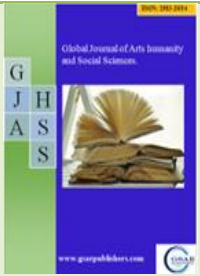
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## PROSPECTS AND CHALLENGES OF INDUSTRIAL DESIGN REGISTRATION IN NIGERIA: COMMERCIALIZATION AND DIGITAL TRANSFORMATION

By

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### Abstract

Industrial Design protection plays a vital role in promoting creativity, innovation, and economic development by safeguarding the aesthetic features of products. In Nigeria, the legal framework governing industrial designs is primarily contained in the Patents and Designs Act, Cap P2, Laws of the Federation of Nigeria 2004, supplemented by relevant international instruments such as the Paris Convention for the Protection of Industrial Property, the World Intellectual Property Organization Convention, and the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This study examines the legal framework regulating Industrial Design registration in Nigeria, the opportunities available to designers following registration, the obstacles confronting effective protection, and the impact of digital transformation on innovation commercialization. The paper adopts a doctrinal research methodology through the examination of statutes, judicial authorities, international instruments, and relevant secondary materials including scholarly writings. It analyzes the requirements and procedures for industrial design registration, the rights conferred by registration, the duration of protection, and the remedies available for infringement. The study further identifies several challenges affecting the Industrial Design regime in Nigeria, including obsolete legislation, weak enforcement mechanisms, administrative bottlenecks, low public awareness, inadequate funding, and poor record management systems. The research also explores the growing influence of digital technologies such as Artificial Intelligence (AI), Blockchain Technology, Computer-Aided Design (CAD), E-commerce, and Digital Marketing on the commercialization of Industrial Designs. These technologies have transformed the manner in which designs are created, protected, marketed, and monetized, thereby creating new opportunities for designers and businesses while simultaneously raising novel legal and regulatory concerns. The study concludes that although industrial design registration offers significant commercial benefits, including exclusive rights, revenue generation, investment attraction, and international expansion opportunities, the existing legal and institutional framework requires substantial modernization. It recommends legislative reforms, full digitization of registration processes, stronger enforcement mechanisms, enhanced public awareness, increased access to funding, and Nigeria's accession to the Hague System for the international registration of Industrial Designs. The implementation of these recommendations would strengthen industrial design protection and promote innovation-driven economic growth in Nigeria.

**Keywords:** Industrial Design, Registration, Intellectual Property, Commercialization, Digital Transformation, Prospects, Challenges, Artificial Intelligence

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## 1.0 INTRODUCTION

The growth of industrialization and technological innovation in the world has increased the importance of intellectual property protection and one of the areas of intellectual property that contributes significantly to commercial success is Industrial

Design. Consumers are often attracted to products not only because of their functionality and usage but also because of their appearance and its aesthetics. Consequently, there is the need to protect the visual and aesthetic features of products through Industrial Design registration.



Flowing from the above, Industrial Design is a form of intellectual property (IP) that relates to the aesthetic appearance of a product that gives it a special form. It can be in a three or two-dimensional shape. Industrial Design cuts across a variety of products and is used to appeal to consumers.<sup>1</sup> It is not to be confused with a Patent as a Patent protects an invention that offers a new technical solution in an industry, meaning, the invention (either a process or product) must be functional while on the other hand, Industrial Design protects the appearance of the product, which need not be functional before it is protected.<sup>2</sup> An “industrial design” is a model or pattern to be multiplied by industrial process.<sup>3</sup>

In everyday language, an industrial design generally refers to a product’s overall form and function. An armchair is said to have a “good industrial design” when it is comfortable to sit in and we like the way it looks. For businesses, designing a product generally implies developing the product’s functional and aesthetic features taking into consideration issues such as the product’s marketability, the costs of manufacturing or the ease of transport, storage, repair and disposal. From an intellectual property law perspective, however, an Industrial Design refers only to the ornamental or aesthetic aspects of a product. In other words, it refers only to the appearance of an armchair.<sup>4</sup> Although the design of a product may have technical or functional features, industrial design, as a category of intellectual property law, refers only to the aesthetic nature of a finished product, and is distinct from any technical or functional aspects. Industrial design is relevant to a wide variety of products of industry, fashion and handicrafts from technical and medical instruments to watches, jewelry, and other luxury items; from household products, toys, furniture and electrical appliances to cars and architectural structures; from textile designs to sports equipment. Industrial design is also important in relation to packaging, containers and “get-up” of products. As a general rule, an industrial design consists of: - three dimensional features, such as the shape of a product, - two-dimensional features, such as ornamentation, patterns, lines or color of a product; or - a combination of one or more such features.<sup>5</sup> Industrial Designs may include: Bottle shapes, Fashion designs, Furniture designs, Automobile body designs, Packaging designs, Footwear designs and Household appliances.

