

THOUGHT

LEADERSHIP



**PATENTS,
KLEPTOPARASITES &
INNOVATION:
A PATH TO BOOSTING
NIGERIA'S TECHNOLOGY
INDUSTRY.**



Jackson, Etti & Edu

INTRODUCTION

A patent is one of the key ways to measure innovation and the economic development of countries.¹ In a nation, it often falls on individuals and businesses with the support of the government to make inventions and promote them. As such, the question of what is in it for businesses is answered by the incentive the government gives to patentees – a legal authority to enjoy the exclusive right to the commercialisation of the invention until the end of a 20-year period. A patent is thus a government authority or license document conferring the sole right to exclude others from making, using, or selling an invention.² (Patents).

A kleptoparasite or kleptoparasitism is a form of feeding behaviour in which an animal steals food from another animal instead of hunting or foraging for its own food. The kleptoparasite thus survives and relies on the efforts and inventions of others. (Kleptoparasites).

The terms Innovation and Invention have often been confused, even by scholars. However, cutting through the cacophonies of literature on the subject, suffice it to say that whilst invention refers to a new idea, a novel method or device, or the introduction of something new for the first time, innovation means improving or making a significant contribution, idea, method, or device. It is with innovation that this article is concerned. (Innovation).

What then is the relation between Patents, Kleptoparasites, and Innovation? How do they constitute a path to boosting Nigeria's economy and the tech industry? It is often said, that to understand the effect of a thing, we must go back to the cause. Let us begin, then, with the problem.

THE PROBLEM

In a lecture delivered at Eko Hotels and organised by AFRIPI, it was revealed that Nigerian companies barely make 10% of the patent application filed annually.³ This can only mean all or either of three things - Nigerians are not inventing; Nigerian technological inventions or innovations do not meet patent requirements; Nigeria awareness of patent is poor. Nigerian politicians and scholars at least agree on one thing – that Nigeria is mostly a consumption nation than a production nation.⁴ This is

¹ R Katila, 'Measuring innovation performance' *International Journal of Business Performance Measurement* (2000) 2180-193; A Kleinknecht and HJ Reinders, 'How good are patents as innovation indicators? Evidence from German CIS data' in Martin Andersson and others (eds), *Innovation and Growth: From R&D Strategies of Innovating Firms to Economy-wide Technological Change* (Oxford, 2012) online edn, <https://doi.org/10.1093/acprof:oso/9780199646685.003.0006> accessed 4 July 2023; ZJ Acs and DB Audretsch, 'Patents as a measure of innovative activity' *KYKLOS* (1989) Vol 42, Fasc 2, 171-180.

² Oxford Dictionary

³ IE Okonkwo, 'IP enforcement as a tool to protect sustainability and development' *Academia* (2022)

https://www.academia.edu/97397220/IP_Enforcement_as_a_Tool_to_Protect_Sustainability_and_Development accessed 4 July 2023.

⁴ J Akinfehinwa, 'I will move Nigeria from a consumption to production nation – Peter Obi' *Daily Post*, December 13, 2022.

evidenced by the heavy reliance on oil and gas as the major source of survival in the country's governance. But what about technology?

The general applause around Nigeria's progress in the tech-startup space has been labelled a 'copycat' syndrome.⁵ The issue has been reiterated by foreign investors as well as legal experts looking at advising on patent registration and protection. No wonder few indigenous patent applications filed in foreign countries that promote substantive examination returns unsuccessful. The local treatment of patent applications is a formal check on form rather than a substantive examination of the novelty (newness), inventive steps, and industrial applicability.⁶

THE ROAD NOT TAKEN

However glorious and disruptive a true invention can be for a society, in-depth African-based research has revealed that using patents as indices for a nation's GDP is not a holistic approach.⁷ In fact, there are far more important utility and petty patents in Nigeria (and Africa) that, although do not meet the legal requirements for patent protection, are very strong indices for development and progress in Nigeria. Sadly, these indices have been neglected by economists of WIPO in the calculation of Nigeria's GDP.

