

Design Protection in Nigeria and India: Salient Comparisons

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Abstract

Industrial design protection has an old historical evolution. It refers to the creative activity of achieving a formal or ornamental appearance for mass-produced items that satisfy the need for a product to visually appeal to potential consumers and the need for the item to perform its intended function efficiently. Many countries worldwide have adopted design laws to achieve the objectives of industrial design protection, especially as mandated by TRIPS and other international treaties. A comparison is made in this article of the design legislation of two countries: the Nigerian Patents and Designs Act and the Indian Designs Act. The legal regimes of Nigeria and India have similar British legal foundations and historical links. However, while India has made extensive reforms on its design legislation and policies, Nigeria is yet to do so. It has also not shown any seriousness in doing so in the future. This article highlights the Nigerian and Indian industrial design legal regimes and highlights some salient similarities and differences between both jurisdictions. It concludes that while the Nigerian and Indian design legislation are both of common law origin, they should exist to serve the purpose of design protection and the economic development of both countries. This is because both nations can model their respective legislation to achieve these objectives. The article finally recommends that Nigeria, like India, urgently reforms its archaic design legislation to conform with best practices.

Keywords: Industrial Design, Design, Legislation, Nigeria, India

1. Introduction

Industrial designs protection has an old history dating back to ancient African, Asian, and European civilizations.¹ Evidence of magnificent inventions with architectural and design skills existed in

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¹ Anthony D'Amato and Doris E Long, *International Intellectual Property Law* (Springer Netherlands 1997) 97.

these civilizations.² The local protection of designs by any country of the world largely depends on the type of legislation it adopts. The formulation of a legal system for the protection of industrial designs requires establishing a balance of interests.³ First, there is the need to provide efficient and effective protection so that the law may promote the design element in production. On the other hand, there is the need to ensure that the law does not unnecessarily extend protection beyond what is necessary to create the required incentive for design activity.⁴ Industrial design protection is also usually granted according to a procedure for the registration of such designs.

The foundations for industrial design protection were laid by specific international conventions. They include the 1883 Paris Convention,⁵ the Hague Agreement Concerning the International Registration of Industrial Designs and its protocols, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).⁶ These international conventions on industrial designs form the basis for their local and international protections. Nigeria and India are not excluded from this carousel of international regimes on industrial design protection. Both countries have adopted local design protection regions.⁷ Even though they are dissimilar in many respects, Both countries have huge populations, are diverse, and rich in human resources. Both countries are also endowed with artisans skillful in making many products, such as packages and containers to furnish and household goods from lighting equipment to jewelry and

² *ibid.*

³ WIPO, *WIPO Intellectual Property Handbook: Policy, Law and Use* (WIPO 2004) 116.

⁴ *ibid.*

⁵ Paris Convention for the Protection of Industrial Property (as last revised at the Stockholm Revision Conference, 20th March 1883) 828 U.N.T.S. 305. Art 5 of the Convention gave protection to international industrial property rights like patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications and the repression of unfair competition. It was the first major step taken to help creators ensure that their intellectual works were protected in other countries.

⁶ Art 25 States the Requirements for the Protection of industrial designs. Interestingly, art 25.1 states that: 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 considerations.

⁷ The Nigerian design protection law is the Patents and Designs Act Cap P.2 LFN 2004, while the Indian design protection law is the Designs Act, 2000, which came into force in 2001.

electronic devices to textiles.⁸ Also, graphic symbols, graphical user interfaces, and logos are articles that are subject to registration for Industrial designs protection in Nigeria and India. This article intends to bring to the fore salient comparisons between the Nigerian and Indian design regimes and policies from an understanding of the different jurisdictions and backgrounds. In essence, while Nigeria and India have similar legal systems and inherited laws from Britain, both countries have approached design protection from different perspectives, dynamics, and economic objectives. As is evident in the article, India has made significant reforms in its design law and design rules besides other national policies. Unfortunately, Nigeria is still stuck with its archaic design legislation.

