PATENT STRATEGIES FOR COMPANIES DOING BUSINESS IN NIGERIA

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ABSTRACT

In the U.S., and indeed in most parts of the world, many large companies understand that smart investors make decisions whether or not to invest in a company, after carefully considering the company’s technology and conducting extensive due diligence. This due diligence usually entails the determination of what technology the company owns and what technology it does not own. The situation is no different in other regions of the world such as Africa, Asia and South America, where measured steps are being taken to underscore the crucial role of patents in both domestic and international economic development.

This article will examine the current patent legal system in Nigeria and some of the challenges to the development of patent rights. The article will also look at the reasons why foreign and local companies doing business in Nigeria implement patent strategies, the effectiveness or lack thereof of these patent strategies, and steps companies may undertake to further protect their patents and encourage development in emerging technologies.

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**ACRONYMS**

AFIT – Air Force Institute of Technology  
AGRO – Agro-Allied Sector  
CBN – Central Bank of Nigeria  
ENG – Engineering Sector  
FUTY – Federal University of Technology Yola  
GSK – GlaxoSmithKline  
IIP – International Intellectual Property Institute  
IP – Intellectual Property  
IPRs – Intellectual Property Rights  
IPS – Intellectual Property System  
IPTTO – Intellectual Property and Technology Transfer Offices  
IPP – Industrial Project Profiles  
ISR – International Search Report  
MAS – Mass Authentication Service  
LFN – Laws of the Federation of Nigeria  
NAFDAC – National Agency for Food and Drug Administration and Control  
NARICT – National Research Institute for Chemical Technology  
NIPRID – Nigerian Institute for Pharmaceutical Research and Development  
NITEL – Nigerian Telecommunications Limited  
NOTAP – National Office for Technology Acquisition and Promotion  
OAU – Obafemi Awolowo University  
PBR – Plant Breeder Rights  
PCT – Patent Cooperation Treaty

PIDC – Patent Information and Documentation Center
PRODA – Project Development Agency
R&D – Research and Development
RFID – Radio Frequency Identification
SMC – Solid Mineral and Chemical Sector
SMEs – Small and Medium-sized Enterprises
TM - Trademarks
TRIPS – Trade Related Aspects of Intellectual Property Rights
WIPO – World Intellectual Property Organization
WHO – World Health Organization
WO – Written Opinion
WTO – World Trade Organization
UNN – University of Nigeria
UPOV – Union for the Protection of New Varieties of Plants
USPTO – United States Patent and Trademark Office

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INTRODUCTION

1. Patent Applications in Nigeria

Patents are an important management tool that can provide a company with competitive advantage, a solid market position and access to new and emerging markets. Through a well-thought-out patent strategy, a company may generate revenue, motivate employees, encourage technology transfer agreements, leverage new business relationships, protect its research and development (R&D) efforts and discourage competitors from imitating its products and services.

Under Nigerian law, patents are protected and can be granted for a product or a process.¹ According to the World Intellectual Property Organization (WIPO), between 1980 and 2000, a total of 6099 patents were registered in Nigeria.² WIPO also reports that out of the 6099 patents that were registered during that period, 5,752 were foreign (convention) application while only 347 were local (non-convention).³

The laws regulating patents and design registration in Nigeria are contained in the Patents and Designs Act, Cap. P.2, Laws of the Federation of Nigeria, 2004 (the Act), which was enacted in 1971, and has not been updated or amended thereafter. The Patents, Trademarks & Designs registry regulates the filing of patents in Nigeria while the National Office for Technology

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¹ In order to register a patent in Nigeria, an applicant must take steps to conduct search for availability; File applications in respect of convention (foreign application on Form 1A) and non-convention (local applications on Form 1B); Submit a Power of Attorney in Form 2 designating the patent agent; File two copies of Form 3, which should include information on the title of invention, name, address and nationality of the applicant. Where foreign priority is claimed, information concerning the patent, number, date, country of earlier application and name of patentee should be included. A complete specification and claim together with plans and drawings if any; and a declaration signed by the true inventor.

² International conference on intellectual property, the Internet economic commerce and traditional knowledge, May 2001

³ The disparity between the number of foreign application filed and granted in Nigeria may be an indication that the protection provided by the government for registered patents and the incentives for R&D are not satisfactory.
Acquisition and Promotion (NOTAP) regulates the transfer of technology and technical service agreements.

Under the Act, an invention is patentable if it is new, results from inventive activity and is capable of an industrial application. This section of the Act contains the novelty requirement and the effect is that no invention may be patented if the same invention is already known in Nigeria. The Act goes on to define the characteristics for an “inventive activity”: An invention results from inventive activity if it does not obviously follow from the state of the art, either as to the method, the application, the combination of method, or the product which it concerns, or as to the industrial result it produces.

This is comparable to the provision of the United States patent law, which provides that an invention must be novel and must not be obvious. An invention will also be patentable if it is an improvement upon an existing invention. In practice, there are loopholes to the above requirements for patentability because Nigeria currently adopts a deposit or non-substantive examination system for its patent applications. What the law does is to place the burden on the public to challenge registered patents that do not conform to the legal requirements. The effect of this deposit system is that it increases the danger that a lot of patents that have been issued by the patent registry in Nigeria cover inventions that are already in the public domain.

Figure 1 shows a breakdown of the patent application and filing process in Nigeria.

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4 Section 1(1)(a) of the Patents and Designs Act, CAP P3, LFN 2004
5 Section 2(b) of the Patents and Designs Act, CAP P3, LFN 2004
6 35 US Code Section 102 and 103
7 Section 1(1)(b) of the Patents and Designs Act, CAP P3, LFN 2004
8 There is no substantive examination to determine whether or not the patent application is new or builds directly upon a basic patent to constitute an improvement and meets the inventive step requirement. The patent examiner is only obligated to check that the required documents and fees have been submitted.

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Figure 1 Patent Application Filing Process in Nigeria
Nigeria does not grant patents in respect of plants, animal varieties, biological processes for the production of plants or animals (except microbiological processes and their products) or principles and discoveries of a scientific nature. This is different from the United States, where plants are covered patent claims provided the patent application meets the required standards that exist in the country for patentability. A few African countries such as Kenya and South Africa also grant patents in respect of plants.

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9 This exclusion from patentability relies on Article 27.3(b) of the TRIPS Agreement, which permits WTO members to exclude from patentability plants and animals other than microorganisms and essential biological processes for the production of plants and animals other than non-biological and microbiological processes.


12 Plant Breeders Rights Amendment No.15 of 1996

13 Id. page

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If an invention is considered contrary to public order or morality, it is excluded from being registered as a patent in Nigeria.\textsuperscript{14} For example, the registrar will not register a patent, which covers a device that is useful to prevent a person from being caught when committing rape.

