

PATENTS AND DESIGN ACT CAP P2 LFN 2004 (REPEAL AND RE-  
ENACTMENT) BILL, 2018

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SCHEDULE

# A BILL

## FOR

AN ACT TO REPEAL THE PATENTS AND DESIGN ACT CAP P2 LFN 2004 AND  
ENACT THE PATENTS ACT 2016 TO PROVIDE FOR THE PROTECTION OF  
INVENTIONS AND OTHER RELATED MATTERS

*Sponsored by Senator Andy Uba*

[ ] Commencement

ENACTED by the National Assembly of the Federal Republic of  
Nigeria as follows

### PART I - PATENTS

1.-(1) Patent means the title granted to protect an invention.

Definitions of  
Patents and  
Inventions

(2) Invention means, an idea of an inventor which permits in  
practice the solution to a specific problem in the field of technology.

(3) An invention may be, or may relate to, a product or a process.

2. The following inventions, even if they are inventions within the  
meaning of section 1, are excluded from patent protection:

Matter excluded  
from Patent  
protection

(a) discoveries, scientific theories and mathematical methods;

(b) schemes, rules or methods for doing business, performing  
purely mental acts or playing games;

(c) methods for treatment of the human or animal body by surgery  
or therapy, as well as diagnostic methods practised on the human or animal  
body; this provision shall not apply to products for use in any of those  
methods.

(d) inventions, the prevention within the country of the commercial  
exploitation of which is necessary to protect public order or morality, which  
includes:

(i) the protection of human, animal or plant life or health; or

(ii) the avoidance of serious prejudice to the environment; if the  
exclusion is not made because the exploitation is prohibited,

- 1 (e) plants and animals other than micro-organisms;  
2 (f) biological processes for the protection of plants or animals other  
3 than non-biological and micro-biological processes; and  
4 (g) plant varieties.

Patentable  
Inventions

5 3.-(1) An invention is patentable if it is new, involves an inventive  
6 step and is industrially applicable.

7 (2) An invention is new if it is not anticipated by a prior art.

8 (3) Prior art shall consist of everything disclosed to the public,  
9 anywhere in the world, by publication in tangible form or by oral disclosure, by  
10 use or in any other way, prior to the filing or, where appropriate, the priority  
11 date, of the application claiming the invention.

12 (4) For the purposes of subsection (3), disclosure to the public of the  
13 invention shall not be taken into consideration if it occurred within twelve  
14 months preceding the filing date or, where applicable, the priority date of the  
15 application, and if it was by reason or in consequence of acts committed by the  
16 applicant or the applicant's predecessor in title or of an abuse committed by a  
17 third party with regard to the applicant or the applicant's predecessor in title.

18 (5) An invention shall be considered as involving an inventive step if,  
19 having regard to the prior art relevant to the application claiming the invention  
20 and as defined in subsection (3), it would not have been obvious to a person  
21 having ordinary skill in the art.

22 (6) An invention shall be considered industrially applicable if it can  
23 be made or used in any kind of industry.

Right to Patent,  
Naming of  
Inventor

24 4.-(1) The right to a patent belongs to the inventor.

25 (2) Where two or more persons have jointly made an invention, the  
26 right to the patent belongs to them jointly.

27 (3) Where two or more persons have made the same invention  
28 independently of each other, the person whose application has the earliest  
29 filing date or, if priority is claimed, the earliest validly claimed priority date  
30 shall have the right to the patent, as long as the application is not withdrawn,

1 abandoned or rejected.

2 (4) The right to a patent may be assigned, transferred or devolve by  
3 succession.

4 (5) Where an invention is made in execution of an employment  
5 contract, the right to the patent belongs in the absence of any contractual  
6 provisions to the contrary, to the employer.

7 (6) Where the invention has an economic value much greater than  
8 the parties could have reasonably foreseen at the time of the conclusion of  
9 the contract, the inventor shall be entitled to a special remuneration, which  
10 shall be fixed by the court in the absence of an agreement between the  
11 parties.

12 (7) The inventor shall be named as the inventor in the patent, unless  
13 in a special written declaration signed by the inventor and addressed to the  
14 Registrar the inventor indicates a desire not to be named.

15 (8) Any promise or undertaking by the inventor made to any person  
16 to the effect that the inventor will make the declaration shall be without legal  
17 effect.

18 5.-(1) An application for the registration of a patent shall be filed Application  
19 with the Registrar and shall contain a request, a description, one or more  
20 claims, one or more drawings where required, and an abstract.

21 (2) The application shall be subject to the payment of the  
22 prescribed application fee.

23 (3) The request shall contain a petition to the effect that a patent be  
24 granted, the name of and other prescribed data concerning the applicant, the  
25 inventor and the agent, if any, and the title of the invention.

26 (4) Where the applicant is not the inventor, the request shall be  
27 submitted with a statement justifying the applicant's right to the patent.

28 (5) The description shall disclose the invention in a manner  
29 sufficiently clear and complete for the invention to be carried out by a person  
30 having ordinary skill in the art, and shall, in particular, indicate, at least, one

1 mode known to the applicant for carrying out the invention.