2. The History and Concept of Design Protection

An industrial design refers only to the ornamental or aesthetic aspects of a product.⁹ It refers only to a finished product's aesthetic nature and is distinct from any technical or functional aspects.¹⁰ Industrial designs protection does not protect articles or products, but rather the design applied to or embodied in such articles or products.¹¹ The protection also emphasizes an abstract conception or idea as the subject matter of design protection.¹² It does not apply to articles or products to grant the proprietor of the design exclusive rights over the commercial exploitation of those articles or products.¹³ Instead, industrial design protection only extends to such articles or products embodying or reproducing the protected design. Thus, the protection does not prevent other manufacturers from producing or dealing in similar articles fulfilling the same utilitarian function, provided that such substitute articles do not embody or reproduce the protected design.¹⁴

⁸ India is to a large extent more industrially advanced than Nigeria despite its huge poor population. Nigeria is not quite industrials and has more poor people than India.

⁹ Ramakrishna B and Anil Kumar H.S, *Fundamentals of Intellectual Property Rights: For Students, Industrialist and Patent Lawyers* (Notion Press 2017) 10.

¹⁰ WIPO, *Looking Good: An Introduction to Industrial Designs for Small and Medium Sized Enterprises* (WIPO 2014).

¹¹ WIPO, 'Industrial Designs' (WIPO, 2021) <https://www.wipo.int/edocs/mdocs/sme/en/wipo_wasme_ipr_ge_03/wipo_wasme_ipr_ge_03_3-main1.pdf> accessed 8 April 2021.

¹² *ibid.*

¹³ *ibid.*

¹⁴ World Intellectual Property Organization, *WIPO Intellectual Property Handbook: Policy, Law and Use* (WIPO 2004) 114.

Design protection deals with protecting the shape or configuration of the whole or part of an article.¹⁵ It does not usually provide protection for surface decoration, nor does it protect features of an article that matches or fits another article. The visual appeal is one consideration that influences consumers' decision to prefer one product over another, particularly in areas where a range of products performing the same function is available in the market.¹⁶ If the technical performance of the various products offered by different manufacturers is relatively equal, aesthetic appeal and, of course, the cost will determine the consumer's choice.¹⁷ Thus, the legal protection of industrial designs serves the vital function of protecting one of the distinctive elements by which manufacturers achieve market success. By rewarding the creator for the effort produced by industrial design, legal protection incentivizes the investment of resources in fostering the design element of production.¹⁸

The law of designs has a long history dating back to the eighteenth century in Britain.¹⁹ The first design Act was passed in 1787, giving two-month protection to designs applied to linens, cotton, calicoes, and muslins.²⁰ The Copyright in Designs Act 1839 set up a registration system and extended design laws to designs applied to articles, either as surface design or shape designs.²¹ Several other Acts were passed over the next few years, and eventually, they were repealed and replaced by the Patents, Designs, and Trade Marks Act 1883.²² Other statutes were also enacted in

¹⁵ Dehns Patent and Trademark Attorneys, 'Protecting Designs' (*Dehns: Patent and Trademark Attorneys*, 2017) <https://www.dehns.com/cms/document/protecting_designs.pdf> accessed 8 April 2021.

¹⁶ *WIPO Intellectual Property Handbook* (n 5) 112.

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ David I Bainbridge, *Intellectual Property* (4th edn, Pearson Longman 2004) 547.

²⁰ *ibid.* In the United Kingdom, the first law giving protection to industrial designs was the Designing and Printing of Linens, Cotton, Calicoes and Muslins Act of 1787, which gave protection for a period of two months to "every person who shall invent, design and print, or cause to be invented, designed and printed, and become the Proprietor of any new and original pattern or patterns for printing Linens, Cottons, Calicoes or Muslins." See N Wigneswaran, 'Registrable Industrial Designs and Overlapping Intellectual Property Rights under the Sri Lankan' (*LawNet*) <<https://www.lawnet.gov.lk/registrable-industrial-designs-and-overlapping-intellectual-property-rights-under-the-sri-lankan/>> accessed 16 April 2021.

²¹ Nwabachili C Chudi, *Intellectual Property and Law in Nigeria* (Malthouse Press 2016) 168.

