ISSUES OF COPYRIGHT AND PATENT IN THE TEACHING PROFESSION

Ugbejeh Ernest Ogwashi
School of Law,
National Open University of Nigeria.

Abstract

The development of intellectual property law in Nigeria is relatively recent. It is an area of law that protects legal rights associated with creative effort, commercial reputation and goodwill. This area of law deters others from copying or taking unfair advantage of the work or reputation of another and provides remedies in appropriate cases. Two areas of intellectual property law which are germane to the teaching profession are patent and copyright. This article seeks to expose and interrogate the underlying issues in copyright and patent in the teaching profession.

Key words: Intellectual property law, copyright, patent and teaching profession

Copyright and patent are aspect of intellectual property law. Intellectual property law is an area of law which concerns legal rights associated with creative effort or commercial reputation and goodwill. The essence of this area of law is to prevent unlawful appropriation of the fruit of another person's labour and also provide remedies where this arises. The upsurge in the piracy of books, firms and music industries in Nigeria is the concern of this area of law. Though, potent and of high commercial value, it is yet to be fully exploited in Nigeria.

The definition of intellectual property has been given by different scholars. According to David Bainbridge, intellectual property law is that area of law which concerns legal rights associated with creative effort or commercial reputation and goodwill (Bainbridge, 2007). This definition is all embracing as it covers wide spectrum of rights. That is, such rights resulting from creative effort both commercial and goodwill. Also, property rights has been described as the various intangible products of the human intellect, which include Copyright, the Law of Confidence and industrial property rights such as Patent, Trademark and Industrial Design (Paul, 1996). Intellectual property law protects creative effort of human intellect by granting certain exclusive rights to the right owner as well as the use of trademarks and designs.

On the other hand, the term Teaching Profession consists of two words, which are "teaching" and "profession". Teaching means training or the art of inculcating knowledge, while profession means occupation. Teaching profession simply means training occupation. It is the occupation of teachers. Occupations that have attained professional status possess a high level of education and training based on a unique and specialized body of knowledge, a strong ideal of public service with an enforced professional code of conduct and high levels of respect from the public at large, registration and regulation by the profession itself, trusted to act in the clients' best interests within a framework of accountability, a supportive working environment, similar levels of compensation as other professions (Goodson, 2003). This clearly shows that a profession performs essential social services. Teaching profession fully provides social services on the individual child which enables him or her to be fully socialised in an industrial society.

A teacher is entrusted with the task of facilitating the growth and development of the younger generation and no teacher can be really successful in performing his duties unless he is intellectually curious and engages in research. Also, often, if not in all cases, a teacher is an employee. These, amongst other factors, raise some issues in copyright and patent. Such issues in copyright would include eligibility, originality, ownership, registration, infringement, while in patent it would include invention, patentability, duration, ownership, extent of patent right and examination of application and grant of patent.

The intellectual property right is an intangible right. The right consists of moral right and economic right. Moral Right is a right that grants the author paternity of the intellectual creation and protects the personal and reputational value of a work, as opposed to its purely monetary value. Moral right relates to the connection between an author and his creation (Sokefun, 2012).

On the other hand, the economic right grants the author a monopoly to exclusively exploit his creation for a certain period. The essence of this monopoly is to promote creativity.

The protection of intellectual property law cuts across all disciplines and professions to wit: actors, performers, pharmacists, playwrights, doctors, engineers, musicians, lecturers, teachers, broadcasters, editors of law reports, librarians, architects, designers, professors etc. The focus of this paper is to examine some salient issues in copyright and patent as they relate to the teaching profession.

Definition of Copyright

The extant law on copyright in Nigeria is the Copyright Act, Cap.68 Laws of the Federation of Nigeria, 2004.

This Act does not give a clear definition of copyright but recognises the right to stop others from doing something or interfering with another's work (Babafemi, 2007). Ekpo M.F., Director General, Nigerian Copyright Commission (May 1997) defined copyright as

> a right in law conferred on authors and owners of creative works be they literary, scientific or artistic in nature, to control the doing of certain acts in relation to those works. This means that the work is protected against unauthorised use. The rationale for this protection is that the law regards the work as property, which, like other properties entitles the owner to the exclusive right of usage.

