A FACILE REVIEW ON THE PROTECTION OF AN INVENTION IN NIGERIA: ISSUES AND CHALLENGES

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Abstract

The development of a nation relies on technological advancements and innovations. It is evident in the progress of countries such as the USA, China, and Russia, which are considered developed nations due to the contributions of their scientists and technicians. In contrast, Nigeria and many other African countries are categorized as developing nations primarily due to the slow pace of innovation. Despite this, the legal process of obtaining protection or a patent for inventions poses a significant challenge for scientists and technicians in Nigeria. In this regard, the study employs a hybrid research method to examine the issues and challenges related to the protection of inventions in Nigeria. A descriptive and analytical approach is used to analyze the data by distributing 253 questionnaires to respondents across various geopolitical zones in Nigeria. The findings reveal a limited number of scientists and technicians involved in technological innovation, and there are obstacles to obtaining patents or protection for inventions in

Nigeria. These challenges often deter scientists and technicians from investing more effort in technological innovation. Therefore, it recommended and concluded that, for practical and improved technological innovation in Nigeria, the government should create an enabling environment and review the existing legal framework for obtaining patents over inventions.

Keywords: Invention, Patent, Scientist, Technician, Nigeria.

Introduction

Given the rate of technological invention and innovative ideas around the global environment[1], there is no doubt that many scientists and technologists may be skeptical of maintaining their actual ownership of their inventions and innovation[2]. However, it must be noted that legal protection concerning invention and innovation is not a recent phenomenon[3]. It is given the fact that most nations of the world have long adopted means of ensuring that an inventor's invention is well protected from exploitation in a manner that affects the inventor's rights to its invention[4].

However, the most effective legal means of ensuring the right of an inventor over their invention is secure and protected is by patenting the invention[5]. A patent is regarded as a right obtained by law

[1] Ayodele Adewole, "International Intellectual Property System And The Challenge Of Artificial And Monkey Intelligence*," Nigerian Journals Online (2019).

[2] Yee Kyoung Kim et al., "Appropriate Intellectual Property Protection and Economic Growth in Countries at Different Levels of Development," *Research Policy* 41, no. 2 (March 2012): 358–375.

[3] Mike J. H. (2019). 'A re-evaluation of the framework for the protection of patents, women's health in Nigeria and the issue of accessing pharmaceutical innovation in Africa: Designing strategies for medicines', *Journal of World Intellectual Property*, (2019) 22(3-4), 162-204

[4] Nnedinma Umeokafor et al., "The Pattern of Occupational Accidents, Injuries, Accident Causal Factors and Intervention in Nigerian Factories," *Developing Country Studies* 4 (July 31, 2014): 119–127.

[5]Solomon Gwom, "Industrializing Nigeria and Sudan as Developing Economies through Patent Protection: Reverse Engineering to the Rescue," *SSRN Electronic Journal* (2018).

by an inventor to protect an invention that is novel and original[6]. However, the World Intellectual Property Organization (WIPO) provides that a patent can only be obtained for an invention that is considered novel[7], new, invented via inventive steps, and such invention must be capable of industrial use or application[8].

A patent is often granted by law to protect the right to an invention that is considered novel or an essential improvement of an invention that already existed in some ways that are better than the said invention improvement[9]. A patent is most relevant to scientists[10], engineers, and technologies, given the advancement of science and technology within the global terrain[11]. Furthermore, the essence of a patent is to encourage inventors to benefit from the reward of their hard work for the continued advancement, development, and discovery of inventions that will lead to further global development[12].

However, in Nigeria, it is the Patent and Design Act[13] that regulates an invention that is said to be patented[14]. In this regard, it suffices to state that the process involves submitting a patent application to the Nigerian Intellectual Property Office (NIPO). The

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[6] J. O. Odion and Nelson E. Ojukwu-Ogba, *Essays on Intellectual Property Law: Copyright, Trade Marks, Patents, Industrial Designs* (Ambik Press Limited, 2010).

[7] Jide Babafemi, *Intellectual Property: The Law and Practice of Copyright, Trade Marks, Patents and Industrial Designs in Nigeria* (Justinian Books Limited, 2006).

[8] Temitope O. Oloko, "An Examination of Article 27 of the TRIPS Agreement in Relation to the Provisions on Patentable Subject Matter under the PDA in Nigeria," *Commonwealth Law Bulletin* 42, no. 2 (April 2, 2016): 236–260.

[9] Desmond Osaretin Oriakhogba, "DABUS Gains Territory in South Africa and Australia: Revisiting the AI-Inventorship Question," *South African Intellectual Property Law Journal* 9 (2021): 87–108.

[10] Desmond Oriakhogba and Ifeoluwa Olubiyi, *Intellectual Property Law in Nigeria: Emerging Trends, Theories and Practice*, 2021.

[11] Philip Faga Hemen, Uguru Uchechukwu, and Atuba Obiekwe, "The Role of Innovation in the Economic Development of Nigeria," *International Journal of Innovative Research & Development* 5 (May 1, 2016): 500.

[12] Babafemi, *Intellectual Property: The Law and Practice of Copyright, Trade Marks, Patents and Industrial Designs in Nigeria*.

[13] Patent and Design Act Cap P2 Laws of the Federation of Nigeria

[14] Uchechukwu Uguru, *Property and Intellectual Rights, in Egwu U. Egwu, et al., (Eds.), Entrepreneurship and Intrapreneurship: Principles and Practice (A Book of Readings)* (Ebonyi State University Press, 2011).

examination process ensures that the invention meets the criteria for patentability outlined in the Nigerian Patent and Designs Act. The patenting process involves several key steps, including filing a patent application. This application typically includes a detailed invention description, claims defining the scope of protection sought, and any necessary drawings. The application undergoes a thorough examination by a patent office to assess its novelty, non-obviousness, and utility. Once granted, the patent provides exclusive rights for a set period, typically 20 years, during which the inventor can commercialize and license their invention.

It has been observed that why most developed countries have their pic towards technological invention by scientists and technicians, but in Nigeria, there seems to be slow space an invention[15]. It concerns the fact that the process and procedure involved in obtaining protection over an invention seem to be ridden with several legal challenges[16], which include lengthy and cumbersome patent examination process, delays in the approval of patent applications can discourage inventors and hinder the timely commercialization of innovations. Additionally, the cost associated with patent filing and maintenance poses a significant hurdle, especially for individual inventors and small enterprises. In this regard, it suffices to state that no scientist or technician will want to avoid being caught in the web of challenges of obtaining protection over their invention after exerting intellectual and financial efforts to arrive at such achievement[17].