²² Bainbridge (n 1) 547.

1919, 1932, and 1949 when the Registered Designs Act 1949 was enacted.²³ This statute has further evolved to the current British Registered Designs Act 1949,²⁴ which is the current law for the registration of designs and the protection of registered designs in the United Kingdom. By fate, the Nigerian and British design regimes are modeled after the British legal regime. This is owing to the similar history of British colonization of both countries. Their current design legislation appeal to their respective economic and technological objectives.

3. Design Protection in Nigeria

Designs are protected in Nigeria under the Patents and Designs Act of 2004.²⁵ The legislation is not any different from the Patents Proclamation Ordinance No. 27 of 1900,²⁶ the Patents Proclamation Ordinance No. 12 of 1902, the Registration of United Kingdom Patents Ordinance of 1925,²⁷ and the Patents and Designs Decree.²⁸ The registration of industrial designs in Nigeria also sets out conditions under which an industrial design will be deemed actionable in Nigerian courts. Therefore, registration of a design is a condition precedent to legal recognition. The Patents and Designs Act has 20 explicit provisions on design protection and other related schedules, which space and the length of this article pose difficulty to a verbatim quotation. However, a brief summary will be made of each provision. Section 12 of the Patents and Designs Act states the nature of a design as:

Any combination of lines or colours or both, and any three-dimensional form, whether or not associated with colours, is an industrial design, if it is intended by the

²³ JC Lahore, 'Art and Function in the Law of Copyright and Designs' (1971) 4 Adelaide Law Review 182.

²⁴ The unofficial consolidated version of the Act incorporates the changes since the Regulatory Reform (Registered Designs) Order 2006 came into force on 1 October 2006. The most recent amendments which came into force on 1 January 2021. See UK Government, 'Registered Designs Act and Rules' (*Gov.UK*, 2021) <<https://www.gov.uk/government/publications/registered-designs-act-and-rules>> accessed 16 April 2021.

²⁵ Cap p2 of Laws of the Federation of Nigeria 2004. Not any different in content from the Patents and Designs Act of 1970. Cap 344 of Laws of the Federation of Nigeria, 1990.

²⁶ The Laws of Nigeria: Containing the Ordinances of Nigeria and Subsidiary Legislation, made there under.

²⁷ Cap 182 Laws of the Federation of Nigeria and Lagos 1958..

²⁸ Decree No. 60 1970.

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.

Section 13(1) of the Act provides the conditions for the registrability of a design.²⁹ It states:

(2) Where application is made for the registration of an industrial design, the design shall be presumed to be new at the time of the application except in so far as the following provisions of this section provide otherwise.

(3) 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. (4) An industrial design shall not be deemed to have been made available to the public solely by reason of the fact that within the period of six months preceding the filing of the application for registration, the creator has exhibited it in an official or officially recognized exhibition. (5) An industrial design is not new merely because it differs in minor or inessential ways from an earlier design or concerns a type of product other than the type with which an earlier design is concerned.

Section 14 provides for the right to registration,³⁰ and section 15 provides for the Applications for registration of industrial designs at the Trademarks and Patent office.³¹ Other sections are section 16,³²

²⁹ It states that "an industrial design is registrable if: (a) it is new, and (b) it is not contrary to public order or morality".

³⁰ s 14(1) states that "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."s14 further provides for the entitlement of the true creator of the industrial design and an industrial design is created in the course of employment or in the execution of a contract for the performance of specified work, among other provisins.

