

NATURE OF PATENT RIGHTS IN NIGERIA

Patents are conferred with statutory recognition under Nigerian law in the body of the **Patents and Designs Act Cap. 344, Laws of the Federation of Nigeria 1990**. The Act deals *inter alia* with the definitions, rights and registration of Patents and Designs respectively.

Section 2(1) of the Patents and Designs Act (hereinafter referred as the PDA) provides that the right to a patent in respect of an invention is vested in the statutory inventor, and a statutory inventor is that person who is the first to file or claim a foreign priority for a patent application in respect of the invention, whether or not he is the true inventor.

This section therefore accords legal recognition of rights to patents solely to the statutory inventor in accordance with the definition contained therein. However, Section 2(2) of the PDA accords a statutory safeguard of the rights of the true inventor. This right is incapable of being waived by contract. This raises a presumption that the statutory inventor has obtained a licence from the true inventor. The Section provides:

“The true inventor is entitled to be named as such in the patent, whether or not he is also the statutory inventor, and the entitlement in question shall not be modifiable by contract.”

Section 2(3) of the PDA provides as follows:

“If the essential elements of a patent application have been obtained by the purported applicant from the invention of another person (or from that other person’s successor in title) without the consent of that other person (or his said successor) both to the obtaining of those essential elements and to the filing of the application, all rights in the application and in any patent granted in pursuance of it shall be deemed to be transferred to that other person or his said successor, as the case may be. ”

This essentially means that where a statutory inventor, who is not the true inventor, does not obtain a licence or necessary consent, from the true inventor or his successor in title, to the use of the essential elements of the patent, then the rights of the statutory inventor in that patent will be effectively extinguished and vested in the true inventor or his successor.

Section 2(4) provides as follows:

“Where an invention is made in the course of employment or in the execution of a contract for the performance of specified work, the right to a patent in the invention is vested in the employer or, as the case may be, in the person who commissioned the work:

Provided that, where the inventor is an employee, then

- (a) if _____
- a) *his contract of employment does not require him to exercise any inventive activity but he has in making the invention used data or means that his employment has put at his disposal, or*
- ii) *the invention is of exceptional importance, he is entitled to fair remuneration taking into account his salary and the importance of the invention; and*
- (b) *the entitlement in question is not modifiable by contract and may be enforced by civil proceedings.*

The main body of the sub-section is to the effect that an employee or independent contractor who makes an invention in the course of the employment is not entitled to any rights in that invention. At best, what the employee has is a non-negotiable right to “fair” remuneration from the employer.

This section raises a few questions: what is “fair remuneration” and who determines it? The law is not clear on this and it hoped that legislative and judicial declaration would clarify the issue by introducing an objective standard of assessment of same.

The rights conferred by a patent on patentees/inventors is spelt out in Section 6 PDA. This provision serves to exclude the whole world, apart from the patentee, from production, usage, importation, sale and storage of the patent, or from applying a process for the purpose of doing any of the just mentioned acts. The section however delimits the scope of a patentee’s rights to that contained in his terms of claim for his patent application and also the description of the patent.

It must however be noted that the rights conferred by patents extend only to industrial and commercial activity on patentable inventions.

Although the PDA appears to protect and confer extensive rights on the holder of a patent, it happily concedes certain rights, as contained in Section 6(4), on persons who are not holders of patents, but who, if their right to a particular process or invention is curtailed, would cause untold hardship to them.

By virtue of Section 7 of the PDA, the life span of a patent is 20 years. Thus a patentee possesses the rights conferred in Sections 2 & 6 for the duration of the patent, except he assigns his rights by virtue of a licence.

Extensive rights have been clearly conferred on patentee’s licences and true inventors under the Act. The clarity of the Act in this regard is commendable and leaves little room for contention.