By virtue of Section 12 of the Patent and Designs Act<sup>6</sup>, the nature of Industrial Design is described as any combination of lines or

colors or both, and any three dimensional form, whether or not associated with colors, is an industrial design, 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. What actually constitutes the design is that particular combination and arrangement lines and colors which gives such features.<sup>7</sup> In Nigeria, the right to registration is vested in the statutory creator, that is, the person who, whether or not is the true creator, is the first to file or validly claim a foreign priority for, an application for registration of the design.<sup>8</sup> It is necessary to state that the registration of an industrial design confers upon the registered owner the right to preclude any other person from doing any of the following act;

- a) Reproducing the design in the manufacture of a product,
- b) Importing, selling or utilizing for commercial purposes a product reproducing the design: and
- c) Holding such a product for the purpose of selling it or utilizing it for commercial purposes.<sup>9</sup>

Industrial design protection occupies a very important position within the framework of intellectual property law. As world economies become increasingly innovation-driven, the aesthetic appearance of products has become a significant commercial asset. Manufacturers and designers alike tend to invest substantial resources in creating unique designs that distinguish their products from those of competitors. Consequently, the law grants protection to industrial designs to encourage creativity, investment, and economic development.

With the rise of digital technologies, AI and online registration systems, Industrial Design protection and commercialization has been greatly transformed. While these developments create new opportunities for innovators, they also generate novel legal and practical challenges.

## 2.0 LEGAL FRAMEWORK GOVERNING INDUSTRIAL DESIGNS IN NIGERIA

Like many aspect of Nigerian law, the history of the protection of Industrial Design in Nigeria can be traced to the English legal system. Industrial designs in the United Kingdom initially protected designs in the textile industry through the Designing and Printing of Linens, Cotton, Calicoes and Muslins Act 1787.<sup>10</sup> This law protected the inventor, designer or printer of any new pattern for a period of two months. As stated earlier, industrialization led to introduction of methods of mass production and proliferation of industrially made goods. This necessitated the need to protect the design of such products, hence the law protecting designs was extended to cover the design of these manufactured articles. This was achieved through the Designs Act of 1842 which protected

<sup>1</sup> M. Ogbonna ‘Protection and Enforcement of Industrial Design in Nigeria.’ <http://www.bimakassociates.com/protection-and-enforcement-of-industrial-designs-in-nigeria/> > accessed June 3, 2026

<sup>2</sup> Ibid

<sup>3</sup> N.B Plc vs P.B Ltd (2010) 14 NWLR (PT. 1214) 529

<sup>4</sup> ‘An Introduction to Industrial Designs for Small and Medium-sized Enterprises in Nigeria. WIPO publication No. 498. Retrieved <

[https://www.wipo.int/export/sites/www/sme/en/documents/guides/customization/looking\\_good\\_nig.pdf](https://www.wipo.int/export/sites/www/sme/en/documents/guides/customization/looking_good_nig.pdf) > accessed June 3, 2026

<sup>5</sup> Ibid

<sup>6</sup> CAP P2, LFN 2004

*Industrial Design in Nigeria. Retrieved <*

<sup>7</sup> Uzokwe vs Densy Ind. (Nig) Ltd (2002) 2 NWLR (PT 752) 528

<sup>8</sup> PDA, s14(1)

<sup>9</sup> PDA, s19(1)

<sup>10</sup> D. Oriakhogba, & I. Olubiyi, *Intellectual Property Law in Nigeria: Emerging Trends, Theories and Practice* (Paclerd Press Limited, 2023) 332



patterns, shapes or ornaments applied to products.<sup>11</sup> In 1883, there was a codification of the Patents, Designs and Trademarks Act in one single legislation. Subsequently, the Registered Designs Act of 1949 was passed which essentially remains in force in the United Kingdom subject to amendments made in the Copyright, Designs and Patents Act 1988.<sup>12</sup>

With regards to Nigeria, the United Kingdom Designs (Protection) Ordinance (No 36) of 1936 protected designs registered in the UK in Nigeria. Such designs enjoy protection in Nigeria as though it were originally registered in Nigeria. This position continued even after the independence of Nigeria in 1960. Hence, anyone interested in registering a design had to do so in the United Kingdom. The first indigenous legislation governing and regulating Industrial Designs was however enacted in 1970 as the Patents and Designs Act (PDA) (Patents and Designs Act, Cap P2, Laws of the Federation of Nigeria (LFN) 2004) which is the extant law till date.<sup>13</sup>

The Constitution of the Federal Republic of Nigeria 1999 (as amended) gave credence to Patents and Designs Act, Cap P2, Laws of the Federation of Nigeria (LFN) 2004 as it provides for protection of property rights under Section 44, indirectly supports intellectual property ownership. Industrial design protection in Nigeria is governed not only by domestic legislation, but also by several international treaties and agreements to which Nigeria is a party and signatory to. These instruments influence the protection, registration, and enforcement of industrial design rights in Nigeria and they include:

### 2.1 Paris Convention for the Protection of Industrial Property

Nigeria is a member of the Paris Convention for the Protection of Industrial Property, which is one of the most important international instruments governing industrial property rights, including Industrial Designs. The Paris Convention establishes the principle of national treatment, requiring member states to grant foreign nationals the same protection afforded to their own citizens, this we believe gave rise to the right of priority in Nigerian law, which allow an applicant who has filed a design application in one member state to file in another member state within six months while retaining the original filing date. The Paris Convention facilitates the protection of Nigerian Industrial Designs abroad and allows foreign applicants to enjoy similar protection in Nigeria.

