

THE REGISTRATION AND COMMERCIALIZATION OF INDUSTRIAL DESIGNS IN NIGERIA: PROSPECTS, CHALLENGES AND DIGITAL ECONOMY IMPLICATIONS

Authors Details

Noel N. Udeoji^{1*}

Intellectual Property Law, BL., FICMC, FIPMD, MC Arb, DRS, Snr. Lecturer, Dept. of
Public Law, Nnamdi Azikiwe University, Awka.

Imelda C. Agbanu²

Nnamdi Azikiwe University.

Rosemary O. Udeoji³

BA., LLB, LLM, AC Arb Nnamdi Azikiwe University, Awka.

ABSTRACT: Industrial designs play a vital role in protecting the aesthetic features of products, fostering innovation and commercial growth in Nigeria's creative and manufacturing sectors. This paper examines the legal framework governing industrial design registration in Nigeria under the Patents and Designs Act 1970 while referencing international instruments such as the Paris Convention for the Protection of Industrial Property, World Intellectual Property Organization (WIPO) and the World Trade Organization Agreement on Trade- Related Aspects of Intellectual Property (TRIPS). Adopting doctrinal research methodology, this paper examines the procedures, requirements, significance of registration, duration of the protection conferred on registration, and the remedies available for infringement. The paper explores the opportunities available to designers post-registration, which includes market exclusivity, licensing, investment attraction, brand recognition, and increased commercialization of innovative products in both local and international markets. The paper finds that despite these opportunities, several obstacles

which include outdated legislations, inadequate public awareness, weak enforcement mechanisms, and infringement affect effective industrial design protection in Nigeria. The paper explores the growing influence of emerging digital transformation tools such as Artificial Intelligence (AI) driven design tools, for example, Computer Aided Design (CAD), 3D printing, E-commerce market places, Digital Marketing, Blockchain Technology for Intellectual Property (IP) tracking, which signal a paradigm shift in impacting, revolutionizing and expanding innovation and commercial opportunities, while simultaneously raising novel challenges and regulatory concerns. The paper concludes that although industrial design registration offers significant commercial benefits, modern and technology-responsive IP system is essential for Nigeria's economic and creative development as the current legal framework is inadequate. It recommends stronger enforcement mechanisms, legislative reforms, institutional modernization, increased public awareness and Nigeria's accession to the Hague System for the international registration of Industrial Design to ensure effective protection and sustainable innovation commercialization growth in Nigeria.

Keywords: *Industrial Design, Registration, Innovation, Commercialization, Digital Transformation, Design Protection, Licensing, E-commerce, Infringement.*

1.0 Introduction

Industrial design, a form of IP, refers to the ornamental or aesthetic aspects of an article as applied to the article, and not the article itself and so this gives it a special form. It can be in a three-dimensional (such as the shape or surface of the article/product) or two-dimensional (such as the patterns, lines or colour of the article/product) form or a combination of both. Industrial design cuts across a variety of products and it relates to the appearance of the product only and is a pattern or representation which the eye can see, appeals solely to the eye, and serves as a powerful differentiator from other designs, to separate any probable confusion, distinguishing them from technical or functional elements of the product/article which is protected by patents.

Industrial designs are referred to as such because of their industrial applicability and are applicable to a wide array of handicrafts and industrial products including luxury items,

jewellery, household wares, furniture, electrical appliances, textile, vehicles, watches, shoes, medical instruments.

An eye-catching and appealing aesthetic features of a product can grab attention, enhance brand recognition, and ultimately influence purchasing decisions by consumers and so it is an important marketing tool which adds commercial value, due to the fact that companies and designers put in intellectual and creative efforts in making such beautiful, eye and sense appealing designs.

The key purpose of an industrial design is to serve as a model or pattern for mass production, not a one off creation or production and so, it is a primary mechanism to enhance product appeal and market competitiveness. However, it does not prevent others from manufacturing the product, but it prevents others from commercially dealing with the product that embodies the protected design without authorization.

The nature of Industrial design, by virtue of section 12 of the Patents and Designs Act is defined as: “any combination of lines or colors or both, and any three-dimensional form, whether or not associated with colours, 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”. Thus, for a design to qualify as an industrial design under section 12 of the extant Act, it must satisfy both of these conditions which are:

- a. Intended for industrial multiplication: The creator has the intention that the design shall be used as a model or pattern which can be multiplied or reproduced through an industrial process. It means that the design is meant for mass production and not for a unique, one-off creation.
- b. Focus on Aesthetic: The focus of the design is on visual or aesthetic purpose and not the technical or functional purpose.

The Court of Appeal in *Nigerian Breweries Plc v. Pabod Breweries Ltd & Anor* held that in a community reading of the definition in section 12 of the Act, “an industrial design” is a model or pattern to be multiplied by industrial process, namely the mould. Bottles do not multiply itself, but the mould. It is also not the “drawings” of the bottle, but the mould

design is what is to be registered for the purpose of the protection under Section 19 of the Act.

