MDC Journals.
International Journal of Scientific and Allied Research
[IJSAR]

International Journal of Scientific and Allied Research (IJSAR)
ISSN: 2437-1246
Volume 5, Issue 1 (March 2021), 74-80
http://www.mdcjournals.org/ijsar-...html

Opinion Article

INTELLECTUAL PROPERTY AND PATENT ACQUISITION

Prof (Mrs) Igwenagu C.M.

Department of Industrial Mathematic/ Applied Statistics, Faculty of Applied Natural Sciences, Enugu State University of Science and Technology.

E-mail: chinelo.igwenagu@esut.edu.ng or chineloigwenagu@yahoo.com.

Phone: +2348063305243

ABSTRACT

Intellectual Property (IP) refers to creation of the mind such as inventions, literary and artistic works; designs; and symbols, names and images used in commerce. When patent are acquired on these intellectual properties, they are then protected by law, which makes it possible for people to earn recognition or financial benefits from what they have invented or created.. Patent acquisition can be referred to as the process or act of obtaining or acquiring a property right for an invention by an inventor. This follows a number of lay down rules or processes; which enables smooth understanding and agreement among the parties involved. Most of the rules are usually contained in the Intellectual property policy (IP Policy) document. The reward of hard work put in getting intellectual property is usually enormous with patent acquisition. Hence is advisable always to acquire patent right for every invention/ innovation.

KEYWORDS: *Acquisition, Benefits, Intellectual Property, Laws, Patent*

1. INTRODUCTION

Intellectual Property (IP) refers to creation of the mind such as inventions, literary and artistic works; designs; and symbols, names and images used in commerce.[1] It can also be said to be a category of property that includes

IJSAR Journal of Environmental, Earth and Physical Sciences (IJSAR-JEEPS)
ISSN: 2408-7645
http://www.mdcjournals.org/ijsar-jeep...html

International Journal of Scientific and Allied Research (IJSAR)
ISSN: 2437-1246
Volume 5, Issue 1 (March 2021), 74-80
http://www.mdcjournals.org/ijsar-...html

intangible creations of the human intellect. Intellectual properties are usually protected by law, which makes it possible for people to earn recognition or financial benefits from what they have invented or created. By striking the right balance between the interest of innovators and the wider public, the intellectual property system aims to foster an environment in which creativity and innovation can flourish. This is usually guided by laws or policies; which is very important and should be well understood by the parties involved

On the other hand, Patent acquisition can be referred to as the process or act of obtaining or acquiring a license or right over a property. However, Patent acquisition can include buying a specific patent or acquiring a broad range of related patents to create a portfolio. For instance, companies that have decided to exploit a specific technology or expand into a specific businesths segment often find it worthy and a sound long-term investment to make as many patents acquisitions as possible; which are related to those technologies and applications. This will enable them to have broad patent coverage. This will minimize the likelihood of patent infringement claims, and also reduce the number of competitors that might decide to enter the acquiring company's business segment.

Patent is the granting of a property right by a sovereign authority to an inventor. This grant provides the inventor the exclusive right to the patented process, design or invention for designated period in exchange for a comprehensive disclosure of the inventions. [2]

II. INTELLECTUAL PROPERTY AND PATENT ACQUISITION

Intellectual Property and Patent Acquisition can be seen as acquiring an intellectual property right for an invention by an inventor. This makes it possible for the inventor to own a right over his intellectual property (invention) for specified period of time.

2.1. Types of Intellectual Property

Different types of intellectual property exist, and the extent of their recognition varies from country to country. The well known types are Patents, Copyrights, Trademarks, Industrial Designs, Geographical Indications and Trade Secrets; although, we are more conversant with Patents, Copyrights and Trademarks. Their brief explanation is given below:

2.11 Patent: A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.

IJSAR Journal of Environmental, Earth and Physical Sciences (IJSAR-JEEPS)
ISSN: 2408-7645
http://www.mdcjournals.org/ijsar-jeep...html

International Journal of Scientific and Allied Research (IJSAR)
ISSN: 2437-1246
Volume 5, Issue 1 (March 2021), 74-80
http://www.mdcjournals.org/ijsar-...html

2.12. Copyright: This is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyrights range from books, music, paintings, sculptures and films to computer programs, databases, advertisements, maps and technical drawings.

2.13. Trademark: A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprise. Trademarks date back to ancient times when artisans used to put their signatures or "mark" on their products.