### 2.2 World Intellectual Property Organization Convention 1967

Nigeria is a member of WIPO, the specialized United Nations agency responsible for promoting intellectual property protection worldwide. WIPO provides an institutional framework for international cooperation in intellectual property matters and assists member states like Nigeria in developing and modernizing

their intellectual property systems. Nigeria's industrial design regime has benefitted from WIPO's technical support, training, and harmonization efforts.

### 2.3 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

The TRIPS Agreement forms part of the legal framework of the World Trade Organization (WTO), of which Nigeria is a member and it requires member states to provide protection for independently created industrial designs that are new or original while mandating effective enforcement mechanisms. Nigeria at all times must ensure that its industrial design laws comply with TRIPS standards regarding protection, registration, and enforcement. There are treaties Nigeria has not yet fully adopted for Industrial Designs with our nearly obsolete laws like:

### 2.4 Hague Agreement Concerning the International Registration of Industrial Designs

This Hague System allows designers to obtain protection in multiple countries through a single international application and that simplifies international registration. It also equally reduce registration costs and enhances global commercialization opportunities. Nigeria is not currently a contracting party to the Hague Agreement. Consequently, design owners must seek protection separately in jurisdictions where protection is desired.

## 3.0 REGISTRATION OF INDUSTRIAL DESIGNS IN NIGERIA

Industrial design registration serves as a legal mechanism through which statutory creators obtain exclusive rights over their designs and such protection encourages creativity, promotes investment, and contributes to economic development. Industrial Design requires registration before it can bestow on a statutory creator certain rights, having fulfilled specific essential statutory requirements. Section 13(1) of PDA states that a design is essentially registrable if it is new and it is not contrary to public order or morality. This means, a design must not have been made available to the public before the filing date and it must not offend public morality or public policy for it to be registered. Therefore, where a design has previously been published or publicly disclosed, it loses its novelty and becomes unregistrable and a design that is contrary to public order or morality cannot be registered. The law excludes designs that may offend societal values or public interests.

It presupposes that where an application is made for the registration of an industrial design, the design shall be presumed to be new at the time of the application.<sup>14</sup> An industrial design is not new if, before the date of application for registration, it has been made available to the public anywhere and at any time by means of description, use or in any other way, unless it is shown to the satisfaction of the Registrar that the creator of the design could not have known that it had been made so available.<sup>15</sup> Also, an

<sup>11</sup> *Ibid*

<sup>12</sup> *Ibid*

<sup>13</sup> *Ibid*

<sup>14</sup> PDA, s13(2)

<sup>15</sup> *Ibid*, s13(3)

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 six months preceding the filing of the application for registration the creator has exhibited it in an official or officially recognized exhibition.<sup>16</sup> Finally, an industrial design is not new merely because it differs in minor or inessential ways from an earlier design or concerns a type of product other than the type with which an earlier design is concerned.<sup>17</sup>

The right to registration of an Industrial Design belongs primarily to the statutory creator of the design, i.e. the person whether or not he is the true creator is the first to file or validly claim a foreign priority for an application for registration of the design.<sup>18</sup> In essence a statutory creator is the first natural person or body corporate to file as that is the system legally operated in Nigeria. But where the design is created in the course of employment, ownership may vest in the employer depending on the terms of the employment contract, because when an Industrial Design is created by an employee within the course of his employment, the rights in such creation shall be vested in the employer, this is equally the case if the design was made in the course of a commissioned work.<sup>19</sup> The Proviso is that an employee who makes a design not in the course of his employment as required by the terms of employment contract but using the means of his employment, shall be entitled to fair remuneration.

### 3.1 Procedure for Registration

An application for the registration of an Industrial Design shall be made to the Registrar, on whom the powers are conferred by the Act, he shall examine every application to make sure it is in compliance with the Act.<sup>20</sup> The Registrar shall check the following:

- Whether the design is not contrary to public order or morality.
- Whether the necessary information like applicant's full name and address, a specimen of the design, etc., are provided and,
- Whether the prescribed fee has been paid.

