming the receipt of the application.
- (i) Examination and Acceptance

²¹ (1994) FHCS 188

- (j) Then an examination of the application to ensure the formal requirements are met and that the design does not contravene public order or morality. If the application meets the requirements then an Acceptance Notice will issue. Otherwise, a refusal notice will be issued.
- (k) Approval of registration

A design will be considered as having met the newness criteria if no identical design has been made available to the public before the date for application for registration²². The design must in the sense of newness be *original*. Designs are considered as 'original', if they have been independently created and are not a copy or an imitation of existing designs. If the design simply makes minor changes to an earlier design, it will not be considered as a new design and as such, it will be ineligible for design protection. It is also important to note the point that 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.

The design must not include protected official symbols or emblems such as the national flag, the coat of arms etc. It must be pointed out that the requirement that such design must be new does not mean it must actually be new in the true sense of the English word 'new'; which adjective connotes, things yet to be discovered or not existing before. Therefore, any form of improvement to an already existing design may qualify for protection. The test for 'newness' of a design is to be established, using the words of Niki Tobi (JCA as he then was) in the case of *Sunday Uzokwe v Densy Industries (Nig.) Ltd. & Anor*²³ wherein his Lordship stated as follows:

to establish that a design is new or not under section 13(1)(a) of the Nigerian Act, the old design that is alleged to exist and the new one must be put side by side to enable the court to

²² Section 15 Patent and Designs Act (Cap. P2) Laws of the Federation of Nigeria, 2004

²³ (2002) MJSC 37

determine whether there is a fundamental difference between the two designs.

However, section 13(3) of the Nigerian Act provides for further requirement for registration of a design thus:

an industrial design is not new if, before the date of application for registration, it has 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 the creator of the design could not have known that it had been made so available.

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 crucial.

Reference is also made in this article to the procedure for an international registration under the Hague Agreement Concerning the International Deposit of Industrial Designs which is a WIPO-administered treaty. Under this Treaty, the national laws of most member states of WIPO require the design to be novel. 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.

The second ambit of the criteria for registration is that *it is not contrary to public order and morality*. Okpanachi in referring to Babafemi, argues that public order or public morality must be understood to cover issues such as good government, administration of justice, public services, national economic policy and the proper interest of the state and society²⁴. He submitted that industrial designs will not be registered where they are found to run contrary to

²⁴ Okpanachi, (n, 2)

the attainment of the above objectives. It is the view in this article also that since the Act does not provide any definition or explanation of what is public 'order or morality', discretion is, therefore, left to the court to define what public order or morality means in each case involving an industrial design. It is only expected and hoped that the court will exercise such discretion of interpretation in appropriate cases with equity, judicially and judiciously.

It is equally important to point out that under section 22 of the Act, a public officer in the exercise of his functions may where he finds it appropriate, make an application to the court to declare the registration of an industrial design as null and void especially where such a design fails the test of newness, public order and morality or that the holder had no right to the design²⁵.

Who May Apply for Registration?

Section 14 provides for persons who may apply for registration.

Section 14 (1)

Subject to this Section, 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.

Section 14 (2)

The true creator shall be entitled to be named as such in the Register and the entitlement in question shall not be modifiable by contract.

Section 14 (3).

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 any

²⁵ Okin Plastics Industries v Metropolitan Industries (Nig) Ltd (1986) FHLR 336

consequent registration shall be deemed to be transferred to that other person.

Section 14 (4).

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 proceedings.

Once the design application has been accepted, the design is then registered and a registration certificate will be issued and a duplicate of the design certificate will be included in the Register of Industrial Designs. Since the scope of this article is to discuss the rights of an owner of a design, the next step in this discussion is to proceed to examine what these rights entail.

Rights that Accrue to the Owner of a Registered Industrial Design

The owner of a registered industrial design has the following exclusive rights under section 19 (1) of the Patents and Designs Act.

- (a) To reproduce the design in the manufacture of products
- (b) Importing, selling, or utilizing for commercial purposes, a product reproducing the design
- (c) Holding such products for the purpose of selling it or utilizing it for commercial purposes

The rights covered under section 19 in combination with the provisions of section 24 entitle the owner to exploit by making or

importing 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. Secondly, the scope of the rights and protection provided for an industrial design means that the design may not be lawfully copied or imitated by another person without the consent of the registered owner. Copies or imitations cannot also be made, lawfully sold, hired or imported, without such authorization. By virtue of section 23 (1) (a) and 24 (2) of the Act, the rights of an owner with respect to a registered industrial design are personal property and are also capable of assignment, in writing, and transmission by operation of law.

Right to Institute Legal Proceedings.