2 (6) The claim or claims shall define the matter for which protection is  
3 sought.

4 (7) Claims shall be clear and concise and shall be fully supported by  
5 the description.

6 (8) Drawings shall be required when they are necessary for the  
7 understanding of the invention.

8 (9) The abstract shall merely serve the purpose of technical  
9 information; in particular, it shall not be taken into account for the purpose of  
10 interpreting the scope of the protection.

11 (10) The applicant may, up to the time when the application is in order  
12 for grant, withdraw the application at any time during its pendency.

Unity of Invention:  
Amendment and  
division of  
application

13 6.-(1) The application shall relate to one invention only or to a group  
14 of inventions so linked as to form a single general inventive concept.

15 (2) The applicant may, up to the time when the application is in order  
16 for grant, amend the application, but the amendment shall not go beyond the  
17 disclosure in the initial application.

18 (3) The applicant may, up to the time when the application is in order  
19 for grant, divide the application into two or more applications namely  
20 divisional applications, but each divisional application shall not go beyond the  
21 disclosure in the initial application.

22 (4) Each divisional application is entitled to the filing date and, where  
23 applicable, the priority date of the initial application.

24 (5) The fact that a patent has been granted on an application that does  
25 not comply with the requirement of unity of invention under subsection (1) is  
26 not a ground for the invalidation of the patent.

Right of Priority

27 7.-(1) An application may contain a declaration claiming the priority,  
28 as provided for in the Schedule, of one or more earlier national, regional or  
29 international applications filed by an applicant or the applicant's predecessor in  
30 title:

1 (a) in or for any state party to the Convention; or

2 (b) in or for any member of the World Trade Organization.

3 (2) Where the application contains a declaration under subsection

4 (1), the Registrar may request that the applicant furnish, within the  
5 prescribed time limit, a copy of the earlier application certified as correct by  
6 the Patent Office with which it was filed.

7 (3) The effect of the declaration shall be as provided in the  
8 Schedule.

9 (4) Where the Registrar finds that the requirements under this  
10 section have not been fulfilled, the declaration shall be considered not to  
11 have been made.

12 **8.-(1)** The applicant shall, at the request of the Registrar, furnish  
13 the Registrar with the date and number of any foreign application.

Information  
concerning  
corresponding  
foreign applications  
and Patents

14 (2) The applicant shall, at the request of the Registrar, furnish the  
15 Registrar with the following documents relating to any of the foreign  
16 applications referred to in subsection (1):

17 (a) a copy of any communication received by the applicant  
18 concerning the results of any search or examination carried out in respect of  
19 the foreign application;

20 (b) a copy of the patent granted on the basis of the foreign  
21 application;

22 (c) a copy of any final decision rejecting the foreign application or  
23 refusing the grant requested in the foreign application.

24 (3) The applicant shall, at the request of the Registrar, furnish the  
25 Registrar with a copy of any final decision invalidating the patent granted on  
26 the basis of the foreign application referred to in subsection (2).

27 (4) For the purposes of this section "foreign application" means  
28 any application filed by the applicant abroad which relates to the same or  
29 essentially the same invention as that claimed in the application filed with  
30 the Patent Office.

Filing Date;  
Examination

1                   9.-(1) The Registrar shall accord as the filing date, the date of receipt  
2 of the application, if, at the time of receipt, the documents filed contain

3                   (a) an express or implicit indication that the granting of a patent is  
4 sought;

5                   (b) indications allowing the identity of the applicant to be established;

6                   (c) a part which, on the face of it, appears to be a description of an  
7 invention.

8                   (2) Where the Registrar finds that the application did not at the time of  
9 receipt, fulfil the requirements referred to in subsection (1), the Registrar shall  
10 invite the applicant to file the required correction and shall accord as the filing  
11 date, the date of receipt of the required correction.

12                   (3) Where no correction is made, the application shall be treated as if  
13 it had not been filed.

14                   (4) Where the application refers to drawings, which are not included  
15 in the application, the Registrar shall invite the applicant to furnish the missing  
16 drawings.

17                   (5) Where the applicant:

18                   (a) complies with the invitation, the Registrar shall accord as the  
19 filing date, the date of receipt of the missing drawings; or

20                   (b) does not comply with the invitation the Registrar, shall accord as  
21 the filing date, the date of receipt of the application and any reference to the  
22 missing drawings shall be treated as non-existent.

23                   (6) The Registrar, after according the filing date, shall examine  
24 whether the application complies with the requirements of section 5  
25 subsections (1), (2), (3) and (4), and the other requirements designated as  
26 formal requirements and whether information requested under section 8, if any,  
27 has been provided.

28                   (7) Where the Registrar is of the opinion that the application complies  
29 with the requirements indicated in subsection (6), the Registrar shall cause the  
30 application to be examined as to whether the requirements of sections 1(2) and



1 (3), 2, 3, 5 (5), (6), (7), (8), and 6 have been complied with.