As mentioned above, when an application is filed, the registrar of patents will not enquire as to whether the subject of the application is patentable. The registrar will also not conduct detailed examination to determine whether the descriptions and claims satisfy the requirements of Nigerian law.\textsuperscript{15} The effect is that patents are granted at the risk of the patentee and without any guarantee of their validity.\textsuperscript{16} The rationale for this lack of substantive examination is that there is shortage of persons of adequate expertise in the fields of science and technology who can assess the novelty of inventions to be patented.

It is highly important that the invention, which is sought to be patented must not have been made available to the public at anytime, and by any means before the date of the filing of the patent application.\textsuperscript{17} This requirement of non-public disclosure does not extend to situations where an inventor or his successor in title exhibited the invention in an official exhibition, within a period of six months preceding the filing of a patent application.

Upon filing, the term of a patent is 20 years from the filing date of a complete patent application.\textsuperscript{18} During the life of the patent the patent holder (often referred to as the patentee) must pay a prescribed annual fee in order to maintain the patent. Where the patent holder

\begin{thebibliography}{9}
\bibitem{14} Section 4(b) of the Patents and Designs Act, CAP P3, LFN 2004
\bibitem{15} Section 4(2)(b) of the Patents and Designs Act, CAP P3, LFN 2004
\bibitem{16} Section 4(4) of the Patents and Designs Act, CAP P3, LFN 2004
\bibitem{17} Section 1(3) of the Patents and Designs Act, CAP P3, LFN 2004
\bibitem{18} Section 7(1) of the Patents and Designs Act, CAP P3, LFN 2004
\end{thebibliography}
defaults in the payment of the annual renewal fee, the patent lapses, after the expiration of a 6 months grace period and cannot be revived again.\textsuperscript{19}

With regard to a product, a patent confers upon the patentee in Nigeria, the rights to preclude others from making, importing, selling, using or stocking it for the purpose of sale or use.\textsuperscript{20} For a process, a patent confers upon the patentee the rights to preclude others from applying the process or doing in respect of a product obtained directly from the process any of the acts mentioned above.\textsuperscript{21} A patentee also has a right to assign the patent or grant a license in respect of the patent.

When a patentee or an assignee suspects that his patent has been infringed, he has a right to bring a civil suit against the infringer.\textsuperscript{22} A licensee cannot sue in the first instance but must first of all require the licensor to sue to remedy the infringement. If the licensor (i.e. the patentee) unreasonably refuses or neglects to institute proceedings, the licensee may do so in his own name without prejudice to the right of the licensor to intervene in the proceedings.\textsuperscript{23} If the court finds that there has indeed been an infringement of the patent, the patentee is entitled to relief by way of damages, injunction, accounts etc.\textsuperscript{24}

\textsuperscript{19} Section 7(2) of the Patents and Designs Act, CAP P3, LFN 2004
\textsuperscript{20} Section 6(1)(a) of the Patents and Designs Act, CAP P3, LFN 2004
\textsuperscript{21} Section 6(1)(b) of the Patents and Designs Act, CAP P3, LFN 2004
\textsuperscript{22} Under Nigeria’s proposed IP Bill; provision is made for additional criminal penalties for patent infringement especially where such infringement is done in the course of business.
\textsuperscript{23} Section 25(4) of the Patents and Designs Act, CAP P3, LFN 2004
\textsuperscript{24} Section 25(1) & (2) of the Patents and Designs Act, CAP P3, LFN 2004

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2. National Office of Technology Acquisition & Promotion (NOTAP)

Functions of NOTAP
A big part of Nigeria’s socio-economic development and technological policy is not only to encourage in flow of new technology into the Nigerian market but to ensure that businesses in Nigeria can identify foreign technology that are best suited to the local needs. To this end, the National office of Technology Acquisition and Promotion (NOTAP) is mandated to carry out registration and monitoring of foreign technology transfer agreements and to ensure that foreign technology imported into the country is not overpriced or obsolete.\(^\text{25}\) The effect of non-registration of a technology transfer contract is that the Nigerian company will be unable to obtain the approval of Central Bank of Nigeria (CBN) to make payments in foreign currency to the non-resident party through an authorized bank.\(^\text{26}\)


\(^{26}\) Rates and Allowances: A look at the laws applicable to corporate entities, Oxford Business Group, 2011

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NOTAP also renders support services to local inventors and researchers by assisting with the registration of their R&D inventions at the Trademark, Patents and Design Registry in Abuja.\(^ {27}\)

In order to assist, encourage and prepare patent applications for researchers in Nigerian Universities and Research Institutions, NOTAP established 30 Intellectual Property Technology Transfer Offices (IPTTOs).\(^ {28}\) These IPTTOs are geographically situated throughout the country. In addition, NOTAP provides technology advisory services and publishes Industrial Project Profiles (IPP) for potential entrepreneurs in order to encourage the establishment of more Small and Medium scale Enterprises (SMEs).\(^ {29}\)

**Registration of Technology Agreements by NOTAP**

NOTAP is mandated to register all contracts for the transfer of foreign technology to Nigerian companies. In carrying out this mandate, NOTAP ensures that there are no restrictive business practices and there are provisions in registered technology agreements for employment, exposure and training of Nigerian staff. NOTAP may also refuse to register a technology agreement where the price or other consideration offered is not commensurate with the technology to be acquired. Figure 2 shows the procedure for registering technology transfer agreements in Nigeria.

\(^ {27}\) [http://notap.gov.ng/](http://notap.gov.ng/)

\(^ {28}\) For a list of the IPTTOs in Nigeria, see Table 3.

\(^ {29}\) NOTAP’s IPP contains information on indigenous research results and locally developed technologies. It also contains technological information on approximately 60 SME projects.
Figure 2 Procedure for Registering a Technology Transfer Agreement in Nigeria

PROCEDURE FOR REGISTERING A TECHNOLOGY TRANSFER AGREEMENT IN NIGERIA

STEP 1

Transferee Sends to NOTAP:
- Complete application form
- Monitoring forms
- Two copies of NOTAP's Questionnaire
- Cover Letter
- Two copies of the Technology Transfer Agreement
- Memorandum and Articles of Association of the Local Company
- Pays Prescribed Application Fees (Bank Draft)
- A copy of any relevant feasibility report
- Annual audited account (existing company) or Certificate of Incorporation (new company)

STEP 2

Application is evaluated by NOTAP: Includes the determination of fees for use of the technology (User fees) and the duration approved for the agreement

STEP 3

Rejected/Recommended for Review

Contract involving a payment below N500,000

Approved

Certificate of Registration Issued

Accepted

Registration Fees due (different from user fees)

Contract involving a payment above N500,000

Possible Grounds
1. Restrictive Business Practices
2. No Training Provision
3. Monopoly Pricing
4. High Royalty Rates
5. Tie-in Clauses
6. Export Restriction

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NOTAP also tracks the number of technology agreements registered in Nigeria based on different industries. In 2010, a total of 1,236 technology agreements were registered with NOTAP. Figure 3 shows a breakdown of the agreements per industrial sector. The Service Sector (SER) had the highest number of agreements (571) while the Agro-Allied industry (AGRO) recorded the lowest number of technology agreements registered for that year (246).

