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THE NIGERIAN PATENT LAW AND ALTERNATIVE DISPUTE RESOLUTION

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Abstract
Law is an integral and dynamic part of every society for it protects the rights of individuals, promote tangible progress and undeniably maintain order. The law on Patent in Nigeria is one area of law that seeks to provide the legal framework for the development of invention, its registration, ownership, operation and protection of a patent. This consists of the intellectual property rights in that newly created invention, or materially improved upon in clear distinctive ways better than what it used to be before. For every inventor seeks to reap the dividends of his invention, and where such invention is unlawfully infringed upon and used without the express permission of the inventor, dispute is bound to occur. Therefore, the settlement of this dispute is such that needs to go through the channels of justice. In Nigeria, for instance, litigants would primarily resort to approaching the law courts for settlement of their disputes, even though there is an option of alternative dispute resolution. This article seeks to provide reasons why the alternative dispute resolution should be employed by aggrieved individuals and bodies for the adjudication of matters arising from patent rights and infringement in Nigeria. The need to adopt ADR will further enhance and maintain good economic relationships amongst individuals, business partners and firms which in turn will boost the economic atmosphere in Nigeria.

Keywords: Alternative Dispute Resolution (ADR), Patent Law, Nigerian,

1. Introduction

Patent law is an important area of intellectual property law, which allows exclusive rights to inventors over their inventions within a given period of time. It may be granted in respect of a new invention capable of industrial application and given a monopoly right that can last up to 20 years.[1] A patent is granted under the law to protect an invention that is new or essentially better in some way than what was made before, or for a better way of making it.[2]

The law on Patent emanated from Europe as early as the 14th Century even up till the time when Nigeria was still a Colony under the British Crown and Authority. The Patent system in Nigeria was introduced by the colonial authorities, by making United Kingdom Patent Law applicable, in the first instance, to the Colony of Lagos in 1900 by the Patents Ordinance No. 17 of that year. Later, the Patent system was extended to Southern Nigeria, through the Patent proclamation ordinance No. 27 of 1900. In 1902, under the Patents proclamation ordinance No. 12, of 1902, the Patent system was extended to Northern Nigeria; following the amalgamation in 1914, different Patent laws were repealed and substituted by the Patent ordinance No. 30 of 1916, as amended in 1925 to become the Registration of UK Patents ordinance No. 6 of 1925.[3] Under the British Crown, the law provided for the recognition, registration and protection in Nigeria of Patents already granted in the UK. Under this system, Nigerian applicants

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[1] Patents and Designs Act, Cap P2 LFN 2004. Section 7(1)
[2] F O Babafemi, *Intellectual Property: The Law and Practice of Copyright, Trade Marks, Patents and Industrial Designs in Nigeria (1st Edn, Justinian Books Ltd. 2007) 342-346*
[3] S A Yauri, 'The Patent System in Nigeria' [2012] (34) (3), *World Patent Information, 213* https://www.sciencedirect.com/science/artiCompulsoryLicencee/pii/S0172219012000695; accessed 25 March, 2025

had to first apply and obtain UK Patents, from the UK Patent office for protection of their invention, before having it registered or protected in Nigeria. This was the practice in Nigeria, up till the first indigenous Patent and Design Law in 1970.[4]

Today, the Patent and Designs Act now provides for the original registration of a patent in Nigeria, and has further repealed all the previous United Kingdom statutory provisions. Just as the copyright law derives from the Constitution of the Federal Republic on Nigeria, so does the patent law.[5] The National Assembly has the inherent power to enact legislation to provide patent protection for works eligible for patent protection in Nigeria. It means that the federal government has pre-empted all rights relating to patent; thus, the individual states cannot grant patent, and there is no such thing as a state patent registration. If inventors of useful discoveries could not protect their works from use or exploitation by others, there would be little motivation to expend effort, time, and money in creating inventions.[6]

2. Conceptual Clarifications

2.1 Patent

A patent is a legal right granted by the federal government that permits its owner to prevent others from making, using, selling, or importing an invention. There are basically three types of patent: utility patents, design patents, and plant patents. However, the great majority of patents are utility patents, granted for useful objects or processes. For more than 40 years, patent in Nigeria have been granted to the first to invent. Generally, patent law prohibits the patenting of an invention that is merely an insignificant addition to or trivial alteration of something already in existence or already known. Patent applies to science, useful arts, inventions and discoveries.[7]