³¹ The Trademark, Patents and Designs Office is an integral part of the Commercial Law Department of the Federal Ministry of Trade and Investment. The section states that applications shall be made to the registrar and—"(a) shall contain-(i) a request for registration of the design; (ii) the applicant's full name and address and, if that address is outside Nigeria, an address for service in Nigeria; (iii) a specimen of the design or a

Section 17,³³ section 18,³⁴ section 19,³⁵ section 20,³⁶ and section 22.³⁷ The Patents and Designs Act also contains

4. Design Protection in India

The Indian Designs Act 2000 governs the protection of which repeals and replaces the Designs Act 1911.³⁸ It sets down the statutory framework for the protection of designs and has been in force since 11 May 2001.³⁹ The Indian Patents and Designs Act, 1911 was repealed, and the Designs Act, 2000 was enacted to make the Designs Law in India TRIPS compliant.⁴⁰ The Act provides minimum protection standards for industrial designs⁴¹ and conforms to design administration's international standards. In conjunction with the Designs Rules 2001 (as amended in 2008 and 2014), the Act streamlines the procedural aspects of registering and processing design applications. In practice, registration of designs at the Indian Industrial Property Office takes about 3 to 6 months.⁴² The amendments in the Indian Design Rules in 2014 bring in small entity as a new category of an applicant and natural persons.⁴³ The provisions of the Indian Designs Law will be summarised for

photographic or graphic representation of the design with any printing block or other means of reproduction from which the representation was derived; (iv) an indication of the kind of product (or, where a classification has been prescribed, the class of product) for which the design will be used; and (v) such other matter as may be prescribed..."

³² provides for the examination of applications for registration.

³³ which provides for registration and publication.

³⁴ which deals with applications under sealed cover.

³⁵ Rights conferred by registration.

³⁶ Duration and renewal of registration.

³⁷ Nullity of registration.

³⁸ Omesh Puri, 'Protecting and Enforcing Design Rights: India World Trademark Review' (*World trademark Review*) <<https://www.worldtrademarkreview.com/brand-management/protecting-and-enforcing-design-rights-india>> accessed 8 April 2021.

³⁹ *ibid.*

⁴⁰ Prabuddha Ganguli, 'Indian Path towards TRIPS Compliance' (2003) 25 *World Patent Information* 143.

⁴¹ as contemplated in the World Trade Organisation Agreement on Trade-Related Aspects of IP Rights (TRIPs). The Designs Office of the Indian Industrial Property Office is saddled with the responsibility of registering designs. See S.S. Rana, 'Design Law in India' (*S.S. Rana & Co*, 7 March 2019) <<https://ssrana.in/ip-laws/design-law-india/>> accessed 20 April 2021.

⁴² Lalit Jajpura, Bhupinder Singh and Rajkishore Nayak, 'An Introduction to Intellectual Property Rights and Their Importance in Indian Context' (2017) 22 *Journal of Intellectual Property Rights* 34.

⁴³ Selvam and Selvam, 'Amendment to the Design Rules in India – Selvam & Selvam' (*Selvam and Selvam*, 2021) <<https://selvams.com/blog/amendment-to-the-design-rules-in-india/>> accessed 28 April 2021. The Controller of Patents, Designs and Trademarks recently through a public notice dated 2 January 2015. See brought to the notice of the public that the Design rules have been amended with effect from December 30, 2014.

convenience reasons, as was the case of the Nigerian Patents and Designs Act above.

The Indian Designs Act has 9 chapters and 48 articles. Articles 1 to 10 of the Law provides for different aspects of Indian Design Law.⁴⁴ Articles 11 to 21 also provide for many matters on restoration, the rights of design proprietors, and the inspection of registered designs.⁴⁵ Articles 22 to 32 provides as follows: piracy of registered design, application of certain provisions of the Act as to patents to designs, general fees, and other issues.⁴⁶ Sections 33-48 further provides for different procedures on designs.⁴⁷

⁴⁴ ss 1-10 provide for issues as follows: Short Title, Extent and Commencement, Definitions, Registration of Designs, Controller and Other Officers, Prohibition of Registration of Certain Designs, Application for Registration of Designs, Registration to be in Respect of Particular Article, Publication Particulars of Registered Designs, Power of Controller to Make Orders Regarding, Substitution of Application, etc, Certificate of Registration, and Register of Designs.