Figure 3 Number of Technology Agreements Registered in Nigeria in 2010 (Per Industrial Sector)

NOTAP has also been able to provide data that shows that between 1983 and 2010, a total of 4,196 technology agreements were registered. The highest number of technology agreements was in the SER Sector, which had a total of 1,334 agreements. The Solid Mineral and Chemical Sector (SMC) had a total of 1,148 agreements. This was followed by, the Engineering Sector (ENG) with a total of 927 agreements and the AGRO sector with a total of 356 agreements.

Table 1 shows a breakdown of the agreement registered (per industry) from 1983-2010 while Figure 4 shows the growth of the agreements over a span of 10 years (per industry).

30 http://notap.gov.ng/content/technology-transfers

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### Figure 4 Analysis of the Number of Technology Agreements Registered in Nigeria (Per Industry) (1999-2009)

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Filing of Patent Applications through NOTAP
Due to globalization, NOTAP has evolved from focusing entirely on its role as a regulatory and control agency to one that offers patent services, access to patent information and technical support in the commercialization process.\textsuperscript{31} In addition to attracting foreign investors, NOTAP seeks to encourage local manpower and technological development. NOTAP began assisting with the filing of applications for patents and the processing fees at the Trademark, Patent and Design registry in 1999. Between 1999 and 2008, a total of 227 applications were submitted to NOTAP for processing. After evaluation, only 86 applications were filed at the Trademark, Patent and Design registry in Abuja.

<table>
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<td>17</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>2003</td>
<td>4</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2004</td>
<td>27</td>
<td>12</td>
<td>7</td>
</tr>
<tr>
<td>2005</td>
<td>41</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>2006</td>
<td>24</td>
<td>16</td>
<td>14</td>
</tr>
<tr>
<td>2007</td>
<td>28</td>
<td>13</td>
<td>4</td>
</tr>
<tr>
<td>2008</td>
<td>40 (As at Sept.)</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>227</strong></td>
<td><strong>86</strong></td>
<td><strong>57</strong></td>
</tr>
</tbody>
</table>

\textsuperscript{31} Isaac Nwaedozie, Overview of Foreign Technology Transfer efforts in Nigeria: NOTAP’s Perspective (2012). Presented at the Science & Technology Diplomacy for Developing Countries Conference.

Establishment of Intellectual Property and Technology Transfer Offices

NOTAP has established thirty (30) Intellectual Property and Technology Transfer Offices (IPTTOs) in a number Nigerian Universities, Polytechnics and Research Institutes. The main function of the IPTTOs is to promote interaction and strengthen the linkage between University/Research Institutions and Industries.\(^\text{32}\) Table 3 shows the locations of the IPTTOs across Nigerian Universities and Research institutions.

\(^{32}\) [http://www.notap.gov.ng/content/establishment-ipttos](http://www.notap.gov.ng/content/establishment-ipttos)

Table 3 Location of Institutional IPTTOs in Nigeria

<table>
<thead>
<tr>
<th>University/Research Institution</th>
<th>State</th>
<th>Geopolitical Zone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ahmadu Bello University Zaria</td>
<td>Kaduna</td>
<td>North-West</td>
</tr>
<tr>
<td>Air Force Institute of Technology (AFIT)</td>
<td>Kaduna</td>
<td>North-West</td>
</tr>
<tr>
<td>Covenant University, Otta</td>
<td>Ogun State</td>
<td>South-West</td>
</tr>
<tr>
<td>Enugu State University of Science and Technology</td>
<td>Enugu</td>
<td>South-East</td>
</tr>
<tr>
<td>Federal Institute of Industrial Research</td>
<td>Ondo</td>
<td>South-West</td>
</tr>
<tr>
<td>Federal University of Technology, Yola</td>
<td>Adamawa</td>
<td>North-East</td>
</tr>
<tr>
<td>Federal University of Technology, Owerri</td>
<td>Imo</td>
<td>South-East</td>
</tr>
<tr>
<td>Federal Institute of Industrial Research, Oshodi</td>
<td>Lagos</td>
<td>South-West</td>
</tr>
<tr>
<td>Federal Polytechnic, Nekede</td>
<td>Imo</td>
<td>South-East</td>
</tr>
<tr>
<td>Federal University of Agriculture Markudi</td>
<td>Benue</td>
<td>North-Central</td>
</tr>
<tr>
<td>Nnamdi Azikiwe University, Awka</td>
<td>Anambra</td>
<td>South-East</td>
</tr>
<tr>
<td>National Research Institute for Chemical Technology (NARICT), Zaria</td>
<td>Kaduna</td>
<td>North-West</td>
</tr>
<tr>
<td>Nigerian Institute for Pharmaceutical Research and Development (NIPRID), Abuja</td>
<td>Abuja</td>
<td>North-Central</td>
</tr>
<tr>
<td>National Root Crops Research Institute, Umudike</td>
<td>Abia</td>
<td>South-East</td>
</tr>
<tr>
<td>Obafemi Awolowo University (OAU)</td>
<td>Ogun</td>
<td>South-West</td>
</tr>
<tr>
<td>Rivers State Polytechnic, Bori</td>
<td>Osun</td>
<td>South-West</td>
</tr>
<tr>
<td>Rivers State University of Science and Technology Port-Harcourt</td>
<td>Rivers</td>
<td>South-South</td>
</tr>
<tr>
<td>Project Development Agency (PRODA)</td>
<td>Enugu</td>
<td>South-East</td>
</tr>
<tr>
<td>University of Benin</td>
<td>Edo</td>
<td>South-South</td>
</tr>
<tr>
<td>University of Ibadan</td>
<td>Oyo</td>
<td>South-West</td>
</tr>
<tr>
<td>University of Ilorin</td>
<td>Kwara</td>
<td>North-Central</td>
</tr>
<tr>
<td>University of Maiduguri</td>
<td>Borno</td>
<td>North-East</td>
</tr>
<tr>
<td>University of Nigeria,Nsukka (UNN)</td>
<td>Enugu</td>
<td>South-East</td>
</tr>
<tr>
<td>University of Uyo</td>
<td>Akwa-Ibom</td>
<td>South-South</td>
</tr>
<tr>
<td>University of Jos</td>
<td>Plateau</td>
<td>North-Central</td>
</tr>
<tr>
<td>University of Port-Harcourt</td>
<td>Rivers</td>
<td>South-South</td>
</tr>
<tr>
<td>Usman Danfodio University, Sokoto</td>
<td>Sokoto</td>
<td>North-West</td>
</tr>
<tr>
<td>Yaba College of Technology, Yaba</td>
<td>Lagos</td>
<td>South-West</td>
</tr>
</tbody>
</table>

**Patent Information and Documentation Center (PIDC)**

In collaboration with WIPO, NOTAP established the Patent Information and Documentation Center (PIDC), which is a computerized databank with access to patent information available globally. What PIDC does is to provide access to technological information in patent documents.
in a manner suited to the needs of the users, including NOTAP, which has become one of the main users of the PIDC.