Concerning the above, this study tends to x-ray and evaluate the practices and legal regulation of an invention in Nigeria. Also, the study is aimed at identifying some of the challenges and issues often mitigating the obtaining protection or a patent over an invention. Furthermore, the study will also propose some possible remedies that could aid in providing an enabling environment for the protection of an invention within Nigeria.

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[15] Ibid.

[16] Ibid.

[17] Ebele V. Ojukwu, Young Sook Onyiuke, and Chinyere C. Esimone, "Intellectual Property Rights Enforcement in Nigeria: A Prop for Music Industry," *US-China Education Review B* 5, no. 6 (June 28, 2016).

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Methodology

The researchers employ or adopt a hybrid research method (doctrinal and non-doctrinal methodology) to ascertain the issues and challenges concerning obtaining protection over an invention. The essence of adopting a doctrinal method of study is to examine and theorize the concept and legal framework for securing protection over an invention in Nigeria. In this regard, laws such as The Patent and Design Act, judicial precedent, and several scholarly pieces of literature were reviewed and relied on ascertaining the extent of protection provided for over an invention in Nigeria.

Furthermore, concerning the doctrinal method, a questionnaire was distributed among respondents residing in Nigeria. The results obtained were analyzed using a descriptive and analytical method. The non-doctrinal study method aims to empirically identify the issues and challenges often encountered in obtaining protection over an invention in Nigeria.

The Issues and legal framework in obtaining protection over an invention in Nigeria

An invention is said to be patentable if the invention is said to be novel or an improvement of an existing invention, and such an invention must be capable of industrial application. According to Buckley J., in the case of *Reynolds V. Herbert Smith & Co. Ltd*[18], defined a patent as follows;

> "… discovery adds to the amount of human knowledge, but merely by disclosing something. Invention necessarily involves also the suggestion of an act to be done, and it must be an act which results in a new product or a new result in a new product or new results in a new product or a new combination for producing an old product or an old result."

[18] (1913) 20 RPC 123

The Patent and Design Act[19] of Nigeria did not define what a patent is all about, and there are no statutory and acceptable definitions of a patent in Nigerian laws. However, the Patent and Design Act provides steps or conditions that must be fulfilled before an invention can be patentable. Nevertheless, the act provides that an invention can only be patentable under the following conditions as stipulated in section 1(1) of the Act[20] and they are:

i. If the invention is new, emanating from an inventive process, and has the relevance of an industrial application.

ii. If the invention consists of an improvement of a patented invention and such improvement is new, arises from an inventive step, and has an industrial application value.

However, in ascertaining or determining what constitutes a new invention, the Patent and Design Act provides that an invention is said to be new if it does not form the state-of-the-art or field knowledge that is already known to the public; this provision is as stipulated in section 1(2) of the Act. Furthermore, section 1(2) of the Patent and Design Act also stipulates that an invention is said to be capable of industrial application if it can be manufactured, reproduced, and used in any kind of industry.

Furthermore, it suffices to state that issues and challenges concerning obtaining protection over a patent could be traced within the Patent and Design Act. Some of these challenges are as follows;

1. Whom the rights to a patent are vested in respect of an invention

2. Application and grant of a patent in respect of an invention and its duration

3. Ground upon which a patent can be refused

4. The rights and benefits conferred by a patent on a patentee

[19] Patent and Design Act Cap P2 Laws of the Federation of Nigeria
[20] Ibid

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The identified issues and challenges are therefore discussed in detail below.

1. Whom the Rights to a Patent is Vested on in Respect of an Invention

The Patent and Design Act specified the persons or individuals that may be recognized by law to possess the rights to a patent in respect of an invention. Some of these persons are as follows;

i. Statutory Inventor

By sections 2(1), (2), and (3) of the Patent and Designs Act[21], the right to a patent in respect of an invention is vested in the statutory inventor, that is to say, the person who first files for an application for an invention (whether or not he is the true inventor) is said to be the statutory inventor. However, the valid owner of the invention or the inventor is entitled by law to be named or acknowledged in the patent. In this regard, if an essential element of a patent application was obtained by an applicant from another person's invention without consent, all rights obtained by issuing a patent certificate shall be deemed to be transferred to the actual inventor[22].

ii. Persons who Employ or Contracted others in Executing or making an invention or Specific Work

Section 2(4) of the Patent and Designs Act stipulates that where a person made an invention as an employee in the course of their employment or such invention was made during the execution of a contract that required such individual to execute a specified work, the right to obtained patent in the invention is saddled with the employer or the person who contracted him to perform or execute the

[21] The Patent and Designs Act, Cap. P2, Law of the Federation of Nigeria, 2004

[22] Ibid section 2(3)

contract. In the case of *Adamson V. Kemsworthy*[23] an assistant engineer who was employed to design lining for colliery tunnels, he was sent at his request to a particular colliery department, and in the process, he developed an inventive solution concerning lining for colliery tunnels. The court held that the invention belonged to his employer.

However, if an individual who is under an employment or contract to perform a specified task and the duty or task required of him does not require or intend to carry out any inventive activities, but in the cause of executing its duties or task concerning been employed or under a contract made an invention making use of means belonging to his employer in making the invention, by law such individual will be entitled to a further fair remuneration[24]. Although the right to obtain a patent in the invention remains with the employer or the person who contracted him, this position of the law has been given judicial recognition in the case of *Uwemedimo V. M.P. (Nig.) Unltd*[25], in this case, the respondent who contracted the appellant to invent a solution that will prevent rusting to their pipeline would have been held to be the owner of the invention, but because they denied not contracting the appellant, they lost the right to obtain a patent in the invention, according to Akkaahs J.C.A. he stated thus;

> "I wish to say straightway that having applied for the patent and the Patent Certificate No. RP 13522 was issued (Exh. 2) Command Clem Nigeria Limited became the registered Patentee in the invention called Anti-Corrosive Special Paint for QIT (Transteel Blue, White Enamel Q.A.D.) with effect from 5/8/99. The right to the patent in the invention will be vested in the respondents if there is a contract to that effect. Since the appellants

[23] (1932) 49 R.P.C. 57
[24] section 2(4)(a)(ii) of the Patent and Design Act of Nigeria
[25] (2001) 4 N.W.L.R (PT 1236) P. 80

alleged there was a verbal contract, but the respondents denied this, the rights to the patent in the invention will reside in the appellants, who are the statutory inventor".