Also, on the nature of industrial design, the Supreme Court in *Uzokwe v. Densy Ind. (Nig) Ltd & Anor*, stated the definition as encapsulated in section 12 of the Act and held further that from the said definition, for an industrial design to be registerable, it must come within the meaning of the said definition whether or not associated with colours.

What actually constitutes the design is the particular combination and arrangement of lines which give rise to the features. So, in a case, as in the instant case, where the dispute is as to the newness of the design, the design claimed to be infringed and the infringing design should be put side by side so as to enable the court to compare and determine whether they are basically the same or whether there are fundamental differences in the shape and pattern of the lines. See also, *F.O. Ajibowo & Co. Ltd v. Western Textile Mills Ltd* and *Lotus Plastic Ltd. v. James Plastic & 2 Ors.*

2.0 Legal Framework of Industrial Design in Nigeria

The primary legal framework governing industrial design in Nigeria is the Patents and Designs Act of 1970 (Cap P2 LFN 2004). The legislation establishes the statutory basis for design protection, stipulating the criteria for registerable designs, the categories of persons eligible to apply, and the duration and renewal of terms of these rights. The core objective of the Act is to safeguard designs that are new or distinctively superior to prior creations, thereby protecting the aesthetic and ornamental aspects of mass-produced goods. The 1999 Constitution of the Federal Republic of Nigeria (As amended) guarantees the protection of property rights which extends to intellectual property under section 44(1).

However, in addition to the primary legislation, there are other international treaties and agreements which govern and influence the protection, registration and enforcement of industrial design in Nigeria, which Nigeria is a party and signatory to and include:

1. Paris Convention for the Protection of Industrial Property

This is one of the most important international instruments governing industrial property rights such as patents, trademarks, industrial designs. Nigeria is a member of this Convention which has as one of its substantive provisions, the principle of national

treatment and right of priority which stipulates inter alia, that a Contracting state must grant the same equal protection it grants to its nationals to nationals of other contracting states if they are domiciled or have a real and effective industrial or commercial establishment in a Contracting state and also accord the right of priority to applications for industrial designs made in a Contracting state by a national of another contracting state. This, to my mind, informed the inclusion of the right of priority, in our extant Patent and Designs Act, which recognizes and affords protection to an application of industrial design made in Nigeria by an applicant of a member state where such an application is made within six months of such application in another member state while retaining the original filing date. The Paris Convention protects Nigerian Industrial Designs abroad and allows foreign applicants enjoy similar protection in Nigeria.

2. World Intellectual Property Organization Convention 1967

Nigeria is a member of WIPO which is the main international body responsible for formulating international normative and institutional frameworks for intellectual property. It assists member states such as Nigeria to develop and modernize intellectual property systems. Nigeria's industrial design regime has benefitted from WIPO's technical support, training, and harmonization efforts.

3. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)

The TRIPS form part of the legal framework and the normative role played by the World Trade Organization (WTO) concerning intellectual property rights as they relate to international trade and requires member states to provide protection for independently created industrial designs that are new or original while mandating effective enforcement mechanisms. Nigeria, being a member of TRIPS, in pursuit of its domestic goals as it relates to industrial designs, should ensure that it complies with TRIPS standards as regards protection, registration and enforcement procedures.

There are other international instruments/treaties which Nigeria has not joined nor domesticated, such as the Hague Agreement which provides for international design registration and allows applicants to register an industrial design by filing a single application with the International Bureau of WIPO, enabling design owners to protect their designs with minimum formalities in multiple countries. This Agreement also simplifies

the management of industrial design registration in that it makes it possible to record subsequent changes and to renew the international registration through a single procedural step, thereby reducing costs and enhancing global commercialization opportunities. Since Nigeria has not domesticated this treaty, applicants must therefore take the National Route and apply separately to the national offices of each country in which they intend to obtain protection which process involve translation into the national languages and payment of administrative/legal fees. Non – Registrable Industrial Designs are sculptures, printed materials, and purely functional features (which are better suited for patents), see Rule 22 of the Design Rules, 1971.

3.0 The Regulatory Authority

Industrial designs can be registered in the Nigerian Trademarks, Patents and Designs Registry within the Intellectual Property Office (IPO) of the Commercial Law Department of the Federal Ministry of Industry, Trade and Investment (FMITI). The Registry handles examination, publication, and grant. It operates from Abuja, with one central office serving the nation.

4.0 Category of Persons Who May Apply to Register an Industrial Design.

In Nigeria, the right to the registration of an industrial design is not vested in the true creator of the design. Rather such a right is vested in the Statutory Creator, (who is a juristic person - natural or body corporate) whether or not he is the true creator, is the first to file an application or validly claim a foreign priority for, an application for registration of the design, as Nigeria operates a first to file system. Since Nigeria is a signatory to the Paris Convention for the Protection of Industrial Property which has been incorporated into local law for patents and industrial designs, this enables applicants from convention countries to claim a priority right of six months from the date of first filing in their home jurisdiction.