Copyright law gives the exclusive right to make copies, license and otherwise exploit a musical or artistic work, whether printed, audio, video and so on. This right protects the work for the lifetime of the author(s) and a period of 50 years after his death (Sokefun, 2001).

The above definitions reveal that copyright serves to control the copying of the intellectual materials and applies for a specific period of time, after which the work is said to enter the public domain. The temporal monopoly is justified on the basis that copyright law does not lock away the ideas underlying a work.

Issues in Copyright in the Teaching Profession

The issues in copyright in the teaching profession shall be discussed under the following heads.

Issue of eligibility: Copyright protects only "work" that is eligible. Eligible "work" means "work" that is qualified for copyright protection. What copyright protects is "work" and not "idea". This implies that where idea is taken without copying the "work" there is no infringement. Also, it is not all works that are entitled to statutory protection. Section 1(1) of the Copy Right Act itemised works eligible for copyright protection in Nigeria to include literary, musical, artistic, cinematograph firms, sound recordings and broadcast.

Section 51 of the Act provides details of items that fall within each categories of eligible work. It defines literary works to include *(a)* novels, stories and poetic works; *(b)* plays, stage directions, film scenarios and broadcasting scripts; *(c)* choreographic works; *(d)* computer programmes; *(e)* text-books, treatise, histories, biographies, essays and articles; *(f)* encyclopaedias, dictionaries, directories and anthologies; (g) letters, reports, and memoranda; *(h)* lectures, addresses and sermons; *(i)* law reports, excluding decision of courts; *(j)* written tables or compilations.

Musical work is defined as any musical composition irrespective of musical

quality and includes work composed for musical accompaniment.

Artistic works include, irrespective of the artistic quality, any of the following work(s) similar thereto: *a)* paintings, drawings, etchings, lithographs, woodcuts, engravings and prints; *(b)* maps, plans and diagrams; *(c)* works of sculpture; *(d)* photographs not comprised in a cinematographic film; *(e)* works of architecture in the form of building models; and *(f)* works of artistic craftsmanship and also (subject to section 1(3) of this Act) pictorial woven tissues and articles of applied handicraft and industrial art;

Cinematographic film includes the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction, and includes the recording of a sound track associated with the cinematograph film (Section 51 of the Act).

Sound recording means the first fixation of a sequence of sound capable of being perceived aurally and of being reproduced but does not include a sound track associated with a cinematograph film (Section 51 of the Act).

Broadcasts are refer to mean sound or television broadcasts by wireless telegraphy or wire or both, or by satellite or cable programmes and include re-broadcast (Section 51 of the Act).

In the teaching profession any work done that falls within the above eligible works would enjoy the copyright protection. The teachers' products that commonly fall within copyright protection are in the category of literary work.

Furthermore, literary, musical and artistic works shall not be eligible for copyright unless the requirements of section 1(2) of the Copyright Act are met. That section provides as follows:
"A Literary, musical and artistic work shall not be eligible for copyright unless-

a. Sufficient effort has been expended on making the work to give it originality

b. The work has been fixed in any definite medium of expression now known or later to be developed from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device."

The above requirement raises two issues: The first question is when will a sufficient effort be deemed to have been expended on the work to give it original character? In *Offrey v. Chief S. O. Ola and Others (unreported suit No: HOS/23/68 decided 27th June 1969),* the court held that sufficient effort exists where some substantial or real expenditure of mental or physical energies of the producer and the labour

or skill was not a negligible or a common place one.

However, the degree of skill, ingenuity, labour and judgement required is a question of fact. To establish sufficient effort, the evidence of industry and knowledge must be proved.

If there is sufficient industry and knowledge, the second question is, how does one determine the originality of the work? This question has not been properly addressed in Nigerian cases. However, in *University of* London Press Ltd v. University of Tutorial Press Ltd (1916)2CH. 601, Peterson J. stated thus:

> The word original does not in this connection mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with the originality of idea, but with the expression of thought, and in the case of 'literary work' with expression of thought in print or writing. The originality which is required relates to the expression of the thought. But the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work that is it must originate from the author. In the present case it was not suggested that any of the papers were copied. Professor Lodge and Mr. Jackson proved that they had thought out the questions which they set, and that they made notes or memoranda for further questions which they set. The papers which they prepared originated from themselves and were, within the meaning of the Act original.