In essence the applicant must file an Application form with Applicant's particulars, Representation of the design, statement of novelty and pay prescribed fees. It is pertinent to buttress that where the application does not comply with necessary requirements, the registrar shall reject the application.<sup>21</sup> The Registrar usually examines the application primarily for compliance with statutory requirements or conformity with the provision of the Act rather than conducting a substantive novelty examination or investigation. Finally, upon acceptance, the Industrial Design is registered by the issuance of a registration certificate to the applicant containing the necessary details and

<sup>16</sup> *Ibid*, s13(4)

<sup>17</sup> *Ibid*, s13(5)

<sup>18</sup> *Ibid*, s14 (1)

<sup>19</sup> *Ibid*, s14(4)

<sup>20</sup> *Ibid*, s15(1)

<sup>21</sup> *Ibid*, s16(1)(a)

following the registration, a notice of the registration is published by the Registrar to inform the public of the existence of the registered design<sup>22</sup>

### 3.2 Rights Conferred by Registration

By virtue of Section 19(1) of the extant PDA (Act), registration grants and confers upon the registered owner the exclusive right to the following acts:

- Reproducing the design in the manufacture of a product;
- Importing, selling or utilizing for commercial purposes a product reproducing articles embodying the design;
- Holding such a product for the purpose of selling it or of utilizing it for commercial purposes; and equally,
- Prevent unauthorized exploitation.<sup>23</sup>

### 3.3 Duration of Protection

Unfortunately, in Nigeria, the right to a registered design lasts for 5 (five) years but may be extended for two consecutive periods of 5 (five) years each. Therefore, the total period any product can be registered for protection is 15 years.<sup>24</sup> That means that the right of the Industrial Design owner is protected within these years from infringement by the public but after expiration, the design enters the public domain. To secure the 15-year timeframe, proprietors must pay renewal fees within strict statutory windows.<sup>25</sup> That presupposes that if a business undergoes financial hiccups, experiences administrative delays at the Trademarks, Patents and Designs Registry, or misses the renewal deadlines (even during the 6-month grace period), the design's protection lapses prematurely. It is our submission that the 15 years short lifespan of registered design appears to be a disadvantage for rapidly and continuously evolving industries and sectors like fashion. Industrial Designs often outlive their commercial appeal in just a couple of years. 15 years is definitely far too short for a long-lifecycle products that finally gain market traction later in their lifecycle. As a result of protection not being extended beyond the 15-year maximum, successful and iconic designs inevitably become part of the public domain. This exposes statutory creator to uncompensated market competition and numerous imitation by third parties.

### 3.4 Obstacles to Industrial Design Registration in Nigeria

There are various obstacles and challenges to the protection conferred upon a design creator and they include but not limited to:

#### 3.4.1 Obsolete Legislation

The Patents and Designs Act enacted in 1971, have never undergone any amendment since then, and therefore requires substantial modernization to reflect contemporary technological realities. The Act is not exhaustive in its provisions to meet up with the realities of the 21<sup>st</sup> century thereby creating some lacunae. As a result, some of the problems associated with industrial designs were not addressed. For example, section 12 which defined

<sup>22</sup> *Ibid*, s17(3)

<sup>23</sup> *Ibid*, s19(3)

<sup>24</sup> *Ibid*, s20(1)(a)(b)

<sup>25</sup> *Ibid*, s20(1)(b) & (2)

industrial design was not very clear. The definition of “industrial design” is so long and winding, with punctuation that the meaning became lost in verbiage. Also, section 13(a) that deals with registrable design; the provision is not clear on when a design is new and not contrary to public order or morality. Then section 14(1) which provides that the right to registration of an industrial design shall be vested in the statutory creator that is to say, the person who, whether or not he is the true creator, is the first to file, or validly to claim a foreign priority for an application for registration of the design.<sup>26</sup> From the foregoing provisions, it is quite clear that the first to file a claim obtains a right to register, one would think that this section creates room for fraud. Then on the issue of remedies for infringement of industrial designs. It is clear from the analysis that the Act does not represent a serious attempt at providing remedies for those whose rights are infringed.<sup>27</sup> This is a serious lacuna, more so, when the Act does not expressly authorized reliance on the English or common law for support. It is therefore arguable whether it is right for the Nigerian Courts to rely on the remedies available under the common law as a matter of course without even seeking to rely on any indigenous statutory provision to that effect. Flowing from the above and others, it can be said that some provisions of the Act are ambiguous and that there are some lacunae in the Act which in no small way are challenges to effective protection of industrial design in Nigeria.<sup>28</sup>

#### 3.4.2 Low Public Awareness

Many creators and entrepreneurs are unaware of the benefits of industrial design registration, consequently, numerous valuable designs are never registered. Awareness has not much been canvassed in respect of this area of law and as such people are ignorant about this area of law. As such infringers take advantage of this public ignorance against the public<sup>29</sup> and this has posed a challenge to effective protection of Industrial Design in Nigeria.