However, the discussion will focus more on Patents as Intellectual Property, specifically in the University System. Patent acquisition is usually guided by IP policies (laws) contained in a well written document called IP Policy Document. This policy document varies among institutions. In situations where intellectual property right (IPR) holders are not protected under a clearly defined and efficiently administered intellectual property legal and policy framework, the economy suffers such inadequacies since both the inventors and the public interest will be in conflict with each other. [3] Hence there is serious need for understanding the intellectual property and patent system.

2.2. The University and Intellectual property laws

Intellectual property can generally be divided into three different areas of the law: Trademark, Patent and Copyright policies.

1. The **Patent Policy**: This applies to any inventive concept or invention that arises as a result of an employment relationship with the University or as a result of substantial use by a researcher of University resources, facilities, or information. Research work financed wholly or in part by an outside sponsor comes under the provisions of the grant or contract.
2. The **Trademark Policy** deals with words, names and symbols (for example, the University Cardinal) the University has used to identify itself, and how it protects that usage.
3. Copyright in the University environment has many different facets. Copyright protection governs "original works of authorship fixed in any tangible medium of expression". Currently there are two copyright policies in the University.

i) The **Copyright Policy:** This governs usage of copyrighted materials online, in the classroom or elsewhere.
ii) The **Copyright Ownership Policy:** This deals primarily with who owns creative and scholarly works in the university. With certain limited exceptions, scholarly works are owned by the faculty member who created the work.

III. INTELLECTUAL PROPERTY LAW

The main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual goods. To achieve this, the law gives people and businesses property rights to the information and intellectual goods they

IJSAR Journal of Environmental, Earth and Physical Sciences (IJSAR-JEEPS)
ISSN: 2408-7645
http://www.mdcjournals.org/ijsar-jeep...html

International Journal of Scientific and Allied Research (IJSAR)
ISSN: 2437-1246
Volume 5, Issue 1 (March 2021), 74-80
http://www.mdcjournals.org/ijsar-...html

create, usually for a limited period of time. This gives economic incentive for their creation, because it allows people to profit from the information and intellectual goods they create. These economic incentives are expected to stimulate, motivate and contribute to the technological progress of countries, which depends on the extent of protection granted to innovators, in this case the Patent Right. Therefore the understanding of Patent acquisition becomes pertinent.

Patent acquisition follows a number of lay down rules or processes; which enables smooth understanding and agreement among the parties involved. Most of these rules as earlier mentioned are usually contained in the Intellectual property policy (IP Policy) document.

3.1 Need for Patents acquisition

Generally, the need for or importance of patents acquisition cannot be over emphasized. Patents when acquired protect the intellectual property of the patent holder, help ensure their profitability, and also serve as marketing for an institution's innovation (the patent holder).Specifically, a patent gives the holder the following rights:

i. The right to stop others from using the registered invention or to choose to permit the use by other persons of such invention under agreed terms.
ii. The right to bring a legal action against anyone who infringes on the registered invention and to make a claim for damages. The Court may also in appropriate circumstances grant injunctive orders restraining the offending party from further infringement on the rights of the patent holder.
iii. The right to grant others a license to use such invention, or sell it, as with any asset. This can provide an important source of revenue.

3.2. How to Apply for a Patent

Before making a formal application, an applicant should research the Patent and Trademark Office's database to see if another person or institution has claimed a patent for a similar invention. The invention must be different from or an improvement upon a previous design to be considered for a patent. It is important for applicants to take care to maintain accurate records of the design process and the steps taken to create the invention. Enforcing the patent is up to the person or entity that applied for the patent.

To apply for a patent, the applicant submits specific documents and pays associated fees (where applicable). Written documentation includes drawings, descriptions, and claims of the item to be patented. A formal oath or declaration confirming the authenticity of the invention or improvement of an existing invention must be signed and submitted by the inventor. After fee payment, the application is reviewed and either approved or denied. .(Some may be asked to undergo modifications).

IJSAR Journal of Environmental, Earth and Physical Sciences (IJSAR-JEEPS)
ISSN: 2408-7645
http://www.mdcjournals.org/ijsar-jeep...html

International Journal of Scientific and Allied Research (IJSAR)
ISSN: 2437-1246
Volume 5, Issue 1 (March 2021), 74-80
http://www.mdcjournals.org/ijsar-...html

Depending on the IP policy of an institution, a researcher or an inventor who has appropriately filed for a patent can use patent pending while waiting for the approval.

