LEGAL PROTECTION OF E-INDUSTRIAL DESIGNS RIGHTS IN NIGERIA

Ibrahim Shehu
Faculty of Law, Usmanu Danfodiyo University, Sokoto
&
Orire Abdulqudus Adesina

Abstract
The legal effect of registration on all aspect of intellectual property is to fully protect same against any sought of infringement which industrial design is not exempted. With the advance in technology in the world today, traditional mode of accessing intellectual property rights has been archaic whereby its not only affecting the owner or licensed user but also the economy of the country since Nigeria Law does not protect the rights of the owner of industrial design in the virtual world. In this regard, this paper shall examine the legal protection of e-industrial design rights in Nigeria through its protection, exploitation, infringement and remedies available therein.

Introduction
The law of industrial designs protects investments in creative and intellectual efforts that go into making industrial products visually appealing and attractive. The protection afforded by law is in recognition of the importance of aesthetic appeal to consumers in the choice of products. Therefore the Patents and Designs Act has given a very sound definition to the term industrial design having observed therein the provision of section 32 of the Act that "a design means an industrial design".

Furthermore, the direction of the development of the industrial design gradually approaches mechanical-electrical integration and informational and electronic products.[1] With an increasing improvement of its technical content, and better socio-economic conditions, people's consumption concept are getting more and more different. Consumer concerns not just the functionality and quality of the product, more and more people are starting to focus on the appearance of the product, degree of innovation, environmental protection, and so on, which brings a higher degree of difficulty to the industrial technology.[2] It is because the increasing demands of people and the industrial design, many scholars are increasingly concerned about the industrial design in recent years. With the continuous development of computer

[1] Yao, J.: "Discuss the Development of Computer-Aided Industrial Design Technology", *IJCSI International Journal of Computer Science Issues*, Vol. 10, Issue 1, No 1, 2013, p. 188. Available at <http://www.ijcsi.org/papers/IJCSI-10-1-1-188-193.pdf> Accessed on 26/11/2016 at 5:04pm
[2] Ibid.

technology, a wide variety of hardware and software are developed, and a variety of ever-changing technologies are attracting the industrial design talents as well.[3]

Meaning of Industrial Design

Though section 32 of the Patent and Designs Act[4] provides that design means an industrial design. Thus, design has been construed in ***Re Clarke's Registered Design***,[5] to mean a pattern or representation which the eye can see and which can be applied to a manufactured article. Therefore the word industrial design could be defined as thus; Any combination of lines or colours or both, and any three-dimensional form, whether or not associated with colours, 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 obtained and is not intended solely to obtained technical result.[6]

From the above therefore, industrial designs are intangible property and are primarily those elements incorporated into mass produced products aimed at enhancing their attractiveness in appearance.[7]

Protection of Electronic Industrial Designs through Registration in Nigeria.

The registration of an industrial design confers certain rights on the registered owner. Unlike artistic design works falling within the scope of copyright law which is automatically protected upon creation of industrial designs is contingent upon official registration of a design which satisfies the eligibility requirements as set out in the Patents and Designs Act.[8]Thus, the objective of the law is to protect design activities that result in new, aesthetic and non-technical features of industrial articles or products. Therefore, section 13 of the Patents and Designs Act provides that an industrial design is registrable if it is new and it is not contrary to public order or morality after which provides automatic right to preclude any other person from doing any of the act set out under the Act.[9]

---

[3] Ibid.

[4] Cap P2, Law of the Federation of Nigeria (LFN) 2004.

[5] (1896) 2 Ch. 38 at 43, Per Lindley L.J.

[6] See section 12 of the Patents and Designs Act.

[7] Nwabachili, C.C. and Nwabachili, C.O.: "Challenges to Effective Legal Protection of Industrial Designs in Nigeria", *Journal of Law, Policy and Globalization*, Vol. 33, 2015, p.7. Available at <http://www.iiste.org/Journals/index.php/JLPG/article/download/19580/19996> accessed on 6/11/2016 at 07:16am.

[8]Oyewumi, A.O.: *Nigerian Law of Intellectual Property*, Lagos: University of Lagos Press and Bookshop Ltd, 2015, p. 209

[9] See section 19 of the Patents and Designs Act.

With the development of information technology and computer network technology, the world economy is undergoing a profound revolution around the "network economy." Thus, industrial design has also gained ground in the digital environment but it is still being affected by the cyber-theft which calls for protection of the industrial design in the virtual world. Therefore, there are many theft counter-measures that are now widely accepted and used in some jurisdictions which have advanced in technology, such as electronic or ink tags attached to retail merchandise, car alarms, engine immobilisers, and vehicle stereos with detachable faces and security code requirements.[10] In addition, innovations are continually emerging as technology and production practices improve. One example is in the protection of portable computers, where several companies offer a tracking method using a small program that can be embedded in the machine's hard drive.[11] This software, which is undetectable and cannot be removed once installed, regularly dials into a monitoring centre when the machine is connected to the Internet, supplying identification information and the telephone number of its calling location. When informed that a computer has been stolen, the monitoring centre begins a scan and alerts appropriate parties once it has been located.[12]

Furthermore, like other aspects of intellectual property rights, the nature of electronic industrial designs rights could also fall within that purview in the sense that the protection of copyright works, trademarks rights, patents rights in the digital environment are attached with the registration of website supported by the domain name through internet service provider which will make someone to easily access the location of such intellectual property work in the digital environment. Thus, this position is supported and provided for special provisions under the international treaties and foreign laws. Therefore, same could be applicable to e-industrial designs rights in the virtual world but the Act does not provide for such and there are no international responses to this at all.