2.2 Invention

There is no statutory meaning to the word 'invention'. However, invention may be defined as "the act of devising or contriving as a result of purpose or forethought, an original contrivance or the construction of that which has never existed before".[8] It is anything, process or idea not generally and currently known, or without too much skill or ingenuity can exist or be reduced into tangible form or used in a tangible thing.[9] It has been argued that these definition do not do justice to the word ';invention' as they relate more to novelty rather than invention. As a result, Reinfert J. in the Canadian case of *Crossley Radio Corporation v General Electric Company Ltd* expressed thus: -

> *It would be idle to attempt a comprehensive definition. In certain cases, this decision must necessarily be the result of the nicety. It is a question of fact and degree…. depending upon practical consideration to a large extent rather than upon legal interpretation.*[10]

2.2.1 When an invention be deemed patentable

An invention can be deemed patentable only if it follows the conditions set out in the Act[11] below. Therefore, an invention will be deemed patentable in line with the Act.[12]From the above, it means that for an invention to be patentable it must satisfy three conditions, namely:

i. It must be new (novel),
ii. It must exhibit/involve a sufficient "inventive step" (be non-obvious); and
iii. It must be industrially applicable (useful).[13]

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[4] Ibid (n 4)
[5] Constitution of the Federal Republic of Nigeria, 1999 (As Amended) Part 1 of the Second Schedule
[6] C A Ojieh and M A Jolasimi, 'The Nigeria Patent Law: A Statute Begging for Amendment' [2014] <http://www.researchgate.net/publication/379987785>; accessed 25 March 2025.
[7] Ibid
[8] Ibid (n 3)
[9] A R Stim, *Patent, Copyright & Trademark: An Intellectual Property Desk (Consolidated Printers Inc. 2007) 211*
[10] (1936) D.L.R 508
[11] Section 1 (1) Patents and Designs Act, Cap P.2, Laws of the Federation 2004.
[12] Ibid (a-b)
[13]Section 2 (1) Patents and Designs Act; C. A. Ojieh and M. A. Jolasimi, 'The Nigeria Patent Law: A Statute Begging for Amendment' [2014] <http://www.researchgate.net/publication/379987785>; accessed 25 March 2025.

2.2.2 When an Invention is Deemed Non-Patentable

There are certain subject matters and areas of life that are clearly exempted from patentability and from industrial application. As expressly provided for under section 1 of the Patents and Designs Act, Patents cannot be validly obtained in respect of the stipulated items therein. Any Inventions, the publication or exploitation of which are contrary to public order or morality are exempted from patent protection. And where such invention is against public policy or morality clearly constitutes a ground on which an application may be rejected by the Patent Registry.[14]

3. Patent Grant

The legal system, requirements and process of application for a patent protection differ from one country to another. In Nigeria, the Patents and Designs Act provides a guide as to who has a right to a patent including the duration and renewal of such a patent. The right to a patent is not vested in the true inventor; rather the right to a patent is vested in the statutory inventor.[15]

3.1 Categories of Persons who may Apply to Register a Patent

The provisions of the Act also give guidelines as to the categories of persons who may apply to register a patent.

a) Statutory Inventors:

Section 2 (1) of the Act provides that the right to patent in respect of an invention is vested in the statutory inventor, that is to say, the person who, whether or not he is the true inventor, is the first to file, or validly claim foreign priority for, a patent application in respect of the invention.[16]

b) Persons who employ or commission others to make an invention

Where the invention is made or commissioned in the course of a person's job, his employer ought to have the right to patent. However, if it was not part of the employee's job to make an invention and he made one without using any data or material belonging to his employer, the employee should, as reasonably expected, reserve the right to patent. However, in this latter case, the employee is entitled to remuneration, taking into account his salary and the importance of his invention.[17]

c) Assignees and Transferees

Patent can be sold (assigned and transferred) to others. The beneficiaries of assignments and transfers have the right to apply for a patent grant. This right to patent by way of assignment is only valid in writing, signed by parties and duly registered.[18] The failure to comply with these requirements will void the assignment as was seen in *Arewa Textile Plc and Ors v Finetex Ltd.*[19]