However, in protecting the true creator, the Act provides that the true creator is entitled to be named as such in the Register and that this entitlement is not modifiable by contract. In the view of a scholar, MIO Nwogu, which said view I align wholly with, the above provisions of “first to file a claim obtains a right to register the designs” seem to leave room for fraud, for instance, where a person in Aba who, in the month of March, started

bringing his products (Baby's crib) to Onitsha, observed that a particular baby's crib was highly marketable and attractive to consumers, rushed and registered the design on the latter Baby's crib in April, returned to Aba and mobilized Policemen who came to Onitsha and arrested the owner of the later Baby's crib on the guise that the lady copied his design without his authorization. But the Act in its wisdom adequately protected the true creator, without leaving room for fraud thus:

If the essential elements of an application for the registration of an industrial design have been obtained by the purported application from the creation of another person without the consent of that other person, both to the obtaining of those essential elements and to the filing of the application, all rights in the application and in any consequent registration shall be deemed to be transferred to that other person.

The Act provides also that where an industrial design is created in the course of employment or the execution of a contract for the performance of specified work, the ownership of the design shall be vested in the employer or, as the case may be, in the person who commissioned the work, Provided that where the creator is an employee, then if his contract of employment does not require him to exercise any creative activity but he has in creating the design used data or means that his employment has put at his disposal-

- a. he shall be entitled to fair remuneration taking into account his salary and the importance of the design which he has created; and
- b. the entitlement in question is not modifiable by contract and may be enforced by civil proceedings.

The scholar opines, and we agree, that the reward as stated above should be an agreed percentage between the employer and employee of the annual profits accruing from the created design.

5.0 The Legal Requirements for the Registration of Industrial Design in Nigeria

Under the Nigerian Law, not every industrial design is registerable. To be registerable, an industrial design must come within the meaning of the expression "Designs" in Section 12 of the Act. In *Sunday Uzokwe v. Densy Ind. (Nig) Ltd.*, the Court of Appeal amplified the two requirements that serve a condition precedent before industrial design can qualify for

registration and held that mere trade or business variation without more is a mere garb which is incapable of wearing the nomenclature of 'new'. Going by section 13, there are conditions and essential requirements which an industrial design must fulfill before it becomes registrable. These are as follows:

a) Newness

The law is that an industrial design is presumed to be new at the time of the application for registration except if it is contrary to the provisions of the Act. By 'new', it presupposes that it must have a distinctive feature that dichotomises it from the ones in vogue. Newness of a design means novelty either in the pattern, shape or ornament itself or in the way in which an old pattern, shape or ornament is applied to some special subject matter, or applied to a manufactured product in an ingenious way, as seen in the case of *Saunders v. Wiel* where the representation of Westminster Abbey applied to the handle of a spoon was held to be new.

Also to be considered new, the design must not be dictated exclusively by the technical function of the product, if this is the case, design registration is not the appropriate form of intellectual property. A more relevant application would be a patent application. It should not be another version of an existing design as was held in the case of *Crocs Inc. USA v. Bata India Ltd & Ors* where the Court held that as the designs claimed were mere modifications of pre-existing designs, the Court stated that novelty or newness of the designs was in question.

The section further provides that an industrial design is not new if, before the date of application, the design was made available to the public anywhere and at any time by means of description, use or in any other way, unless the creator of the design shows to the satisfaction of the Registrar that he could not have known that it had been made so available. In *West African Cotton Company Limited v. Hozelock Excel* the court clarified that the expression 'anywhere' means worldwide not just Nigeria. The design must not include protected official symbols or emblems such as the national flag, the coat of arms etc.

Flowing from the above, the newness requirement is defeated in a case of prior publication or disclosure of the industrial design to the public, anywhere, by whatever means, which may be by usage, sale, test run, description or made available.

A proviso in Section 13(4) of the Act however provides that 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 6 months preceding the filing of the application for the registration, the creator has exhibited it in an officially recognized exhibition. In this grace period of six months the creator may market the design without losing its 'newness/novelty' as required for registration. However, it is often advisable to keep the design confidential until application for design protection as the creator will have no exclusive design rights during the grace period.

Accordingly, apart from the singular exception of the design being exhibited in an official or officially recognized exhibition, within the period of six months, "publication" of the design will invalidate newness and render the design unregistrable.

However, instances exist, which act as defense, which do not defeat or invalidate the requirement of newness such as, where a worker who was sworn to secrecy of implied obligation of confidence reveals it to others unknown to the creator, or where the disclosure was by the design creator to a textile factory responsible for manufacturing the textile, or where the design is shown, disclosed or made available to some individuals who have no obligation of secrecy, or where the design is shown to a commission agent who had the sole right of selling the design proprietor's goods.

b) Not contrary to Public Order/Morality Test

The design must not be contrary to public order or morality. Public order or public morality are the ethical standards/ rules of conduct of a society enforced by law that encompass the virtues of good governance, administration of justice, public services, national policy and the interest of the State. Although what is public order or morality is not defined in the Act, it is determined by the courts on a case-by-case basis bearing in mind that any design that would cause public unrest, or is immoral, anti-cultural or offensive to the honor or image of any age group, gender, ethnic group, race, religion, persons, institutions, nationality etc. will not be registered.

