**INTELLECTUAL PROPERTY THE PANACEA FOR A SUSTAINABLE ENVIRONMENT**

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**Protocol.**

It is for me a singular honour and privilege to be asked to deliver this speech on **“Intellectual Property the Panacea for a Sustainable Environment”** today.

The recent trend is the rapidly growing interaction between Intellectual Property Law (IP) and Environmental law. They both share a common interest in machineries, chemicals and their effects, and are now sharing a new rapidly growing common interest in living organisms (humans inclusive). These two fields of law may be able to assist each other in the preservation of biodiversity.

For some people technological advancement and innovation are antithetical to a sustainable environment. While this is not true, until recent times; intellectual property has been neutral to environmental protection. There are no gains or advantages for complying with environmental compliance requirements; as far as intellectual property is concerned. Environmental law on its part, has not taken into cognizance or used to its advantage, the incentives offered by intellectual property. However, this narrative is fast changing.

During my research, I discovered that, according to the[*World Intellectual Property Organization (WIPO)*](https://www.wipo.int/portal/en/index.html), Intellectual property refers to creations of the mind: inventions; literary and artist Intellectual works; and symbols, names, and images used in commerce.

But, how then can we achieve the purpose of intellectual property rights? It is simply by law. Law gives people and businesses property rights to the information and intellectual goods created.

On the other hand, Environmental regulations have been focused on restricting the use of environmentally harmful technology while dispensing the need for promoting environmentally beneficial technology. On its part, intellectual property law is an established system for promoting and facilitating commercial development. The synergy between both laws can promote innovation of environmental technology that are aimed at environmental protection.

Strictly speaking, the inter play between Intellectual property law and environmental law can help attain the balance of protection and progress by identifying and encouraging environmentally beneficial technology. Intellectual property can be at the forefront of ensuring a conservation of the ecosystem. It can achieve this by giving both incentives for inventions that are environmentally friendly and thereby prohibiting or reducing the competitive advantage of inventions that are less friendly to the environment.

**THE GROWTH LEVEL OF INTELLECTUAL PROPERTY IN NIGERIA**

A good indication of how various countries are faring vis-à-vis technological innovativeness and intellectual property recognition and protection is mirrored in the 2020 International IP Index Executive Summary published by U.S. Chamber International. **In this report, Nigeria scored 27.62% in the overall score board out of 53 Countries representing an average of the Global GDP.** Nigeriastill lags behind other African countries regarded as more innovative and presumably that adopt stronger and more effective mechanisms for IPR protection and enforcement. The Leading country on the score sheet was US with 95.27% % and in Africa, was Morocco with 59.66%. Nigeria ranked 50th and **was categorized as one of the countries that is underperforming based on its level of development.**

In the 2019 edition of the annual Report on the Global Innovation Index (GII), published by WIPO, Nigeria moved up two notches to the 116th position in the world ranking.

**HOW WE CAN EMBRACE ITS GROWTH AND AWARENESS**

Infringement of Intellectual Property Rights undermines genuine investment in creativity, innovation and knowledge. Invariably, the granting of exclusive proprietary rights (usually in consideration of the disclosure of the creation), creates an incentive for creators to develop, produce, and distribute new and genuine goods and services for commercial purpose.

**LEGAL FRAMEWORK**

Laws governing Intellectual Property rights and protection in Nigeria includes:

* **Copyright Act (as amended), Cap. C28, Laws of the Federation of Nigeria 2004.**
* **Patents and Designs Act, Cap. P2, Laws of the Federation of Nigeria 2004.**
* **Trademarks Act, Cap. T13, Laws of the Federation of Nigeria 2004**
* **Merchandise Marks Act, Cap. M10, Laws of the Federation of Nigeria 2004.**
* **Trade Malpractices (Miscellaneous Offences) Act, Cap. T12, Laws of the Federation of Nigeria 2004.**

**International IP regimes** in the form of treaties.

* Paris Convention for the Protection of Industrial Property (ratified in September 1963);
* The Berne Convention (1986);
* The Rome Convention (Performers, Producers of Phonograms and Broadcasting Organisations – ratified in October 1993);
* The Patent Law Treaty (ratified in April 2005)
* Patent Cooperation Treaty (ratified in May 2005).