Also Lord Atkinson in *Macmillan v. Cooper* stated thus

> It will be observed that if the product of the labour, skill and capital of one man which must not be appropriated by another, not the elements, the raw materials, if we may use the expression upon which the labour and the skill and capital of the first have been expended. To secure copyright for the product it is necessary that the labour, skill and capital should be expended sufficiently to impart on the product some quality or character which the raw material does not possess and which differentiate the product from the raw material.

The above dictum was applied in the Nigerian case of *ICIC (Directory publ) Ltd. v. Ekko Delta (Nig.) and Another*, where the court held that a copier could not enjoy copyright protection.

Literary, musical and artistic works can only enjoy copyright protection if there is sufficient input of knowledge and industry.

One important requirement for eligibility is contained in section 1(2)(b) of Copyright Act. It provides that the work must have been in a definite medium of expression now known and

later to be developed. There is no decided Nigerian case on this. By this, the work is required to be definitely expressed in a language already known or a language which is later to be developed and from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device, before such work will be eligible for copyright (Babafemi, 2007). Thus, in *Hadley v. Kemp (1999) EMLR 589*, it was held that the defendant had completed the writing of the song in his head and that they were put into a permanent form when the group made the first 'demo' tape of the song in the recording studio.

Artistic work shall not be eligible for copyright, if at the time when the work is made it is intended by the author to be used as a model or pattern to be multiplied by any industrial process (section 1(3) of the Act).

Issue of Statutory Duty to Keep Register of Work

Section 14 of the Act imposes a duty on the publishers, printers, producers or manufacturers of works of which copyright subsist to keep a register of all work showing-

a. the name of the author;
b. the title;
c. year of production; and
d. the quality of the work produced.

The provision of section 14 is supported by section 23 of the Act. Section 23 provides that any person who;

a. fails to keep the register as required under section 14 of the Act or

b. makes or causes to be made a false entry in the register or

c. produces or tenders or causes to be produced or tendered as evidence any such entry in writing knowing the same to be false shall be guilty of an offence and be liable on conviction to a fine not exceeding N10,000.00

Section 34(2) of the Act places on the Copyright Commission the additional duty of maintaining effective data bank on author and their work.

There is no duty on the copyright owner to keep register of work or to register his or her works. In other jurisdiction like Canada, New Zealand, United States of America, registration of the work by the copyright owner is condition precedent to instituting a legal action in court.

Issue of Jurisdictional Nature of Copyright

One feature of copyright is that it is territorial in nature**.** Copyright being intellectual property right is territorial in nature. This implies that right arises as a result of national legislation which authorises an official grant by a national intellectual property office. It also means that intellectual property right is only effective in the territory of the state granting that right. An intellectual

property right granted in Nigeria only has effect within the territory of Nigeria; it does not give any rights outside Nigeria and can only be infringed by conduct which occurs within the territory of Nigeria (Sokefun, 2001). Thus, section 5(1)(a) provides that copyright is conferred on eligible work in Nigeria if at the time of first publication one of the authors is a citizen or domiciled in or a body corporate registered in Nigeria. The question that arises is whether work protected under Nigerian law can enjoy protection outside Nigeria?

Section 5(1)(b) and 41of the Copyright Act addressed this concern. The work will enjoy such protection to the extent of the existence of reciprocal treaty between Nigeria and such country.

Issue of Ownership and Authorship

Ownership flows from authorship. Section 10(1) states the basic rule that the author of a work is the first owner of the copyright. In *Oladipo Yemitan v. The Daily Times (Nig.) Ltd & Anor*. (1980) F.H.C.R 186 at 190, Belgore, J said that "it must be stated that the legal position is that copyright belongs to the author, who is the one that actually expended the work, labour, knowledge and skill."

This rule is subject to the written contract of employment, work created in the course of employment and newspaper, magazine or similar periodicals. In the first two cases ownership is on the employer while in the later copyright vests in the proprietor in the absence of any agreement to the contrary (Section 10(1) to (4)). In *Noah v. Shuba*, (1991) FSR 14, it was held that the copyright created by an employee in the course of his employment could still belong to the employee on the basis of a term implied on the ground of past practice. If the employee's name appears on the work or copies of the work, there is a presumption that the work was not made in the course of employment.