3.2 Ownership and Rights of a Patent

In line with other intellectual property rights, a patent is a form of personal property that may be assigned, licensed, or transferred. The owner of a patent is the person who is registered as the proprietor whether or not he is the devisor of the invention. The proprietor is the person to whom the patent is granted and who, therefore, has the right to work the patent. To facilitate patent applications there is a rebuttable presumption that the person making the application is entitled to the grant of the patent. Section 2 (2) of the Act provides that: *The true inventor is entitled to be named as such in the patent, whether or not he is also the statutory inventor, and the entitlement in question shall not be modifiable by contract*. If an invention turns out to be of outstanding benefit to the employer, the employee may apply for compensation award.[20]

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[14] Ibid

[15] Ibid; F.O. Babafemi, *Intellectual Property: The Law and Practice of Copyright, Trade Marks, Patents and Industrial Designs in Nigeria (1st Edn, Justinian Books Ltd. 2007) 357-359*

[16] Abdul Abubakar. Argungu & Nasir. Umar, 'An Appraisal of Patent Law and Transfer of Technology in Nigeria' [2021] (3) *Ife Business Law Review, 231-245*

[17] Ibid.

[18] Patents and Designs Act, Cap. P1,LFN 2004, Section 24(2)

[19] (2003) 7 NWLR (pt. 322)

[20] C. A. Ojieh and M. A. Jolasimi, 'The Nigeria Patent Law: A Statute Begging for Amendment' [2014] <http://www.researchgate.net/publication/379987785>; accessed 25th March, 2025.

Rights of a Patent and Patentee:
Section 6 (1-4) of the Act[21] clearly provides the right a patent receives under the law, which is the same it confers upon the patentee for himself, and also the right to preclude any other person from doing any of the acts thereunder. It stipulates the scope of the protection conferred by a patent; it goes further to provide the extent such right conferred on the patent can be enjoyed and the priority of date with respect to the application for a patent and its validity, amongst other things.[22]

3.3 Duration and Renewal of patent
A patent generally expires at the end of the twentieth year from the date of filing of the relevant patent application.[23] To maintain and continue the life of a patent, the owner must pay an annual maintenance fees within the given time and such patent would ordinarily elapse if the prescribed annual maintenance fees are not duly paid in respect of it.[24] However, a grace period of six months is allowed for the payment of the fees and if the fees and any prescribed surcharge are fully paid up within that grace period, the patent will continue as if the fees had been duly paid.[25] After the expiration of a patent, the invention becomes part of a public domain, i.e the invention no longer has patent protection and is no longer off limits, so anyone can make, use, or sell the invention without any form of infringement.[26]

3.4. The Procedure for Application of Patent
Just like the law of trademarks, there is a centralised system of registration for a patent. There is a Registrar of Patents and Designs and there is a Register in which patents are recorded.[27] Thus, every patent application must be made to the Registrar of patent in the prescribed forms and the guideline for application of patents and designs in Nigeria is succinctly set out in the Patents and Designs Act,[28] provides that an application should be made to the Registrar containing the applicants full name and address and, if that address is outside Nigeria, an address for service in Nigeria, a description of the relevant invention with any appropriate plans and drawings, a claim or claims accompanied by: The prescribed fees; where appropriate, a declaration signed by the true inventor requesting that he be mentioned as such in the patent and giving his name and address, among other thing. The Registrar is expected to determine the patentability or otherwise of patent applications before a grant is made.[29]

3.4.1 Obtaining a Patent
It is worthy of note that in obtaining a patent, the first vital point to establish is the priority date of the applicant's invention. The essence of a patent is that it is something new which has not existed hitherto and so it is vital to establish a priority date ahead of anyone else in the field; particularly if it is in a typical race, where rival firms are pursuing the same or similar line of research.[30] Priority date is the date for filing the application for a patent. This date is important because not only does it establish priority over rival applications, it also sets the clock time running for the 20 year-period of validity of the patent.[31]

