



INTELLECT FIRST

-AUGUST, 2020

JEE IN THE HEADLINES

Our Recent Milestones:

- ▶ Winner, Nigeria Firm of the year 2020' - Managing Intellectual Property (MIP) Awards.
- ▶ Finalist, 'Africa Firm of the Year 2020' – MIP Awards
- ▶ Rated Tier 1 Law Firm for contentious and non- contentious trademark and Patent work in Nigeria by World Trademark Review (“WTR”).
- ▶ Highest ranking Firm in 2020, for IP stars by Managing Intellectual Property (“MIP”)
- ▶ Voted the “Best IP Advisor, Africa” at the Innovation & IP Forum & Awards 2019.
- ▶ Our Head of Practice, Uwa, is one of 2 Nigerians recognized amongst the Top 250 Women in Intellectual Property 2019 & 2020, globally, by Managing Intellectual Property.

3 July 2020 - JEE Patent Webinar

Living up to its reputation, as a leading IP Practice in Africa, Jackson Etti & Edu, on 2nd July 2020, hosted a webinar themed “Deconstructing Patent in Africa through Regional Schemes”. The webinar which focused on patent protection in Africa, highlighted the national and regional filing systems and their benefits, was organized in collaboration with the African Intellectual Property Organisation (OAPI) and the African Regional Intellectual Property Organisation (ARIPO).

Anchored by Tolu Olaloye, a Senior Associate in JEE, the webinar also featured John Kabare, an Intellectual Property Operations Executive in ARIPO, and

Magui Nnoko, Counselor and Projects Coordinator at OAPI, with participants drawn from across Africa, Asia, America and Europe.

27 April 2020 - World IP Day: JEE Greenovation Challenge

World Intellectual Property (IP) Day is celebrated worldwide on April 26 every year. The theme for the 2020 edition was "Innovate for a Green Future" which we marked in style, albeit in lockdown, by organising an innovation competition tagged: "**JEE Greenovation: Innovating for a Green Future**", which aimed to support local efforts to address various environmental challenges through cost-effective and sustainable, eco-friendly solutions. We collaborated with the Nigerian Conservation Foundation (NCF), represented by Dr Muhtari Aminu-Kano, Director-General and The Tikki Hywood Foundation (THF), Zimbabwe, whose Founder and Chief Executive, Ms Lisa Hywood was also one of our judges.

A total of 39 entries, including 2 from as far as afield as Asia, were received, out of which 5 Finalists were shortlisted for live presentations on April 27, 2020 using the following indices:

- ▶ **Market Orientation:** satisfy needs, be competitive on the market, solve a problem
- ▶ **Environmental Aspect:** reduce negative impact, an innovation without negative impact on the environment at all
- ▶ **Phase:** full lifecycle of the innovation must be considered
- ▶ **Impulse:** intention for reduction may be economical or ecological
- ▶ **Level:** the innovation must set a green standard to existing alternatives
- ▶ **Cost:** entire solution must be cost-effective & capable of implementation from the grassroots level/at community level
- ▶ **Sustainability:** innovation must be seen to benefit future generations, in line with the WIPO theme

Ms Tobi Ade Odiachi, with Bio-Degradable Tableware was declared winner with a cash prize of 1 million Naira in seed grant and pro-bono legal services.

No longer business as usual" is the new cliché'. The novel Coronavirus 2019 pandemic ("COVID-19") has changed the way we live, and work. This change presents a new set of challenges that place a demand on our capacity for innovation and provides new opportunities for growth. These innovations, while solving the health, social and business problems induced by the pandemic also have the potential to produce substantial economic benefits for the innovators that hold the intellectual property rights ("IP").

Nigerian innovators are proving equal to the task. In response to the need for rapid testing in the country, Dr. Ola Brown, Founder of Flying Doctor Investment Group, recently launched a special walk-in COVID-19 testing booth with the aim of expanding access to testing whilst reducing the risk of infection to healthcare workers. The innovation has the potential to significantly reduce the use of Personal Protective Equipment ("PPE") which are quite expensive and in short supply.