2 (8) For the purposes of subsection (7), the Registrar shall take into  
3 account:

4 (a) the results of any international search report and any  
5 international preliminary examination report established under the Treaty in  
6 relation to the application;

7 (b) a search and an examination report submitted under section  
8 8(2)(a) which relates to a corresponding foreign application;

9 (c) a final decision submitted under section 8(2)(c) on refusal to  
10 grant a patent on a corresponding foreign application; or

11 (d) a search and an examination report which was carried out upon  
12 the request of the Registrar by an external search and an examination  
13 authority.

14 10.-(1) Where the Registrar finds that

Grant of Patent;  
Changes in Patents

15 (a) the application complies with the requirements under section 9  
16 (6) and (7), the Registrar shall grant the patent;

17 (b) the application does not comply with the requirements under  
18 section 9 (6) and (7), the Registrar shall refuse the application and notify the  
19 applicant of the refusal.

20 (2) When the Registrar grants a patent, the Registrar shall:

21 (a) publish a reference of the grant of the patent in the prescribed  
22 manner;

23 (b) issue to the applicant a certificate of the grant of patent and a  
24 copy of the patent;

25 (c) record the patent;

26 (d) make available copies of the patent to the public, on payment of  
27 the prescribed fee.

28 (3) The Registrar shall, whenever possible, give a final decision on  
29 the application not later than two years after the commencement of the  
30 examination referred to in section 9 (7).

1 (4) The Registrar shall, upon the request of the owner of the patent,  
2 make changes in the text or drawings of the patent in order to limit the extent of  
3 the protection.

4 (5) The Registrar shall not make any change where the change would  
5 result in the disclosure contained in the patent going beyond the disclosure  
6 contained in the initial application on the basis of which the patent is granted.

Rights conferred  
by Patent

7 **11.-(1)** The exploitation of the patented invention in the country by a  
8 person other than the owner of the patent shall require the owner's consent.

9 (2) For the purposes of this section, "exploitation" of a patented  
10 invention means any of the following acts:

11 (a) where the patent has been granted in respect of a product:

12 (i) making, importing, offering for sale, selling and using the product;

13 (ii) stocking the product for the purposes of offering for sale, selling  
14 or using;

15 (b) where the patent has been granted in respect of a process:

16 (i) using the process; or

17 (ii) doing any of the acts referred to in paragraph (a) in respect of a  
18 product obtained directly by means of the process.

19 (3) The owner of the patent shall, in addition to any other rights,  
20 remedies or actions available to the owner, have the right, subject to subsection

21 (4) and section 13, to institute court proceedings against any person  
22 who infringes the patent by performing, without the consent of the owner; any  
23 of the acts referred to in subsection (2) or who performs acts which may lead to  
24 infringement.

25 (4) The rights under the patent shall not extend to:

26 (a) acts in respect of articles which have been put on the market in any  
27 country by the owner of the patent or with the owner's consent;

28 (b) the use of articles on aircraft, vehicles or vessels of other countries  
29 which temporarily or accidentally enter the airspace, territory or waters of  
30 Nigeria;

1 (c) acts done only for experimental purposes relating to a patent  
2 invention; or

3 (d) acts performed by a person who in good faith, before the filing  
4 or, where priority is claimed, the priority date of the application on which the  
5 patent is granted in the country, was using the invention or was making  
6 effective and serious preparations for the use.

7 (5) The right of prior use referred to in paragraph (d) may be  
8 transferred or devolve only together with the enterprise or business, or with  
9 that part of the enterprise or business, in which the use or preparation for use  
10 has been made.

11 (6) At the request of the owner of the patent or of a licensee if the  
12 licensee has requested the owner to institute court proceedings for a specific  
13 relief and the owner has refused or failed to do so, the court may grant an  
14 injunction to prevent infringement or an imminent infringement, award  
15 damages and grant any other relief provided for in the general law.

16 (7) For the purpose of civil proceedings in respect of the  
17 infringement of rights of the owner, if the subject matter of a patent is a  
18 process for obtaining a product, the court may order the defendant to prove  
19 that the process used to obtain an identical product is different from the  
20 patented process.

21 (8) Any identical product when produced without the consent of  
22 the patent owner shall, in the absence of proof to the contrary, be deemed to  
23 have been obtained by the patented process if the product obtained by the  
24 patented process is new.

25 12.-(1) Subject to subsection (2), a patent shall expire twenty years  
26 after the filing date of the application for the patent.

Duration; Annual  
Fees

27 (2) In order to maintain the patent or patent application, an annual  
28 fee shall be paid in advance to the Registrar for each year, starting one year  
29 after the filing date of the application for grant of the patent.

30 (3) A period of grace of six months shall be allowed for the late

1 payment of the annual fee on payment of the prescribed surcharge.

2 (4) Where an annual fee is not paid in accordance with this section, the  
3 patent application shall be deemed to have been withdrawn or the patent shall  
4 lapse.