Furthermore, section 2(5) of the Patents and Designs Act further provides that an individual will not be regarded as an inventor if such a person merely assisted or took part during the development of the invention without contributing valuable input to the making of the invention.

iii. A Licensee or Assignee

Furthermore, where a person has been granted a license or assigned the right to exploit and use an invention by the owner, Nigerian law requires or recognizes that the licensee or assignee has a right to the invention[26].

However, sections 10(3) and 24(2) and (3) of the Patent and Design Act further provide that the license or assigned right to an invention must be in writing, signed by parties, and registered with the payment of a prescribe fees, failure of which the licensee or the assignee may not have an enforceable right against a third party infringing on the right to the invention so license or assigned, in the case of *Arewa Textiles PLC and Ors. V. Finetex Limited*[27] at the trial court, the respondent was able to substantiate his case that the right to an invention (method and apparatus of producing textile materials" was assigned to the respondent company by Boaty Company Limited but the assignment was not registered, the trial court on the basis that the right of a patent to the invention has been assigned to the respondent, gave judgment in favor of the respondent. However, on appeal, the Court of Appeal reversed the judgment of the trial court on the basis that the assignment of the patented invention was not registered, and,

[26] Section 10(1) and 24(1) of the Patent and Design Act
[27] (2003) 7 N.W.L.R. 322

therefore, the respondent does not have enforceable rights against the appellant or any third party who infringe on the patented in the invention.

2. Application and Grant of a Patent in respect of an Invention and its duration

The procedure for the application of a patent in an invention is as provided by the Patent and Act that a party or an inventor who seeks to apply for a patent must comply with the following procedure;

i. The inventor must bring an application to the registrar of patent and design, and the application must contain the following

a. The applicant's name and address must be within Nigeria; however, where the applicant resides outside Nigeria or the applicant is a foreigner, the applicant must provide a Nigeria address[28].

b. The applicant must give a proper description of the invention intended to be patented[29].

c. Furthermore, a claim(s) that is the nature of the invention should be patented, whether it is a new invention or a new improvement in an invention[30].

ii. The applicant or inventor is also required to pay a prescribed fee and an attached signed declaration by the valid owner of the invention

iii. Where an agent makes the application, the agent is required to attach a signed power of attorney to the application[31]

[28] Section 3(1)(a)(i) of the Patent and Design Act
[29] Ibid section 3(1)(a)(ii)
[30] Ibid Section 3(1)(a)(iii)
[31] Ibid section 3(1)(b)(iii)

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However, there are circumstances where foreigners or Nigerians who intend to show or avail themselves of foreign priority concerning an invention upon making their application for a patent in Nigeria by sub-section 1 of the Patent and Design Act must attach a written declaration stating the following[32];

a. The country in which the applicant had earlier made his application

b. The date and number of an application made in the said country the applicant first made his application

c. The name of the applicant who made the earlier application

However, having satisfied the above condition, the applicant seeking foreign priority shall, after three (3) months of making the application for patent in Nigeria, submit to the registrar of patent and design in Nigeria a certified true copy of the earlier application in the other the country he first applied for a patent[33].

It must be noted that the implication of section 3(4)(a) of the Patent and Design Act of Nigeria is the effect that in circumstances where an invention has not been patented in Nigeria, a party does not have any right of patent over such invention and the law will not avail any protection to the inventor even if the invention has been patented in another country.

After the patent application has been made by sections 3(1), (2), and (4) of the Patent and Design Act, the registrar of Patent and Design in Nigeria is entitled to examine the application if it has properly adhered to the

[32] Ibid Section 3(4)(a)
[33] Ibid section 3(4)(a)

specification of the Patent and Design Act. If the registrar is satisfied, the Patentee will be issued a patent certificate[34].

However, the grant of a patent under Nigerian law is not expected to last for eternity; this is concerning the fact that the Patent and Design Act specified that the duration of exercising a right over a patented invention is twenty (20) years from the date of the application of the patent[35]. In this regard, after twenty (20) years of the grant of a patent, an invention is no longer protected by the Patent and Design Act of Nigeria; it is said to have expired. However, a patentee is always required to pay annual fees for the grant of a patent, a failure of which the patent so granted is said to have lapsed or expired[36].

3. Ground upon which a Patent can be refused

Given the condition specified concerning a patentable invention, the Patent and Design Act[37] further states that for an invention to be considered new, it must be novel and not form part of the state of the art. However, section 1(3) of the Patent and Design Act further explains what "the state of the Art" means by providing this;

> "… 'State of the Art' means everything concerning that Art or field of knowledge which has been made available to the public anywhere and at any time whatever (employing a written or oral description, by use or in any other way) before the date of the filling of the patent application relating to the invention."

An examination of section 1(3) of the Patent and Design Act seems to provide the condition by which an application for a patent concerning an invention may be refused. From the

[34] Ibid Section 4 and 5
[35] Ibid Section 7(1)
[36] Ibid Section 7(2)
[37] Ibid Section 1(2) and (3)

provision of section 1(3) of the Act, a patent may not be granted in an invention on the following grounds;

i. **Oral Disclosure:-** An invention will not be considered new or novel where it has been orally disclosed to the public before the date of application of the right to patent. It is concerning the fact that members of the public may have learned more about the workings of the invention and even avail them the opportunity to produce and make use of the invention

ii. **Publication by Document:-** publication by document means publishing an article or an exhibition in a bookshop or library. In this regard, when an invention is made available to the public by means of any form of a document before a patent is applied for an invention, the application for the patent will be refused. Furthermore, even if such publication by the document was done incautiously, a patent would still not be granted for the invention. In the case of *Van der Lady V. Bamford*[38], the court held that the Patentee had forfeited his right to a patent concerning a hayraking machine (claimed to have been invented by the Patentee), given the fact that a hayraking machine having the same features with the one invented by the Patentee was capture by a photograph in a journal, that the picture of the hayraking machine is sufficient to disclose it to the public.

Exception as to Oral Disclosure and Publication by Document

However, there is an exception to a refusal of a patent concerning oral disclosure and publication; the last paragraph of section 1(3) of the Patent and Design Act stipulates that where the invention is exhibited in an official or unofficial recognized international exhibition, it shall not serve as a bar to obtaining a patent in the invention if the application is made within six (6)

[38] (1963) R.P.C. 61

months after the exhibition. Given the provision of section 1(3) of the Patent and Design Act, an inventor has the opportunity to take part in an international exhibition even if the invention has not been patented.