**Regulatory Agencies**

1. **The Nigerian Copyright Commission (“NCC”)** – established under the Copyright Act to regulate creative activities such as music, publishing, artistic and literary works.
2. **The Nigerian Broadcasting Commission (“NBC”)** – established under the National Broadcasting Commission Act (Cap. NII, LFN 2004) and vested with the responsibilities of regulating and controlling broadcasting rights, licenses and assignments in Nigeria;
3. **The Trademarks, Patents and Designs Registry** – established pursuant to the Trademarks Act and the Patents and Designs Act, under the Federal Ministry of Commerce to regulate the filing of trademarks, industrial designs as well as grant of patents in Nigeria;
4. **National Office for Technology Acquisition and Promotion (“NOTAP”)** – established under the NOTAP Act (Cap. N62, LFN 2004) to register technical service agreements, technology transfers and know-how agreements between Nigerian and non-Nigerian parties.

**Other private (non-governmental) initiatives** formed to support the above government agencies in the facilitation and enhancement of IP rights:

* Intellectual Property Lawyers Association of Nigeria (IPLAN);
* The Nigerian Local Chapter of the International Association for the Protection of Intellectual Property (AIPPI);
* Anti-Counterfeiting Collaboration (ACC) of Nigeria;
* The Performing Musicians Association of Nigeria (PMAN);
* Copyrights’ Collecting Societies – associations of copyright owners established pursuant to and licensed under the Copyright (Collective Management Organizations) Regulations 2007 with the principal objectives of negotiation and granting of licenses, collecting and distributing of royalties in respect of copyright works; and the
* Federation of Intellectual Property Owners (FIPO).

There are three aspects of intellectual property that should be examined in respect of its impact on sustainable environment; Trademark, Patents and Trade Secrets.

**TRADEMARKS**

Trademarks are designed to identify the origin of goods or services; prevent mistake, deception and confusion with regard to origin; and protect goodwill. [A trademark can be](https://www.granitetrademarkservices.com/single-post/Trademark-Examples) a Company’s name, slogan, brand, logo and more that acts as a source identifier of goods or services. In other words, anything that symbolizes to consumers who it is that is selling a product can function as a trademark. Trademarks are designed to identify the origin of goods or services; prevent mistake, deception and confusion with regard to origin; and protect goodwill.

The recent advent of “green labelling” implicates trademark rights. Examples include statements regarding the environmental characteristics of a product, names connoting environmental benefits, and certification of environmentally benign characteristics by independent organizations.

In relation to the topic being discussed, it is my understanding that, with increase awareness or consciousness of the impact of products on environment, consumers are increasingly desirous of using products that are eco-friendly to emphasize their supports for a sustainable environment.

Therefore, trademarks with the suggestion that the product is environment- friendly, can serve as an incentive for companies to make those products; as it offers them better competitive advantage. For instance, the recent advent of “green labelling” implicates trademark rights. Examples include; statements regarding the environmental characteristics of a product, names connoting environmental benefits, and certification or endorsement of environmentally friendly characteristics by Environment Impact groups.

Conversely companies that make products with hazardous impact on the environment can be compelled to inscribe a warning on the product, that the product is harmful to the environment.

**PATENT**

The procedure for obtaining patents for environmental friendly innovations can be reduced to become easily obtainable. The benefits of patent too, on such technology should be of great impact so as to encourage innovations in those areas.

Technologies used by companies to manage waste can also be protected by patent, in this case, the patentee can issue licenses in respect of it. This will also increase the commercial incentive for making inventions for managing waste disposal.

Furthermore, Regulatory Agencies can also mandate companies to use certain patented environmental friendly invention. This will lead to increased royalties to the patentees. However, Legislations and Regulations affecting patent licenses must balance the interests of patentees and those required to use patented environmental technologies.

**TRADE SECRETS**

Manufacturers of products with harmful substances are required to make certain Environmental Disclosures. In essence, what this means is that, they are required to make reporting on substances or machines used in production that are harmful to the environment. On the other hand, persons using environmental friendly substances are not required to make these disclosures.

The effect of this is that, the trade secrets of those using eco-friendly substances or machineries in their production, are far safer than those using the hazardous ones. This ensures that companies, when faced with alternatives, use an eco-friendly product to ensure that their Trade Secret is safer.