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[21] Patents and Designs Act, Cap. P1,LFN 2004,
[22] Ibid
[23] Ibid section 7(1)
[24] Ibid section 7(2);
[25] Ibid section 7(1) (a) (b)
[26] Jennifer Heaven Mike & Greg Uloko, *'Modern Approach to Intellectual Property Law in Nigeria'* (2nd Edn, Princeton & Associates Publishing Co. Ltd 2022) 228
[27] F.O. Babafemi, *Intellectual Property: The Law and Practice of Copyright, Trade Marks, Patents and Industrial Designs in Nigeria (1st Edn, Justinian Books Ltd. 2007) 369*
[28] Cap. P1 LFN 2004, Section 3-5
[29] Ibid; O. M Atoyebi, SAN 'An Examination of Patent and Design Protection in Nigeria: Prospects and Problems' [2022] contributed by Pwveno Ditto, Esq <https://www.omaplex.com.ng/an-examination-of-patent-and-design-protection-in-nigeria-prospects-and-proplems> accessed 26 March 2025.
[30] C A.Ojieh and M A Jolasimi, 'The Nigeria Patent Law: A Statute Begging for Amendment' [2014] <http://www.researchgate.net/publication/379987785> accessed 25th March, 2025
[31] ibid

3.4.2 Statutory Exceptions

One of the statutory exceptions to the exclusive right to the use of a patent by a Patentee is a Compulsory License.[32] Compulsory licensing occurs when a regulatory authority allows someone else to produce a patented product or process without the consent of the Patentee.

3.4.2.1 Compulsory Licensing is also considered when a government intends to use a patent-protected invention for the public interest. Some of the treaties ratified by Nigeria which regulate and supports Compulsory License worldwide include the World Trade Organization's agreement on intellectual property - the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement, the Doha Declaration 2001, and the Protocol Amending TRIPS 2005.[33] Compulsory licensing comes in handy in relation to pharmaceuticals and other life-saving solutions. In the general case, the regulatory authority may grant a Compulsory license to a patented invention without the consent of the Patentee. The Patents and Designs Act provides that a person may apply to the Federal High Court for the grant of a compulsory licence. The Act further provides that any such application shall be made upon expiration of three years after the grant of a patent or four years after the filing of a patent (whichever period last expires) on any of the grounds stipulated therein.[34]

3.4.2.2 Other Exceptions:

In addition to the statutory exception of compulsory license, there are also two other statutory exceptions to the exclusive right to the use of a patent is succinctly provided for under Paragraph 13, 14, 15, 16 First Schedule, Part I and Paragraph 18, 19, 20 First Schedule, Part II to the Patents and Designs Act, exempts the government, any person authorized by the Minister, any supplier of the Government, and such other persons thereunder.[35]

Furthermore, the Act also provides that during the period of emergency, the powers exercisable in relation to a patented article or invention on the authority of a Minister to perform certain acts as provided thereunder.[36]

4. Patent Legislation in Nigeria

The primary legislation that regulates Patent and Design in Nigeria is the Patents and Designs Act administered by Trademarks, Patents and Designs Registry, Commercial Law Department, Federal Ministry of Industry, Trade and Investment. The Act clearly states the procedure for application for patent, right conferred by patent, the duration of patent, licenses of the right, registration of designs and other related provisions.[37]

4.1 What Constitutes Infringement on the Right of a Patent Holder?

The right to a patent is infringed if another person, without the licence of the patentee does or cause the doing of any act which that other person is precluded from doing under the Act.[38] Thus a patentee can preclude any other person from making, importing, selling, using the product or stocking the product for the purpose of sale or use.[39] By the provision of the Act, a person shall infringe only if his acts relate to commercial or industrial activities.[40]

4.2 The Defences Available to a Patent Holder

A successful claim for infringement of a patent in Nigeria could lead to the award of substantial damages against the infringer in addition to injunctions to prevent further infringement. A prospective investor

[32]S Soyombo, 'Compulsory Licensing of Patent in Nigeria' [2023] <https://www.doa-law.com/compulsory-licensing-of-patents-in-nigeria/> accessed 29 March 2025
[33] Ibid
[34] Cap. P1 LFN 2004, section 11 & First Schedule, Part 1 Paragraph 1 (a-d)
[35] Ibid
[36] See Section 11 & First Schedule, Part 1 Paragraph 1 (a-d)
[37] O. M Atoyebi, SAN 'An Examination of Patent and Design Protection in Nigeria: Prospects and Problems' [2022] contributed by Pwveno Ditto, Esq <https://www.omaplex.com.ng/an-examination-of-patent-and-design-protection-in-nigeria-prospects-and-proplems> accessed 26 March 2025.
[38] Ibid section 6(1)
[39] Ibid (n 43)
[40] Ibid, section 6(2)

ought therefore to be cautious so he does not lose the investment in a product or process that turns out to be invalid due to the effect of a prior registered patent, and also suffer the punitive damages imposed by a court for infringement.[41] Also, an investor who can demonstrate that the acts done are for experimental or non-commercial purposes may escape liability in an action for infringement. Statutory authority for challenging the validity of the grant of a patent is provided under section 9 of the Patent and Designs Act.