#### 3.4.3 Weak Enforcement Mechanisms

Registration alone does not stop infringement by infringing parties, weak enforcement mechanism is also one of the challenges to effective industrial designs protection in Nigeria. The pace of judicial proceeding is slow thereby creating lengthy litigations and the judiciary is bedeviled with manpower and infrastructural constraints such as insufficient number of judicial officers, poor record management facilities, absence of research assistants for presiding officers of court and the non-availability or insufficient court halls, to mention but a few.<sup>30</sup> Also, the high cost of litigation

poses a serious problem for effective enforcement as some designers will be disillusioned by this.

#### 3.4.4 Administrative Delays

Processing delays and numerous bureaucratic procedures may discourage applicants, although digitization has improved efficiency, delays may still arise in the examination, registration and renewal processes.

#### 3.4.5 Inefficiency of Governmental Agencies

There is no separate statutory body regulating industrial designs in Nigeria and as such the Registry<sup>31</sup> charged with the responsibility of regulating industrial designs multitasks. There is no adequate machinery to enable these agencies to work effectively. For example, the agencies are not provided with vehicles to enable them to move from one place to another to fish for infringers. Also, they are not adequately funded. These bodies are not provided with funds so as to enable them to work effectively. They also lack manpower. As a result, they do not function effectively.<sup>32</sup>

#### 3.4.6 Lack of Proper Records of Registered Industrial Designs

There are no proper records of all the registered industrial design in Nigeria. The Registrar does not keep data base form of all the registered designs. As a result of this, the Registrar may inadvertently register a design that is similar to the one that is already registered.<sup>33</sup>

#### 3.4.7 Limited Access to Funding

Nigerian Industrial Designers frequently face a major hurdle: getting enough money for materials, equipment and technology. This lack of funds makes it challenging to turn new ideas into actual products and increase their production capacity.<sup>34</sup>

### 3.5 Opportunities after Registration

Most times, the success or failure of a product rests on its look as it will first be pleasing to the eyes before purchase. Therefore, to successfully commercialize a product, a creator generally must invest time and money to innovate, develop and create products with a new or original design as well as working on advertising the product. Some of the benefits afforded a creator of a registered Industrial design includes:

#### 3.5.1 Exclusive Monopoly Rights

Protecting industrial designs is essentially to enable one prevent unauthorized imitation of protected designs by third parties. The owner of a protected industrial design has the right to prevent

<sup>26</sup> Udeoji N., Udeoji R & Ozioko K ‘An Overview of the Prospects and Challenges of Industrial Design Registration in Nigerian Setting. Retrieved’ < <https://msipublishers.com/wp-content/uploads/2025/08/MSIJALJ01A082025-GS.pdf> > accessed June 4, 2026.

<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> Trademarks, Patents and Designs Registry, operating under the Federal Ministry of Industry, Trade and Investment.

<sup>32</sup> Ibid

<sup>33</sup> Ibid

<sup>34</sup> Udeoji, N., Udeoji, R & Ezekiel, Q. ‘Appraising the Prospect and Challenges of Modern Age Industrial Designs, Impact of Digital Technology, its Registration and Commercialization Procedures in Nigeria. Retrieved’ < <https://msipublishers.com/wp-content/uploads/2025/08/MSIJAL1072025-GS.pdf> > accessed on June 5, 2026

others not having his consent from making, selling, exporting or importing articles bearing or embodying a design which is a copy, or substantially a copy, of his protected design, when such acts are undertaken for commercial purposes.<sup>35</sup> The Statutory Creator obtains a statutory monopoly over the design, this enables the creator to exclude competitors, maintain market exclusivity and get a return on investment. Moreover, near monopoly serves as an incentive for innovation.

### 3.5.2 Attraction of Investment

Since industrial designs are aimed at appealing to consumers, they can be an important element of a company's brand and business assets which may increase the market value of a company and its products and facilitate their marketing and commercialization.<sup>36</sup> Investors often prefer businesses possessing protected intellectual property because registration as it demonstrates innovative prowess, provides legal certainty and reduces market risks. Venture capitalists and private equity investors frequently evaluate Intellectual Property portfolios before investment decisions.

### 3.5.3 Generation of Revenue

Industrial design rights can be sold or licensed to another enterprise, which will then generate revenues for the rights owner and in turn, generate revenue for the economy at large through the payment of taxes, licensing fees, permit charges.<sup>37</sup> As industrial designs constitute proprietary rights capable of sale, assignment, transfer and inheritance, a statutory owner may license the design to third parties so as to benefit royalty, income and reduce production costs. A registered design is therefore a valuable commercial asset.

### 3.5.4 International Expansion

Through the principle of priority under the Paris Convention, Nigerian applicants may seek protection in other jurisdictions as other countries applicants can also seek, but within prescribed periods and this enhances export opportunities.