The owner of the registered industrial design has the right to institute legal proceedings against any person who has infringed any of the rights conferred by the registration of the industrial design²⁶. However, a determination whether or not an owner or licensee's right to a design has been infringed depends on the nature of infringement and the peculiarity of the design as contained in the statement of novelty.²⁷

Where, however, a License has been granted in respect of the design, the Licensee may give the power by registered letter to the Licensor to sue for the infringement., but where such licensor refuses or neglects, to sue and the infringements continue, the license's may commence the action in his own name. However, such proceedings must be instituted within five (5) years from the act of infringement. In the case of *Apple, Inc. v Samsung Electronics Co., Ltd*²⁸ Apple failed to get a preliminary injunction because the court doubted the validity of Apple's design patent due to possible lack of novelty. On

²⁶ Section 25

²⁷ *Chukwumereije & Sons W.A. Ltd v. Industries Ltd & Sons (1989) FHCLR 423,*

²⁸ *Apple, Inc. v Samsung Electronics Co.,* [2011] No. 11-cv-1846 (N.D. Cal. Dec. 2, 2011); The United States Court of Appeals for the Federal Circuit, however, recently declared that the District Court erred in its analysis of the validity issue. The court remanded for findings on the balance of hardships and the public interest; *Apple, Inc. v Samsung Electronics Co., Ltd.* F.3d, 2012 WL 1662048 (Fed. Cir.2, *Apple, Inc. v. Samsung Electronics Co., Ltd.,* [2011] 14c O 194/11 (District Court of Düsseldorf 2011).

the other hand, Apple was successful in her Community design law suit in Düsseldorf, Germany, where the company has been granted a preliminary injunction against Samsung's Galaxy barring all distribution of its allegedly infringing tablet in the entire European Union except for the Netherlands.

Remedies for infringements of industrial designs are provided under section 25 (2) of the Act. The remedies include damages, Anton Piller Orders, injunction, accounts and other ancillary reliefs or actions that may be available to similar or related intellectual property rights such as patents.

When is an Industrial Design said to be Infringed?

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, that is:

- (1) Applies the industrial design or any fraudulent or obvious imitation of it to any article in respect of which the industrial design is registered;
- (2) imports into Nigeria, for sale, or for use for the purposes of any trade or business, any article to which the industrial design or any fraudulent or obvious imitation of it has been applied outside Nigeria without the licence or consent of the owner;
- (3) or sells, offers or keeps for sale, or hires, or offers or keeps for hire, any of the articles described above.

Conclusion

This article had set out with the aim of appraising the rights and protection of proprietors and owners of industrial designs under the Patents and Designs Act Cap. P2 Laws of the Federation of Nigeria 2004. The article explained what industrial designs are by

explaining that industrial designs are not necessarily what ordinary people understand them to be, but they are primarily the aesthetic quality attached to products with the aim of enhancing its attraction and appearance to consumers and users. The article emphasized the primary objective of the law governing industrial design, both in Nigeria and under international law, to be that of protecting a design that is fresh, new or in some aspect better than what is already in existence before.

In summary, this article made reference to the number of steps an applicant must first take to be able to register a design in Nigeria. To do so, the article explained that the applicant must consider whether or not the design is new with reference to the procedure for registration provided under sections 15, 16, 17 and 18 of the Act, while the rights conferred by registration are provided for under section 19.

The article found that despite the importance of the legal framework regulating industrial designs and their protection from infringements in Nigeria, there is an increase in the level of infringement of industrial designs partly due to low level of awareness of what it is and partly due to lack of economic and financial opportunities to be explored by proprietors to put their designs into commercial and productive use, coupled with, the lack of understanding of the economic value which designs affords to their owners.

Secondly, the article agreed that there are also challenges of effective legal protection and enforcement of intellectual property rights and industrial designs in particular especially where it concerns persons with disabilities. The current legal framework is

also not clear on how reverse engineering, for example, could affect the enjoyment of the intellectual property rights.

The emphasis on three dimensional forms and two dimensional patterns or colours in the current legal framework on industrial designs does not provide any form of protection for persons with disabilities especially the visually impaired as nature denies them an appreciation of these dimensions This indeed is a form of discrimination which is against the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

It is submitted that the fact that some persons are born or live with disabilities should not be basis for excluding them from creating or appreciating the aesthetic quality of design in products which they also use daily or may even require for their health and sustenance needs.

It is, however, heartwarming that, the Nigerian Legislature has provided legislation to protect persons living with disabilities including the visually impaired by making provisions and penalizing non-inclusion of certain categories of designs in public buildings, airports, hospitals, schools and other public places under the Discrimination Against Persons with Disabilities Prohibition) Act, 2018²⁹.

It therefore, calls for further amendment of the Discrimination Against Persons with Disabilities (Prohibition) Act, 2018 itself to accommodate designs that may be invented by these categories of persons. It is also recommended that more public education and enlightenment campaigns be made to create public awareness on the economic, social and humanitarian importance and value to which designs bring to the individual, government and

²⁹ Part II Section 6

society generally. The amendment or overhaul of the current status of the Patent and Designs Act is also highly recommended. This may be done by either re-enacting a stand- alone legislation on designs that is separate from the present conjoined Statute known as Patent and Designs Act, or amending the existing legislation by increasing the duration for which a registered proprietor of a design may enjoy his rights under such registration if the rights so protected are to be economically meaningful to proprietors or owners of such designs.