At Ahmadu Bello University, Zaria, a 20-year-old mechanical engineering student, Usman Dalhatu, built a local ventilator. The young innovator has since transformed the local ventilator into a portable ultra-modern E-vent automatic ventilator. Mr. Tunde Okoya, the Managing Director of Lange and Grant Commodities, also developed a prototype ventilator which is now set to be produced in large quantities and deployed to several African markets.

Inventions are protected in Nigeria by the Patents and Designs Act ("PDA"). The law grants an inventor the exclusive right of exploitation for twenty ("20") years in exchange for the disclosure of information about the invention for the benefit of the public. This right is referred to as "patent".

For an invention to qualify for protection under the PDA, it must satisfy the dual conditions of novelty and capability of industrial application. While the latter may be easily met, satisfying the former often proves difficult. For an invention to be considered novel, it must have resulted from inventive activity. The law reckons that 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 methods, or the product which it concerns, or as to the industrial result it produces. Where the invention, fails to meet these criteria, it is considered unworthy of protection and open to free exploitation. These strict criteria inadvertently exclude valuable inventions from protection.

Utility models can solve this dilemma. According to the World Intellectual Property Organisation (“WIPO”), a “utility model” is an exclusive right granted for an invention, which allows the right holder to prevent others from commercially using the protected invention without his authorisation, for a limited period of time. Utility models protect innovations or discoveries which would otherwise not be protected under the standard patent law as they fall short of the inventive step or novelty requirement for a patent.

Though yet to be recognised in Nigeria, utility models have already been embraced by the IP system of many African countries including Egypt, Senegal and Rwanda as well as the two regional bodies, ARIPO (Anglophone countries) and OAPI (Francophone countries). Aside the benefit of encouraging local innovation in manufacturing and other sectors, a utility model law will prevent free riding of local inventions by predatory firms who have expended no effort or investment in respect of these innovations.

UPDATES IN NIGERIAN IP

Nigerian Trademarks Registry’s Publication of the Trademarks Journal Trade-mark Journal Volume 1 No.4 (Online/IPAS/Pre- IPAS) dated 30th June, 2020

Barely two months after the Federal Government of Nigeria Gradually began to lift the 3 month “COVID-19” Lockdown restrictions, the Trademarks registry recently released the Trademark Journal Volume 1 No.4 (Online/IPAS/Pre- IPAS) dated **30th June, 2020**. Impres-

sively, this is the 4th journal being published by the trademarks registry this year; the journal is the 2nd Journal being published post COVID-19 following *the Journal Vol. 1 No. 3* of **30 May, 2020**. Whilst the former was published to cover only matters filed vide the registry’s online platform, the latter is a publication of matters filed vide the registry’s Online Platform, Industrial Property Administration System (IPAS), as well as its manual system.



It is interesting to note that during the lockdown order which halted activities across the majority of Federal Government Ministries, Departments and Agencies, The Nigerian Trademarks registry as well as the Patent and Design Registry's filing process continued unhindered via the registry's online platform.

Section 20 (1) of the Trademarks Act allows for a two-month opposition period during which any interested party may file a Notice of Opposition. This period by law is non-extendable. Therefore, given the date of the Journal, it is expected that applications published in the said journal stand open for opposition purposes till the **30th of August, 2020**.

UPDATES IN AFRICAN IP

Mozambique Accedes to ARIPO's Banjul Protocol on Trademarks

The African Regional Intellectual Property Organization (ARIPO) has announced Mozambique as the latest member state to accede to the Banjul Protocol on Trademarks. The instrument of accession was deposited in the ARIPO Head Office on 15th May 2020 and the Protocol will enter into Force with respect to the Republic of Mozambique consequently on 15th August 2020. This implies that from 15th August 2020, applicants can begin to designate Mozambique as one of the countries to file national trademark applications through the ARIPO system.