4.3 Other Defences:

The defendant may also raise some other defences as highlighted below: -

i. That the patent has already been granted in Nigeria for the same invention to an earlier fresh applicant, or earlier foreign priority applicant or the patent is benefitting from an earlier priority,
ii. That the defendant can prove the acts carried out was done for experimental purposes only and non-commercial in nature; amongst other things.[42]

4.4 Remedies Available to a Patent Holder for the Infringement on the Patent Rights

When Intellectual Property rights are infringed upon, the Nigerian legal system provides several remedies, depending on the circumstances. Below are the key remedies:[43]

A. Injunctions

An injunction is a court order that either prevents the infringing party from continuing their infringing activities (**restrictive injunction**) or compels them to take certain actions (**mandatory injunction**). In *Ferodo Limited v. Ibeto Industries Ltd (2004)*,[44] where the court granted an injunction against Ibeto Industries for infringing on Ferodo's registered trademarks.

B. Damages

Damages are monetary compensation awarded to the intellectual Property owner for losses suffered due to the infringement. The court can assess damages based on the profits the infringer has made from the infringement or the actual loss suffered by the Intellectual Property owner. In *Niger Chemists Ltd v. Nigeria Chemists*,[45] the court awarded damages for trademark infringement, compensating the plaintiff for the loss of revenue due to the defendant's unauthorized use of a similar trademark.

C. Account of Profits

In some cases, instead of seeking damages, the Intellectual Property owner may request an account of profits and this remedy forces the infringing party to surrender the profits they made as a result of the infringement. It is typically used in cases of patent and copyright infringement. Again, in *Niger Chemists Ltd v. Nigeria Chemists*[46] also highlighted the remedy of an account of profits, where the infringer was ordered to pay back the profits earned through unauthorised use of the trademark.

D. Delivery Up and Destruction

A court can order the infringing party to deliver up or destroy any products or materials that infringe on the intellectual property rights. This is particularly common in trademark and copyright cases where counterfeit goods are involved. In *Microsoft Corporation v. Franike Associates Ltd*,[47] the court ordered the delivery up and destruction of pirated software copies. Other remedies include Anton Piller Orders (search and seizure), **Mareva Injunction (Freezing Order); Criminal Prosecution; Declaratory Judgments,** amongst others.

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[41] P Akoni 'Patent Infringement In Nigeria – When Can It Be Excused' [2018] <https://www.mondaq.com/nigeria/patent/729250/patent-infringement-in-nigeria-when-can-it-be-excused>accessed 27 March 2025

[42] J H Mike & G Uloko, *'Modern Approach to Intellectual Property Law in Nigeria'* (2nd Edn, Princeton & Associates Publishing Co. Ltd 2022) 234-236

[43] Ibe Chido 'What are the Available Remedies For intellectual Property Right Infringements in Nigeria'[2024] <https://ica.ng/what-are-the-available-remedies-for-intellectual-property-right-infringement-in-nigeria/#article> accessed 27 March 2025

[44] 5 NWLR (PT.866), 317-378; See also Lubrizol Corp v. Esso Petroleum Co. Ltd (1998) RPC 727

[45] (1961) ANLR 180

[46] Ibid

[47] *[2011] LPELR-CA/L/573/2008*

5. Jurisdiction

Generally, the jurisdiction to hear intellectual property law cases is given under Section 251 (1) (f) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), exclusively to the Federal High Court.[48]

It provides thus:

> *Notwithstanding anything to the contrary contained in this Constitution . . . the Federal High Court shall have and exercise exclusive jurisdiction to the exclusion of any other court in civil causes and matter:" "Any Federal enactment relating to copyright, patent, designs, trademarks and passing-off, industrial designs and merchandise marks, business names, commercial and industrial monopolies, combines and trusts, standards of goods and commodities and industrial standards.*