Exploitation of Electronic Industrial Designs

An industrial design is a form of property which is capable of being exploited by the registered owner. Exploitation in this context includes: the manufacture, importation, sale and commercial utilisation of a product, reproducing the design. The design may also be assigned, transferred by succession, held in joint ownership[13], or be the subject

[10] Lester, A., "Crime Reduction Through Product Design", *Australian Institute of Criminology*, No. 206, 2001, p. 2. Available at <www.aic.gov.au/media_library/publications/tandi_pdf/tandi206.pdf> Accessed on 26/06/2016 at 6:12pm

[11] Ibid.

[12] Evans, J., "Anti-theft technology emerges", 2000, cited in Lester, A., op cit, p. 2.

[13] See section 24(1) of the Act.

of a contractual license.[14] Therefore, the transfer may be in respect of all the rights of the registered owner, or it may be partial and apply only to a particular right or a specified article.[15]

Furthermore, in some advance countries where technology has its way in the commercialization of goods and services via the internet, the exploitation of industrial design could also be made through this means in the sense that having made available samples of the designs through the internet with the adequate internet security on it, then there will be a link created for subscribers or customers to click in order to bid for such design or any other form of industrial designs. Thus, this position is not yet ripe in Nigeria since we are still battling with the traditional mode of exploitation by the registered owner.

In the light of the above, the exploitation of industrial design by the registered owner could be made electronically in as much as the provision stated by the Act could be satisfied by the owner. Though, as stated earlier, Nigeria is still lagging behind on the issue of technology and the protection of rights attached to goods and services in the cyberspace, therefore, there needs to be amendment of the Act in order to solve these exigencies.

Infringement of Electronic Industrial Design

The right to institute action for infringement is vested at the first instance in the owner of the registered design. Where a licensee has been granted in respect of the design, the licensee may, by registered letter, require the licensor to institute infringement proceedings but where the licensor unreasonably refuses or neglects to act, the licensee may institute action in his own name, subject however, to the right of the licensor/design owner to intervene in the proceedings.[16]

Though, there has not been yet a law or treaty in this respect to determine the position of how infringement takes place in respect of electronic industrial design via the internet (i.e virtual world). Still in line with other forms of intellectual property which is attached to cyber-theft in the cyberspace, once it has been proved that the infringer acted upon unauthorised exploitation of the design of the registered owner, then infringement has been made. Therefore, such a person needs to be prosecuted in order to regain the status of the owner including providing remedies if any to such registered owner in case of damages.

[14] See section 23(1) of the Act.

[15] Oyewumi, A.O., op cit, p. 218

[16] See section 25(4) of the Act.

In the light of the above, in relation to intellectual property rights infringement in the digital environment, once it has been satisfied that the restricted acts had been done by the defendant, then such act will be termed to have infringed upon the plaintiff's right which will give him the right to institute an action in court.

Remedies to the Infringement of Electronic Industrial Design Rights

The general principles governing remedies available against the copyright infringer include civil remedies and criminal penalties. These principles apply *mutatis mutandis* to industrial property law as provided for under the Patents and Designs Act.[17]

In this regard, since it has been ascertained that there is no law yet or any treaty at all to tackle the problem of e-industrial design in the virtual world, the issue of remedies to be available against e-infringement of electronic industrial designs rights will be another cost of question. Thus, in Nigeria today, the only remedy provided for the infringement of intellectual property rights in the digital environment is the provisions of the Cybercrime (Prohibiton, Prevention, etc.) Act, 2015[18] whereby the provision could be applicable here also to some length.

Conclusion/Recommendations

It trite now that intellectual property works in the virtual world need adequate protection against any sort of infringement such as cyber-squatting or cyber-theft which industrial design is not excluded in order to fully protect the interest of the owner or registered user of the work electronically.

Furthermore, unlike the traditional mode of protection against infringers, the paper was able to establish the fact that all intellectual property work could be accessed and infringed upon immediately the domain name including the website of the registered owner or company has been hacked (i.e there is no adequate protection for intellectual property in the virtual world). Therefore, unlike some other aspect of intellectual property which some treaties, such as WIPO Treaties, TRIPS Agreement etc. have been established to curb this situation and it is left for member states to domesticate such instruments in their own national legislations, there is no international response as to the protection of e-industrial design in the virtual world.

Finally, it is safe to conclude that though with the establishment of the said treaties, it shows that there is a legal framework to protect e-intellectual property in the virtual world. Still there are some loopholes in the protection of intellectual property in the digital environment which call for the amendment of these laws so as to fully protect

[17] See section 25(2) of the Act.

[18] See generally sections 45 and 49 of the Act.

the e-intellectual property such as in the case of e-industrial design and so on, against any form of infringement.

In the light of the above, it hereby recommended that the Patent and Designs Act should be amended to fit the proper demands of the owner's right. Also, there should be at the international level conventions or treaties to curb the issue of infringement of the e-industrial designs in the virtual world so as for those who did not reap to sow. With this, all signatory states will be able to amend their national laws to respond to contemporary situations.