## 4.0. Infringement of Industrial Designs

The right of an industrial design owner is infringed if another person, without the license of statutory design owner, does or causes the doing of any act which that other person is precluded from doing under section 19 of the PDA, which deals with the rights conferred by registration.<sup>38</sup> The acts includes reproducing the design, manufacturing products embodying the design, importing infringing products and selling infringing products without authorization.

An infringement of the rights of the design owner shall be actionable at the suit of the design owner in question: and in an action for such an infringement all such relief by way of damages, injunction account or otherwise shall be available in any corresponding proceedings in respect of the infringement of other

proprietary rights.<sup>39</sup> A claim for an infringement of rights in design cannot be sustained merely because the infringing product is similar to that of the alleged infringed product. Similarity in design has nothing to do with its novelty or distinctiveness. It is important in a case where the newness of a design is in dispute for the design claimed to be infringed on and the infringing design to be put side by side 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.<sup>40</sup> Also, in design infringement disputes, it is not enough for the complainant to merely allege similarity of the new design to his design. There must be "in some way a special, peculiar, distinctive, significant or striking appearance" that has been imitated in the latter design.<sup>41</sup>

A defendant shall not be absolved from liability merely because he reproduces the Claimant's industrial design with differences in only minor or inessential details or because it concerns a type of product other than the type with which the design is concerned - section 19 (2) PDA). In *Controlled Plastics Ltd v. Black Horse Industries Ltd*,<sup>42</sup> the defendant's design was similar to that of the claimant. Only differences were that the Claimant's product was perforated at the bottom while that of the defendant was not and the Claimant's colander had thicker lines than those of the defendant. The court held that the defendant was infringing.<sup>43</sup>

### 4.1 Remedies Available for Infringement of Industrial Design Rights

In an action for such infringement of industrial design rights as stated above, all such reliefs by way of damages, injunctions, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of the infringement of other proprietary rights.<sup>44</sup> The statutory creator may seek:

#### 4.1.1. Damages

A Plaintiff in any action for an infringement of Industrial design rights as a design owner, may claim general, special, or exemplary damages, if he can prove same. Damages have been defined as the pecuniary compensation which the law awards to a person for the injury he has sustained by reason of the act or default of another, whether that act or default is a breach of contract or a tort. It could also be expressed as "the recompense given by process of law to a person for the wrong that another has done him".<sup>45</sup> It goes without saying that in an action for such an infringement, a successful plaintiff is entitled to damages as compensation for losses suffered.

#### 4.1.2. Injunction

In its legal sense, an injunction is a judicial process or mandate operating in *personam* by which, upon certain established

<sup>39</sup> *Ibid*, s. 25(2)

<sup>40</sup> *Uzokwe vs Densy Ind. (Nig) Ltd (supra)*

<sup>41</sup> *N.B. PLC V. P.B. LTD (supra)*

<sup>42</sup> (1990-91) FHCLR 180

<sup>43</sup> *Spivap (Nig) Ltd v. Bola Alaba & Ors (1991) FHCLR 181*, see also *D. Oriakhogba, & I. Olubiyi, op cit. (n.10)*

<sup>44</sup> PDA, s25(2)

<sup>45</sup> *F.B.N Plc vs A.G Federation [2018] 7 NWLR (PT. 1617) 121*

<sup>35</sup> *M. Ogbonna M., op cit, n.1*

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*

<sup>38</sup> PDA, s. 25(1)



principles of equity, a party is required to do or refrain from doing a particular thing. An injunction has also been defined as a writ framed according to the circumstances of the case, commanding an act, which the court regards as essential to justice, or restraining an act, which it seems contrary to equity and good conscience.<sup>46</sup> There are classes and types of injunction available to a design owner and the Supreme Court of Nigeria in the case of *Ohakim vs Agbaso* stated thus;

Injunctions are classified according to the nature of the order given by the court or sought by a party. The two broad classifications of injunction are: (a) mandatory injunctions; and (b) prohibitory injunctions. Under prohibitory injunctions, there are perpetual injunction, interlocutory injunction, interim injunction, qua-timet injunction, mareva injunction and anton-pillar orders. Generally, prohibitory injunctions restrain the person to whom they are directed from doing specific act or acts. However, mandatory injunction is an order of court requiring a party to do a specific act or acts. It is often seen as a restorative order invoked by the court to deal with a defendant who has no respect for the court of law. In most cases, a mandatory injunction is granted to undo what has already been done. This is why it is usually referred to as restorative injunction.<sup>47</sup>

In an action for infringement of an industrial design right, a design owner may apply to the court for any of the types of prohibitory injunctions, depending on the stage of the suit. The court may upon successful application grant an interim or interlocutory injunction pending the determination of the suit or perpetual injunction at the conclusion of the suit restraining further infringement.

#### 4.1.3. Account of Profits

This occurs in an action for infringement, where it is proved or admitted that an infringement was committed, but that at the time of infringement, the defendant was not aware and had no reasonable grounds to suspect that industrial design right subsisted to which the action relates, the plaintiff shall not be entitled to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement upon a successful litigation and an order of court, whether or not any other relief is granted. This specific remedy I believe is to prevent unfair enrichment of a defendant.