Exploitation by  
Government or  
Authorized person

5 **13.-(1) Where:**

6 (a) public interest, in particular, national security, nutrition, health or  
7 the development of other vital sectors of the national economy so requires, or

8 (b) a judicial or administrative body has determined that the manner  
9 of exploitation, by the owner of the patent or the owner's licensee, is anti-  
10 competitive, and the Minister is satisfied that the exploitation of the invention  
11 in accordance with this subsection would remedy that practice,  
12 the Minister may decide that, even without the consent of the owner of the  
13 patent, a Government agency or a third person designated by the Minister may  
14 exploit the invention.

15 (2) The exploitation of the invention shall be limited to the purpose  
16 for which it was authorized and shall be subject to the payment to the owner of  
17 an adequate remuneration, taking into account the economic value of the  
18 Minister's decision as determined in the decision, and where a decision has  
19 been taken under subsection (1) (b), the need to correct anti-competitive  
20 practices.

21 (3) The Minister shall take a decision after hearing the owner of the  
22 patent and any interested person if that person wishes to be heard.

23 (4) Upon a request of the owner of the patent, of the Government  
24 agency or of the third person authorized to exploit the patented invention, the  
25 Minister may, after hearing the parties, if either or both wish to be heard, vary  
26 the terms of the decision authorizing the exploitation of the patented invention  
27 to the extent that changed circumstances justify the variation.

28 (5) Upon the request of the owner of the patent, the Minister shall  
29 terminate the authorization if the Minister is satisfied, after hearing the parties,  
30 if either or both wish to be heard, that the circumstances which led to the

1 Minister's decision have ceased to exist and are unlikely to recur or that the  
2 Government agency or third person designated by the Minister has failed to  
3 comply with the terms of the decision.

4 (6) Notwithstanding subsection (5), the Minister shall not  
5 terminate the authorization if the Minister is satisfied that the need for  
6 adequate protection of the legitimate interests of the Government agency or  
7 third person designated by the Minister justifies the maintenance of the  
8 decision.

9 (7) Where a third person has been designated by the Minister, the  
10 authorization may only be transferred with the enterprise or business of that  
11 person or with the part of the enterprise or business within which the  
12 patented invention is being exploited.

13 (8) The authorization shall not exclude:

14 (a) the conclusion of licence contracts by the owner of the patent;

15 (b) the continued exercise, by the owner of the patent, of the  
16 owner's rights under section 11 (2).

17 (9) A request for the Minister's authorization shall be accompanied  
18 with evidence that the owner of the patent has received, from the person  
19 seeking the authorization, a request for a contractual licence, but that, that  
20 person has been unable to obtain the licence on reasonable commercial  
21 terms and conditions and within a reasonable time.

22 (10) Subsection (9) does not apply in cases of national emergency  
23 or other circumstances of extreme urgency but in such cases, the Registrar  
24 shall notify the owner of the patent of the Minister's decision as soon as  
25 reasonably practicable.

26 (11) The exploitation of the invention by the Government agency  
27 or third person designated by the Minister shall be predominantly for the  
28 supply of the market in the country.

29 (12) The exploitation of an invention in the field of semi-conductor  
30 technology shall only be authorized for public non-commercial use or where

1 a judicial or administrative body has determined that the manner of  
2 exploitation of the patented invention, by the owner of the patent or the owner's  
3 licensee, is anti-competitive and if the Minister is satisfied that the issuance of  
4 the non-voluntary licence would remedy the practice.

5 (13) A person aggrieved by the Minister's decision under this section  
6 may appeal to the court.

Non-Voluntary  
Licences

7 14.-(1) On a request, made to the court after the expiration of a period  
8 of four years from the date of filing of the patent application or three years from  
9 the date of the grant of the patent, whichever period expires last, the court may  
10 issue a non-voluntary licence if the court is satisfied that the patented invention  
11 is not exploited or is insufficiently exploited, by working the invention locally  
12 or by importation, in the country.

13 (2) Notwithstanding subsection (1), a non-voluntary licence shall not  
14 be issued if the owner of the patent satisfies the court that circumstances exist  
15 which justify the non-exploitation or insufficient exploitation of the patented  
16 invention in the country.

17 (3) The decision for issuing the non-voluntary licence shall specify:

18 (a) the scope and function of the licence;

19 (b) the time limit within which the licensee shall begin to exploit the  
20 patented invention, and

21 (c) the adequate remuneration to be paid to the owner of the patent and  
22 the conditions of payment.

23 (4) The beneficiary of the non-voluntary licence may:

24 (a) exploit the patented invention in the country according to the  
25 terms specified in the decision issuing the licence;

26 (b) commence the exploitation of the patented invention within the  
27 time limit specified in the decision, and

28 (c) exploit the patented invention sufficiently.

29 (5) Where:

30 (a) the invention claimed in a patent cannot be exploited in the

1 country without infringing a patent granted on the basis of an application  
2 benefiting from an earlier filing or where appropriate, priority date, and

3 (b) where the invention claimed in the later patent involves an  
4 important technical advance of considerable economic importance in  
5 relation to the invention claimed in the earlier patent, the court, upon the  
6 request of the owner of the later patent, may issue a non-voluntary licence to  
7 the extent necessary to avoid infringement of the earlier patent.