4. The Rights and Benefits Conferred by Patent on a Patentee

If a patentee has been granted a patent to an invention, it precludes every other person (except the Patentee) from dealing or doing any of the following actions to the invention as stipulated in section 6(1)(a) and (b) of the Patent and Design Act, which are;

i. Where the patent is in respect of the product, the Patent and Design Act of Nigeria precludes anyone from reproducing, importing or exporting, stocking the product for sale, or selling the same

ii. Where the patent is with respect to a process, only the Patentee has the sole right to make use of the process and apply the process in making or producing a product.

The exception to the Exclusive Right of a Patentee

However, there is an exception to the exclusive right of the patentee to the right of a patentee with respect to the invention. These exceptions are as follows;

i. Section 11 of the Patent and Design Act of Nigeria provides explicitly that the Nigeria government if deemed fit, may command a compulsory license and use of patents for the services of government agencies

ii. As provided in the first schedule, part 1 to the Patent and Design Act, after the expiration of four (4) years after the granting of a patent in an invention, an individual may apply to the court for the granting of a patent to an invention on the following grounds

a. That the invention has yet to be so worked in Nigeria since the patent to the invention was granted to the patentee

b. That given the demand for the product generated via the invention, the degree of the working or production of the invention is not reasonable

c. That the working of the patented invention is being hindered by importation

d. That a refusal of a patentee to grant a license has substantially prejudiced the usage of the invention in an industrial or commercial activity in Nigeria

However, the court may refuse a compulsory license to an invention if the person applying fails to prove to the court that the Patentee has been approached to grant a license but has been refused. Furthermore, it proves or guarantees the court that the applicant can work the invention satisfactorily to remedy the lapses in the invention[39].

Infringement of Patent and Jurisdiction of the Court to Entertain the Infringement

For an infringement of a patent to accrue and be actionable, the right to the inventor's patent to make use or sell the invention must have been interfered with by another person[40]. However, such infringement must have occurred after the application for registration, and a certificate of a patent must have been issued to a person or the inventor who applied for the patent. According to Akaahs J.C.A. in the case of *Uwemedimo V. M.P. (Nig.) Unltd*[41] *supra*, in this case, the appellants claimed that there was an oral agreement between the parties that the respondent would pay to the appellant $2.00 (two dollars) for every petroleum product of the respondent for the appellant's invention (Anti-Corrosive Special Paint for QIT) that stopped the corrosion of the appellants' pipelines. The appellants also asserted that the oral

[39] Paragraphs 4 and 5 Part 1 of the First Schedule to the Patent and Design Act of Nigeria

[40] section 25(1) of the Patent and Design Act

[41] (2001) 4 N.W.L.R (PT 1236) P. 80

agreements for the payment were reached at a meeting in 1980. However, the respondents claimed that the appellant claimed that their invention was infringed upon in 1980. However, the appellants only applied for a patent and certificate No. RP 13522 was issued to the appellant on 5 August 1999. *Akkaahs J.C.A.* lending his decision when an infringement to the patent right is said to occur stated thus;

> "I wish to say straightway that having applied for the patent and the Patent Certificate No. RP 13522 was issued (Exh. 2) Command Clem Nigeria Limited became the registered Patentee in the Invention called Anti-Corrosive Special Paint for QIT (Transteel Blue, White Enamel Q.A.D.) with effect from 5/8/99… Any infringement by the respondents or any other persons will be actionable at the instance of the appellants starting from 5/8/99. The evidence adduced by the appellants dates back to 1980, when the rights to sue on the patent had not accrued. The learned trial judge was right to hold that at the time the defendant was said to have infringed the plaintiff's patent in the early 1980s, the plaintiff did not have any patents to be infringed. The plaintiffs only obtained their Patents No. RP 13522 on 5 August 1999."

In the case that there is an infringement in patent rights, the federal high court has jurisdiction to entertain a suit[42]. It concerns the fact that ***section*** 251(1)(f) of the Nigeria Constitution[43] provides that the Federal High Court shall have or be saddled with the jurisdiction to the exclusion of all other courts concerning matters or suits as they relate to any matter pertaining to patent and design. In the case of *Amavo Limited V. Bendel Textile Mills Limited*[44], the appellant at the trial (state high court) instituted a suit against the respondent; however, there was evidence that the case before the state high court was a matter concerning an infringement of patent and design, the state high court rule that given section 251(1) (f) of the Nigeria constitution, it the Federal High Court that has exclusive jurisdiction to entertain the suit.

[42] Section 26(1) of the Patent and Design Act
[43] Nigeria Constitution as amended (2011
[44] (1991) 8 NWLR, 37

On appeal, the trial court decision was sustained by the Court of Appeal. Furthermore, the court in the case of *Microsoft Crp. V. Franike Asso. Ltd.*[45], the court that the Federal High Court has exclusive jurisdiction relating to enactment or suit that concerns patents, copyrights, trademarks, and design. However, in entertaining any suit relating to any matter that concerns patent and design, section 26(2) of the Patent and Design Act provides that two assessors who learn in a technological or economic matter must assist the judge in hearing the suit.

Global Best Practices in Invention Protection

In an era marked by rapid technological advancements and dynamic innovation landscapes, the protection of inventions stands as a cornerstone for sustaining global progress. The quest to safeguard intellectual property has prompted nations worldwide to formulate and adopt various practices aimed at fostering innovation, acknowledging the pivotal role that invention protection plays in economic development and technological advancement. The landscape of invention protection spans diverse legal, economic, and cultural dimensions, reflecting the unique approaches nations undertake to balance innovation incentives and public access to knowledge. The establishment of robust patent systems, international collaborations through treaties, and educational initiatives are key elements that characterize the global discourse on invention protection.

The cornerstone of invention protection globally lies in the establishment of robust patent systems. Nations such as the United States, Japan, and several European countries have exemplified best practices in patenting. Their systems are characterized by efficiency in processing patent applications, rigorous examination procedures to ensure the novelty and non-obviousness of inventions, and the provision of exclusive rights for a reasonable duration.

For instance, the foundation for the U.S. patent examination process is rooted in various U.S. patent laws, including the Leahy-Smith America Invents Act (AIA)[46]. The AIA introduced significant changes

[45] (2012) 3 NWLR PT 1287 PG. 301, at 321
[46] Leahy-Smith America Invents Act (AIA) of 2011

to the U.S. patent system, emphasizing the importance of a thorough examination to ensure that only genuinely innovative and deserving inventions receive patent protection. Section 102 of the Act[47] introduced provisions such as the first-to-file system. The AIA introduced post-grant review proceedings, providing an avenue for third parties to challenge the validity of granted patents within a specific timeframe after issuance. Sections 321-329 of the Act[48] detail the procedures, grounds, and requirements for initiating post-grant reviews. Interpartes review is another post-grant review mechanism introduced by the AIA. Sections 311-318 of the Act[49] delineate the procedures and grounds for challenging the validity of patents in a more efficient and streamlined manner than traditional litigation.