An author of a work is the person who creates it and does not have to be the person who carries out the physical act of creating the work such as putting pencil on paper. In *Cala Homes (South) Ltd v. Alfred McAlpine Homes East Ltd* (1995) FSR 818, it was held that the person taking down dictation is not the author of the resulting work.

The originator of the information that forms the basis of a work may not be considered the author of the work. In *Springfield v. Thame*, the claimant, a journalist supplied newspapers with information in the form of an article. The editor of the Daily Mail, from that information, composed a paragraph which appeared in the newspaper. It was held that the claimant was not the author of the paragraph as printed in the newspaper.

Issue of Copyright Infringement

Infringement refers to breach of copyright. Section 15 of the Copyright Act, 1990 states that Copyright is infringed by any person who without the licence or authorisation of the owner of the copyright-

(a) does, or causes any other person to do an act, the doing of which is controlled by copyright;

(b) imports into Nigeria, otherwise than for his private or domestic use, any article in respect of which copyright is infringed under paragraph (a) of this subsection

(c) exhibits in public any article in respect of which copyright is infringed under paragraph (a) of this subsection;

(d) distributes by way of trade, offer for sale, hire or otherwise or for any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed under paragraph (a)of this subsection;

(e) makes or has in his possession, plates, master tapes, machines, equipments or contrivances used for the purpose of making infringed copies of the work;

(f) permits a place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement on the copyright in the work, unless the person permitting the place to be used is not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright;

(g) performs or causes to be performed for the purposes of trade or business or as supporting facility to a trade or business or as supporting facility to a trade or business, any work in which copyright subsists.

One important requirement of copyright infringement is objective similarity and derivation. Objective similarity requires the court to compare the source of the work with the alleged infringement. The derivation is another way of saying that the defendant must have taken the claimant's work either directly or indirectly. In *Warwick Films v. Eisinger* (1969) 1 Ch. 508, the defendant's film about the trials of Oscar Wilde was based not on the claimant's book but on the actual court transcript.

Another Requirement of Infringement is the Establishment of Substantial Taking

How can this be determined? It can be determined not by reference to how much of the work has been taken but the essence of the work that has been reproduced. In *Hawkes & Sons v.*

Paramount Films Services (1934) Ch. 593, a 30 second extract of the famous 'Colonel Bogey' included in a news film was held to have amounted to substantial taking.

Copyright can be infringed by a person who authorises another person to perform the infringing act. An employer will be held responsible for acts of infringement committed by employee in the course of employment.

Infringement is classified into primary and secondary. Examples of primary infringement are copying, issuing copies to the public, performance in public**,** communication to the public and adaptation. Examples of Secondary Infringement of copyrights are importing infringing copies, possessing or dealing with such copies, providing means for making such copies, transmitting a copyright work over a telecommunications system, permitting premises to be used for an infringing performance, providing apparatus for such infringement, permitting such apparatus to be brought onto premises, and supplying a sound recording or film for an infringing performance. The main distinction between the primary infringer and secondary infringer is that the primary infringer is liable regardless of the state of knowledge while the secondary infringer is only liable if he knew or had reason to know that he was dealing with an infringing copy.

Infringer of copyright is liable to both civil and criminal liabilities. Section 20 provides for the criminal liability. Section 21 provides for anti piracy device and criminal liability for its breach. Section 22 provides for criminal liability against bodies corporate where found culpable.

The civil remedies are pre-trial remedies and post trial remedies. The pre-trial remedies come in different dimensions like a search order (Anton Piller Order), an interim injunction (interlocutory injunction), or freezing order (Mareva injunction). The post trial remedies are damages, injunctions and accounts.

Section 24 of the Copyright Act provides that both civil and criminal cases can be taken simultaneously.

Issues in Patent in Teaching Profession

The next session shall examine meaning of patent, invention and the issues in patent in the teaching profession. The issues to examine are patentability, eligibility, ownership, duration, examination of application, extent of patent right and infringement of patent.