3.3. Patent Pending

Patent pending is a legal designation that can be used with any type of patentable process or product to denote or show that a patent has been applied for but has not yet been granted. It is used by inventors to inform or notify the public that they have filed a patent application with the relevant patent and trademark authority. Such a designation serves as a means of notifying the public and other businesses or inventors that they could be held liable for damages once a patent is issued. Inventors might use the term "patent pending" in marketing materials, on product packaging, and on the product itself. A patent pending notice does not have to be given in a specified way and some inventors use variations of the term, such as "Pat. Pend." Sometimes the notice also displays the provisional patent number granted to it.

3.4. Importance/ Uses of Patent Pending

I. The main benefit of a patent pending disclosure is that it establishes a priority date for the invention and provides legal recourse to the inventor. This means that the first inventor to file an application gets the patent.
II. A patent pending notice is used by inventors to create awareness or inform the public that they have filed a patent application for their innovation.
III. Violators or copiers of pending patents can be sued for patent infringement and are liable for damages, such as back-dated royalties and injunction or a seizure of the items that copied their provisional patents. This means that If/when a patent is actually granted, a holder may be able to collect damages, such as back-dated royalties, or may be able to get an injunction or effect a seizure of the items that are similar to the content or artwork listed on their patent application. However, the patent pending holder cannot sue a potential infringer until a patent is actually granted.

3.5. Duration of Acquired Patents

In most cases, once a patent is granted, it is valid for up to 20 years from the patent application filing date for utility patents (and in some countries plant patents) and 14 years from the date the patent was granted for design patents. Given the limited amount of time an invention can be protected by patent, it makes sense to seek the benefits of a potential patent as early as possible. Also in situations where a patent holder is required to pay annual renewal fees, the patent expires if he/she fails to pay the prescribed annual fees after a grace of 6 (six) months following the year from which such fees are due.[4]

IJSAR Journal of Environmental, Earth and Physical Sciences (IJSAR-JEEPS)
ISSN: 2408-7645
http://www.mdcjournals.org/ijsar-jeep...html

International Journal of Scientific and Allied Research (IJSAR)
ISSN: 2437-1246
Volume 5, Issue 1 (March 2021), 74-80
http://www.mdcjournals.org/ijsar-...html

IV. TYPES OF INVENTION THAT CAN BE PATENTED

Most often researchers are faced with difficulties regarding the type of invention which can be registered for patenting. The following criteria can serve as a guide

i. Novel Invention

Invention that seeks for patent must be new and have an inventive step that is not obvious to someone with knowledge and experience in the subject. The invention must also have never been known, used or made public. An invention is also patentable if it constitutes an improvement upon a patented invention.

ii. Must have Industrial Application

The invention must be capable of being made or used in some kind of industry. Industry in this context means "Anything distinct from being purely intellectual".

This implies that the invention goes beyond just an idea, a scientific theory, or a computer program but must take the practical form of an apparatus, product or a device.

iii. In line with Public Policy and Morality

The invention must not be against public policy or morality as this constitutes a ground on which an application may be rejected by the Patents Registry.

V. CONCLUSION.

In conclusion, there is huge benefit and a great need to acquire patent on intellectual property. Through this means, the time, resources and the efforts of researchers/inventors are greatly rewarded. For institutions, apart from showcasing them globally, it can serve as an important way of generating revenues; some businesses exist solely to collect the royalties from a patent they have licensed and perhaps in combination with a registered design and trade mark.

IJSAR Journal of Environmental, Earth and Physical Sciences (IJSAR-JEEPS)
ISSN: 2408-7645
http://www.mdcjournals.org/ijsar-jeep...html

REFERENCES

[1] WIPO (2021).What is intellectual property. *https://www.wipo.int/about-ip/en/ accessed 5/02/2021.*

[2] Will Kenton (2020*) https://www.investopedia.com/terms/p/patent.asp accessed 5/02/2021*.

[3] Femi Olubanwo and Oluwatoba Oguntuase(2019) Strengthening Intellectual Property Rights And Protection In Nigeria. *Google Accessed 5/02/2021*.

[4] Ayobami Tunde and Seyi Adisa (2018) Registration of Patent in Nigeria. *Google Accessed 5/02/2021*

.