**REGISTRATION OF INTELLECTUAL PROPERTY RIGHTS**

**TRADEMARKS**

In order for a trade mark to be registrable, the mark must contain one of the following:

* the name of a company, individual, or firm represented in a special or particular manner;
* the signature of the applicant for registration or some predecessor in his business;
* an invented word or invented words;
* a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or surname;
* any other distinctive mark;

**Procedure for Registration**

It is advisable that searches be conducted to determine the availability of a trade mark before any application for registration is made. On receiving the application, the Registrar will issue an Acknowledgement Form confirming the receipt of the application by the Registry and the temporary number allocated to the trademark, pending registration and allocation of a permanent registration number.

1. **Examination**

The Trademarks Registrar will conduct an examination of the Trademarks Register to confirm that there is no earlier conflicting trademark which may preclude the registration of the mark. The Registrar's examination shall also extend to whether the mark is distinctive, deceptive, scandalous or in any way disallowed as containing names of single chemical substance, prohibited words, Arms of Nigeria or state, national flag, 'President', 'Governor', Arms of City, Town, Place, Society, Names of living persons or persons recently dead except with permission. If the Registrar is satisfied that the mark may be registered, an Acceptance Form will be issued. **This is usually within 3 weeks after the issuance of the Acknowledgment**. Otherwise, a Refusal Form will be issued. After acceptance, the application will be published in the Trademarks Journal to notify any interested party who may have an objection to the registration. Publication of mark in trademark journal is usually within 12 -18 months after the issuance of Letter of Acceptance.

1. **Opposition**

**Any interested party may file an objection by giving a notice of opposition within two months of the publication** in the trademark journal. It is important to note that this period is non-extendible. The opposition hearing takes place before the Registrar, who shall after hearing the parties and considering evidence take a decision. The decision of the registrar in this regard, may be appealed to the Federal High Court.

1. **Registration**

Where there are no third party objections to the registration of a trademark within the opposition period or where the objections are resolved in favour of the applicant, the Registrar shall issue the applicant with a Certificate of Registration. The registration of a trademark takes effect retrospectively from the application/filing date. Thus, although an applicant's rights start upon registration, same take effect retrospectively. The registration of a trade mark shall be for a period of seven years but may be renewed from time to time for a period of fourteen years.

**PATENTS**

**The Patent and Design Act (the "Act")** provides the criteria for registering a patent in Nigeria as follows:

1. **Novel Invention**

The invention must be new and have an inventive step that is not obvious to someone with knowledge and experience in the subject. The invention must also have never been known, used or made public.

An invention is also patentable if it constitutes an improvement upon a patented invention.

An inventor is usually advised to keep his/her invention secret until the invention has been registered else such inventor plays with the risk of invalidating his own patent by prior publication.

1. **Capable of Industrial Application**

The invention must be capable of being made or used in some kind of industry. Industry in this context is in its broadest form and it means "Anything distinct from being purely intellectual".

This suggests that the invention goes beyond just an idea, a scientific theory, an aesthetic creation, a computer program but must take the practical form of an apparatus, product or a device.

1. **Public Policy and Morality**

The invention must not be against public policy or morality as this constitutes a ground on which an application may be rejected by the Patents Registry (the "Registry").

1. **One Invention per Registration**

The application to be made to the Registry must relate to only one invention but may include or have in connection with that invention, claims for a number of products or for a number of manufacturing processes or applications of those products.

1. **Full Description**

In addition to the provisions of Section 1 of the Act, the Registry prescribes that the application must clearly and fully disclose the details of the invention, the processes involved and all that it entails.

**Procedure for the Registration of a Patent in Nigeria**

1. When the conditions qualifying an invention for a patent as identified above have been met, an application shall be made to the **Registrar of Patents** and Designs (the "Registrar") and shall contain the following:
* The applicant's full name and address, and if the address is outside Nigeria, there should be an address for service within Nigeria;
* A description of the relevant invention with any appropriate plans and drawings;
* A claim or claims (for any number of products, processes or applications), however, an application shall relate to one invention only;
* The application is to be accompanied by the prescribed fees as determined by the Registry from time to time;
* Where appropriate, a declaration by the true inventor of the product supplying his name and address and requesting that he be mentioned as such in the Patent;
1. Where the application is submitted by an agent, a power of attorney authorising the donee of the power of attorney to that effect.