8 (6) Where a non-voluntary licence is issued under subsection (5),  
9 the court, upon the request of the owner of the earlier patent, shall issue a  
10 non-voluntary licence in respect of the later patent.

11 (7) In the case of a request for the issuance of a non-voluntary  
12 licence under subsections (5) and (6), subsection (3) shall apply with such  
13 modifications as are necessary with the proviso that no time limit needs to be  
14 specified.

15 (8) In the case of a non-voluntary licence issued under subsection  
16 (5), the transfer may be made only with the later patent, or, in the case of a  
17 non-voluntary licence issued under subsection (6), only with the earlier  
18 patent.

19 (9) The request for the issuance of a non-voluntary licence is  
20 subject to payment of the prescribed fee.

21 (10) Section 13(4) to (13) shall apply with such modifications as  
22 are necessary.

23 15.-(1) An interested person may request the court to invalidate a Invalidation  
24 patent.

25 (2) The court shall invalidate the patent:

26 (a) if the person requesting the invalidation proves that a person has  
27 not complied with any of the requirements of sections 1(2) and (3), 2, 3, 5  
28 (5), (6), (7) or (8); or

29 (b) if the owner of the patent is not the inventor or the inventor's  
30 successor in title.

1           (3) An invalidated patent, or claim or part of a claim, shall be regarded  
2 as null and void from the date of the grant of the patent.

3           (4) The registrar of the court shall notify the Registrar of the final  
4 decision of the Court.

5           (5) The Registrar shall record the decision and publish a reference of  
6 it in the prescribed manner.

7                           PART II - UTILITY MODEL CERTIFICATES

Applicability of  
provisions relating  
to Patents

8           **16.-(1)** Subject to section 17, the provisions of Part I shall apply, with  
9 such modifications as are necessary, to utility model certificates or applications  
10 for utility model certificates.

11           (2) Where the right to a patent conflicts with the right to a utility  
12 model certificate in the case referred to in section 4(3), the provision shall  
13 apply as if the word “patent” were replaced by the words “patent or utility  
14 model certificate”.

Special provisions  
relating to Utility  
Model Certificates

15           **17.-(1)** An invention qualifies for a utility model certificate if it is new  
16 and industrially applicable.

17           (2) Section 3(1) and (5) does not apply in the case of an invention for  
18 which utility model certificate is requested.

19           (3) Section 9 (7) does not apply in the case of applications for utility  
20 model certificates.

21           (4) A utility model certificate shall expire, without a possibility of  
22 renewal, at the end of the seventh year after the date of the filing of the  
23 application.

24           (5) With the exception of subsection (3), section 12 (1) does not apply  
25 in the case of utility model certificates.

26           (6) In proceedings under section 15, the court shall invalidate the  
27 utility model certificate on the following grounds:

28           (a) that the claimed invention did not qualify for a utility model  
29 certificate, having regard to subsection (1), section 3 (2), (3) and (6);

30           (b) that the description and the claims do not comply with the



1 requirements prescribed by section 5 (5), (6) or (7);

2 (c) that any drawing which is necessary for the understanding of  
3 the invention has not been furnished; or

4 (d) that the owner of the utility model certificate is not the inventor  
5 or the inventor's successor in title.

6 (7) Section 15 (2) does not apply in the case of a utility model  
7 certificate.

8 **18.-(1)** Prior to the grant or refusal of a patent, an applicant for a  
9 patent may, upon payment of the prescribed fee, convert the applicant's  
10 application into an application for a utility model certificate, which shall be  
11 accorded the filing date of the initial application.

Conversion of  
Patent applications  
or Applications  
for Utility Model  
certificates

12 (2) Prior to the grant or refusal of a utility model certificate, an  
13 applicant for a utility model certificate may, upon payment of the prescribed  
14 fee, convert the applicant's application into a patent application, which shall  
15 be accorded the filing date of the initial application.

16 (3) An application may not be converted under subsection (1) more  
17 than once.

18 **PART III - INTERNATIONAL APPLICATIONS UNDER THE TREATY**

19 **19.** An international application designating Nigeria shall, subject  
20 to this Part, be treated as an application for a patent or utility model  
21 certificate filed under this Act having as its filing date the international filing  
22 date accorded under the Treaty.

Filing date and  
effects of  
International  
application  
designating  
Nigeria

23 **20.** The Patent Office shall act as receiving office in respect of an  
24 international application filed with it by a resident or national of Nigeria.

Patent Office as  
receiving office

25 **21.** An international application shall be filed in a prescribed  
26 language with the Patent Office as receiving office and the prescribed  
27 transmittal fee shall be paid to the Patent Office.

Filing of  
International  
Applications

28 **22.** The Patent Office shall act as a designated office in respect of  
29 an international application in which Nigeria is designated for the purposes  
30 of obtaining a national patent or utility model certificate under this Act.

Patent Office as  
Designated Office

Patent Office as  
elected Office 1                    **23.** The Patent Office shall act as an elected office in respect of an  
2 international application in which Nigeria is designated as referred to in section  
3 22 if the applicant elects Nigeria for the purposes of international preliminary  
4 examination under Chapter II of the Treaty.