The United States has established a robust framework for the protection of inventions through its patent laws and the diligent operations of the U.S. Patent and Trademark Office (USPTO). The effectiveness of the U.S. patent system is notably characterized by its commitment to a timely and transparent examination process, which is central to ensuring the quality and validity of granted patents. One fundamental aspect of the U.S. patent system is the requirement for a rigorous prior art search and examination. This process is designed to identify existing technologies or prior art that may be similar or relevant to the claimed invention. The assessment aims to determine whether the invention is novel, non-obvious, and valuable, which are vital criteria for patentability. This exhaustive search helps prevent the granting of patents for inventions that lack genuine novelty, contributing to the overall quality of the U.S. patent system.

Additionally, the United States Patent and Trademark Office (also known as USPTO) has implemented initiatives like the Patent Prosecution Highway (PPH), facilitating a more expeditious examination process. The PPH allows applicants whose claims have been determined allowable by one patent office to request accelerated examination in another participating office. This not only expedites the process but also encourages collaboration and efficiency in patent

[47] Ibid
[48] Ibid
[49] Ibid

examination on a global scale. Furthermore, the USPTO has embraced advancements in technology to enhance its examination procedures. The use of sophisticated databases and search tools enables examiners to access a vast repository of prior art, facilitating comprehensive searches to assess the novelty and non-obviousness of inventions. The transparent nature of the U.S. patent examination process is reinforced by the publication of patent applications eighteen months after their filing. This publication provides valuable information to the public and promotes knowledge dissemination. It also contributes to the global knowledge base, allowing inventors and researchers worldwide to stay informed about the latest technological developments. In this regard, the U.S. patent system, guided by relevant patent laws and administered by the USPTO, stands as a beacon of efficiency and transparency. The commitment to a thorough examination process, encompassing rigorous prior art searches, aligns with the U.S.'s dedication to fostering technological innovation. This diligence has undoubtedly played a pivotal role in positioning the United States as a global leader in innovation and intellectual property protection.

Also, the Patent Cooperation Treaty (PCT)[50] is a prime example of global best practices in invention protection, facilitating collaboration between nations in the realm of patent applications. The PCT, administered by the World Intellectual Property Organization (WIPO), streamlines the process of filing patent applications across multiple countries. This international treaty simplifies the administrative burden on inventors seeking global protection for their inventions. The PCT procedure encompasses critical elements outlined in specific articles, each contributing to the efficiency and effectiveness of the international patent application process.

For example, Article 3 of the PCT[51] is fundamental in establishing the international filing date, which is crucial for determining priority. It defines the moment at which the PCT application is considered officially filed and the effect of this filing on the rights of the applicant. This provision ensures a standardized starting point for the

[50] The Patent Cooperation Treaty (PCT), adopted on June 19, 1970, and entering into force on January 24, 1978,

[51] Ibid

international patent application process, allowing inventors to establish their place in the global patent landscape. Article 15 of the PCT[52] is pivotal in governing the international search process conducted as part of the PCT procedure. It mandates a comprehensive search of prior art relevant to the invention. The international search aims to identify existing technologies or inventions that may be similar or pertinent to the claimed invention. By doing so, it provides the applicant with valuable information about the patentability of their invention on a global scale. The search is conducted by an international searching authority, which is typically a patent office recognized for its expertise in conducting thorough prior art searches. Furthermore, Article 32 of the PCT outlines the provisions for an optional international preliminary examination, offering applicants a valuable tool for assessing the patentability of their inventions on an international level. The international preliminary examination provides a detailed analysis of the patentability criteria, including novelty, inventive step, and industrial applicability. While this examination is optional, it serves as an opportunity for applicants to receive an early evaluation of their invention's patentability before entering the national phase.

Concerning the above, the PCT procedure, as delineated by these specific articles, offers inventors a structured and globally recognized approach to filing international patent applications. The defined international filing date, comprehensive prior art search, and optional international preliminary examination collectively contribute to a more efficient and informed process for inventors seeking international patent protection. The PCT's procedural framework exemplifies international collaboration in the realm of patent protection, fostering a standardized and accessible system for inventors around the world. By adhering to the PCT, inventors can file a single international patent application, which is then examined by an international authority. This approach not only simplifies the initial filing process but also provides a basis for subsequent national phase applications. The collaboration inherent in the PCT system encourages efficiency and cost-effectiveness in pursuing global patent protection.

[52] Ibid

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Furthermore, The Agreement on Trade-Related Aspects of Intellectual Property Rights[53] (TRIPS) is another pivotal international agreement fostering collaboration and setting minimum standards for the protection of intellectual property, including patents. Article 27 of the TRIPS[54] establishes minimum standards for patent protection, encompassing crucial aspects of patentability criteria. It outlines the conditions that inventions must meet to be eligible for patent protection, setting benchmarks for availability, scope, and duration. The article recognizes the importance of striking a balance between granting exclusive rights to inventors to incentivize innovation and ensuring that patents do not unduly restrict access to knowledge. Article 27[55] thereby plays a central role in harmonizing the patent systems of member countries, fostering innovation while safeguarding the public interest. Article 41 of TRIPS[56] further addresses the enforcement of intellectual property rights, including patents, emphasizing the importance of providing effective legal remedies against infringement. Article 41[57] requires member countries to establish a legal framework that enables patent holders to enforce their rights, seek appropriate remedies, and deter potential infringers. It emphasizes the need for fair and equitable procedures to address patent disputes, ensuring a balance between the interests of right holders and the public.

The above relevant sections of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) set minimum global standards for patent protection. Article 27 OF TRIPS[58] establishes criteria for patentability, ensuring a consistent framework for protecting inventions worldwide. Meanwhile, TRIPS Article 41 underscores the importance of effective enforcement mechanisms and remedies to uphold the rights of patent holders and maintain the integrity of the global intellectual property system. Together, these provisions

[53] The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was adopted on April 15, 1994, as part of the Uruguay Round of multilateral trade negotiations under the World Trade Organization (WTO) and entered into force on January 1, 1995

[54] Ibid

[55] Ibid

[56] Ibid

[57] Ibid

[58] Ibid

contribute to creating a level playing field for innovators and promoting the advancement of technology on a global scale. In this regard, TRIPS, administered by the World Trade Organization (WTO), serves as a framework for the protection of inventions on a global scale. By establishing uniform standards, TRIPS ensures a level playing field for inventors and businesses worldwide. This harmonization promotes fair competition and encourages innovation across borders, as inventors can anticipate consistent protection for their intellectual property in different countries. The enforcement mechanisms provided by TRIPS also contribute to maintaining the integrity of the global intellectual property system.

