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RECENT DEVELOPMENTS AND CHALLENGES IN THE PROTECTION OF
INTELLECTUAL PROPERTY RIGHTS

NEW DEVELOPMENTS AND CHALLENGES IN THE PROTECTION OF
INTELLECTUAL PROPERTY RIGHTS (IPRS)
A NIGERIAN PERSPECTIVE

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I. INTRODUCTION

1. Intellectual property right is assuming increasing importance in every facet of life today beyond what it had been originally as a result of new developments in modern science and technology as well as challenges arising from the competitive nature of international trade. Nations, world over, have indeed been compelled to pay greater attention to the development of intellectual property and its protection. The application of new technologies to the creation, production and distribution of works of the mind have also tended to blur the frontiers established by the traditional concepts of intellectual property. The result is that nations are increasingly faced with new developments and challenges in the protection, management and enforcement of intellectual property rights. It has therefore become imperative for nations to cooperate in the exchange of intellectual information in mastering the new developments and challenges posed by the technological evolution of our age. It is on this note that a conference of this nature is highly commended.

II. CONCEPT OF INTELLECTUAL PROPERTY RIGHTS AND THE IMPORTANCE OF ITS PROTECTION

A. Intellectual Property Rights

2. Intellectual property rights are rights conferred by statutes on an individual or a corporate body with respect to the product of his or her intellect, guaranteeing the exclusive control of the exploitation of his work for a limited period. The object of protection here is usually "a work of the mind" or human intellect. Basically, intellectual property covers two main branches namely, copyright and industrial property. Copyright deals primarily with literary, musical and artistic creations such as books, music, arts, films and broadcasts as well as live performances and expressions of folklore and most recently, a new genre of work in terms of multimedia production which is made accessible by a computer program. Industrial property on the other hand involves patents, trademarks, industrial designs, geographical indications and appellations of origin, utility models, etc.

B. Importance of the Protection of Intellectual Property Rights

3. When intellectual property rights are protected, rights are conferred on their owners to enable them derive maximum benefits from the products of their labor and thereby have opportunity to recoup their investment in terms of efforts, time, labor and money.

4. Besides, intellectual property rights protection plays a dominant role in provoking innovative, creative and inventive activities thus inducing inventors to disclose, work their inventions and or grant exclusive or non-exclusive licenses to exploit the inventions for the benefit of mankind.

5. Intellectual property rights protection creates a conducive climate for transfer of technology through the security it offers to patent owners. Adequate protection of IPRs is also a means of attracting national and foreign investment. It equally serves as a means by which cultural values and traditions such as folklore are preserved.

6. Furthermore, protection of intellectual property rights encourages and stimulates the development of trade and commerce. Above all, protection of intellectual property rights in all its ramifications creates wealth for the individual, corporate body concerned and the respective nations through the payment of royalties, patent fees and the generation of foreign exchange.

7. From the above, it can be positively asserted that intellectual property rights have permeated almost every field of human endeavors such as defense, communications and information network through the development of nuclear weapons, micro-computers, E-mail and Internet services. Other areas are aviation, petrochemicals, maritime, literary, musical, artistic, cinematographic works, sound recordings, pharmaceuticals and Bio-technological inventions, business methods and software, electronic filling of patent applications, etc.

8. The focus of this paper is on the new developments and challenges of intellectual property rights and the current position on the issues in Nigeria.

III. NIGERIAN POSITION ON NEW DEVELOPMENTS AND CHALLENGES OF INTELLECTUAL PROPERTY RIGHTS

9. Nigeria, like several other developing nations, is facing new developments and challenges in the process of strengthening its intellectual property system, as a result of rapid globalization that has engulfed the world economy. Specifically, the areas of concern for Nigeria involves the establishment of appropriate legal and institutional framework, creating awareness on the importance of IPR, protection of pharmaceuticals, biotechnological inventions, business methods and software, electronic filling of patent applications and the future of the Intellectual Property system in general.

A. Legal and Institutional Framework for IPR

10. In Nigeria, Intellectual Property Rights is governed by the Trademarks Act Cap. 436 Laws of the Federation of Nigeria, the Patents and Designs Act Cap. 344 Laws of the Federation of Nigeria 1990 and the Copyright Law Cap. 68 Laws of the Federation of Nigeria 1990. The Trademarks, Patents and Designs laws are currently implemented by the Trademarks, Patents and Designs Registry under the Federal Ministry of Commerce.

