

# REFERENCE DOCUMENT

## NIGERIA

### CATEGORY- EXCEPTIONS TO PATENT LAW UNDER THE NIGERIAN PATENT ACT

#### SPECIFIC - PRIOR USE

#### DOCUMENT REFERENCE SOURCE-

- **NIGERIAN PATENT & DESIGNS ACT CAP 344, LAWS OF THE FEDERATION OF NIGERIA 1990 , (P.2 LFN 2004)**

- The provision for prior use exception has not been expressly stated in the Nigerian Patents & Designs Act, however similar provision can be found in Section 6 subsection (4) of the Act states

Section 6(4) Where, at the date of the filing of a patent application in respect of a product or process or at the date of a foreign priority validly claimed in respect of the application, a person other than the applicant-

*(a)* was conducting an undertaking in Nigeria; and

- *(b)* in good faith and for the purposes of the undertaking, was manufacturing the product or applying the process or had made serious preparations with a view to doing so,  
then, notwithstanding the grant of a patent, there shall exist a right (exercisable by the person for the time being conducting the undertaking, and not otherwise) to continue the manufacture or application, or to continue and complete the preparation, and thereafter undertake the manufacture or application, as the case may be, and in respect of any resulting products to do any other act mentioned in subsection (1) of this section.

Court cases: None so far

Implementation: The Nigerian court will be open to implement and enforce the prior use exception once it is established as contemplated within the Nigerian Patent & Designs Act.

## **NIGERIAN PATENT LAW PROVISIONS**

### **✚ THAT CONTRIBUTES TO TECHNOLOGY TRANSFER.**

- ❖ Section 3(1)(a)(i)(ii) of the Nigerian Patent & Designs Act contains the patent disclosure requirement. It makes it mandatory for all patents including foreign patents to fully disclose the technology behind their invention. This enables transfer of technology

### **Section 3. Patent applications**

(1) Every patent application--

(a) shall be made to the registrar and shall contain--

(i) the applicant's full name and address and, if that address is outside Nigeria, an address for service in Nigeria;

(ii) a description of the relevant invention with any appropriate plans and drawings;

(iii) a claim or claims; and

(iv) such other matter as may be prescribed;

- ❖ **Duration of Patent for a 20year period could encourage foreign direct investment which in turn promote technology transfer. Section 7 of the Patents & Designs Right states-**

#### *7. Duration and lapse of patent*

(1) Subject to this Act, a patent shall expire at the end of the twentieth year from the date of the filing of the relevant patent application.

- ❖ **The recognition** of the right of the applicant to claim Foreign priority encourages more foreign filing with a rippling effect of more technology being transferred

- ✚ **On certain aspect of the Patent National or Regional Law .** - We wish to uphold the Information available at [https://www.wipo.int/scp/en/annex\\_ii.html](https://www.wipo.int/scp/en/annex_ii.html)

- ✚ On National and Regional Laws on Administrative and opposition system and other administrative revocation and invalidation mechanism

- The Nigerian Patents & Designs Act does not provide for an opposition system , once the Registrar issues the Patent Certificate she becomes ***functus officio*** meaning her powers with respect to the Patent comes to an end. However by the provision of section 28(5) of the Act and aggrieved party can appeal the

decision of the Registrar to the Federal High Court which is the court saddled with the responsibility to hear and dispose of Intellectual Property matters.

*Section 28(5) that states "Any person aggrieved by a decision of the Registrar in the exercise of his functions under this Act may appeal to the court".*

- Last year the Registrar of Patents & Designs set up an Administrative Panel to offer a platform for first **Alternative Dispute Resolution (ADR)** to applicants and other persons aggrieved by decisions from the Registry before they embark on court processes. The Administrative Panel has been effective and efficient.
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- ✚ On International work sharing and collaborative activities the practice is to refer to the search and examination report accompanying the PCT documents .
- ✚ Client-Attorney privilege is not expressly stated in the Patents and Designs Act , However it is enshrine in the code of professional ethics and a punishable offence.