6.0 Registration Process of an Industrial Design

In most countries just like in Nigeria, an Industrial Design must be registered in order to be protected under the Act. An industrial design application made to the Trade Marks and Patents Registry typically involves the following steps:

STEP 1: Conduct availability search to ensure that your design is new and not already registered by someone else and upon confirming the availability and eligibility of the Design, the applicant will be required to duly fill the Application Form (as there are different Forms for textiles and non-textiles) with relevant information and also provide necessary documents which must include:

- i. A request for registration of the design,
- ii. The applicant's(individual or company) full name and address and if that address is outside Nigeria, an address for service in Nigeria,
- iii. A specimen of the design or graphic/ photographic representations of the design,
- iv. An indication of the kind of product or class of product (where a classification has been prescribed) for which the design will be used,
- v. Any other requirement that may be prescribed,
- vi. Evidence of payment of the prescribed application fees,
- vii. A signed power of attorney authorizing the accredited agent, where an agent is applying on behalf of the creator, which said Power of Attorney need not be notarized,
- viii. Where the true creator is different from the applicant, a signed declaration by the true creator where he requests to be named as such in the Register and giving his name and address.
- ix. Where an applicant claims foreign priority in respect of an earlier application made in a country outside Nigeria, his application shall be accompanied by :
- x. A written declaration showing: (i) the date and number of the earlier application, (ii) the country in which the earlier application was made, and (iii) the name of the person who made the application,

- xi. A certified copy of the earlier application made in that other country (which is to be submitted to the Registrar, within three months of the Nigerian application, with a sworn translation thereof if not in English. The application will not be accepted for consideration until the Priority document is received at the Patents and Designs Registry.

Upon submission of the duly completed application form and payment of the prescribed fees, the Registry issues a Design Acknowledgment Letter confirming receipt of the application.

STEP 2: Examination by the Registrar

Upon submission, the Registrar examines the application for registration to verify its conformity with the statutory requirements, that is;

- a. Section 13(1) (b): that the design is not contrary to public order or morality.
- b. Section 15 (1) or (2): that all required information and accompanying documents are present and correctly formatted, and
- c. Section 15(3): that all conditions for claiming foreign priority (if applicable) have been satisfied.

Where the application successfully passes the checks mentioned above, the design will be registered. Also, if foreign priority is successfully proved and claimed, that will be officially noted in the Register.

STEP 3: Acceptance and Issuance Certificate

Section 17(1) and (2) of the P & D Act provides that upon the assessment and the approval of the submitted application, the Registrar will issue a Design Acceptance Letter alongside a Certificate of Registration to the Applicant containing details like the design number, registered owner's information, application and registration dates, foreign priority details (if any), a representation of the design, and the true creator's name. By virtue of section 17 of the Act, as soon as possible after the registration, the Registrar will publish a notification of registration, containing the key details of the design.

It is to be noted that an Opposition period of 2 months is observed and if there are no objections or where resolved in applicant's favour, the design will proceed to registration.

7.0 Duration of Protection and Renewal

Registration is valid for an initial period of five years from the date of application but renewable for two further consecutive periods of five years each, giving a maximum total protection of fifteen years. The renewal fee must be paid within twelve months prior to the expiration of the design or during the 6-month grace period with payment of a surcharge. The said renewal shall be registered and notified and is also done when the design ceases to have effect.

8.0 Opportunities Thereafter: What Registration unlocks

A party who alleges the earlier existence of a design must certainly prove such existence and the most fundamental way of proof is the tendering of the design in court. It is only when the court physically sees and examines the earlier design along with the other one that a judicious conclusion will be drawn. It is not enough to tender the product and present same as a legal substitute for the design in question. The physical inspection of the design is very crucial. Under the Patents and Designs Act, the owner of a registered industrial design is clothed with the following rights:

A) Exclusive Rights and Legal Protection

By virtue of section 19 (1) of the P & D Act, the registered owner is conferred with the exclusive right to preclude any other person from doing the following acts:

- a. reproducing the design in the manufacture of a product;
- b. importing, selling, utilising for commercial purposes a product reproducing the design;
and
- c. holding such a product for the purpose of selling it or of utilizing it for commercial purposes without authorization.
- d. The rights conferred by section 19 extends only to acts done for commercial or industrial purposes.

However, there is a limitation on the rights of the registered owner as seen in section 19(2) thereof which said limitation is only with respect to acts done for commercial or industrial purposes and not to acts done after the product incorporating the design has been legally sold in Nigeria. This deterrent effect of unauthorized exploitation is particularly valuable in industries where imitation is rampant, including furniture, fashion, textiles, packaging, and consumer electronics.

B) Licensing and Revenue Generation:

Having a registered design prevents third parties and competitors from cashing in on the products or services promoted by the company. A registered industrial design can be licensed for a consideration, to third parties on mutually agreed terms, creating a direct revenue stream for the rights owner.

Licensing agreements which must be in writing, generate royalty revenue while allowing the rights owner to retain ownership. A Licence may be exclusive (where the rights owner grants a single licence in respect of the stipulated acts in the contract or non-exclusive (where the rights owner is free to grant licences to others as well). The law requires that a licence must be registered and the prescribed fees paid, and shall be cancelled by the Registrar at the request of the licensor after the termination of the licence. The licence shall be void, to the extent of its excess, if what was granted was beyond the rights of the rights owner.