Concerning the above, a thorough review of global best practices in invention protection reveals valuable insights for improving strategies and implementations worldwide. By adopting efficient patent systems, engaging in international collaborations, promoting education and awareness, and implementing lessons learned from successful models, nations can create environments that foster innovation, protect intellectual property, and contribute to the collective progress of humanity.

Presentation and Analysis of Data

Concerning the data generated through the questionnaire survey method, the result obtained is therefore analyzed as follows;

Sample Size and Techniques

Given the response to the questionnaire, the study adopts a sample size of 253 respondents resident in the various geopolitical zones in Nigeria.

Concerning the method of identifying the respondents in responding to the questionnaire, the study adopted simple random sampling techniques. The essence of adopting a simple random method of sampling is a result of the following characteristics or advantages which are:

i. It is preferable when focusing on respondents from a heterogeneous population like Nigeria[59]

ii. A simple random sampling technique is said to be devoid of any form of biased result[60]

iii. It is a straightforward, hassles method and easy method of obtaining data

iv. It is more suitable for empirical legal research[61]

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[59] Paul Aidonojie, "The Legal Impact and Relevance of Using Plea Bargains to Resolve Tax Disputes in Nigeria," Brawijaya Law Journal 9, no. 2 (October 31, 2022): 196–212. Aidonojie et al., "The Causes of the Rising Incidence of Domestic Violence in Nigeria: Proposing Judicial Separation as a Panacea." Paul Atagamen Aidonojie et al., "The Challenges and Impact of Technological Advancement to the Legal Profession in Nigeria given the Covid-19 Pandemic," KIU Journal of Humanities (January 13, 2022). Afolabi Toyin et al., "Legal Issues in Combating the Scourge of Terrorism; Its Impact on International Trade and Investment: Nigeria as a Case Study" 7 (October 10, 2022): 129–139. Aidonojie et al., "The Causes of the Rising Incidence of Domestic Violence in Nigeria: Proposing Judicial Separation as a Panacea." Odetokun Oladele et al., "An Empirical Study of Criminalizing Minor Infractions of Tax Laws in Nigeria: The Need for Negotiated Punishments" 7 (July 13, 2022): 157–168.

[60] Paul Atagamen Aidonojie et al., "A Facile Study Concerning the Legal Issues and Challenges of Herbal Medicine in Nigeria," The Indonesian Journal of International Clinical Legal Education 4, no. 4 (December 24, 2022). Paul Aidonojie, Nosakhare Okuonghae, and Kingsley Ukhurebor, "The Legal Rights and Challenges of COVID-19 Patients Accessing Private Healthcare in Nigeria" (December 23, 2022). Paul Atagamen Aidonojie, "The Societal And Legal Missing Link In Protecting A Girl Child Against Abuse Before And Amidst The Covid-19 Pandemic In Nigeria," Jurnal Hukum 38, no. 1 (May 29, 2022): 61.

[61] Aidonojie et al., "The Causes of the Rising Incidence of Domestic Violence in Nigeria: Proposing Judicial Separation as a Panacea." Aidonojie, "The Legal Impact and Relevance of Using Plea Bargains to Resolve Tax Disputes in Nigeria." Paul Atagamen Aidonojie, Oluwaseye Oluwayomi Ikubanni, and Alade Adeniyi Oyebade, "Legality of EndSARS Protest: A Quest for Democracy in Nigeria," Journal of Human Rights, Culture and Legal System 2, no. 3 (November 20, 2022): 209–224. Paul Aidonojie, Simon Imoisi, and Idemudia Oaihimire, "A Facile Study Concerning The Prospect And Challenges Of Conducting A Hybrid Method Of Legal Research In Nigeria" 13 (October 15, 2022): 148–174. The Legality, Prospect, and Challenges of adopting Automated Personal Income Tax by States in Nigeria: A Facile Study of Edo State, Cogito Multidisciplinary Journal, Vol. 14(2), PP. 149 – 170; Aidonojie, P.

Data Analysis

The data obtained through a questionnaire distributed to the respondents residing in various geopolitical zones is hereby analyzed as follows:

Research Question One

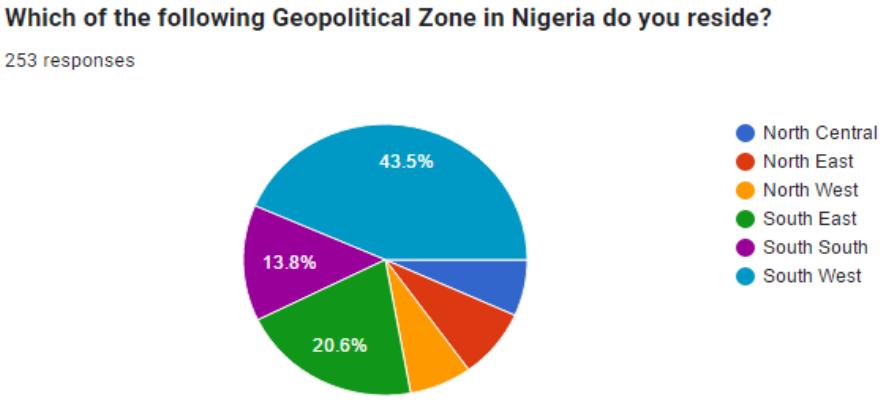

Figure 1: Geopolitical zone resided by respondents

S/N	Geopolitical Zones in Nigeria	Responses of Respondents	Percent
1	North Central	17	6.7%
2	North East	21	8.3%
3	North West	18	7.1%
4	South East	52	20.6%
5	South South	35	13.8%

A., Oaihimire, I. E. and Agbale, O. P., (2022), The Legal and Ethical Issues concerning Diagnosing and Treatment of Patients by Pharmacists in Nigeria, Euromentor Journal, Vol. 13(2), PP. 113-138.

6	South West	110	43.5%
	TOTAL	**253**	**100%**

Table 1: Geopolitical zone resided by respondents

Figure 1 and Table 1 represent the respondents' identification of the specific area within the geopolitical region in which they reside in Nigeria.