National  
Processing 5                    **24.** The Patent Office as a designated office or elected office shall not  
6 commence the processing of an international application designating Nigeria  
7 before the expiration of the time limit referred to in section 25 except if the  
8 applicant complies with the requirements of that section and files with the  
9 Patent Office an express request for early commencement of the processing.

Entering  
National Phase t 10                   **25.** The applicant in respect of an international application  
11 designating Nigeria shall, before the expiration of the time limit applicable  
12 under Article 22 or 39 of the Treaty or of a later time limit as may be prescribed  
13 in the Regulations:

14                    (a) pay the prescribed fee to the Patent Office, and

15                    (b) where the international application was not filed or published in  
16 the prescribed language, the applicant shall submit an appropriate translation  
17 of the international application containing the prescribed contents.

Failure to enter  
National Phase 18                   **26.** Where the applicant does not comply with the requirements of  
19 section 25 within the time limit referred to in that section, the international  
20 application shall be considered withdrawn for the purposes of this Act.

Harare Protocol 21                   **27.** An international application may designate Nigeria for a patent  
22 under the Harare Protocol.

Processing  
International  
Application in  
accordance with  
the Treaty 23                   **28.-(1)** The Patent Office shall process an international application in  
24 accordance with:

25                    (a) the Treaty and regulations made under the Treaty; and

26                    (b) the administrative instructions made under the regulations  
27 referred to in paragraph (a).

28                    (2) Where the provisions of the Treaty, the regulations made under the  
29 Treaty and the administrative instructions made under the regulations conflict

1 with this Act, the Treaty, or the regulations or the administrative instructions  
2 shall apply.

3 **PART IV - GENERAL PROVISIONS**

4 **29.-(1)** A change in the ownership of a patent, or the registration of Changes in  
Ownership Licence  
Contracts  
5 a utility model certificate, or an application for a patent or a utility model  
6 certificate, shall be in writing.

7 (2) At the request of an interested party, the Registrar shall record  
8 the fact of the change and, except in the case of an application, the Registrar  
9 shall publish the change in the prescribed manner.

10 (3) The change shall have no effect against third parties until it has  
11 been recorded.

12 (4) A licence contract concerning a patent or a registered utility  
13 model certificate, or an application shall be submitted to the Registrar who  
14 shall keep its contents confidential but shall record it and publish a reference  
15 to it in the prescribed manner.

16 (5) The licence contract shall have no effect against third parties  
17 until it has been recorded.

18 **30.** Where an applicant's ordinary residence or principal place of Representation  
19 business is outside the country, the applicant shall be represented by a legal  
20 practitioner resident and practicing in the country.

21 **31.-(1)** The Patent Registry shall be located at the Registrar- Patent Registry  
22 General's Department of the Ministry of Justice.

23 (2) The Registry shall be responsible for the registration of patents  
24 and for the administration of registered patents.

25 (3) The Registry shall be headed by the Registrar-General who  
26 shall be assisted by such Assistant Registrars as may be appointed in  
27 accordance with article 195 of the Constitution.

28 (4) The Registrar may delegate any functions of the office of the  
29 Registrar.

30 **32.-(1)** The Registry shall maintain a register for patents and utility Register

1 model certificates.

2 (2) All the recordings provided for under this Act shall be recorded in  
3 the register.

4 (3) The register shall be open to the public and a person may obtain an  
5 extract from the register in the prescribed manner.

6 (4) The Registrar shall cause to be published in the Official Bulletin,  
7 Gazette or any print media any publications required under this Act.

Corrections of  
Errors

8 **33.** The Registrar may correct any error of translation or transcription,  
9 clerical error or mistake in any application or document filed with the Patent  
10 Office or in any recording effected pursuant to this Act.

Extension of  
Time

11 **34.** Where the Registrar is satisfied that the circumstances justify it,  
12 the Registrar may, upon receiving a written request, extend the time for doing  
13 any act or taking any proceeding under this Act, upon notice to the parties  
14 concerned and upon the terms as the Registrar may direct.

Exercise of  
Discretionary  
Powers

15 **35.** The Registrar shall, in the exercise of a discretionary power  
16 conferred by this Act, comply with article 296 of the Constitution.

Appeals

17 **36.** An aggrieved person may appeal to the court against a decision  
18 taken by the Registrar under this Act.

Offences

19 **37.** Subject to sections 11(4), 13 and 14, a person who knowingly  
20 performs any of the acts referred to in section 11 (2) in the country without the  
21 consent of the owner commits an offence and is liable to a fine not exceeding  
22 two thousand penalty units or to imprisonment for a term not exceeding two  
23 years.

Application of  
of International  
Treaties

24 **38.** The provisions of any international treaties in respect of  
25 industrial property to which the country is a party shall apply to matters dealt  
26 with by this Act and, in case of a conflict with this Act, the international treaty  
27 shall prevail over the Act.

Regulations

28 **39.-(1)** The Minister may by legislative instrument make regulations  
29 for the effective implementation of this Act.