Registry Updates

Following the outbreak of the pandemic in many African countries, many IP Offices across Africa were either shut completely or partially or proceeded on lockdown to continue operations remotely. However, with the easing of the lockdown in almost all the African countries, many IP Offices have resumed activities. Below are some of the notable developments across IP Offices in Africa.

Country/ Region	Update
Nigeria	Open but activities are slowly coming back to life. Members of the IPAS team are yet to fully resume. Remote filing is possible in some instances

Kenya	Fully Operational
OAPI	Remote Filing
ARIPO	Remote Filing
Botswana	Remote Filing
Algeria	Open but with limited service hours
Angola	Open with limited service operations
Lesotho & Liberia	Closed till further notice
South Africa	Open
Zimbabwe	Closed till further notice
Sudan	Remote Filing
Ghana	Open
Ethiopia	Open

There is a trend of increasing IP service charges in Africa, however, it seems governments have suspended such initiatives for various reasons including the hardships brought by the pandemic. The government of Ghana had proposed to increase all its IP filing fees by 20% effective from the 19th May 2020 but has since suspended this decision indefinitely. South Africa also suspended the proposed increase in official fees for Patents and Registered Designs which was previously scheduled for 1 October 2019. This change was meant to introduce a distinction in fees for corporate entities (large companies) from Small Medium and Micro Entities ("SMME"s).



Recent developments from South Africa

The Offices of the Department of Agriculture in South Africa is now accepting Plant Breeders' Rights Applications and Plant Variety Listing Applications. This effectively implies that interested applicants can contact their IP agents in Africa to get more information about filings.

Further, The South African Government is working on regulating its crypto assets. "*Crypto assets*" are a form of fintech innovation that may impact on the financial sector of the country. It is an umbrella term for various types of "digital assets" through "block-chain" technology. The Intergovernmental Fintech Working Group of South Africa has published a draft policy on crypto assets and crypto asset-related activities for public comment. The final paper will set the policy position for South Africa on crypto assets which will lead to the development of a regulatory regime.



The operative provisions of the Protection of Personal Information Act, 2013 ("POPIA") came into force on **1 July 2020**. POPIA is South Africa's data privacy law which governs when and how organisations collect, use, store, delete and otherwise handle personal information. Our clients need to be advised that they have 12 months from 1 July 2020 to become compliant. This means that although there will be no sanctions for non-compliance they must work towards compliance. Clients are advised to commence an analysis of all personal information within their organisation; source of the information and purpose. This exercise is quite complex and involving hence it needs to commence as soon as possible to avoid future penalties by the Information Regulator. The fines and penalties vary depending on the offence, with a maximum of 10 years in prison or a ZAR10 million fine (US\$576,230).

AfCFTA Secretariat operationalisation

On the **30th May 2019**, State Members of the African Union (AU), adopted the African Continental Free Trade Area (AfCFTA). AfCFTA was founded in Kigali, Rwanda on **21 March 2018** by forty-four (44) of the fifty-five (55) African Heads of State to create a single continental market for goods and services, with free movement of people and investments with the potential to increase economic growth, welfare and industrial development.

The roadmap of this Treaty involved a Framework Agreement that established three (3) protocols which covered Trade in Goods, Trade in Services, and Rules & Procedures. The second phase will see the development of the other three (3) protocols that cover Competition Policy, investment and Intellectual Property. The Priority service sectors are –; Transport, Communication, Finance, Tourism and Business Services.

The AfCFTA Secretariat was appointed on **1st April 2020** under the leadership of HE Mr Wamkele Mene of South Africa and will sit in Accra, Ghana. To date fifty-four (54) states have signed (Eritrea abstained) and twenty-eight (28), have ratified. The Secretariat's immediate goal is the creation of the Protocol on Investment as they initiate Phase 2. The full operationalisation of the Secretariat has been delayed by the Covid-19 pandemic. Concerning Covid-19, the AfCFTA Secretary General has proposed a trade corridor to facilitate swifter clearance of essential goods supported by a moratorium on customs duty to enhance affordability.