This provision is in the same manner, similar to the provisions of section 7 of the Federal High Court Act; and various intellectual property laws specifically confer jurisdiction on its subject matter only on the Federal High Court.[49]

6. Alternative Dispute Resolution (ADR) in Nigeria

Enforcing a patent right is expensive and takes a long time. It is rightly said that the system favours large wealthy corporations which have the deep pockets required to sue for patent infringement and hire lawyers to fight and defend them on a global scale.[50] Parties are enjoined therefore to explore other less expensive dispute resolution methods such as mediation, conciliation and arbitration or other less costly possibilities of settling disputes without the need for court litigation.[51] Arbitration practice in Nigeria is primarily regulated by the Arbitration and Conciliation Act 2023,[52] which incorporates the UNCITRAL Model Law of International Commercial Arbitration 1985.

6.1 What is Arbitration?

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.[53] Arbitration is basically a legal process used to resolve disputes outside the court system; it involves the use of a neutral third party known as an arbitrator, who listens to both sides of the dispute and makes a binding decision, and this decision made by the arbitrator is legally binding and can be enforced by the court as judgment.[54]

6.2 Patent Dispute Resolution in Nigeria

Generally, Intellectual Property disputes arise when a party purportedly infringes on the intellectual property rights of another. Examples of Intellectual Property rights include; Patents, Copyright, Trademarks, Trade secrets, Domain names, Geographical Indications, etc. In Nigeria, some of the causes of the rise in Intellectual Property disputes include Infringement, a lack of understanding of Intellectual Property laws, inadequate enforcement mechanisms, invalidity, ownership or breach of contract, and a weak legal system.[55]

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[48] O J Jegede 'Forms and Enforcement of Intellectual Property Rights In Nigeria'[2020] <https://www.mondaq.com/nigeria/trademark/1009338/forms-enforcement-of-intellectual-property-rights-in-nigeria> accessed 27 March 2025.

[49] Ibid; Also See Section 32 of the Patents and Designs Act; Section 46 of the Copyright Act; and Section 67 of the Trademarks Act interpreting "court" as used under the Act' means the Federal High Court.

[50] Ibid (n 43), 230

[51] Ibid

[52] This new Act Repealed the Arbitration and Reconciliation Act, Cap. A1 8 Laws of the Federation, 2004.

[53] 'What is arbitration?' available at <https://www.wipo.int/amc/en/arbitration/what-is-arb.html> accessed 27 March, 2025

[54] N Ayantoye, 'Arbitration As An Effective Mechanism For Resolving Intellectual Property Disputes: Assessing Benefits And Limitations' [2023] <https://www,mondaq.com/nigeria/arbitration-dispute-resolution/1355142/arbitration-as-an-effective-mechanism-for-resolving-intellectual-property-disputes-assessing-benefits-and-limitations> accessed 26th March, 2025

[55] Sa'datu Shariff & Beverly Agbakoba-Onyejianya 'Arbitrability of Intellectual Property Rights in Nigeria: Lessons for the Creative Industry'[2023] <https://www.oal.law/arbitrability-of-intellectual-property-rights-in-nigeria-lessons-for-the-Creative-Industry > accesed 26th March,2025

6.2.1 Application of ADR in Patent Dispute in Nigeria

In Nigeria today, the need for Alternative Dispute Resolution (ADR) mechanisms like arbitration and mediation are needed to solve patent disputes. ADR offers a faster, cheaper and more flexible alternative to traditional litigation, particularly for contractual intellectual property disputes. Although, there is no express legislation on arbitrability of Intellectual Property disputes, there are scenarios which would allow arbitration mechanisms to be deployed in Intellectual Property disputes. They are discussed subsequently hereunder: -[56]

i. Contractual ADR Provisions

Contractual ADR provisions are common in franchising, licensing or sponsorship agreements. Such agreements would typically provide for an ADR mechanism for resolving disputes arising out of the contract.

ii. Regulator empowered by the Statute to refer parties to explore ADR

Section 13(3) of the Trademarks Act 1905, recognizes resolution of IP disputes either by litigation or through arbitration or any other ADR means.

iii. Court Ordered ADR

Section 17 of the Federal High Court Act provides that:-*"In any proceedings in the Court, the Court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof",* and other similar rules of court.[57] This means that these courts can direct that parties resolve Intellectual Property disputes through ADR means and report the outcome to the court.