Definition of Patent

A patent is a set of exclusive rights granted by a state (national government) to an inventor or their assignee for a limited period of time in exchange for a public disclosure of an

invention (Sokefun 2012). The law of patent is mostly about the protection of inventions. The extant patent law in Nigeria is the Patents and Designs Act, Cap. P.2, Laws of the Federation of Nigeria, 2004. A patent is the grant of a monopoly to the inventor, or more commonly his employer to work the invention to the exclusion of others for a period of 20 years. The invention might concern a new product or an improvement of an existing product. The law of patent is of great importance to a teacher, researcher, scientists and other professionals. It is very important in this era of rapid technology advancement. If the focus of patent is invention, what then is invention? Invention is not defined under the Nigerian law. However, as observed by *Rinfret J. in Crossley Radio Corporation v. Canadian General Electric Company Ltd* (1936) D.L.R. 508 "it would be idle to attempt a comprehensive definition. In certain cases, the decision must necessary be the result of nicety. It is a question of fact and degree depending upon practical consideration of a large extent rather than upon legal interpretation".

The best way to explain invention is to discuss what does not constitute invention. Invention is not a discovery or principle. Section 1(5) of Patents and Designs Act, Cap. P.2, Laws of the Federation of Nigeria, 2004, clearly excludes principle and discovery from the meaning of invention. A patentee must go beyond useful discovery, he must make some addition not only to knowledge, but to previously known inventions, and must use his knowledge and ingenuity so as to produce, or make possible the production of, either a new and useful thing or result or a new or useful method of producing an old thing or result (Babafemi. 2007). This was affirmed by Lindley J. in *Lane-Fox v. Kensington and knightsbridge Lighting Co. Ltd* (1891) 8 R. P. C, 277 when he said:

> An invention is not the same thing as discovery. When Volks discovered the effect of electricity current from the battery on a frog's leg, he made a great discovery, but no patentable invention.

Discovery adds to the amount of human knowledge while invention goes further by suggesting the art to be done and it must be **an act which results in new product or a new result, or a new process, or a new combination for producing an old product or an old result** (*Reynolds v. Herbert Smith & Knightsbridge Co, 1913).*

Patentability

It is not all inventions that are patentable. Section 1(1) of the Act sets out the conditions under which an invention shall be patentable. It provides that an invention is patentable;

(a) If it is new, results from inventive activity and is capable of industrial application

(b) If it constitutes an improvement upon a patented invention and is also new, results from inventive activity and is capable of industrial application

Section 1(2) states that an invention is new if it does not form part of "the state of the art". What is the "state of the art"? Section 1(3) is precise on this. It provides that:

> everything concerning that art or field of knowledge which has been made available to the public anywhere and at anytime whatever (by means of a written or oral description, by use or in any other way) before the date of the filing of the patent application relating to the invention or the foreign priority date validly claimed in respect thereof, so however that an invention shall not be deemed to have been made available to the public merely by reason of the fact that within the period of six months preceding the filing of the patent application in respect of the invention, the inventor or the successor in title has exhibited it in an official or officially recognised international exhibitition

It is clear from the above that a publication of invention in an official or officially recognised international exhibition would not being regarded as be available to the public. The status of a conference proceeding where a paper describing an invention is read is nebulous. The Act is silent on whether such will amount to publication. It recommended that such exemption should extend to such a paper.

Publication can take the form of a document or through prior use. Where there is prior use, the publication need not be written or via spoken words. What happens where experiment of the invention is to be carried out in the public before patent specification can be properly drawn up? The Act is also silent on this. Where this is the case, the experiment should not be regarded as prior use or publication.

Another issue is whether a publication of a part of the invention ought to invalidate the entire claim or a claim to novelty for the part not published. Again the Act is silent on this issue. Ideally novelty and patent should be granted to the remaining part not published.

Another requirement for patentability is that the invention must result from inventive activities (Section 1(2)(b) of Patents and Designs Act). An inventive activity is said to be present where having regard to the state of the art, the invention is not obvious to a person skilled in the art *(Allmanna Suenska Elektriska A/R v. Burntisland Shipbuilding Co. (1952) 69 R.P.C. 63.)*

Also an invention can be an improvement of patented invention and such improvement must be new, result from inventive activities and capable of

industrial application (Section 1(2)c). In *Agbonrofo v. Grain Haulage and Transport Ltd*, the plaintiff improvement on ring boiler by inventing a harmless electric ring boiler unlike the imported ring boiler that prevents fire disaster was held to be an invention and patentable.