⁴⁵ The provisions in ss 11-21 are as follows: restoration of lapsed designs, the procedure for disposal of applications for restoration of lapsed designs, rights of proprietor of lapsed design which have been restored, requirements before delivery on sales, effect of disclosure on copyright, inspection of registered designs, information as to existence of copyright, cancellation of registration, designs to bind government, industrial and international exhibitions, provisions as to exhibitions, restoration of lapsed designs, procedure for disposal of applications for restoration of lapsed designs, rights of proprietor of lapsed design which have been restored, requirements before delivery on sales, effect of disclosure on copyright, inspection of registered designs, information as to existence of copyright, cancellation of registration, designs to bind government, industrial and international exhibitions, and provisions as to exhibitions.

⁴⁶ Provisions of ss 22 to 32 are thus: piracy of registered design, application of certain provisions of the act as to patents to designs, general fees, fees, provisions as to registers and other documents in the patent office notice of trust not to be entered in registers, inspection of and extracts from registers, privilege of reports of controller, prohibition and publication of specification, drawings, etc. where application abandoned, etc., power of controller to correct clerical errors, entry of assignment and transmissions in registers, rectification of register, powers and duties of controller power of controller in proceedings under act.

⁴⁷ They are as follows in this sequence: exercise of discretionary power by the controller, power of controller to take directions of the central government, refusal to register a design in certain cases, appeals to the high court, evidence, etc., the evidence before the controller, certificate of the controller to be evidence, evidence of documents in the patent office, applications and notices by post, a declaration by infant lunatic, etc., avoidance of certain restrictive conditions, agency, powers, etc. of the central government, reciprocal arrangement with the united kingdom and other convention countries or group of countries or inter-governmental organisations, report of the controller to be placed before parliament, provision of security of India, power of central government to make rules, repeal and savings.

The Indian Designs Act 2000 is accompanied by the Designs (Amendment) Rules, 2021. The Indian design rules have gone through some amendments. The Designs (Amendment) Rules, 2008 were amended at different times until 2019, when it was amended to the Designs (Amendment) Rules, 2021.⁴⁸ The Indian design practice also has a Design Manual that provides detailed information to the public and users of the Design Registration System on the practice and procedures followed by the Designs Wing of the Indian Patent Office to process Design Applications and other related procedures.⁴⁹

5. Salient Comparisons

Even though there are similarities, a dual look at the Nigerian Patents and Designs Act and the Indian Designs Act will reveal some disparities in the design legislation registration in both countries. Statutory provisions and administrative and policy practices of both countries will now be considered.

5.1. Salient Statutory Comparisons

The Indian design legislation and the Nigerian design legislation are both different in structure and composition. The first thing to consider is that India became a member state of the World trade organization (WTO) in 1995. Consequently, it repealed its Patents and Designs Act of 1911 and enacted a different but new Designs Act, 2000, which is was enacted in compliance with TRIPS to make design laws for the country. In Nigeria, even though it is a member state of TRIPS, it has not made significant reforms to its design laws to comply with the TRIPS expectations or objectives, which will consequently boost its quest for economic, technological, and national development.

Another statutory comparison of both jurisdictions reveals that while Nigeria's Patents and Designs Act has 20 explicit provisions on design protection and other related schedules, the Indian Designs

⁴⁸ The amendments have been as follows: Design Rules, 2001, Designs (Amendment) Rules, 2008, Draft Designs (Amendment) Rules, 2013, Designs (Amendment) Rules, 2014, Draft Designs (Amendment) Rules, 2019, and The Designs (amendment), Rules, 2021. See Office of the Controller General of Patents, Designs and Trademarks, 'Design Rules of India' (*Office of the Controller General of Patents, Designs and Trademarks*, 2021) <<https://ipindia.gov.in/rules-designs.htm>> accessed 20 April 2021.

⁴⁹ The Manual is based on the provisions of Designs Act, 2000 and the Designs Rules, 2001 as amended in 2008. See the Manual Of Designs Practice and Procedure Published By the Office Of The Controller General Of Patents, Designs & Trade Marks. See *ibid*.

Act has 9 chapters and 48 articles. Articles 1 to 10 provide for different aspects of Design Law protection in India. The number of provisions and range of issues for protection in the Indian design legislation, without doubt, reveals that India has carried out extensive reforms on its design legislation, while Nigerian is yet to do so.