30 (2) Without limiting subsection (1), the regulations may prescribe:

1 (a) the fees for any act for which payment is required under this  
2 Act;

3 (b) the details relating to the inspection of registers;

4 (c) time limits for the submission of specific things under this Act;

5 (d) additional details concerning the processing of international  
6 applications;

7 (e) measures to enable the Minister to stimulate, encourage,  
8 support inventive and innovative activities and to promote, patenting of  
9 inventions and utility models by citizens;

10 (f) any matter required or authorized to be prescribed by  
11 regulations.

12 **40.** The Registrar may issue administrative instructions relating to Administrative  
Instructions  
13 the procedures under this Act.

14 **41.** In this Act, unless the context otherwise requires: Interpretation

15 "court" means the High Court;

16 "designate", "designated office," have the same meaning as in the Patent  
17 Cooperation Treaty;

18 elected" "elected office" have the same meaning as in the Patent Cooperation  
19 Treaty;

20 "Harare Protocol" means the Protocol on Patents and Industrial Designs  
21 adopted in 1982 in Harare, Zimbabwe and ratified by the Government of  
22 Nigeria on 30th September 1983;

23 "industry" covers, handicraft, agriculture, fishery and services;

24 "international application", "international filing date" "international  
25 preliminary examination" have the same meaning as in the Patent  
26 Cooperation Treaty;

27 "Minister" means the Attorney-General and Minister for Justice;

28 "Paris Convention" means the Paris Convention for the Protection of  
29 Industrial Property of March 20, 1883, as revised;

1 "Treaty" means the Patent Cooperation Treaty done at Washington on June 19,  
2 1970;

3 "priority date" means the date of the earlier application that serves as the basis  
4 for the right of priority provided for in the Paris Convention;

5 "receiving office" has the same meaning as in the Treaty;

6 "register" means the register referred to in section 32;

7 "Registrar" means the Registrar-General.

Repeals and  
Savings

8 **42.-(1)** The Patent and design Act Cap P2 LFN 2003 is hereby  
9 repealed.

10 (2) Subsidiary legislation made under the law shall remain in force  
11 until revoked.

12 (3) Notwithstanding the repeal of the Patent Law, patents granted  
13 under the law shall remain in force but shall be deemed to have been granted  
14 under this Act.

15 (4) Patents granted shall remain in force for the unexpired period of  
16 the term of protection provided for under this Act, subject to the payment of  
17 annual maintenance fees provided for under this Act.

18 (5) The Minister may make any further transitional or saving  
19 provisions which appear to the Minister to be necessary or desirable.

Citation

20 **43.** This Bill may be cited as the Patents and Design Act Cap P2 LFN  
21 2004 (Repeal and Re -Enactment) Bill, 2018.

22 SCHEDULE

23 Article 4

24 [A to I. Patents, Utility Models, Industrial Designs, Marks, And Investors'  
25 Certificates: Right of Priority. - G. Patents: Division of the application]

26 A. (1) Any person who has duly filed an application for a patent, or for  
27 the registration of a utility model, or of an industrial design, or of a trademark,  
28 in one of the countries of the Union, or his successor in title, shall enjoy, for the  
29 purpose of filing in the other countries, a right of priority during the periods  
30 hereinafter fixed.

1           (2) Any filing that is equivalent to a regular national filing under  
2     the domestic legislation of any country of the Union or under bilateral or  
3     multilateral treaties concluded between countries of the Union shall be  
4     recognized as giving rise to the right of priority.

5           (3) By a regular national filing is meant any filing that is adequate  
6     to establish the date on which the application was filed in the country  
7     concerned, whatever may be subsequent fate of the application.

8           B. Consequently, any subsequent filing in any of the other  
9     countries of the Union before the expiration of the periods referred to above  
10    shall not be invalidated by reason of any acts accomplished in the interval,  
11    the particular, another filing, the publication or exploitation of the invention,  
12    the putting on sale of copies of the design, or the use of the mark, and such  
13    acts cannot give rise to any third-party right or any right of personal  
14    possession. Rights acquired by third parties before the date of the first  
15    application that serves as the basis of the right of priority are reserved in  
16    accordance with the domestic legislation of each country of the Union.

17          C. (1) The periods of priority referred to above shall be twelve  
18    months for patents and utility models, and six months for industrial designs  
19    and trademarks.

20          (2) These periods shall start from the date of filing of the first  
21    application; the day of filing shall not be included in the period.

22          (3) If the last day of the period is an official holiday, or a day when  
23    the office is not open for the filing of applications in the country where  
24    protection is claimed, the period shall be extended until the first following  
25    working day.

26          (4) A subsequent application concerning the same object as a  
27    previous first application within the meaning of paragraph (2), above, filed  
28    in the same country of the Union, shall be considered as the first application,  
29    of which the filing date shall be the starting point of the period of priority, if,  
30    at the time of filing the subsequent application, the said previous application

1 has been withdrawn, abandoned, or refused, without having been laid open to  
2 public inspection and without leaving any rights outstanding, and if it has not  
3 yet served as a basis for claiming a right of priority. The previous application  
4 may not thereafter serve as a basis for claiming a right of priority.