It is not all inventions that are patentable. Section 1(4) (a) and (b) enumerates inventions for which patent can never be granted. They include plant or animal verities or essentially biological processes for the production of plant and animals other than micro-biological processes and their products as well as inventions, the publication would be contrary to public order or morality. However, invention is not contrary to public order or morality merely because its exploitation is prohibited by law. The Act is silent on the meaning of and how to determine "essentially biological and micro-biological processes". This should be made clearer in the Act.

Ownership of Patent

There are different categories of persons on whom patent can be vested. They include statutory inventor, true inventor and person to whom the invention has been assigned or contractual license has been granted.

Section 2(1) of the Act provides that "the right to a patent in respect of an invention is vested in the statutory inventor, that is to say, the person who, whether or not he is the true inventor, is first to file, or validly to claim a foreign priority of the invention. This is abnormal and unjust. Under section 7(2) of British Patent Act 1977, the right to grant a patent is first vested in the true inventor.

What happens to the true inventor in Nigeria? The Act merely provides in section 2(2) that the true inventor is entitled to be named in such patent application and this right cannot be modified by any contract. This section is only relevant where there is valid assignment of the patent by the true inventor.

What Happens Where Invention has been Commissioned or is Made in the Course of Employment? The Act provides in this respect thus: Where an invention is made in the course of employment or is in the execution of a contract for 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." This is justified as the invention is seen as part of the employee's job. Also, where the employee though not employed for invention but uses the employer's data or material, the patent belongs to the employer. However the employee is entitled to fair remuneration taking into account the employee's salary (Section 2(4)). But where the invention is not part of the employee's job and no data or material of that employer is used the employee would have patent in the invention.

Issue of Duration of Patent

Patents are granted for 20 years and are renewable annually else it becomes invalid (s. 7). The issue is when does the renewal commence and patentee's rights accrue? Does the right accrue at the time of filing or at the time the patent is granted? This was answered in *General Tire and Rubber Co. v. Firestone Rubber Co. Ltd* (1976)893 RPC, 197, where the court held that a patentee's right of action to sue on his patent accrued from the date he applied for the grant but the right cannot be entertained until after the grant. The court also stated that

> … although a patentee is liable to pay renewal fees on his patent from the date of the grant but he is no way liable to pay this fees until the actual grant is made. Since the plaintiff in the case did not pay his/it's renewal from the date of the grant of its patents in 1973 when it was signed and sealed …, I hold the patent No. RP 9708 invalid.

But section 7 of Patents and Designs Act provides that patent shall expire after 20 years from the time of filing. This should be amended to read "from the time of grant".

Issue of Examination of Application and Grant of Patent

Upon application and compliance with all the statutory requirements the registrar is obliged to grant the patent. The Registrar cannot enquire into the patentability of the invention (Section 4(2) of the Act). Patent rights are granted in Nigeria at the risk of the patentee and without guarantee of their validity (s. 4(4)). In other jurisdictions like United States of America, Germany, Holland, the Patent Office is required to carry out examination and cover all possible aspect of the patent law which may affect the validity of the patent when granted. Nigeria should embrace this comprehensive examination of patent application.

Extent of the Right

Section 6(1) provides that a patent confers on the patentee the right to preclude any other person from doing any of the following acts;

a. Where the patent has been granted in respect of a product, the act of making, importing, selling or using the product, or stocking it for the purpose of sale or use and

b. Where the patent has been granted in respect of process, the act of applying the process or doing, in respect of a product obtained directly by means of the process, any of the acts mentioned above

Section 6(2) provides that the scope of the protection conferred by a patent will be determined by terms of the claim; and the description (and the plan and drawing if any) included in the patent shall be used to interprete the claims.

The exception is provided in section 6(3) that the right under patent;

a. Will extend only to act done for industrial or commercial purpose and

b. Will not extend to acts done in respect of a product covered by the patent after the product has been sold in Nigeria, except in so far as the patent makes provision for special application of the product, in which case the special application will continue to be reserved to the patentee.