3. Some Important International Patent Conventions

The Patent Cooperation Treaty (PCT)

The PCT facilitates patent filing in different PCT member states using a streamlined procedure. In 2003, Nigeria signed the PCT and deposited its instrument of accession to the World Intellectual Property Organization (WIPO) Office on February 8, 2005. Nigeria became a contracting state of the PCT on May 8, 2005. Subsequently, the registrar of patents began accepting PCT national phase filings and issuing certificates through the local patents registry in Nigeria. The registry in Nigeria also accepts requests for registration of the right of priority. Under the PCT, the timeline for entry into the national phase is 30 months from the priority date.

The World Trade Organization’s Trade Related Aspects of Intellectual Property (TRIPS)

Under the World Trade Organization’s (WTO) TRIPS agreement of 1994, members are required to provide IP protection in their laws. What TRIPS does is to establish minimum standards for the availability, scope and use of various forms of IP i.e. trademarks, copyrights, geographical

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33 PCT Notification No. 169 Patent Cooperation Treaty (PCT) – Accession by the Federal Republic of Nigeria
34 Article 22(1); Article 39(1)(a) and all documents submitted must be translated to English.

Available online at http://ssrn.com/abstract=1801883
indications, industrial designs, patents including plant variety protection, layout designs for integrated circuits and undisclosed information (trade secrets).

Under TRIPS, member countries are not allowed to pick and choose amongst the different agreements however, countries are allowed to exclude from patent protection, plant and animals other than microorganisms.\(^{35}\)

**Union for the Protection of Plant Varieties (UPOV)**

The purpose of this convention, which was amended in 1961, is to ensure that members of the union acknowledge the achievements of breeders of new plants by granting to them an IPR on the basis of a set of clearly defined principles.

Nigeria however does not have a Plant Variety Protection Act and as such a patent cannot be obtained in Nigeria in respect of plants, animal vegetables, for the production of plants or animals (except microbiological processes and their products) or principles and discoveries of a scientific nature.

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\(^{35}\) Many developing countries, including Nigeria, rely on the provisions of Article 27.3(b) of TRIPS in deciding to exclude plant varieties from patent registration.
REASONS WHY COMPANIES DOING BUSINESS IN NIGERIA SHOULD IMPLEMENT PATENT STRATEGIES

1. The Cross-Licensing Advantage

Companies that have registered patents in Nigeria can increase the value of their patents by making cross-licensing an integral part of their business model. A company that has one or more patents registered in Nigeria but wishes to use patents that are owned by a second company can negotiate a cross-licensing agreement, which would allow both companies to use one or more of their respective patents in accordance with the agreement. Such an alliance will allow both companies to substantially increase their weight in their area of technology.
2. **Strong Market Position and Access to New Markets**

Under Nigerian law, a patent confers upon the owner, the exclusive right to prevent others from making, importing, selling or stocking the patented invention.\(^{36}\) In theory, this implies that a company that owns patents in Nigeria may be able to create a market entry barrier for competitors in respect of the same invention. In practice however, companies license patents so as to prohibit others from using them and in order to turn infringers into allies.

Patents are also valuable because they offer numerous possibilities for gaining access to new markets especially in cases where companies own patents on technology that they cannot afford to manufacture or where they do not wish to be involved in the manufacturing of products. Through licensing, a company that owns registered patents in Nigeria may be able to penetrate markets it could not otherwise hope to serve. The licensee will however be responsible for ensuring that the products that result from use of the patent conforms with local laws and registration e.g. laws and regulations relating to labeling and translations.

3. **Higher Profit or Return on Investment**

Diversification of revenue streams is extremely important for companies doing business in Nigeria especially in view of increased competition and high sale costs. Patents allow companies to do just that. A company can recover the costs of R&D through royalties by allowing its patents to be used by other companies.

\(^{36}\) See Sections 6(1)(a) and (b) of the Patents and Designs Act CAP P3, LFN 2004

4. Positive Image for your Enterprise

A company’s portfolio of patents is often viewed as a corporate asset, which is taken into account during joint ventures, mergers and acquisition and when engaging in other revenue-generating transactions. For example, companies in the pharmaceutical and technological industries tend to have large portfolio of patents, which are often displayed by such companies on their websites and in annual reports. The idea is for potential investors and subscribers to take note of the companies on-going commitment to innovation.

5. Legal Basis for Patent Litigation

Should a case proceed to litigation, patents offer companies doing business in Nigeria the right and legal basis for their claim. This right allows companies to successfully challenge the infringement of their patents and entitles the company to civil remedies. For example, in *Uwemedimo v. Mobil Oil Producing (Nig) Unlimited*, a claim for the infringement of a patent, the court held that having applied for the patent and being issued a certificate of registration to that effect (Cert. No. RP13522), the right to the patent resided in the Appellants who were the statutory investors. Similarly, in *Bedding Holdings Limited v. Independent Electoral Commission*\(^\text{37}\) the Federal High Court Judge held that the Independent Electoral Commission infringed on the plaintiff’s registered patent (RP12994 and RD5946) when it licensed the importation of transparent ballot boxes to two private Nigerian companies who were also joined as parties to the suit, without seeking the requisite license from the plaintiff.

\(^{37}\) Suit No. FHC|Abj|CS|82|11

CHALLENGES TO THE DEVELOPMENT OF PATENT RIGHTS IN NIGERIA

Some of the challenges to having an effective patent system in Nigeria include:

Figure 6 Challenges to the development of patent rights in Nigeria

1. Lack of Expert Patent Examiners

Possibly one of the biggest challenges with regard to patent rights in Nigeria is that fact that patent examiners are not experts in the fields of science, engineering and technology. They are not required to have advanced degrees or trainings in the above fields. The effect of this lack of expertise is that patent examiners in Nigeria are unable to perform more than a cursory search of the registry records in order to locate prior art and as such there is no substantive examination of the specifications and drawings that are submitted for filings. This is potentially dangerous because the average person finds it difficult to read and understand patent

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specifications and drawings and therefore increasing the possibility of patents being registered when there are prior patents covered by the new registration.