A difference between the Indian design legislation and the Nigerian design legislation is their examination of designs under their respective legislation.⁵⁰ While in India, both the substantive examination and the depository are used to verify design applications, it is the formal examination method that is applied in Nigeria. Another salient difference to consider is the statutory definition of the term “design” in Nigerian legislation and Indian design legislation. The Nigerian Patents and Designs Act defines “design” as:

Any combination of lines or colours or both, and any three-dimensional form, whether or not associated with colours, is an industrial design if it is intended by the creator to be used as a model or pattern to be multiplied by industrial process and is not intended solely to obtain a technical result.

The Indian design legislation defines design as:

only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trademark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 or property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957

⁵⁰ Chapter 4 of the Indian Manual Of Designs Practice and Procedure 2001.

Other provisions of the Indian design legislation that are not in the Nigerian design legislations are as follows:

1. There are provisions for copyright in registered designs under the Indian Designs Act. The Act provides the design ten years from the registration date, among other provisions.⁵¹ There is no similar provision in the Nigerian Patents and Designs Act.
2. The Indian design Act has provisions for legal proceedings in piracy of registered designs in the form of importing articles for the purposes of sale, knowing that the design or any fraudulent or obvious imitation.⁵²
3. Unlike the Nigerian design legislation, the Indian designs legislation also makes provision for the power and duties of the Controller, which includes “receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of under documents, issuing commissions for the examining of witnesses and awarding costs and awards.”⁵³
4. Unlike the Nigerian patents and designs legislation, the Indian design legislation has provisions on adducing evidence.⁵⁴ The Indian Designs Act, among other provisions, states:
evidence shall be given by affidavit in the absence of directions by the Controller to the before the contrary, but in any case in which the Controller thinks it right so to do he may to take evidence viva voce in lieu of or in addition to evidence by affidavit or may allow any party to be cross-examined on the contents of his affidavit.
5. The Indian Designs Act provides for agents and proxy applications. There is no similar application in the Nigerian Patents and Designs Act. It states thus:

All applications and communications to the Controller under this Act may be signed by, and all attendances upon the Controller may be made by or through a legal practitioner or by or through an agent whose name and address has been entered in the register of patent agents maintained under section 125 of the Patents Act, 1970.

⁵¹ Chapter III, ss 11-20.

⁵² Chapter IV, ss 23-24.

⁵³ Chapter VII, ss 32-36.

⁵⁴ Chapter VIII, ss 37-42.

(2) The Controller may, if he sees fit, require -(a) any such agent to be resident in India;(b) any person not residing in India either to employ an agent residing in India;(c) the personal signature or presence of any applicant or other person.⁵⁵

6. Unlike in the Nigerian Patents and Designs Act, the Indian designs legislation provides for the Central Government of India to cause to be placed before both House of Parliament once a year a report respecting the execution of the Designs Act by or under the Controller.⁵⁶ The Report of the Controller shall also be to be placed before Parliament. It also states that the Controller should not disclose information relating to the registration of a design or any application on the registration of a design under the Act, which he considers prejudicial to the interest of the security of India. He shall also not take any action regarding the cancellation of registration of such designs registered under the Act that the Central Government may, by notification in the Official Gazette, specify in the interest of the security of India.⁵⁷

5.2. Salient Administrative and Policy Comparisons

The administration to protect industrial designs in India and Nigeria is carried out through specific institutions and officials. Some of these administrative bodies and officials in both countries will be considered.

In India, the Controller General of Patents, Designs and Trade Marks, who heads the Indian Department of Promotion of Industry and International Trade, Ministry of Commerce and Industry,⁵⁸ is usually responsible for the registration and administration of designs. In Nigeria, the Registrar of Designs who heads the Designs Department at the Trademarks, Designs and Patents Office at the Ministry of Trade and Industry is responsible for registering designs.⁵⁹ The Controller General in India is also entrusted with administering the laws relating to designs, patents, trademarks, and

⁵⁵ Chapter IX, s 43.

⁵⁶ s 47.

⁵⁷ Chapter X, s 44-47.