Where at the date of filing of the patent application in respect of a product or at the date of foreign priority validly claimed in respect of the application, a person other than the applicant was conducting an undertaking in Nigeria; and in good faith and for the purpose of the undertaking, was manufacturing the product or applying the process or had made serious preparations with a view to doing so. Then, notwithstanding the grant of a patent there shall exist a right in that person for the time being conducting the undertaking (section 6(4)). Other exception to exclusive use of patent includes the grant of compulsory license (First Schedule to the Act).

Infringement of patent occurs if another person without the license of the patentee does or causes the doing of any act which that other person is precluded from doing under section 6 or 9 of the Act (Section 25(1)). Where there is an infringement, the available remedies include damages, injunction, account of profit and delivery up

Conclusion

The roles of a teacher include preparing lecture notes, teaching, conducting research and inculcating discipline in the students. In discharge of the arduous duties, the teacher asserts both mental and physical energy. A good teacher therefore is required to conduct research regularly and to publish articles and book. The teacher has access the ideas in the public domain but must not copy the work of another. Where a teacher produces eligible work or invention, his intellectual rights should be protected by a comprehensive and up to date legislation. Copyright and patent are of immense importance to the teaching profession and in this era of technological development. It engenders industry, creativity and inventions. If Nigeria is to take its pride of place in Africa and become relevant in this computer age serious attention should be paid to intellectual property rights. If teachers are to be motivated to carry out research, produce good lecture note and invention, the issues of copyright and patent should be seriously handled. The identified loopholes and inadequacies in the Copyright Act and Patents and Designs Act should be addressed.

References

William C., & Llewelyn, D., (2007). *Intellectual Property: Patents, Copyright, Trademarks and Allied Rights* (Sixth Edition) London: Sweet & Maxwell.

Paul M., (1996). *Intellectual Property Law*, London: Sweet & Maxwell.

Bainbridge, D. I., (2007). *Intellectual Property* (Sixth Edition) Pearson Education Limited.

Sokefun, J. A., (2001). An Overview of the Protection of Intellectual Property in Nigeria. *The Nigeria Journal of Private and Commercial Law*, 2.

Norman N., (2005). *Intellectual Property*, London: University of London Press.

Goodson, I., (2003). *Professional knowledge, professional lives: Studies in Education.* Maidenhead, Open University Press.

Babafemi F.O., (2006). *Intellectual Property: The Law and Practice of Copyright, Trade Marks, Patent and Industrial Designs in Nigeria*, Nigeria: Justinian Books Ltd.

Legislations

Patents and Designs Act, Cap. P.2, Laws of the Federation of Nigeria,

Copyright Act, Cap.68 Laws of the Federation of Nigeria, 2004.

British Patent Act 1977

Sokefun, J.A., (2012) *Law of Intellectual Property*, School of Law Course Material, NOUN Courseware.

Ekpo M.F., Director General, Nigerian Copyright Commission (May 1997)

Decided Cases

University of London Press Ltd v. University of Tutorial Press Ltd (1916)2CH. 601

Macmillan v. Cooper (1944) A.C. 329

ICIC (Directory publ) Ltd. v. Ekko Delta (Nig.) and Another

Hadley v. Kemp (1999) EMLR 589

Oladipo Yemitan v. The Daily Times (Nig.) Ltd & Anor. (1980) F.H.C.R 186

Noah v. Shuba, (1991) FSR 14

Cala Homes (South) Ltd v. Alfred McAlpine Homes East Ltd (1995) FSR 818

Springfield v. Thame(1903) 89 L.T 242

Warwick Films v. Eisinger (1969) 1 Ch. 508

Hawkes & Sons v. Paramount Films Services (1934) Ch. 593

Crossley Radio Corporation v. Canadian General Electric Company Ltd (1936) D.L.R. 508

Lane-Fox v. Kensington and knightsbridge Lighting Co. Ltd (1891) 8 R. P. C, 277

Reynolds, v. Herbert Smith & Knightsbridge Co (1913) 20 RPC123

Allmanna Suenska Elektriska A/R v. Burntisland Shipbuilding Co. (1952) 69 R.P.C. 63

Agbonrofo, v. Grain Haulage and Transport Ltd(1998) F.H.C.1. 236

General Tire and Rubber Co. v. Firestone Rubber Co. Ltd (1976)893 RPC, 197