In addition to the lack of expertise of the patent examiners, there are very few training modules or patent examination guidelines that have been developed to educate patent examiners in Nigeria.

Figure 7 Required Patent Capacities

2. Few Litigated Cases of Patent Infringement

There are very few cases of patent infringement that have proceeded to court and the litigation process in Nigeria. The majority of cases are settled before they get to court and these out-of-court settlements reduce the number of legal precedents in this area of IP. This is certainly not to state that there are no cases or legal precedents on patent infringement in Nigeria.

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3. Disparity between the Number of Foreign and Local Patent Applications

There is a large disparity between the number of foreign patent applications and the number of domestic applications that are filed in Nigeria. Table 4 shows that between 1998 and 2007, out of 4,823 patent applications filed in Nigeria 4,257 (88.26%) were filed by foreign applicants and 566 (11.73%) were filed by local applicants.

Table 4 Number of Patent Applications Filed and Granted in Nigeria between 1998 and 2007.

<table>
<thead>
<tr>
<th>YEARS</th>
<th>Foreign Patents</th>
<th>Local Patents</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. Of Applications Filed</td>
<td>No. Of Applications Granted</td>
</tr>
<tr>
<td>1998</td>
<td>411</td>
<td>185</td>
</tr>
<tr>
<td>1999</td>
<td>439</td>
<td>312</td>
</tr>
<tr>
<td>2000</td>
<td>473</td>
<td>351</td>
</tr>
<tr>
<td>2001</td>
<td>476</td>
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<tr>
<td>2002</td>
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<td>2003</td>
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<td>2004</td>
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<td>421</td>
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<td>2005</td>
<td>297</td>
<td>316</td>
</tr>
<tr>
<td>2006</td>
<td>255</td>
<td>212</td>
</tr>
<tr>
<td>2007</td>
<td>565</td>
<td>218</td>
</tr>
<tr>
<td>TOTAL</td>
<td>4,257</td>
<td>2,398</td>
</tr>
</tbody>
</table>

The disparity in the number of local and foreign applications may be an indication that the incentives provided by patents in Nigeria and for R&D are not currently satisfactory. This is very different from what happens in countries like Japan, China and Korea, where more local patent are filed than foreign patents. In 2007 for example, 565 foreign patents were filed in Nigeria, while only 84 local patents were filed representing 12.9% of the total patents filed in the country. In Japan, China and Korea, during the same year, 84.1%, 62.4%, and 74.6% (respectively) of the total patents filed were local applications.
Figure 8 Trends in Local & Foreign Patent Applications filed in Nigeria between 2004 & 2007

Table 5 Trends in Local and Foreign Patent Grants in Nigeria between 2004 and 2007

4. Counterfeiters are getting better at producing fakes

The sad reality is that just as technology is evolving and companies developing sophisticated anti-counterfeiting techniques, counterfeiters are equally getting better at producing fakes. The World Health Organization (WHO) estimates that fake anti-malaria drugs alone kill approximately 100,000 Africans a year and these counterfeit medicines deprive governments of 2.5%-5% of their revenue.\(^\text{38}\)

This problem is certainly not limited to Nigeria and other developing countries. In the U.S. for example, counterfeiters cost businesses an estimated $200 billion a year.\(^\text{39}\) One major problem that may result from a company’s goods being counterfeited in Nigeria is that when word gets out to the market that some of the goods are fakes, consumers tend to avoid purchasing that brand, which often leads to loss of millions of Naira.

In order to combat counterfeiting and stay steps ahead of counterfeiters in Nigeria, companies such as GlaxoSmithKline (GSK) have in collaboration with Nigeria’s National Agency for Food and Drug Administration and Control (NAFDAC), piloted innovative approaches that are aimed at protecting patents in Nigeria from counterfeit medicines.\(^\text{40}\) What GSK and NAFDAC have done is to take advantage of the fact that in the area of telecoms, Nigeria is currently Africa’s largest market with close to 100 million mobile phones.

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\(^\text{40}\) Other companies in Nigeria such as HP (using mPedigree), have adopted similar innovative approaches to protect their patents in Africa from counterfeit medicines.

Available online at http://ssrn.com/abstract=1801883
Using mobile phones, GSK began a six-month pilot anti-counterfeiting program in February 2011, in relation to its antibiotic, Ampiclox™. The company placed a scratch-off code on the back of the Ampiclox antibiotic pack. Using this code, consumers would send a text message to a central NAFDAC toll-free phone number for verification; the mobile service looks up the code and sends a verification text back to consumers.
There is also a toll-free phone number for consumers to call if they have any questions. This helpline received over 2,360 calls and some of the calls according to GSK, helped the company identify counterfeit Ampiclox in the market.

Available online at http://ssrn.com/abstract=1801883
GSK received 145,000 texts from 115,000 unique users representing approximately 10% of use. While 90% of the texts returned a genuine PIN, 2.5% received a counterfeit alert and others received a message indicating a duplicate PIN.

5. Failure to Revise the Patents & Designs Act
Since the enactment of the Act in 1971, there has been no significant amendment to it. This lack of revision/failure to amend has certainly been a challenge in view of the fast pace in which technology is advancing in Nigeria and also worldwide. Countries like China that equally have markets comparable with the Nigerian Market have made several significant amendments to their patent laws. For example in 2009, the Chinese government made its third revision to the patent laws.

Available online at http://ssrn.com/abstract=1801883
Chinese patent law and in 2010, new regulations was issued.⁴¹ Although Nigeria currently has a proposed IP Bill, that incorporates some of the trends that are now globally acceptable with regard to patents, the Bill is still currently pending and as such what continues to be operational is the 1971 Act.


Unlike NOTAP, which through PIDC can account for the number of patent applications submitted to it and the number granted, the Trademark, Patents and Design Registry in Nigeria is not automated. All matters relating to searches, acknowledgments, acceptances and registration are dealt with manually.

This shortcoming often leads to double registration and makes it extremely difficult to report data that relates to number of patent application filed per year and trends in patent applications. In the 2011, World Intellectual Property Indicators⁴² compiled data relating to IP activities in several countries, including a number of African countries. Data relating to Nigeria was incomplete. One possible reason for the failure to report this data to WIPO is the difficulty that arises due to the lack of a computerized registry system that would make it easy to run reports on the number of patent application filed and registered at the Registry on a year-to-year basis.