It is important to state at this stage that section 254 (1)(f) CFRN 1999 (as amended) and section 26 of Patent and Design Act empowers the Federal High Court, to the exclusion of any other to adjudicate and assume jurisdiction over cases relating to industrial design. The Federal High Court is equally permitted at hearing to

sit and be advised by two assessors having expert knowledge of matters of a technological and economic nature.<sup>48</sup>

## 5.0. Digital Transformation of Innovation Commercialization

Innovation commercialization is the process of transfiguring and transforming an invention or creative idea into a marketable product or service capable of generating economic returns. It creates a proper bridge between innovation and the marketplace by ensuring that creative outputs are effectively exploited for profit. It also means the process of transforming creative, functional, and aesthetically distinctive product designs into marketable assets that generate revenue and business value. This process is critical for designers, manufacturers, and the broader economy, as it enables the monetization of IP, fosters innovation, and enhances competitiveness.<sup>49</sup>

Digital transformation of innovation commercialization in industrial design refers to the use of digital technologies, platforms, and tools to convert industrial design innovations from mere creative concepts into commercially viable products and services. In a modern economy, industrial designs are no longer commercialized solely through traditional manufacturing and physical marketplaces. In layman's term, it means the use of digital tools to get new ideas to market faster and cheaper. The emergence of digital technologies such as Computer-Aided Design (CAD), Artificial Intelligence (AI), Blockchain, E-commerce, and digital IP management systems has modernized how Industrial designs are created, protected, marketed, and monetized.

The traditional way is to brainstorm an idea, build a physical prototype, produce, hope it appeals to people enough to buy the product when it hits physical stores, while the digital way is to use software to model a product, validate demand through social media and launch to consumers.

### 5.1. Role of Digital Transformation in Industrial Design Commercialization

The role digital technology is playing in industrial design commercialization can never be overemphasized as it is completely changing how industrial designs are commercialized by expanding audience footprint and market penetration, making operations easy through the following means:

#### 5.1.1. E-Commerce Commercialization

Digital platforms allow innovators to commercialize designs globally, that means that Design owners can now reach customers beyond traditional markets. Online market places such as Jumia and Konga in Nigeria, alongside global platforms like Etsy and Amazon, provide designers with direct access to vast consumer bases worldwide. These platforms bypass traditional retail intermediaries, reducing overhead costs related to physical storefronts and distribution. This new access to the market allows designers, especially small and independent creators, to sell their products worldwide. This helps them increase their revenue

<sup>46</sup> *Luna vs. C.O.P., Rivers State [2018] 11 NWLR (PT 1630) 269*

<sup>47</sup> *(2010) 19 NWLR (PT 1226) 172*

<sup>48</sup> *PDA, s26(2)*

<sup>49</sup> *N Udeoji, R. Udeoji, & Q. Ezekiel, op. cit p13*



potential and gain more visibility for their brand.<sup>50</sup> Avenues with expanded market reach, lower marketing costs, direct customer engagement and increased sales opportunities are created.

### 5.1.2. Artificial Intelligence

AI tools assists designers in predicting consumer preferences, identifying market trends, enhancing user experience as well as product design. Quick data-driven decision-making improves the commercial success of industrial designs. However, Nigerian law presently does not expressly regulate ownership of AI-generated industrial designs and this presents emerging legal questions and further creates lacunas.

### 5.1.3. Blockchain Technology

Blockchain technology is a digital record book (ledger) that securely stores data and transactions across network of computers. Blockchain can assist in proving ownership of industrial designs, recording licensing transactions, tracking design usage and reducing intellectual property infringement. It creates secure and transparent records that facilitate commercialization and could significantly reduce disputes regarding authorship and ownership.

### 5.1.4. Digital Marketing

Digital marketing tools, including social media campaigns, content marketing, search engine optimization (SEO), and targeted advertising, empower designers to reach specific customer segments efficiently and cost effectively. These strategies enhance brand awareness, engage potential buyers, and drive sales by tailoring messages to audience preferences and behaviours. The affordability and precision of digital marketing are particularly beneficial for emerging designers and startups with limited budgets.<sup>51</sup> Social media platforms have revolutionized commercialization, now designers can promote products directly to consumers at relatively low cost.

### 5.1.5. Computer-Aided Design (CAD)

Computer-Aided Design (CAD) software enables designers to create, modify, and test industrial designs digitally before production. Its benefits includes; reduced production costs, faster product development, enhanced design accuracy and easier collaboration among stakeholders.