6.2.2 Enforcement of Patent Rights through ADR in Nigeria

There are several enforcement mechanisms an intellectual property right holder can employ in enforcing an intellectual property right. These mechanisms include Alternative Dispute Resolution, Criminal Complaint and Civil Action via the courts. To establish a breach of intellectual property right in a civil court, the claimant has to establish the followings:

(a) It is the owner of a patent, and
(b) The defendant has infringed its patent

Upon the occurrence of any of the infringements, the intellectual property right owner may bring a lawsuit at the Federal High Court. The owner may be entitled to reliefs by way of damages, injunction, rendering of account and such relevant reliefs as the court may deem necessary in the circumstance as earlier highlighted above.[58]

6.2.3 Challenges and Prospects of ADR in Patent Disputes in Nigeria

There are enormous challenges facing the use of ADR in patent disputes in Nigeria. However, we shall be treating a few hereunder;

i) Genuine Ownership

One of the problems associated with patent and design protection in Nigeria is that there is no way to truly ascertain the owner of an invention, as protection is only offered to the first eligible person to present the application. Simply put, an inventor has no protection when someone else beats him to the game. This means that the right to patent is tied to the meeting of the statutory requirements as no further examination is made by the Registrar beyond the basic examinations to ensure compliance with the Act. This seems to fully defeat the purpose of protecting the fruits of the labour of the inventor.[59]

ii) **Infringement**

Another problem facing the protection of patents and designs in Nigeria is that the law that regulates patents and designs in Nigeria is the Patents and Designs Act, which does not fully anticipate modern

[56] D Oturu 'Arbitrating Intellectual Property Disputes in Nigeria: Lessons From Hong Kong and Singapore' [2025] <https://www.aelex.com/arbitrating-intellectual-property-disputes-in-nigeria/> accessed 28 March 2025
[57] See Section 24 of the High Court Laws of Lagos State 2003.
[58] Ibid (n 44)
[59] O M Atoyebi, SAN 'An Examination of Patent and Design Protection in Nigeria: Prospects and Problems' [2022] contributed by Pwveno Ditto, Esq <https://www.omaplex.com.ng/an-examination-of-patent-and-design-protection-in-nigeria-prospects-and-proplems> accessed 26th March, 2025.

methods of infringement of patent rights through modifications and process alterations. This has made varying acts that infringe the rights of an inventor unenforceable.[60]

iii) Revocation

There is also the issue relating to the condition that the government can revoke the licenses of patentees where it is for public interest or morality. What this implies is that where there are reasonable grounds to support same, the government can revoke the right of an inventor and this can easily be used by the government in whatever manner it deems fit.[61]

6.2.4 Prospects of ADR

Arbitration provides multiple benefits compared to court litigation as regards intellectual property, and they include the following:[62]

(a) Single Forum: Under arbitration parties can agree to resolve their multi-jurisdictional disputes in a single arbitral forum, and with a properly drafted arbitration clause or submission agreement, there are no jurisdictional issues because the agreement to arbitrate constitutes submission to the jurisdiction of the arbitrators.

(b) Expertise: Judges in courts who preside over intellectual property matters are mostly oblivious or may be unable to fully grasp the intricate issues before them. Parties who choose arbitration can appoint arbitrators that are experts in intellectual property, particularly as regards the right they intend to enforce.

(c) Confidentiality: Arbitration ensures a more private and discreet alternative to resolving disputes compared to litigation in a court of law. IP disputes may involve trade Secrets and commercial benefits, which are best kept confidential to avoid being exploited by the public and the possible loss of proprietary rights, unlike IP litigation. Arbitration.[63]

(d) Neutrality: Arbitration can be neutral to the law, language, and institutional culture of the parties.[64] Also, arbitrators must be impartial, even when the agreement to arbitrate allows each party to designate an arbitrator; and in Nigeria for instance the arbitral tribunal is to ensure that parties are treated equally, and each party is given reasonable opportunity to present their case.[65]