⁴¹ On October 1, 2009, the third revised Chinese patent law came into force. In February 2010, the New Implementing Regulation of the New Patent Law and the New Guidelines for Patent Examination were issued.
⁴² WIPO’s World Intellectual Property Indicators 2012 provides a wide range of indicators covering various areas of intellectual property: patents, utility models, trademarks, industrial designs, microorganisms and plant varieties protection. It draws on data from national and regional IP offices, WIPO, the World Bank and UNESCO.
Table 6 WIPO Indicators - Patent Applications by Patent Office and Origin, 2011

<table>
<thead>
<tr>
<th>Country</th>
<th>Resident Applications</th>
<th>Non-Resident Applications</th>
<th>Total Number of Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>76</td>
<td>730</td>
<td>806</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>2</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Egypt</td>
<td>605</td>
<td>1,625</td>
<td>2230</td>
</tr>
<tr>
<td>Ghana</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Kenya</td>
<td>77</td>
<td>120</td>
<td>197</td>
</tr>
<tr>
<td>Morocco</td>
<td>152</td>
<td>882</td>
<td>1,034</td>
</tr>
<tr>
<td>Nigeria</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Senegal</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>South Africa</td>
<td>821</td>
<td>5,562</td>
<td>6,383</td>
</tr>
</tbody>
</table>


7. Failure to Compile Data/Non-Reporting of Patent Activity

As a corollary to the lack of automated system at the Patent and Design Registry in Nigeria, there is the issue of failure to compile and make assessable relevant data with regard to the number of applications that are filed and registered annually. This non-reporting/failure to compile data shows that the patent system in Nigeria is currently not working as effectively as it should. There is the need to report data that reflects the total number of applications that are filed and registered annually. It is also important for the registry to be able to provide a breakdown of the applications to show the percentage of domestic and foreign applications and the countries and/or continents that are filing these patents.

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Unlike the U.S. where patent infringers receive criminal sanctions for infringement of existing patents, there is currently no criminal law sanction for patent infringement in Nigeria. In cases of patent infringement in Nigeria, the patent owner may sue in civil proceedings for damages, injunction and accounts.\(^{43}\)

Nigeria’s proposed Intellectual Property Bill, titled: *A Bill for an Act to provide for the Establishment of the IP Commission of Nigeria, Repeal of Trademarks Act CAP T13 LFN 2004 and Patent and Designs Act, CAP P2 LFN 2004 and make comprehensive provisions for the registration and protection of trademarks, patents and designs, plant varieties, animal breeders and farmers rights’ and for other related matters*, however provides for criminal sanctions for patent infringement.

Under Article 161 and 162 of the Bill, it is a criminal offence to use a patent without the consent of the patent owner and to counterfeit or imitate a patented article in the course of business. The Bill makes it a criminal offence punishable with 1 year imprisonment and/or a fine of N300,000.

In addition, the proposed Bill makes it a criminal offence to make false claims or representations of patent and provides for judicial orders for injunction, evidence discovery of patent and preservation.

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\(^{43}\) Section 25(1) \&(2) Patent and Designs Act, CAP P2 LFN 2004

Although the Federal High Court in Nigeria has the exclusive jurisdiction over intellectual property matters, the court is not a specialized court that only deals with IP Cases. Some studies show that having a specialized patent Infringement court will allow for the development

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of subject matter expertise, which will foster timely adjudication, as well as accurate and more consistent rulings. It will also signal to the public and foreign investors that the government respects IPR and are willing to enforce infringement of those rights. Most judges in Nigeria however have too little experience to be familiar with the vast complexities of patent cases. One possible solution to the problem of trained judges would be to organize continuing legal education seminars for judges in this area of law.

10. Culture of Patenting Amongst Nigerian Researchers

Universities and research institutions play a key role in national innovation systems. Studies have shown that Nigerian universities and research institutions generate some inventions, however only a few of those inventions are patented. Some of the reasons for the failure to patent inventions by Nigerian researchers include: lack of awareness of the procedure for patenting; Information gap; large portion of the research that lead to inventions are sponsored by the government, early publication of research in journal articles, poor culture of patenting, and lack of a specific law on IP creation and management at research institutions and universities in Nigeria. Researchers have also not taken advantage of reviewing prior/existing patent documents, which are available through NOTAP and serve as a springboard for further research in Nigeria.

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44 Study on Specialized IP Courts, International IP Institute, 25 January, 2012

In an effort to encourage patent culture among researchers in Nigerian universities and research institutions, NOTAP has established thirty IPTTOs across Nigerian universities, polytechnics and research institutions, geographically located in different parts of the country. These IPTTOs assist researchers with preparing and filing patent applications at the patent registry in Nigeria. Table shows the number of patent applications filed by researchers in research institutions in Nigeria between 1999 and 2012.

Table 7 Patent Applications Filed by Research Institutions (1999-2012)

<table>
<thead>
<tr>
<th>YEAR</th>
<th>FILED</th>
<th>EVALUATION</th>
<th>GRANTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>0</td>
<td>0</td>
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<tr>
<td>2000</td>
<td>5</td>
<td>0</td>
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<td>2001</td>
<td>1</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>2002</td>
<td>0</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>2003</td>
<td>0</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>2004</td>
<td>0</td>
<td>17</td>
<td>11</td>
</tr>
<tr>
<td>2005</td>
<td>0</td>
<td>16</td>
<td>17</td>
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<td>2006</td>
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<td>2008</td>
<td>5</td>
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<td>2009</td>
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</tr>
<tr>
<td>2010</td>
<td>3</td>
<td>53</td>
<td>1</td>
</tr>
<tr>
<td>2012</td>
<td>0</td>
<td>7</td>
<td>0</td>
</tr>
</tbody>
</table>

See table 3 for list of IPPTO offices in Nigeria.

PATENT STRATEGIES

Local and Foreign companies doing business in Nigeria need to develop comprehensive and practical patent strategies, which may include some of the following:

- File Patents in addition to TM
- Drug Labeling for Authentication
- Educate Inventors & Employees
- Increase Compensation for Inventors
- Develop Patent Prowess
- Understand the Nigerian Market
- Acquisiton of competing technology/Acquisition of Companies
- Local Distributors/Agents
- Continuous Innovation
- Renewal Fees
- Using patents as a sword
- International Patent Filing
- Turn Infringers to allied using licenses
- Monitor Competitors
- Local Counsel
- Using patents as a sword

Available online at http://ssrn.com/abstract=1801883
1. Focus not only on trademarks and design filings but also on patent filings

While no one can undermine the importance of registering trademarks and designs in Nigeria, successful IP strategies usually combine the various forms of protection available (depending on whether the subject matter is covered by the available protection). The idea is to weave a tight mesh of rights in the invention, creating a recognizable bond and therefore providing the most effective form of protection. Thus, nothing stops a company that has invented new computerized software from getting a trademark, filing a patent and design application and claiming copyright on the same software.