**TRADE SECRETS**

**Protection of trade secrets**

Due to the fact that trade secrets cannot be subject to public disclosure, owners of trade secrets protect them with legal and technological procedures. If the owner of a trade secret intends to disclose a trade secret to a third party, it is advisable that he executes a confidentiality agreement or **a Non-Disclosure Agreement (NDA)** with the third parties as this may be the only way he may be able to protect his trade secret and prevent the third parties from using his invention or idea.

An NDA is an agreement that creates a confidential relationship between the parties whereby they agree to protect confidential and proprietary information or a trade secret.

In conclusion, I recommend that creative measures be implemented to improve environmental protection by applying the principles of intellectual property law. The success of green labelling is likely to depend on whether trademark recognition adds to the value of environmentally benign products. Trademark and unfair competition laws will settle competing claims and prevent confusion in the marketplace. International efforts to protect the global environment may rely on intellectual property laws to increase environmental technology transfer. Biodiversity may be preserved through measures guaranteeing property rights to the custodians of critical habitats.

Also, discouraging harmful technologies is best achieved through environmental regulation. Such regulation can reduce the incentive for harmful innovation by prohibiting it directly, or by rendering it uneconomical. For the purpose of environmental protection, legislations should be enacted to provide us criteria for distinguishing between acceptable innovations that are beneficial to the environment and unacceptable innovations that are harmful to the ecosystem.

Going further It is essential to promote environmentally sustainable development that are peculiar to different geographical indications. There is also a need for capacity building and technical assistance for policy coherence and sustainable development; improved licensing frameworks for sustainable business models.

Lastly there is a need to have a balance on IP protection law to foster an innovative and less toxic environment. It is therefore important for IP regulations to set out modalities for sustainable value creation through technology transfer. The strongest tool with which to restore Nigeria’s intellectual property protection and enforcement regimes are legislation and policy initiatives that priorities’ IP protection while recognizing the importance of a robust Intellectual Property Legal Framework.

Once again, thank you for this singular honour.

Most obliged.

**O. M. Atoyebi, SAN.**

**Thoughts for discussion.**

1. **Will a centralized regulatory body help in the proper regulation and public awareness of Intellectual Property Rights?**

**Answer:** Yes. However, the common practice in several jurisdictions is to have different regulatory agencies. The reason for this is not farfetched; Intellectual Property rights require specialization of regulatory agencies. In Addition, the sectors where these Intellectual Property Rights occur are not entirely related.

1. **How can Nigeria combat fraudulent green labelling?**

***Green labelling****, also known as 'Ecolabelling', is a recognised scheme for businesses to communicate the environmental credentials of products they put on the market. The Ecolabel stimulates the market for green products and services and promotes broader awareness of environmental issues. Green labels became an officially recognised method for companies to make transparent environmental declarations or claims about their products, packaging etc.*

**Answer:** Awareness about the importance of using environmentally friendly products have increased over the years, especially with the publicity of global warming awareness and preservation of sea creatures. This has made manufacturers who are not up to standard in this regard fraudulently include misleading information about their products. Nigeria can combat this by putting in place laws that will prohibit perpetrators of such actions and a framework to punish offenders. A mass public awareness is very good way to also prevent this.

1. **Won’t discouraging Patent registration of “harmful technologies” harm our economic development?**

**Answer:** That is true. However, we must consider the responsibility we have to protect the environment. Discouraging registration in this light is not absolute. The regime will merely be adjusted to encourage eco-friendlier technologies.

1. **Which is more important, a stringent patent registration regime for products that are harmful to the environment or less stringent regime for the registration of environmentally friendly products?**

**Answer:** A less stringent regime for the registration of environmentally friendly products. Then, we can follow this by putting in place a regime that will discourage products that are harmful to the environment. Without going too much into the details, let me say that we also have to consider the impact of these inventions on the growth of our economy.

1. **How long do you think is ideally possible to have a grounded IP regulation?**

**Answer:** In Nigeria, the recommendations have been straight forward. While it is important for the process to be fast tracked, we must also put into consideration the process and time it takes to put these recommendations into Laws. Putting an estimated time to this might be impossible. This is because the process of having an ideal regulation for any sector is not a one-time occurrence but one which is reviewed from time to time after enactment. The Judiciary will also have to be considered in this process.