Comesa Innovation: Electronic Certificate of Origin

As part of its Digital Free Trade Area ("DFTA") initiative, the Common Market for East & Southern Africa ("Comesa") Trade and Customs Division, has launched an electronic certificate of origin ("eCo" system). The Fifteen (15) Comesa Member States .

ready to start piloting the eCo System include Burundi, DR Congo, Egypt, Eswatini (Swaziland), Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Tunisia, Zambia and Zimbabwe.

Certificates of origin are important because they help determine import duties and such regulatory issues as safeguard measures and other trade restrictions. Though they differ from country to country, regional integration (from the World Trade Organisation to Regional Economic Communities) has attempted standardisation to improve trade facilitation. Comesa certificates are issued to exporters within the Comesa Free Trade Area (established 2000) to confer preferential treatment to goods originating from an FTA member State. This is an important aspect of Comesa's rules of origin. The eCo system has been accelerated due to the Covid-19 pandemic and the need to smoothen trade facilitation and customs cooperation. The Trade and Customs Division is now working on mitigating the challenges of the rules of origin such as high implementation costs.

INNOVATION

WIPO Proof

On 27th May 2020, the World Intellectual Property Organisation (WIPO) launched its version of online digital evidence service known as "WIPO PROOF". It provides tamper-proof evidence of the date and time an IP work was created, disclosed, published, or introduced to the market.

In a world where works are digitally created and published online, it is very crucial for IP owners to be able to prove original proprietorship or first use in the case of an opposition or dispute.

Key Benefits:

- ▶ Independent and unique digital fingerprint on each work verifiable by third parties
- ▶ Instant generation of highly encrypted [254bit] hash using a one-way hashing algorithm
- ▶ Digital date and time-stamping available
- ▶ Separation and coding of collaborative works with each author able to specify parts authored in the joint work
- ▶ Confidentiality of works - the IP work is not stored itself or read (only the hash generated is stored)

How It Works:

► Creating a Token:

- a. Interested users must sign up for a WIPO account and have an up-to-date browser to be able to access the service.
- b. A valid bundle must be purchased for the original digital work to be processed.
- c. A token (unique digital fingerprint) is generated and an online acknowledgement that the token has been created.
- d. A confirmation email containing the link to download the token is sent to the user.

► Verification:

IP owners or third parties can verify tokens/original works by providing:

- i. The unaltered digital work
- ii. The token

Any work (trade secrets, trademarks, copyrights, documents, etc.) can be secured using the WIPO PROOF.

SECTOR SPOTLIGHT – ENERGY AND INFRASTRUCTURE

Update on Order for Transition to Cost Reflective Tariff

The commencement date for the implementation of cost reflective tariff within the Nigerian Electric Power sector which was scheduled for July 1 2020 has been moved to the first quarter of 2021. The Order on Transition to Cost reflective tariff which was first issued by the Nigerian Electricity Regulatory Commission ("NERC") on March 31 2020 will review end-user tariffs to reflect the cost of power generation and distribution. Although initially envisaged to commence on April 1 2020, the scheduled commencement was moved as a palliative by the NERC in response to the global economic down-turn caused by the COVID-19 pandemic. This planned tariff hike is expected to boost quality of service of all players in the power value chain, especially at the level of the distribution companies. The current tariffs represent about 60% of the actual cost reflective tariff supplied to end-users, while the government makes up for the deficit.

However, it is no secret that the Nigerian epileptic power sector has for long been plagued with several stumbling blocks such as liquidity constraints, legacy debts, as well as Aggregate Technical, Commercial Collection losses. Whilst, these setbacks may or may not be ameliorated by the tariff hike, end-users have from time to time expressed willingness to pay the appropriate rates for electricity power on the condition that the distribution companies provide quality power and metering to consumers. The Order for transition to cost reflective tariff, (considering that Nigerians seem to pay the lowest rates for power across the continent) is commendable. What is "appropriate rates", however, remains a quandary as Stakeholders need to take into consideration economic realities such as the purchasing power of those in rural areas and not just translate appropriate rates to mean increased rates.

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