Research Question Two

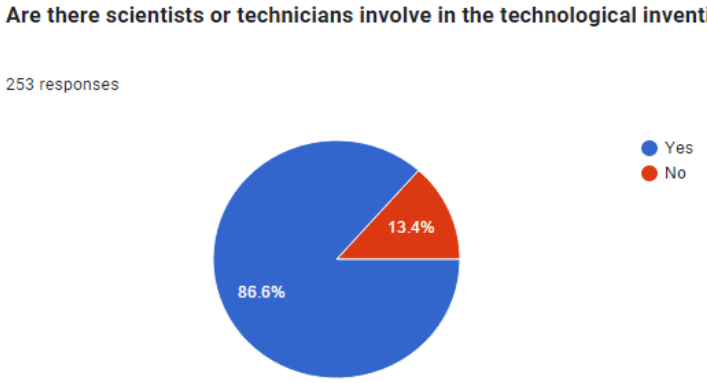

Figure 2: Verification of the existence of technicians or scientists involved in the invention in Nigeria

	Response	Percent
Valid Yes	219	86.6%
Valid No	34	13.4%
Total	**253**	**100%**

Table 2: A valid of the existence of technicians or scientists involved in the invention in Nigeria

Figure 2 and Table 2 above are respondents' valid confirmations of the fact that there is or are technicians or scientists involved in developing an invention in Nigeria.

Research Question Three

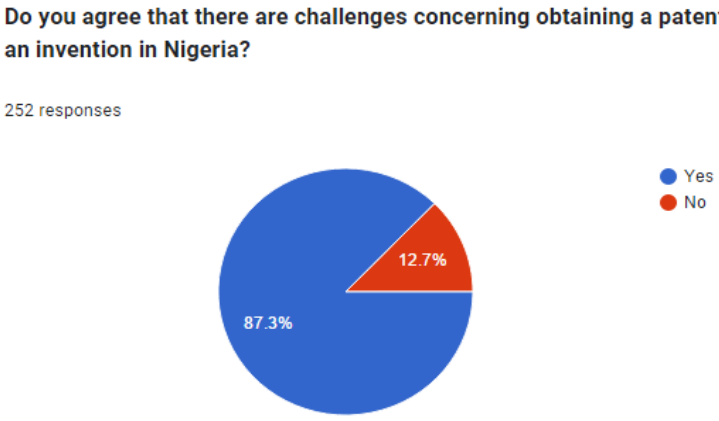

Figure 3: Verification if there are challenges concerning obtaining a license or protection of an invention in Nigeria

	Response	Percent
Valid Yes	220	87.3%
Valid No	32	12.7%
Total	**252**	**100%**

Table 3: A valid Verification if there are challenges concerning obtaining a license or protection of an invention in Nigeria Nigeria

Figure 3 and Table 3 above are respondents' valid recognition of the fact that there are challenges to obtaining a patent or protection concerning their invention.

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Research Question Four

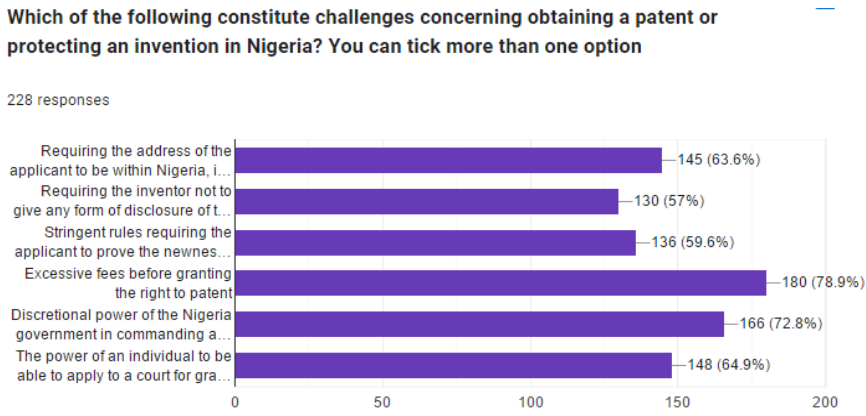

Figure 4: Challenges mitigating the obtaining of a patent or protection of an invention in Nigeria

Challenges in the Protection of an Invention	Cluster of Response	Percentage
Requiring the address of the applicant to be within Nigeria, including foreigners	145	63.6%
Requiring the inventor not to give any form of disclosure of the invention otherwise, it won't be considered new	130	57%
Stringent rules requiring the applicant to prove the newness of the invention	136	59.6%
Excessive fees before granting the right to patent	180	78.9%
Discretional power of the Nigeria government in commanding a	166	72.8%

compulsory license and use of patents for the services of government agencies		
The power of an individual to be able to apply to a court for granting of a patent to an invention on grounds stipulated by the patent act may be abuse	148	64.9%

Table 4: Valid Cluster of challenges mitigating the obtaining of patent or protection of an invention in Nigeria

Figure 4 and Table 4 are a cluster of respondents' valid identification of the challenges often mitigating obtaining a patent or protecting an invention in Nigeria.

Research Question Five

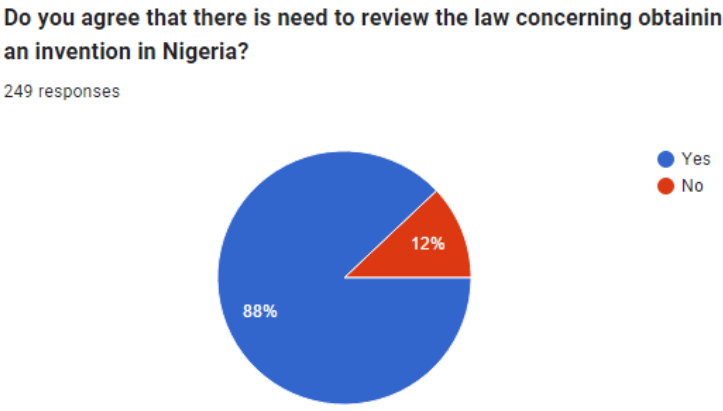

Figure 5: Confirmation of the fact that there is a need to intensify the protection of an invention in Nigeria

	Response	Percent
Valid Yes	219	88%
Valid No	30	12%

Total	**249**	**100%**

Table 5: Valid confirmation of clinical legal education is relevant in the justice system in Nigeria

Figure 5 and Table 5 are valid identifications of responses by the respondents in confirming if clinical legal education is relevant to the expansion of justice in Nigeria.