⁵⁸ appointed under sub-section (1) of section 4 of the Indian Trade and Merchandise Marks Act, 1958

⁵⁹ Ss 4-5 PDA.

geographical indications within the territory of India. However, in Nigeria.

An area of difference the will be pointed out is the making of design rules. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. Contrarily, In Nigeria, design rules are made by the Ministrade of Trade and Investment with the approval of the President.⁶⁰ Also, India established the National Centre of excellence for training, management, research, and education in Intellectual Property (IP) Rights.⁶¹ Nigeria does not have a government-funded institution of this nature. The objectives of this institute are to cater to the need of training of examiners of patents, designs, trademarks, and geographical indications, IP professionals, IP managers, imparting basic education to user communities, government functionaries and stakeholders involved in creation, commercialization, and management of intellectual property rights.⁶² It is also meant to facilitate research on IP-related issues, including preparing study reports and policy analysis of relevance to government. Unlike Nigeria, the Indian Department of Industrial Policy and Promotion (DIPP) is entrusted with matters concerning the specialized UN agency on IPRs, the World Intellectual Property Organization (WIPO), including coordination with other concerned Ministries and Departments.⁶³

Moreover, unlike Nigeria, India has made some progress in Intellectual property protection by setting up a Department for Promotion of Industry and Internal Trade(DPIIT).⁶⁴ Under its DPIIT, a Cell for IP Promotion and Management (CIPAM) was established and tasked with implementing the IP Policy and interagency

⁶⁰ See s 302) PDA It states: The Minister of Industries with the approval of the President may make rules establishing schemes to encourage inventive activity and without prejudice to the generality of the foregoing, any such scheme may include provision for the payment of grants to persons who have discovered or perfected, or appear to have reasonable prospects of discovering or perfecting, important inventions which cannot be further developed for financial reasons.

⁶¹ Office of the Controller General of Patents, Designs &Trade marks, 'Rajiv Gandhi National Institute of Intellectual Property Management' (*Office of the Controller General of Patents, Designs and Trademarks*, 2021) <<https://ipindia.gov.in/about-us-rg.htm>> accessed 28 April 2021.

⁶² *ibid.*

⁶³ Deepak Verma, 'National Intellectual Property Rights Policy of India: A Review' (2020).

⁶⁴ International Trade Administration, 'India:Protecting Intellectual Property' (*International Trade Administration*, 2021) <<http://www.trade.gov/knowledge-product/india-protecting-intellectual-property>> accessed 27 April 2021.

coordination in India.⁶⁵ There are many positive initiatives undertaken by the Indian government focused on creating IP awareness and capacity building with enforcement officials. In 2016, The Indian Ministry of Home Affairs announced that IP would become a mandatory subject for all police training academies.⁶⁶ The Indian Patent Office (IPO) has also hired 458 examiners to address patent, designs, and trademark examination backlogs.⁶⁷ As a result, the Indian Patent and Designs processing wait times were reduced.⁶⁸ Also, Up until 2018, the Intellectual Property Rights (Imported Goods) Enforcement Rules, or Customs Rules on IPR, included provisions for the recordation of all categories of IP. A 2018 change to the Customs Rules on IPR accords new customs redecoration system, which permits owners of trademark, designs, copyright, and geographical indications to record their IPR with Customs and seek affirmative enforcement action in the event of counterfeit activity at the ports.⁶⁹ Customs officers have ex-officio authority to seize and destroy counterfeit goods, though rights holders must pay for storage and destruction of counterfeit materials.

6. Conclusion

The article has so far highlighted some comparisons between the Nigerian designs protection and the Indian Design protection. It has first considered the history and concept of design registration in Nigeria, intending to expose what design law entails. The article also separately examines design protection in Nigeria and in India. It also outlines and summarises the provisions of both legislations with sufficient clarity. It further highlights the salient differences between both legislation and administrative agencies and officers in design protection. In advocating for changes in the protection of the Nigerian design applications, some recommendations shall be proffered.