A perfect example is the disruption of payment and financial services in Nigeria using modified technology. Whilst most of the financial solution technology may not be novel, they added a petty but significant improvement to the banking solutions and impacted heavily on the lives of Nigerians both in urban and rural areas. But sadly, the registration of utility patents in Nigeria is not powered by law. Although, one wonders if such utility patents are not in themselves significant enough to pass through the narrow needle of patent requirement which reads '...or significant improvement that is new...!'

The second, and most neglected path to the solution behind the problems identified above, is that every patent granted has a 20-year lifespan after which the patent rights expire, and the invention falls into the public domain for use. The people have a right to know which patent is expired.

The application for a patent comes with what we call the claim's specification. By virtue of the Act, a patent application must carry a specification and the specification must describe the relevant invention in a manner sufficiently clear and complete for

⁵ D Olarewaju, 'Copy copy syndrome' *Techpoint* October 19 2017.

⁶ See the Nigerian Patents and Design Act, 1971.

⁷ J De-Beer and ors (eds), *Innovation & Intellectual Property: Collaborative Dynamics in Africa* (2014, UCT Press) available at <https://openair.africa/wp-content/uploads/2014/01/Innovation-and-Intellectual-Property-Collaborative-Dynamics-in-Africa-pdf.pdf> accessed 2 July 2023.

the invention to be put into effect by a person skilled in the art or field of knowledge to which the invention relates.⁸ In simple terms, by following your specification, others should be able to re-create your invention. But in practice, the Nigeria Registrar of Patent, seal off the significant information and only present the description of the patent during publication or search.

While the approach taken by the Registrar may protect the invention and its trade secrets, it is submitted that there is no stipulation in the Patent Act warranting the protection of trade secrets. But there is a provision excluding unauthorised use and providing penalty for infringement.

Thus, the essence of patent law and the right given is to open an aperture for innovation in society. After a 20-year period of the rights holders' enjoyment, the said invention should be opened for others to access and innovate for the betterment of society.

Thus, any citizen should be able to demand the information behind an invention at the Patents Registry based on the Patent & Designs Act and the Freedom of Information Act. And such information should be provided without hesitation once it is confirmed that the lifespan of the patent granted has not expired. Imagine if Nigeria-Africa has access to the making of the cure for HIV-Aids, Cancer, AI Robotics, et al, the clamour for technology transfer would have been solved halfway. Sadly, while the law actually affords this opportunity, Nigeria is far away from taking advantage.

Patents are thus the opportunity (invention) afforded by law, to businessmen, scholars, scientists, project students, et al, (kleptoparasites), to take advantage of for the survival of a nation. To utilise expired patent is ethical, moral, and legal.

RECOMMENDATIONS

Nigerian business owners, think tanks, innovative policymakers, and even lawmakers, forget that a framework should be set in place for Nigerian businesses and our educational institutions to access those patents that have fallen into the public domain and put them to business use or improve on them.

By virtue of the Freedom of Information Act, every Nigerian deserves and has a right to access public records (including the register of patents that has fallen due). Consequently, the right to use, improve and even commercialise such patent is protected by law.

⁸ Section 12 Patents & Designs Act, *supra*.

It is therefore recommended that the Patents Registry should from time to time publish the list of patents that have expired alongside the claims and specifications, especially where no ever-green application is made. The Minister of Trade and Commerce must ensure that this is done on a monthly or quarterly basis.

Such knowledge would no doubt, come in handy for educational institutions and incubation hubs in their research and innovative activities. This will lead to collaborations and jobs. This will lead to employment opportunities, and by extension, the development of our ailing economy.

For enquiry on the registration of patents, technology transfer, licensing, or venture projects, et cetera, kindly reach out to the Technology, Media & Entertainment sector of Jackson Etti & Edu. Please note that the content of this thought leadership is not a legal advisory of any sort.

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