Revenue generation is one of the most prominent advantages of using Intellectual property assets for small and medium enterprises (SMEs) as the exclusivity that IP rights offer enables SMEs to earn royalties and generate income from licensing their IP assets.

C) Assignment:

This is an outright sale where the right owner is totally divested of his rights in the design and has transferred same to the Assignee in return for a consideration. It must be in writing, signed by both parties and be registered on payment of prescribed fees. Unless registered and the prescribed fees paid, assignment has no effect against third parties.

D) Enhances Marketing and Commercializing Goals of Enterprises

Design is a vital element of a company's brand identity hence, registering it can further guarantee the safety of the design and promote the market value of the enterprise. When consumers identify a product by its distinctive shape or pattern, the registered design becomes a source identifier as powerful as a trademark. Registration of industrial design which translates to Nigerian small and medium enterprises (SMEs) acquiring IP rights enables the said SMEs to build the visibility of their brands and adequately protect their assets. Consequently, these businesses are positioned to sustain a competitive advantage amid the influx of new market participants.

E) Strategic Business Advantage of Strategic Partnerships and Joint Ventures

Registration prevents competitors from cashing in on the products or services promoted by the company. In emerging markets where brand differentiation is critical, this exclusivity necessitated on registration translates directly into market share protection and pricing power. Industrial Design registration potentially places businesses at the forefront of investment opportunities as investors' confidence is boosted when businesses ably demonstrate that they have protected their valuable IP asset. Also, registered designs facilitate collaborations between designers and manufacturers. The 2025 Design and Innovation Exhibition in collaboration with Eco Bank Plc, highlighted "collaborations between manufacturers and creatives" as key to industrial expansion.

F) Intellectual Property as Collateral for Financing

Under the recently approved National Intellectual Property Policy and Strategy (NIPPS) of 2025, intellectual property assets can now serve as collateral for loans, potentially opening new financing pathways for startups and inventors who previously lacked tangible security. Startups can now use their registered designs to secure loans from financial institutions, solving one of the most persistent challenges for innovation-driven enterprises that lack traditional collateral.

G) Globalization and Export Potential

Nigeria's creative and manufacturing sectors are increasingly looking outward. The 2025 Design and Innovation Exhibition, themed "Building a Made-in-Nigeria Brand,"

highlighted how registered designs, with broader efforts to develop a sustainable ecosystem that fosters local talent, enhances industrialization and boosts economic growth, can position Nigerian products, with the nation's innovation, craftsmanship, and industrial potential, for global recognition in an industry worth hundreds of billions of dollars.

9.0 Infringements of Industrial Design and Remedies

Infringement of design rights occurs where the acts reserved exclusively for the design owner as provided under section 19 of the Act, are carried out by a third party without the authorization or consent of the design owner while the registration is still in force. The person entitled to sue for infringement under the Act are the design owner or an assignee (on the ground that assignment is an outright sale). A licensee can sue on the condition that he must first, by a registered letter, require the licensor to sue for the infringing acts enumerated in the said registered letter. In the event of the Licensor unreasonably refusing or neglecting to sue, then the Licensee, can sue in his name, however, this is without prejudice to the right of the Licensor to intervene in the proceedings.

It is pertinent to note that by virtue of section 251(1) (f) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and section 26 of the P & D Act, the Federal High Court, is seised with the jurisdiction over Intellectual property which includes Industrial Design. The Court may sit with two Assessors who have expert knowledge in matters of technological or economic nature, with particular regard to novelty, inventive activity or interpretation of claims in relation to proceedings on patents and industrial designs.

Where a defendant reproduces the Claimant's industrial design in minor or inessential details or relies on the fact that it concerns a different type of product from the one covered by the design, he shall not escape liability of infringement.

The evidential burden of proof lies on the Claimant who is required to produce before the court the two designs, that is his own design allegedly infringed and the infringing design of the defendant, for comparison by the court, instead of mere viva voce evidence. However, in the case of *Uzokwe v. Densy Ind. (Nig) Ltd*, the Supreme Court went further to state that it is not enough to place the finished products side by side for the court to examine, but in addition, the moulds or designs itself from which the two products were

made should also be brought before the court for examination. See also *Nigerian Breweries Plc v. Pabod Breweries* (2010) 14 NWLR (Pt. 1214) 529. However, this new position of the apex court has been condemned by scholars such as Oriakhogba and Olubiya on the ground that it would not be easy for the Claimant to produce the mould of the defendant before the court as the moulds may not easily be movable especially where such had to be assembled and fixed to the ground. This Writer leans to the stance save to add that, on the application of the claimant, in line with the Evidence Act, the court can visit the locus in quo where the said mould is situate, with his assessors, examine same and reconvene back to the court for the continuation of its proceedings as done in trials, when necessary.