2. File applications through local counsel as against individuals

Developing and managing a company’s IP portfolio takes a lot of effort and planning. Therefore, any foreign company that intends to participate in the Nigerian market needs a well-constructed IP plan and a diverse IP team that would execute the plan effectively. The importance of using local attorneys cannot be over-emphasized due to the fact that they understand tactical decisions that need to be made, are usually well aware of the local culture, can easily make inquiries and carry out searches. Apart from statutory protections, Nigerian lawyers have taken the initiative by forming groups aimed at protecting IPRs and lobbying for IP reforms. Some of these groups include the Intellectual Property Lawyer Association (IPLAN), the Anti-Counterfeiting Collaboration (ACC), Nigeria, and the Nigerian Chapter of the International Association for the Protection of Intellectual Property (AIPPI).
3. Monitor the patent activities of competitors

It is important to monitor not only changes in the patent legal system but also the patent activities of competitors in order to prevent the consequences of patent infringement. As with filing, competitive searching and monitoring should preferably be carried out by local law firms that have solid teams that deal with IPRs. In addition to preventing patent infringement on the part of companies, monitoring a competitors’ patent would also enable companies seek out new ideas, opportunities and direction for their business. The rationale is that when a competitor company starts filing for patents, it becomes obvious that they are moving on to another stage in development e.g. building prototypes. Therefore by monitoring a company’s recent patent filings and activities, you can get a pretty good idea what new products they are developing, how close they are to introducing their product unto the market and you can conclude about the possible direction of technological development in a particular industry. Most certainly, it is worth monitoring patent filings in order to avoid wasteful duplication and to access useful technology i.e. through competitive monitoring a company can recommend opportunities for cross-licensing/licensing of patents to its competitors. The flip side of this is that your competitors can also monitor your activities.

4. Understand the market and respect the local culture

As a corollary of monitoring your competitor, it is equally important to understand the Nigerian market. Although Nigeria is clearly one of the largest commercial markets, there is high tendency for consumers to resort to certain brand names, which they are familiar with, and as such it may be very difficult for a company seeking to introduce a new brand, to penetrate the
market (which is often saturated) with a new product. This is notwithstanding the fact that such a company has patented its new product because patenting the product without taking adequate steps to develop an effective patent strategy would not by itself, guarantee commercial success. Companies must therefore take steps to determine whether the product they seek to introduce can be commercialized successfully locally and/or internationally. If the product has the potential for international commercialization, then the company can put together strategies for entering other countries in order to ensure that there will be additional returns on the costs of filing patent applications in these countries.

5. Use the Nigerian legal system as a sword to protect IPRs

As stated above, filing for a patent allows you to monitor competitors. It is also an easy way to access the most updated information about patents that have been registered in Nigeria. If an applicant applies for a patent on something that has already been opened to the public or patented, the registry will reject the application and send back a notification with information on the relevant prior patent(s). This simply means that the examiner will tell the applicant about the relevant technology. In this way, a company that has developed the patent can by registering it prevent competitor’s entry into that market, other than through a licensing agreement. The problem with this strategy is that most examiners in Nigeria are not experts in the field of science and technology and as such they are usually not able to inform applicants about the extent to which their own technology is innovative or not, due to their inability to conduct substantive examinations. All that can be done is to inform the applicant of the
presence of an existing patent and not the differences in innovation. Another problem with this strategy is the lack of computerized registry system in Nigeria. Although the registry has been taking steps to address this problem, computerized systems are not yet operational.

6. **Educate potential inventors and employees about the necessity of patent protection**

Educating inventors about the R&D process and the need for patent protection enables them think differently about how they work. It also teaches them to look for opportunities to create IP that are aligned with the company’s business objectives. Because of the pace at which the consumer market is developing in Nigeria, it is essential to ensure that all employees of a company doing business in Nigeria are fully aware of intellectual property rights issues generally and that company is able to formulate and implement a consistent patent strategy.

7. **Increase compensation for inventors**

Under Nigerian law, patents on employees’ inventions are automatically assigned to the company. The usual practice is for companies to reward its employees who have come up with useful inventions and patented them. Compensation is usually monetary. The problem with this strategy is that such employees are often not compensated for subsequent use of the patent on the grounds that the employee made use of the companies data, the R&D conducted

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47 See Section 2(1)(4) of the Patents and Design Act, CAP P3 LFN 1990. This provision is subject to a few exceptions.
48 NOTAP currently promotes a framework on incentives and reward system for creators of IP in tertiary and research institutions in Nigeria. An IP Policy Guideline was published by NOTAP to assist university and research institutes to develop incentives and reward systems.

by the company has led to the new inventions and the initial filing were all carried out within
the scope of the employees employment. The rationale, which companies rely on is that any
additional compensation would amount to paying the employee for work, which they would
ordinarily be required to do.

The importance of compensating employees should not be underestimated. Technology and
the flow of information have changed the way people think and their expectations. In the past,
employee-inventors were compensated by the company putting the their name on the patent
however, this may no longer be seen as an adequate reward. It is highly important that
additional corporate incentives be made available in order to motivate more research and to
get patents that will be valued worldwide.

8. Develop patent prowess

Reputation is a very important tool in business. When a company develops a reputation for
having the ability to challenge infringement of its IPRs and win IP disputes, competitors will be
less likely to risk infringing such a company’s IPRs. On the other hand, a company that has
developed the reputation for not monitoring and challenging the infringement of it’s patents
and IPRs in general, runs the risk of having its patents violated on a regular basis. In Nigeria, for
example, companies such as GSK, Pfizer, Johnson & Johnson and Novartis have developed the
corporate reputation for regulatory prowess, which is very important especially in a market
such as Nigeria where consumers rely on brand names and the reputation of brands in deciding
whether or not to purchase a product.
When a company doing business in Nigeria has reasons to suspect that others are infringing upon their patent, there are a few steps the company can take. First, the company needs to collect information about the infringing party and their use of the infringing product or process. It is advisable to engage the services of a patent lawyer and seek professional legal advise. The patent lawyer will usually send a cease and desist letter informing the alleged infringer of a possible conflict between the companies patent and the infringing company’s business activity. The effectiveness of this letter usually depends on whether the company that is infringing your patent is doing so intentionally or unintentionally. In unintentional cases, the infringing company usually discontinues its use and sometimes agrees to negotiate a licensing agreement. In other cases, the company that owns the patent may seek an injunction from the Federal High Court in Nigeria.