5 D. (1) Any person desiring to take advantage of the priority of a  
6 previous filing shall be required to make a declaration indicating the date of  
7 such filing and the country in which it was made. Each country shall determine  
8 the latest date on which such declaration must be made.

9 (2) These particulars shall be mentioned in the publications issues by  
10 the competent authority, and in particular in the patents and the specifications  
11 relating thereto.

12 (3) The countries of the Union may require any person making a  
13 declaration of priority to produce a copy of the application (description,  
14 drawings, etc.) previously filed. The copy, certified as correct by the authority  
15 which received such application, shall not require any authentication, and may  
16 in any case be filed, without fee, at any time within three months of the filing of  
17 the subsequent application. They may require it to be accompanied by a  
18 certificate from the same authority showing the date of filing, and by a  
19 translation.

20 (4) No other formalities may be required for the declaration of priority  
21 at the time of filing the application. Each country of the Union shall determine  
22 the consequences of failure to comply with the formalities prescribed by this  
23 Article, but such consequences shall in no case go beyond the loss of the right  
24 of priority.

25 (5) Subsequently, further proof may be required.

26 Any person who avails himself of the priority of a previous application shall be  
27 required to specify the number of that application; this number shall be  
28 published as provided for by paragraph (2), above.

29 E. (1) Where an industrial design is filed in a country by virtue of a  
30 right of priority based on the filing of a utility model, the period of priority shall



1           be the same as that fixed for industrial designs.

2                   (2) Furthermore, it is permissible to file a utility model in a country  
3           by virtue of a right of priority based on the filing of a patent application, and  
4           vice versa.

5                   F. No country of the Union may refuse a priority or a patent  
6           application on the ground that the applicant claims multiple priorities, even  
7           if they originate in different countries, or on the ground that an application  
8           claiming one or more priorities contains one or more elements that were not  
9           included in the application or applications whose priority is claimed,  
10          provided that, in both cases, there is unity of invention within the meaning of  
11          the law of the country.

12          With respect to the elements not included in the application or applications  
13          whose priority is claimed, the filing of the subsequent application shall give  
14          rise to a right of priority under ordinary conditions.

15                  G. (1) If the examination reveals that an application for a patent  
16          contains more than one invention, the applicant may divide the application  
17          into a certain number of divisional applications and preserve as the date of  
18          each the date of the initial application and the benefit of the right of priority,  
19          if any.

20                  (2) The applicant may also, on his own initiative, divide a patent  
21          application and preserve as the date of each divisional application the date of  
22          the initial application and the benefit of the right of priority, if any. Each  
23          country of the Union shall have the right to determine the conditions under  
24          which such division shall be authorized.

25                  H. Priority may not be refused on the ground that certain elements  
26          of the invention for which priority is claimed do not appear among the  
27          claims formulated in the application in the country of origin, provided that  
28          the application documents as a whole specifically disclose such elements.

29                  I. (1) Applications for inventors' certificates filed in a country in  
30          which applicants have the right to apply at their own option either for a

1 patent or for an inventor's certificate shall give rise to the right of priority  
2 provided for by this Article, under the same conditions and with the same  
3 effects as applications for patents.

4 (2) In a country in which applicants have the right to apply at their  
5 own option either for a patent or for an inventor's certificate, an applicant for an  
6 inventor's certificate shall, in accordance with the provisions of this Article  
7 relating to patent applicants, enjoy a right of priority based on an application  
8 for a patent, a utility model, or an inventor's certificate.

9 *Article 4bis*

10 [Patents: Independence of Patents Obtained for the Same Invention in  
11 Different Countries]

12 (1) Patents applied for in the various countries of the Union by  
13 nationals of countries of the Union shall be independent of patents obtained for  
14 the same invention in other countries, whether members of the Union or not.

15 (2) The foregoing provision is to be understood in an unrestricted  
16 sense, in particular, in the sense that patents applied for during the period of  
17 priority are independent, both as regards the grounds for nullity and forfeiture,  
18 and as regards their normal duration.

19 (3) The provision shall apply to all patents existing at the time when it  
20 comes into effect.

21 (4) Similarly, it shall apply, in the case of the accession of new  
22 countries, to patents in existence on either side at the time of accession.

23 (5) Patents obtained with the benefit of priority shall, in the various  
24 countries of the Union, have a duration equal to that which they would have,  
25 had they been applied for or granted without the benefit of priority.

26 *Article 4ter*

27 [Patents: Mention of the inventor in the Patent]

28 The inventor shall have the right to be mentioned as such in the patent.

1 *Article 4quater*

2 [Patents: Patentability in Case of Restrictions of Sale by Law]

3 The grant of a patent shall not be refused and a patent shall not be invalidated  
4 on the ground that the sale of the patented product or of a product obtained  
5 by means of a patented process is subject to restrictions or limitations  
6 resulting from the domestic law.

EXPLANATORY MEMORANDUM

This Bill seeks to repeal the Patents and Design Act Cap P2 LFN 2004 and  
Enact the Patents Act 2016 to provide for the protection of inventions.