Under section 25 (2), remedies for infringement include:

- i. **Damages:** It is the monetary compensation awarded by the court in favour of the claimant and against the defendant. Damages can be general, that is, the compensation for losses that naturally flows from the act of the defendant which need not be proved as same is presumed by law or special damages which has to be proved by the claimant as same is not presumed by law.
- ii. **Injunction:** It is an equitable remedy, which may be interlocutory, interim or perpetual, granted by the court compelling a party to do or refrain from doing an act.
- iii. **Accounts of Profit:** This remedy is granted where it is proved by the claimant that the defendant has commercially dealt with his registered design or made profit from it. Where this is granted by the court, the claimant will not be awarded damages so as not to have double compensation.
- iv. **Order for seizure and Inspection (Anton Piller Order):** This is a special type of injunction issued by the court which allows a claimant to enter the premises of the defendant in order to seize and preserve evidence that is essential to proving the defendant's liability.
- v. **Conversion or Delivery Up:** Upon request, the court may order that all infringing copies and materials be converted and delivered up to the Claimant by the defendant.

- vi. Destruction: This may be awarded to the claimant in order to avoid any damage to his reputation or the quality of his works where the infringing works of the defendant are of lesser quality.

10.0 Obstacles to Protection Industrial Designs in Nigeria

While the legal framework may have noble objectives, there are some drawbacks to its protection:

- a. Outdated legislation: The law governing industrial design, which is the Patent and Designs Act is outdated and lagging behind the times and are in dire need of amendment by the National Assembly to align with modern standards under the Agreement on Trade-Related Aspects of Intellectual Property Rights and other international best practices. There, also, is not enough legal protection for industrial designs and because actions on infringements are limited to infringements within Nigeria's borders, there is no extra territorial jurisdiction by Nigerian courts over infringements which occur outside Nigeria's borders.
- b. Non domestication of international treaties on intellectual property: Although Nigeria is a signatory to key international treaties such as the Paris Convention (1883) and TRIPS Agreement (1994), it has not domesticated these treaties into local law as required by Section 12 of the 1999 Constitution. Also, Nigeria is not part of the Hague Agreement Concerning the International Deposit of Industrial Designs at all that enables registration of designs simultaneously in over 70 countries. An alternative would have been multiple registration via the Regional Route with a single application at the regional IP office concerned. Regional IP offices include the African Regional Industrial Property Office (ARIPO) for industrial design protection in English-speaking African countries, the Benelux Designs Office (BDO) for protection in Belgium, the Netherlands and Luxembourg etc. Nigeria is not a member of any. Creators must therefore take the National Route applying separately to the National IP offices of each country in which they intend to obtain protection. This process involves translation into the national languages and payment of administrative/legal fees.

- c. Institutional and Procedural Obstacle: Despite the legal framework on Industrial Design, the lengthy period of the registration process, the attendant administrative inefficiencies and the outdated Registry pose a challenge. Also, lack of a unified registry portrayed in the existing fragmentation across Trademarks, Patents, and Designs registries as it leads to duplication of roles, delays in registration, inefficiency, a lack of a comprehensive IP database and enforcement.
- d. Infrastructure deficit: Electric energy produced was about 4,000 to 5,400 MW on a daily basis due to gas supply shortages, poor transmission infrastructure, and incessant national grid constraints and collapse. This has even necessitated the Nigerian Presidency installing solar energy facilities on the Presidential Villa otherwise known as the Aso Villa at Abuja. How many SMEs can afford solar panels that can fully power their businesses? Where creators cannot make items with support facilities in the first place, they will not apply for industrial designs.
- e. Endemic corruption: Nigeria is one of the most corrupt countries in West Africa and ranks 142nd out of 182 countries on the Transparency and Corruption Perceptions Index . This has implication for investment and Foreign Direct Investment flows into the country. The root causes of corruption in Nigeria have been identified to include social insecurity and over-centralization of resources at the centre . This corruption finds its way in administration and protection of industrial designs.
- f. Weak Enforcement: Nigerian right owners and other stakeholders do not regularly approach the courts and this affects the development of the law. Even where rights are registered, enforcement is problematic. The European Union’s Report of 2025, placed Nigeria on its priority watch list, noting “persistent issues of counterfeiting, piracy, and weak enforcement frameworks” . Other barriers include underfunded agencies, lack of training for customs in border control against counterfeit goods importation, lack of training for police officers in IP enforcement (resulting in poor investigation and prosecution of offenders). Furthermore, the prevalence of non-deterrent penalties within the existing legal framework often fails to stem the tide of infringement, providing insufficient protection for IP assets. As a result, these systemic weaknesses create an environment where the costs and risks of litigation frequently outweigh the

potential benefits of legal recourse, ultimately stifling innovation and deterring local inventors from securing and defending their industrial designs.