6.2.5 International Best Practices in ADR for Patent Disputes

The use of alternative dispute resolution (ADR) procedures – mediation, arbitration and expert determination – to settle disputes between private parties outside the courts has a long tradition in legal systems around the world.[66] While traditionally ADR options have not been widely used to settle intellectual property (IP) and related disputes, such procedures are becoming increasingly popular. Intellectual Property and related disputes have distinctive characteristics. With the globalization of trade and the increasingly international creation and exploitation of Intellectual Property, these disputes often span multiple jurisdictions and involve highly technical matters, complex laws and sensitive information. In these circumstances, parties often look for flexible dispute resolution processes that can be customized to their needs and that enable them to control the time and cost of proceedings. The 2013 WIPO International Survey on Dispute Resolution in Technology Transactions revealed that the ability to limit the time and cost of proceedings were top priorities when selecting dispute resolution options.[67]

ADR Options

The most commonly available ADR processes include:[68]

[60] Ibid
[61] Ibid
[62] Ibid
[63] Ibid
[64] Ibid
[65] Ibid
[66] H Wollgast 'WIPO Alternative Dispute Resolution- Saving Time and Money in IP Disputes' [2016] <https://www.wipo.int/web/wipo-magazine/articles/wipo-alternative-dispute-resolution-saving-time-and-money-in-ip-disputes-39858> accessed 28th March, 2025
[67] Ibid
[68] Ibid

a. **Mediation:**
An informal consensual process in which a neutral intermediary, the mediator, assists the parties in reaching a settlement based on the parties' interests. While the mediator cannot impose a settlement, any settlement agreement has force of contract. Mediation does not preclude any subsequent court or arbitration options.

b. **Arbitration:**
A consensual procedure in which the parties submit their dispute to one or more arbitrators of their choice for a binding and final decision (an "award") based on the respective rights and obligations of the parties and enforceable under arbitral law. Arbitration normally forecloses any subsequent court options.

c. **Expedited Arbitration:**
A procedure that normally involves a sole arbitrator and which is carried out in a shorter time frame and at reduced cost. Expedited arbitration is especially suited to less complex cases involving lower disputed amounts and where speedy resolution is needed.

d. **Expert Determination**.
A consensual procedure in which the parties submit a specific matter, such as a technical question, to one or more experts, who make a determination on the matter. The parties can agree for the determination to be legally binding.

7. Role of Intellectual Property Offices in ADR for Patent Disputes

The role of intellectual property offices all over the world today cannot be overemphasized. Where disputes arises parties can voluntary opt for alternative dispute resolution procedures such as mediation and arbitration, which are gaining popularity as means of settling IP disputes and reducing negative fall-out.[69] In November 2018, the WIPO Center launched the WIPO Mediation Pledge for IP and Technology Disputes. While the Pledge is not a binding commitment, it demonstrates a signatory's willingness to consider mediation when resolving its IP and technology disputes. The Pledge has already attracted more than 200 signatories from over 70 countries, notably Intellectual Property producers and practitioners. Various institutions, including Intellectual Property Offices and industry associations, are also promoting this initiative.[70] IP Offices around the world are raising awareness about the advantages of ADR and this may include developing country-specific information materials for interested parties concerning ADR options, or offering joint information and practical training events on mediation and arbitration for IP and related disputes, among other things.[71]

8. Conclusion

Patent being an aspect of intellectual property rights is very important for the economic growth and highly-competitive innovating world of today. The fundamentals of these intellectual property rights is to safeguard the interest of inventors and their inventions, so that their right are not infringed upon and even when such infringement occurs, disputes surfaces in the cause of making, using, processing and so much more. These rights have legal protection and the consequences of infringement of these rights would amount to the payment of damages and other remedies. The use of arbitration and other ADR mechanisms seeks to curb the delay in our regular courts, using world best practices and further enforcing these intellectual property rights of a creator and inventor for his benefit, foster economic growth and maintain relationships. Intellectual property in today's world plays a major role in developing and boosting the world economy, therefore these rights must be protected, enforced and implemented at all cost for the rapid growth and development of our nation and global space.

[69] Leandro Toscano and Oscar Suarez, 'An expanding role for IP offices in alternative dispute resolution' [2019] <https://www.wipo.int/web/wipo-magazine/articles/an-expanding-role-for-ip-offices-in-alternative-disputeresolution-40667>accessed 28 March 2025
[70] Ibid
[71] Ibid