## 6.0. Recommendations

In light of the numerous opportunities, glaring challenges, and interesting emerging digital trends surrounding industrial design registration and commercialization in Nigeria, and flowing from this research, we recommend the following:

#### a. Legislative Overhaul of the Patents and Designs Act

The extant Patents and Designs Act is largely and clearly out of touch with the current world trend and does not adequately address contemporary technological realities. The National Assembly should undertake a comprehensive review of the legislation to align it with modern international standards and emerging technologies such as Artificial Intelligence (AI), Blockchain

Technology and Computer-Aided Design (CAD). Specific provisions should be introduced regarding ownership, protection, and commercialization of digitally generated industrial designs.

#### b. Establishment of a Specialized Intellectual Property Commission

Even though it may seem like a long shot, there is a need for the establishment of an autonomous and well-funded Intellectual Property Commission responsible for patents, industrial designs, trademarks, and related rights. Such a body would improve administration, enforcement, public awareness, and policy development relating to industrial design protection in Nigeria.

#### c. Digitization of the Industrial Design Registry

The Trademarks, Patents and Designs Registry should fully digitize its registration, examination, renewal, and record-keeping processes. An integrated online database would improve transparency, reduce administrative delays, facilitate searches for prior registrations, and minimize the risk of duplicate registrations. Registration of industrial designs may seem seamless now but it is still too technical to be conducted electronically. Right now, when a prospective design owner wants to register an Industrial Design, irrespective of the state where he reside or work, he must embark on an arduous and dangerous (as a result of insecurity in Nigeria) journey to Abuja, where the Registrar's office is situated, or may rely on the newly operational online system.

#### d. Nigeria Should Accede to the Necessary International Agreement

Nigeria should as a matter of urgency accede to necessary international agreements and treaties and we should first become a contracting party to the Hague Agreement Concerning the International Registration of Industrial Designs. Membership of such, would enable Nigerian designers to secure protection in multiple jurisdictions through a single application, thereby reducing registration costs, simplifying international protection procedures, and enhancing global competitiveness.

#### e. Strengthening Enforcement Mechanisms

The effectiveness of Industrial Design protection depends largely on enforcement, therefore, Government should strengthen enforcement institutions through adequate funding, personnel training, technological resources, and collaboration with law enforcement agencies. Specialized Intellectual Property divisions within the courts should also be encouraged and created to ensure speedy dispensation of justice.

#### f. Increased Public Awareness

Government agencies, universities, professional associations, and intellectual property practitioners should intensify public enlightenment campaigns on the importance of Industrial Design registration. Designers, entrepreneurs, manufacturers, and small and medium-scale enterprises (SMEs) should be educated on the commercial value of Industrial Design protection and the consequences of infringements.

#### g. Improved Access to Funding for Designers and Innovators

<sup>50</sup> Ibid

<sup>51</sup> Ibid

Government and financial institutions should establish innovation grants, IP funds, and low interest credit facilities specifically targeted at industrial designers and creative entrepreneurs. Access to finance would encourage innovation and facilitate the commercialization of protected designs.

#### **h. Legal Recognition of Artificial Intelligence-Generated Designs**

Given the growing use of Artificial Intelligence (AI) in product design and development, Nigerian intellectual property laws should expressly address ownership, authorship, and protection of AI-assisted and AI-generated industrial designs. This would eliminate uncertainty and encourage investment in emerging technologies.

#### **i. Promotion of Digital Commercialization Platforms**

Industrial designers should be encouraged to leverage digital platforms, e-commerce marketplaces, social media marketing, and blockchain-based licensing systems for commercialization. Government should support digital entrepreneurship initiatives that enable creators to monetize their intellectual property on a global scale.

#### **j. Enhanced Collaboration with International Organizations**

Nigeria should strengthen collaboration with organizations as the WIPO for technical assistance, capacity building, policy development, and modernization of its industrial design protection framework. Such collaboration would facilitate the adoption of international best practices.

## **7.0 Conclusion**

Though Industrial design registration under the Patents and Designs Act provides an important mechanism for protecting the aesthetic and commercial value of innovative products in Nigeria, Industrial design protection remains a critical component of intellectual property law and an important catalyst for innovation, economic growth, and industrial development in Nigeria. While the registration system under the Patents and Designs Act provides valuable legal protection and commercial opportunities for designers, several challenges continue to hinder its effectiveness, including obsolete legislation, weak enforcement mechanisms, inadequate public awareness, administrative inefficiencies, and limited access to funding.

The rapid advancement of digital technologies has simultaneously created new opportunities for commercialization and new regulatory challenges. Technologies such as Artificial Intelligence, Blockchain, Computer-Aided Design, and E-commerce have transformed the creation, protection, and exploitation of industrial designs. Consequently, Nigeria must modernize its legal and institutional framework to accommodate these developments and position its designers to compete effectively in the global marketplace.

With appropriate legislative reforms, institutional strengthening, increased awareness, and the adoption of digital innovations, Nigeria can build a robust industrial design regime capable of fostering creativity, attracting investment, stimulating economic growth, and enhancing the country's competitiveness in the knowledge-drive