- g. **Judicial inefficiency:** Judicial officials as well as the Nigerian judiciary faces challenges of delayed trials, lack of expertise in IP law which leads to inconsistent and sometimes erroneous judgments). The absence of specialized intellectual property courts (as cases are lumped together with general commercial disputes, prolonging resolution) exacerbate the difficulty of adjudicating design piracy leading to prolonged litigation which discourages creators from pursuing legal remedies.
- h. **Low Awareness:** The general population, including a significant proportion of Nigerian businesses, especially small and medium enterprises (SMEs) has limited knowledge of industrial design law and its benefits. Many rely on informal means of protecting their innovations, making them vulnerable to exploitation. Many tertiary institutions often lack structured IP policies to commercialize inventions and designs, leading to a brain drain and underutilization of innovations. Despite the ongoing awareness by the National Office for Technology Acquisition and Promotion (NOTAP) and the recently launched “Project 1%” which is a joint initiative by WIPO Academy and WIPO Nigeria Office (which seeks to bring IP education to 1% of Nigeria’s youth and students) many designers or creators still remain unaware and are illiterate of their rights or the registration process.
- i. **Limited Commercialization Support:** Even when designs are registered, many innovators still struggle to commercialize them as the Nigerian market is dominated by imported products which makes it hard for local designers to compete. This may be due to inadequate infrastructure as there is an unfortunate isolation of manufacturing sector from Research and Development activities leading to non-commercialization of ideas, lack of proper records, and insufficient governmental agency efficiency which contribute to the commercialization gap.

11.0 Digital Transformation of Innovation Commercialization

Innovation commercialization is the process of turning a new idea, invention or innovation into a product, service, or technology that can be successfully sold or used in the market to generate economic value. In the instance case, it is the process by which a registered

design can be exploited through manufacturing, licensing, assignment, franchising, or other business strategies to generate revenue, commercial and economic benefits. This process is of particular benefit to designers, manufacturers and the wider economy as it enables the monetization of industrial design, fosters innovation and creativity and thus enhances competitiveness.

Digital transformation of innovation commercialization in Industrial Design refers to the use of digital technologies, platforms, and tools to transform the inventions, innovations from mere creative ideas to commercially viable products on a large scale, globally. Traditionally, commercialization involved reliance on local manufacturers, face-to-face marketing, paper based registration process.

12.0 Role and Impact of Digital Technology on Commercialization of Industrial Design

Digital technology, tools and platforms such Computer-Aided Design (CAD), Blockchain Technology, Artificial Intelligence (AI), E-commerce and digital intellectual property management systems have revolutionized and transformed industrial design at every stage, changing how products are conceived, developed, and marketed. Thus, they enhance the design process making it more creative, efficient, and collaborative, resulting in smarter products that prioritise user needs . The various means through which this have been achieved are as follows:

- a. Computer-Aided Design (CAD): The CAD software is used to create exact 2D and 3D versions of products on a computer and makes it easy to change and enhance designs quickly without requiring expensive physical models. Also virtual testing permits designers to check how a product works, feels and looks in a digital space thus improving production efficiency and prototyping capabilities, (because they can get feedback quickly and make changes, leading to faster innovation), and in the long run, saving time, resources and money in manufacturing and development.
- b. Blockchain Technology: Blockchain's decentralized, encrypted, and transparent transaction system and distributed ledger technology that records the provenance of a digital asset had fundamentally changed how industrial designs are registered, licensed and tracked, as a design owner can use it to link all versions of his design during the designs lifecycle from registration to subsequent renewals because its system of

recording information is difficult to change, hack or cheat. It can also serve as evidence of creation, ownership and title of the industrial design, including assignment and licence, and allows creators to track illegal uploads, thus protecting the industrial design of a product.

- c. Artificial Intelligence (AI): AI- powered designs tools are transforming creative processes, in assisting designers in predicting consumer preferences, identifying market trends, enhancing user experience, product design while also raising novel questions about AI-generated designs and ownership because at present, Nigeria laws do not provide expressly for the regulation of ownership of AI- generated industrial designs.
- d. E-commerce platforms: Digital marketplaces such as Jumia, Konga expand market access for Nigerian innovators and designers, especially small and medium designers or creators, enabling direct access to sales to consumers worldwide, by bypassing traditional and local intermediaries with their exploitative arrangements thus resulting in a reduction in overhead costs related to physical storefronts and distribution. This in turn increases their revenue potential and enables them gain more global visibility for their brands.
- e. Digital Marketing: Digital marketing tools such as social media campaigns, content marketing, search engine optimization (SEO), and targeted advertising or niche creation, empower designers to reach specific consumer segments efficiently. These strategies enhance brand awareness, engage potential buyers, and drives sales in that messages are tailored to audience preferences and behaviours. The affordability and precision of digital marketing, is of great benefit to emerging designers and startups with limited budget.

13.0 Conclusion

Industrial design is without doubt the language of a product as well as its identity. It drives a consumer's choice and is a key factor in the consumer's purchase decision. The protection afforded industrial registration by the PDA commences upon registration and fosters on the registered industrial benefits such as exclusivity and the protections are therefore very important for both SMEs as it is a catalyst for creativity, innovation,

economic value, growth and development in Nigeria. The state of legal protection on industrial design is highly ineffective and this is affecting the level of the innovation and the revenue generation by industrial designers negatively. The writer is of the view that an improvement in the light of the areas under recommendation will afford a better protection system and be of immense boost to the level of innovation in the country.