9. Acquire new technologies through transfer of technology or acquire the entire company

When a company is working on a new technology, it has to ensure that such technology is not infringing patents that have already been obtained by other competitors. The company also has to ensure that others citing prior art or obviousness do not subsequently challenge the patents it has obtained. Therefore, companies that are engaged in technological development in Nigeria may sometimes need to acquire the patents of other companies in order to prevent such challenges in the future. It is however important to point out that while negotiations to transfer technology from one company to another is another strategy, which a company can undertake in building its business in Nigeria, it is usually a time consuming and cumbersome
process. A Company may as an alternative, acquire other target companies for their technology. But, it is noteworthy to point out that the acquisition of companies, particularly the integration of the acquired company, is no trivial task either and the company runs the risk that such acquisition might not really enhance share value.

10. **Understanding the importance of continuous innovation**

Today, due to increasing competition in Nigeria and the emergence of customer oriented markets, innovation is a major factor that can drive the success of many businesses. The main concern of any company’s management should be to encourage innovation through different channel of the company, especially from R&D. What most companies in Nigeria do towards this goal is to establish policies that support innovative process. For example, many companies have included innovation in their mission statement. The idea is that when management emphasizes the importance of innovation it ensures that this concept is reinforced throughout the company.

It is no longer enough to rely on older inventions or rest on existing patents, if a company truly intends to succeed in the Nigeria consumer market. For example, in the early 90’s, there were about 100,000 landlines in Nigeria, which were run through the state-owned telecoms, NITEL. Today, NITEL is no longer in existence and the telecoms industry in Nigeria has grown to 100 million phone lines.\(^{49}\) This reflects the increasing demand and induces more players into the market, hence the increase in competition.

\(^{49}\) See Figure 11.
11. **Filing only in Nigeria vs. International Patent Filing**

As stated above, most locally owned Nigerian companies do not file patents and those that do file, do not make any effort to file internationally. Patents registered in Nigeria offer only territorial protection, so it is important that companies take advantage of the priority filing by filing internationally. One option is to file under the PCT, which will facilitate the application process, and give companies valuable patentability such as the PCT international search report and the Written Opinion of the International searching Authority, to base their decision as to whether or not to further pursue patent protection. For example, the International Search Report contains a list of prior art documents from all over the world, which have been identified as relevant to the invention, while the Written Opinion of the International Searching Authority analyzes the potential patentability in light of the results of the International Search Report. Figure 14 outlines the PCT application process.

*Figure 12 Outline of the PCT Application Process*

While the filing of a patent application, depending on how you look at it can be a costly procedure, companies/inventors have to balance that the cost of not filing against the price of having their invention infringed upon. They should therefore devise early patent filing strategies early in order to ensure that there is sufficient funding and carry out investigations to enable them decide whether or not to filing in specific countries that may or may not suite their products.

12. Importance of paying renewal fees

As stated earlier, the patentee is required to pay a prescribed annual fee in order to maintain the patent and when he defaults, the patent lapses after the expiration of a 6 months grace period and cannot be revived. Companies must therefore ensure that not only do they file their patents but also they must pay the annual renewal on their patents. The implications of failure to renew after the grace period can often be devastating, as the company loses the patent and it will not be revived.

13. Drug Labeling for Authentication

Pharmaceutical companies doing business in Nigeria must first of all meet the minimum standards set by NAFDAC regarding packaging. It is however not enough to provide the bare minimum requirement on packages because both drugs and packaging are counterfeited daily.

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50 Section 7(2) of the Patents and Designs Act CAP P3, LFN 2004

An October 2011 report by GALLUP showed that about 83% of Nigerians claimed to have encountered a counterfeit drug.\(^5^1\)

In response to this problem, many pharmaceutical companies use holograms on some of their medicines and products.\(^5^2\) These holograms can be in the form of labels, hot-stamped patches, blister boils, invisible printing, digital watermarks, color-shift inks, scrambled images, and micro text. For example, Colgate Palmolive uses holographic foil, which is recognizable usually at the point of sale. Other methods of increasing consumer authentication include the serialization of holograms, 2-D barcodes, which can be either linear, scripted or 2-D data matrix format, or Radio Frequency Identification (RFID)\(^5^3\).

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**2-D Barcode Format**

![2-D Barcode](image)

**National Drug Code**

![National Drug Code](image)

**Script Format**

![Script Format](image)

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\(^5^3\) RFID works using a tag, which is placed on each product in order to enable tracking. The product is packed into cases and stacked on trucks. Scanners track the tag on the product as it moves. RFID tags can be read from a distance using the scanners and contain a lot more data than bar codes. Both GSK and Pfizer have used RFID in some of their drugs.

14. Turning Infringers Into Licensees

When a company discovers that its patent is being infringed in Nigeria, one way it can avoid the high costs and length of the litigation process is through licensing, which can be extremely profitable and a great source of revenue to the company. The company’s strategy here will be to turn an infringer or a competitor into an ally. This can prove extremely valuable in cases where the infringing company/competitor did not infringe the patent intentionally, already has an established market and is exploiting the patent in products and services that it sells.

15. Engage the services of a Local Distributor/Agent

Foreign companies doing business in Nigeria can engage the services of a local distributor or agent. Local distributors due to their familiarity with the market have access to vital market knowledge such as the determination of appropriate pricing strategies and sales networks. They can also provide labor and other related inputs at competitive rates and can navigate regulatory requirements. This does not mean that foreign companies with registered patents and products in Nigeria should place every responsibility on the local distributor, such companies can support the local distributor by providing personnel trainings, marketing and technical support.

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54 In technology transfer cases, NOTAP specifically requires foreign companies to make provisions for the training of Nigerian staff.

Available online at http://ssrn.com/abstract=1801883
CONCLUSION

Nigeria’s Intellectual Property System (IPS) is fairly young and is still evolving in terms of content and effective protection remedies. While there are some challenges, the current IPS presents opportunities operating within the country, especially as Nigerian consumers are ravenously seeking technological innovations.

Technological and pharmaceuticals companies seeking to do business in Nigeria need to be mindful of existing patents and develop their own patent strategies that take into account the local market. Such companies should endeavor to use patents as both a shield and a sword and develop the prowess to protect their patents. It is also important for companies doing business in Nigeria to file their patents before introducing products into the market and to do so through local counsel who understand the tactical decisions that need to be made and are well aware of the local culture.

Continuous monitoring of competitors will ensure that companies avoid duplicative research and have access to useful technology, thereby reducing their R&D costs. Licensing and cross-licensing also offer additional business strategies through which companies doing business in Nigeria can diversify their revenue streams, access new markets and maintain a strong market position.

Finally, both local companies seeking to do business in Nigeria and foreign companies seeking to transfer technology to Nigeria need to take advantage of the various advisory services and patent assistant services offered by NOTAP.