Research Question Six

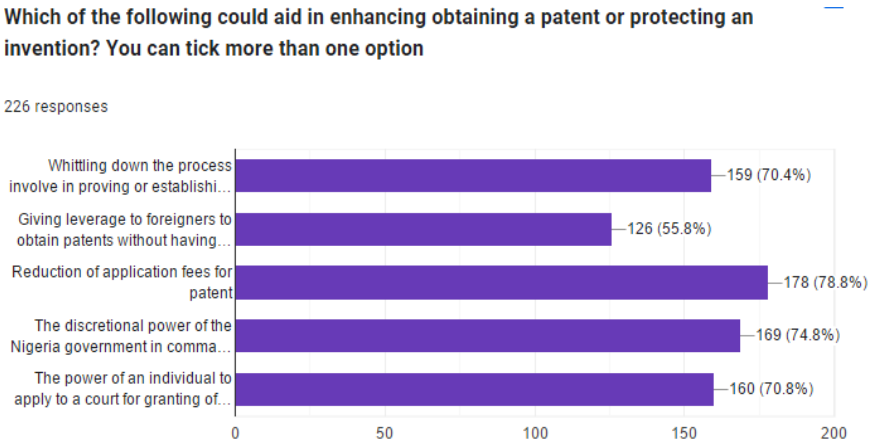

Figure 6: Identifying possible solutions that could aid in intensifying the protection of an invention in Nigeria

A possible solution in intensifying the protection of an invention	Cluster of Responses	Percentage
Whittling down the process involved in proving or establishing the newness of invention	159	70.4%
Giving leverage to foreigners to obtain patents without having an address in Nigeria	126	55.8%

Reduction of application fees for patent	178	78.8%
The discretional power of the Nigeria government in commanding a compulsory license and use of patents should be adequately construed and placed on a check	169	74.8%
The power of an individual to apply to a court for granting of a patent to an invention on grounds stipulated by the patent act should be placed on a check	160	70.8%

Table 6: Valid cluster of identification of possible solutions that could aid in intensifying the protection of an invention in Nigeria

Figure 6 and Table 6 are valid identifications of possible solutions that could aid in intensifying the protection of inventions in Nigeria.

Discussion of Findings

Given the data presented above in this study, it is further revealed that 253 respondents, as presented in Figure 1 and Table 1, reside in the various geopolitical zones in Nigeria. The essence of Figure 1 and Table 1 is aimed at ensuring that the respondents are well knowledgeable and informed concerning the concept and issues concerning invention in Nigeria. In furtherance of this, in Figure 2 and Table 2, 86.6% of the respondents were able to identify that they were aware that there were technicians and scientists involved in an invention in Nigeria. However, in Figure 3 and Table 3, 87.3% of the respondents agreed that though technicians and scientists are involved in invention, challenges often mitigate their quest for obtaining a patent or protecting their invention in Nigeria. In this regard, in Figure 4 and Table 4, the respondents in a cluster of responses further identify challenges concerning obtaining a patent or protecting an invention in Nigeria as follows;

i. 63.6% of the respondents identify that requiring the address of the applicant to be within Nigeria, including foreigners, often poses a challenge in obtaining a patent over an invention

ii. 57% stated that there is the challenge of the requirement for an inventor not to give any form of disclosure of the invention; otherwise, it won't be considered new

iii. 59.6% stated that there are or are stringent rules requiring the applicant to prove the newness of the invention

iv. 78.9% stated that excessive fees before granting the right to patent often constitute a challenge

v. 72.8% identify that the discretional power of the Nigeria government in commanding a compulsory license and use of patents for the services of government agencies as a challenge in protecting an invention

vi. Furthermore, 64.9% were of the view that the power of an individual to be able to apply to a court for granting of a patent to an invention on grounds stipulated by the patent act may be abuse

Concerning the above, it suffices to state that the continuously identified challenges may cause an unfair level and unconducive environment for scientists and technicians to come up with an invention. In this regard, scientists and technicians who are aware of the above challenges may be unwilling and discouraged from inventing any invention within Nigeria. However, in Figure 5 and Table 5, 88% of the respondents agreed that given the fact that most or all the challenges concerning obtaining a patent or protection of an invention are a result of the patent law of Nigeria, there is a need to intensify and improve on the protection of an invention in Nigeria. In this regard, in Figure 6 and Table 6, the respondents further identify possible ways that could aid in enhancing obtaining a patent or protecting an invention in Nigeria as follows;

i. 70.4% of the respondents stated that there is a need to whittle down the process involved in proving or establishing the newness of invention

ii. 55.8% stated that giving leverage to foreigners to obtain patents without having an address in Nigeria

iii. 78.8% identify that the relevant authority granting a patent should ensure the reduction of application fees for patent

iv. 74.8% stated that the discretional power of the Nigeria government in commanding a compulsory license and use of patents should be adequately construed and placed on a check

v. Furthermore, 70.8% agreed that the power of an individual to apply to a court for granting a patent to an invention on grounds stipulated by the patent act should be placed on a check.

Conclusion

In conclusion, this study underscores the crucial role of technological innovation in the development of nations, drawing attention to the contrasting landscapes between developed countries like the USA and international treaties and developing nations like Nigeria. The legal intricacies surrounding the protection of inventions in Nigeria, as explored through a hybrid research method involving 253 respondents across diverse geopolitical zones, reveal a nuanced picture. While a substantial number of respondents are aware of the involvement of technicians and scientists in Nigeria's innovation landscape, challenges in obtaining patents or protecting inventions are pervasive. The difficulties identified, ranging from geographic constraints on applicants to stringent rules and excessive fees, present formidable barriers to scientists and technicians seeking to contribute to technological innovation. As illuminated by the respondents, these impediments risk creating an environment that may discourage inventors from pursuing their creative endeavors within Nigeria.

Moreover, the respondents' collective agreement (88%) that the challenges predominantly stem from Nigeria's patent laws underscores the urgency to intensify efforts in reforming and improving the protection of inventions. The suggested measures (including streamlining the process of proving the novelty of innovations, providing leverage to foreigners, reducing application fees, and constraining discretionary powers) offer a roadmap for enhancing Nigeria's patent acquisition and protection landscape. In essence, the study not only highlights the challenges but also proposes actionable

solutions that, if implemented, can contribute significantly to creating an environment that encourages and supports innovation. The path forward involves collaborative efforts from the government and the relevant authorities to pave the way for a future where Nigeria can harness the creative potential of its scientists and technicians for sustained technological advancement.

The study strongly recommends and concludes that for Nigeria to foster effective and improved technological innovation, it is critical for the government to establish an enabling environment and reassess the existing legal framework governing patent acquisition. The identified challenges, as enumerated in the study, necessitate a comprehensive review to eliminate obstacles and create a more conducive atmosphere for scientists and technicians.

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