14.0 Recommendations

To foster a more robust industrial design registration, post registration benefits and protection, and the commercialization opportunities presented by innovation and emerging technologies, the following recommendations are proffered:

- a. **Legislative Reforms:** The National Assembly should prioritize, by way of amendments, the Patents and Designs Act and other IP laws to modernize and align same with contemporary digital trade realities, international standards such as bilateral and multilateral treaties such as the TRIPS Agreement and the emerging technologies such as Computer- Aided Design (CAD), Blockchain, AI-generated designs. Such updates should explicitly incorporate provisions for ownership, protection and commercialization of digitally generated industrial designs, fully digitized filing systems and enhanced cross- border enforcement mechanisms to combat the pervasive counterfeiting that currently hampers the industry. **Policy Reforms:** This must extend beyond mere legislative amendments to include concerted efforts aimed at strengthening institutional capacity and bolstering public awareness regarding the long-term value of industrial design registration. By harmonizing local regulatory frameworks, such as the Patent and Design Registry, the Nigeria Copyright Commission with international best practices and streamlining administrative workflows, Nigeria can effectively incentivize local creativity, thereby creating the robust legal environment necessary to attract sustained foreign and domestic investment in its rapidly expanding creative economy.
- b. **Establishment of specialized IP tribunals:** The writer humbly calls for a further amendment of the 1999 Constitution of the FRN to create constitutionally recognized, specialized IP court to handle IP-related matters. Competent legal practitioners skilled and experienced in IP law should be appointed both from the bar, the bench and the

academia to sit at the specialized IP courts. The judex appointed to man these specialized courts on intellectual property would in turn accelerate dispute resolution and improve enforcement consistency.

- c. Increased funding for enforcement agencies: There should be increased funding with adequate staff training for the Nigerian Customs Service and the Nigerian Police Force to carry out their policing and prosecution functions, the Nigerian Copyright Commission, and the Patent and Design Registry and to combat counterfeiting and piracy. Experience shows that insufficient finance, inadequate or obsolete equipment and lack of up-to-date skills in the use of these modern technologies among the rank and file of officers prevent the various efforts from achieving desired results.
- d. Designers should register their designs before public disclosure as Nigeria operates a first-to-file system, this they can now do using Intellectual Property Automated System (IPAS) online filing to reduce processing time and administrative burden, and post registration, should also monitor renewal deadlines as failure to renew within time which is twelve months before the expiration of the first 5-year period results to loss of rights, if after the grace period of six months after the expiration, the annual renewal fee and the attached penalty is not paid. Also, there should be active personal pursuit of rights enforcement in court by registered design rights holders, because as they say, the first law of nature, is self-preservation. The right holder himself must be proactive in protecting his intellectual property and maintain a litigious stance in the Nigerian courts against infringers at all times.
- e. Develop IP valuation methodologies: Since registered design can be used as collateral, banks and other financial institutions need robust frameworks for valuing the registered design so that innovators and startups will have greater access to loans, venture capital and investment funds, accelerating business growth and economic inclusion.
- f. Practice of ethical industrial processes and revival of the African culture of respect for the proprietary rights of others. The traditional societies in pre- colonial Nigeria had structures for the informal protection of creative rights and those values must be rekindled to complement the present Nigerian legal system.

- g. Increased public awareness and human capital development. Artisan development of Nigerian youths by giving a primary of place to the work of artisans, technicians and craftsmen. Celebration of excellent industrial designs will reward creative activity and channel the talents and strengths of young Nigerian to productive and positive pursuits.
- h. Curbing of corruption in both public and private sectors. This will drastically reduce incidences of piracy of the works of others.
- i. Deployment of critical infrastructure like power, transportation, and telecommunication with increased and enhanced broadband access and road network to assist creators.
- j. Creation of or strengthening of a central coordinating body, the establishment of inter-agency committees and dedicated implementation units, and the modernization of key agencies such as the Patents and Designs Registry, the Trademarks Registry, the Nigerian Copyright Commission and the Plant Breeders' Rights Office aimed at restructuring to improve efficiency and responsiveness so IP rights, including industrial design, can be registered, enforced and commercialized rapidly and transparently as commercialization is the at the centre of all IP regime.
- k. The very laudable initiative of Federal Government's new IP policy- National Intellectual Property Policy & Strategy (NIPPS) launched on 10 January, 2026 and activated on 17 January 2026 wherein three key bodies: the Inter- Ministerial Steering Committee, the Inter- Agency Coordination Group, and the Technical Working Group, were inaugurated aims to modernize the country's IP system, strengthen protection for creators and innovators, and boost economic competitiveness For the benefits to be felt across all strata, including but not limited to urban creators, tech firms, rural innovators, SMEs and creative communities, education institutions, the Policy must be implemented effectively, with adequate funding, competent institutions and real enforcement. Laws on paper do not and are not automatically translated into law in action and change lives, they must be backed by consistent action. So, the IP Policy as part of a broader national strategy for economic diversification and human capital development, since it represents a strategic shift in how Nigeria views innovation and

creative assets- from something peripheral to something central to economic growth, if implemented well, can help attract billions in investment, create jobs, empower creators, boost exports and deepen Nigeria's integration into the global knowledge economy because the extent to which its potential benefits are realized on practical execution, institutional capacity, accountability and inclusive implementation.

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