**Briefly discuss the following intellectual property protection methods.**

1. **Patent:** a patent is the title granted to protect an invention.

An invention therefore is an idea of an inventor which protects the solution to a specific problem in the field of technology. Patent is reserved for inventions that satisfy rigorous standards such as (novelty, inventive step and industrial applicability). An application for a patent has to be drawn up precisely and accurately stating the scope of the invention and the claims made in respect of it for which protection is sought.

The justification for granting a Patent is to encourage the development of new inventions, and in particular to encourage the disclosure of those new inventions.

Patents in Nigeria are governed by the Patent and Designs Act 1970, under the Act an invention is patentable if:

1. It is new, results from inventive activity and is capable of industrial application.
2. If it constitutes an improvement upon a patented invention, and also, is new, results from inventive activity and is capable of industrial application[[1]](#footnote-1).

Where an invention is made in the course of employment or in the execution of a contract for the performance of specified work, the right to a patent in the invention is generally vested in the employer in the absence of any contractual provisions. Where the employee, by the nature of his employment, is not required to undertake inventive activities but has utilized the facilities or data provided by his employer, or where the invention is considered to be of exceptional importance, the inventor is entitled to fair remuneration, taking into cognizance his salary and the importance of the invention.

**Requirements for registration of a patent.**

In applying for a patent one seeking for a patent protection shall make an application for the registration of a patent with the Registrar of Patent and Designs (Registrar).

Application should consist of the applicant’s name and address, a description of the relevant invention with any appropriate plans and drawings, one or more claims, such other matter as may be prescribed and the prescribed fees.

The registrar after examination of application is to grant the patent to the patentee, register the patent in the Register and publish same in the Journal.

**Rights conferred by patent?**

Where a patent is granted, certain rights are conferred on the patentee for a period of 20 years. Where a patent has been granted in respect of a product, Section 6 of the Patent and Designs Act gives the patentee the right to preclude any other person from making, importing, selling or using the product, or stocking it for the purpose of sale or use.

Where the patent has been granted in respect of a process, it precludes any other person from applying the process or doing, in respect of a product obtained directly by means of the process.

The law also makes provision for third parties by providing compulsory licenses, a compulsory license is one that can be granted to third parties for the use of a patented product or a product whose patent application is pending, and this is obtained without the approval or consent of the patentee or potential patentee.

1. **Copyright:** is an intellectual property right that gives exclusive and legal right to a creator of a creative work to enjoy its use and distribution for a fixed number of years.

Copyright in Nigeria is governed by the Copyright Act, 2004, Nigeria Copyright Commission is the body charged with the enforcement of copyright in Nigeria.

For a creative work to be eligible for copyright it has to be sufficiently Original and it has to be expressed e.g. writing, painting, musical recording (cannot be in one’s imagination).

Registering for copyright is not a precondition for protection. You do not have to register your copyright; it subsists automatically in a work from the moment the work is created.

Categories of works which are eligible for copyright-
(a) literary works;
(b) musical works;
(c) artistic works;
(d) cinematograph films;
(e) sound recordings; and
(f) broadcasts.

**Requirements for Registration of Copyright?**

Submit completed registration form, two copies of work and evidence of payment of the prescribed fees to NCC.

**Rights conferred by Copyright?** Where copyright is registered it prevents people from; copying your work, distributing copies of it whether free of charge or for sale, renting or lending copies of your work, performing or showing your work in public, making an adaptation of your work, putting it on the internet.

1. **Trademark:** a trademark is an intellectual property right that confers a right on the proprietor or the owner to use the trademark to the exclusion of every other entity.

A trademark exclusively identifies a product as belonging to a specific company and recognizes the company’s ownership of the brand[[2]](#footnote-2) trademark may consists of any device, brand, heading label, name, design, logo, symbol, signature, word, letter, numeral or combination thereof that a company is associated with.

Deceptive or scandalous matters or designs, names of chemical substances and geographical names cannot be registered as a trademark.

Trademark in Nigeria is governed by the Trade Marks Act, Cap T 13, Laws of the Federation 2004. Applications are filed at the Trademarks Registry.

**Requirements for the Registration of a Trademark?**

* Details of applicant/ proprietor, prints or a representation of the proposed trademark, class and classifications of the goods or services for which trademark is sought, special claims relating to the application, authorization of agent.

**General Procedure for Trademark Registration?**

There are 4 stages in the registration of a trademark at the Trademarks Registry, Commercial Law Department, Federal Ministry of Industry, Trade and Investment

* **Availability/ clearance stage***:* a search is conducted to ensure that the proposed mark is not in conflict or too similar with an already existing trademark. When this is done, the application will be sent to the Registrar, who in turn issues an acknowledgement upon receipt of due application, temporary number will be allocated pending successful registration.
* **Acceptance**: after a successful search has been conducted, the Trademarks Registrar will conduct an examination in the trademark Register to confirm there are no conflicting trademarks and that the proposed trademark is registrable. If satisfied the Registrar will accept, register the trademark and issue an Acceptance Form to the applicant. The Acceptance Form is initial evidence that the trademark has been duly registered.
* **Publication stage**: as a condition precedent for the registration of a trademark, the Registrar will ensure the notice of the application is published in the Trademark Journal, the notification will include the full details of the application and the applicant. Any organization who opposes to the registration of the trademark is required to file a notice of opposition with the Registrar within two months of the publication.
* **Certification stage**: Where there is an opposition, the Registrar is to inform the applicant, who has one month to respond to the opposition. Where there are no oppositions or where an opposition is duly resolved then a Certificate of Registration will be issued for the trademark sought.

**Grounds for refusal of a Trademark Application?**

1. Where the applicant is not the true proprietor
2. Where the application was made in bad faith
3. Where the trademark is identical or too similar to an existing trademark
4. Where the trademark contains restricted words or symbols.

A trademark is valid for 7 years and renewable for subsequent periods of 14 years.

1. **Trade secret**: trade secrets are a type of intellectual property that comprises of formulas, practices, processes, designs, instruments, patterns or compilations that have inherent economic values because they are not generally known or readily ascertainable to others[[3]](#footnote-3). They are an invisible component of a company’s intellectual property.

Trade secrets are protected by law examples of legal protections include non- disclosure agreements, non-compete clauses, work-for-hire.

**Distinction between Trademarks, Patents and Trade Secrets?**

1. To enjoy protection on trademarks the proposed trademark has to be disclosed to consumers, in other for consumers to be able to associate it with a supplier whereas trade secrets are not disclosed to the public.
2. To acquire a patent, full information about the product or process has to be provided and upon publication will be available to all whereas with trade secrets the information is not disclosed.
3. Trade secrets enjoys perpetual monopoly whiles patent and trademarks are for specified period of years and are subject to revocation where patentee or proprietor fails to pay the annual fees or omits to act.

In a nutshell, trademarks, patents, copyrights and trade secrets are all intellectual property rights which have been provided by law to ensure the protection of inventions, creations and designs, these intellectual properties are set up by law to ensure the development of new inventions, as well as encourage the disclosure of new inventions for the common good of the society.

Applicants to any of the intellectual properties have rights and privileges and where those rights are infringed upon they are entitled to carry out legal processes to enforce those rights.

Intellectual property cases are handled at the Federal High Court.

1. Section 1(1)(a)(b) Patent and Designs Act 1970 [↑](#footnote-ref-1)
2. <https://www.investopedia.com> [↑](#footnote-ref-2)
3. en.m.wikipedia.org [↑](#footnote-ref-3)