Given that Nigeria operates a formal examination of designs system at the designs registry, like India, there is a need to provide a

⁶⁵ *ibid.*

⁶⁶ *ibid.*

⁶⁷ Omar Ramon Serrano Oswald and Mira Burri, 'India, Brazil, and Public Health: Rule-Making through South-South Diffusion in the Intellectual Property Rights Regime?' *n/aRegulation & Governance* <<https://onlinelibrary.wiley.com/doi/abs/10.1111/rego.12355>> accessed 27 April 2021.

⁶⁸ *ibid.*

⁶⁹ Aditya Gupta, 'Border Enforcement of Intellectual Property Rights in India: Recent Developments' (2009) 1 *Trade, Law and Development* 260, 290.

substantive examination for design applications. What is obtainable currently is only the formal examination method. This will increase the quality of design articles granted by the Registry. There is also the need to hire and train professionals in design examinations. South Africa and Kenya are examples of countries that have successfully drafted amendments to provide for substantive examination system in their patent and design protection systems. One good suggestion is to mix the substantive examination system and the deposit examination system in the Patents and Designs Act and the Design Rules to entertain different patent applications like utility models and other types of patent applications, respectively.

Another area that needs to be improved is funding for R and D for intellectual property law development, especially in research institutions and institutions of learning. Low R and D or research and development spending by the Nigerian government is a significant challenge that affects the Nigerian patent system. Collaborations with universities by the government to boost innovation and encourage patented products by higher learning institutions are very poor in Nigeria.

Like other intellectual property rights in Nigeria, a significant challenge of protecting designs is the lack of awareness of patent rights among Nigerians. Owing to a mostly illiterate population in Nigeria, there is an apparent low awareness of the modus and advantages of utilizing design rights. This challenge is topmost against releasing the benefits of a dynamic design system. The potentials of reaping such benefits are very high, as Nigeria has an enterprising youth population who can utilize patent rights for the common good and foster economic development.

Design laws and policies, other related IP laws like trademark law, designs, trade secrets, and others cannot operate independently. Some laws complement them. Thankfully, the Consumer Protection and Competition Bill was recently signed in 2018 by President Muhammadu Buhari. Laws that promote research and development should be put in place and enforced by the government to boost the Nigerian IP system.⁷⁰ It is also strongly suggested that a constitutional provision be made in the Nigerian constitution for intellectual protection as a government's core objective.⁷¹

⁷⁰ John Ameh, 'Breaking: Buhari Signs Consumer Protection Bill into Law' *Punch Newspapers* (Abuja, 6 February 2019) <<https://punchng.com/breaking-buhari-signs-consumer-protection-bill-into-law/>> accessed 7 February 2019.

⁷¹ Like the United States Constitution, art 8.

Promoting innovations in SMEs can be facilitated in Nigeria by, besides other means, improving knowledge or technology through technology transfer is worth investing time and resources. The experience of SMEs in developing innovations and the role of technology transfer in different industries has yielded many positive results.⁷² Some advantages to be derived from this experience would be the essential absorptive capacity in SMEs to the benefits of technology transfer effortless mastery of the transferred technology for developing innovations by SMEs because of cooperation between SMEs and government. Local government agencies should also be encouraged to support such efforts to build the capacity of SMEs from the grassroots.

There are many problems associated with patent office administration in the Nigerian Trademark, Patents and Designs Registry. Some of these problems have been identified: the lack of uniform and consistent practice, lack of adequate human resources, and an efficient and well-regulated system to dispense patents for inventions. These bureaucratic delays have caused organizational problems, neglect by the government despite constant appeals for more money, more clerks, and better organization, and other issues. Some countries have overcome many of their patent administration challenges. The Nigerian Patent Registry can implement some reforms from the experiences of other countries. One of the first reforms is disseminating knowledge to Nigerians about what it does in a design manual or other means. Other reforms can be to employ competent and capable people in the Registry.

⁷² A good experience can be seen in Indonesia where transfer of technology played a key role in the metal industry. See Tulus Tambunan, 'Promoting Innovation in SMEs through Transfer of Technology: Lessons from a Metalworking Industry Cluster in Indonesia' [2009] *Tech Monitor* 3.