11. Between 1972 and 2000, 12,707 Trademarks, 6,099 Patents and 4,343 Industrial Designs were registered. Out of the 12,707 Trademarks registered from 1975 to 2000, 8,874 were foreign while 3,843 were domestic. As for Patents, out of the total of 6,099 registered between 1980 and 2000, 5,752 were conventional (foreign) and 347 were non-conventional (local). The industrial designs on the other hand were categorized into textiles and non-textiles and out of the 4,318 registered from 1972 to 2000, 1,419 were textiles while 2,924 were non - textiles. In 1999, about 1,895 trademarks and 418 patents were registered which shows the increasing importance of intellectual property protection in the country (see Annex for the relevant tables and charts).

12. As regards patents and designs law, some of the provisions need to be amended in order to make it TRIPS compliant. In addition, there is no provision presently for substantive examination of inventions under the Patent law due to lack of technical capability and infrastructures for such exercise.

13. Another area of challenge under the Patent law is in respect of inventions developed by an employee in the course of employment. The Patent law provides that “in the case of an invention made in the course of employment or in the execution of a contract for the performance of a specific work, the right to a patent in the invention is vested in the employer or the person who commissioned the work”. The challenge here is that employees who use their talent to come up with inventions, though in the course of their employment, expresses the desire to have a share of the proceeds that might accrue therefrom as an incentive. The modern trend is to encourage this crop of inventors by making them share from the royalties arising from their inventions.

14. Government is in support of this view and has urged the National Office for Technology Acquisition and Promotion (NOTAP) to work out a fair package of incentives and the modalities to motivate such inventors and also encourage research and development generally, in the country.

15. On the trademarks, the law does not provide for the registration of service marks. Efforts are however being made to review the Patents and Trademarks Laws to introduce substantive examination, include service marks and generally make the laws TRIPS compliant. Nigeria is also taking steps to ratify the Patent Cooperation Treaty (PCT).

16. As regards the copyright law, currently Nigeria has an up-to-date copyright law. The copyright law is administered by the Nigerian Copyright Commission, which is a parastatal under the Federal Ministry of Culture. The Commission through its programs has sensitized and aroused the awareness of Nigerians on the importance of the copyright system and the need for its enforcement.

17. As you all know that the issue of enforcement of intellectual property laws is a challenge to developing countries in general, Nigeria has developed various means to deal with piracy, counterfeiting and faking of products. This problem has generated a lot of debate recently in the country and necessary enforcement machinery has been put in place to address the issue.

18. In order to streamline intellectual property administration in the country and make it more effective, government is considering the establishment of an Intellectual Property Commission, as an umbrella organization which will bring the copyright system, patents, and trademarks regime under a single authority.

B. Creation of Awareness on Intellectual Property Rights

19. Although awareness on the intellectual property right protection is increasing in Nigeria, the pace is still very low compared with the rapid global changes taking place in respect of the subject matter.

20. The financial resource to embark on awareness building program has therefore constituted a great challenge to government agencies for this exercise. In the recent past, it was recognized that such awareness can be made available through patent information and documentation by which technical information contained in patent documents are disseminated to interested users. This is already being done in Nigeria through the Patent Information and Documentation Center (PIDC) established at the National Office for Technology Acquisition and Promotion (NOTAP) with the assistance of the World Intellectual Property Organization (WIPO). The Center has continued to mount intensive IPR

awareness building programs to meet the needs of industries, especially the small and medium enterprises (SMES), researchers, innovators, inventors, universities and polytechnics. Such awareness programs have enlightened the public on the usefulness and availability of the technology information on the state – of – the – art and search reports contained in patent documents and on-line databases.

21. In view of the tremendous services being provided through this PID Center, further assistance will be needed in terms of personal computers, soft wares and up to date DVD-ROMS on patents to enable Nigeria have access to latest technologies.

C. Protection of Pharmaceuticals

22. Under the Paris Convention and most national Patent Laws like the Nigerian Patent Act, an Invention is patentable when it is new, involve an inventive step and is industrially applicable. Some inventions like pharmaceutical products are however excluded from such protection. The rationale for the exclusion is that such inventions will assist to promote access to drugs at competitive prices while another school of thought is against its exclusion, and feels it will discourage innovation and deprive inventors of the benefits to be accrued from its sales. Nigeria was with the first school of thought, hence pharmaceuticals was excluded from patentability. However, with the emergence of TRIPS Agreement, all WTO members are obliged to recognize patents in all fields of technology including pharmaceuticals. Presently, Nigeria is currently in strong support of the protection of pharmaceuticals. Hopefully when the existing law is reviewed this aspect will be amended to make it TRIPS compliant and also promote research and development in the field of technology.

D. Protection of Bio-Technological Inventions

23. Nigeria has recognized the importance of Biotechnology for health care development, food security, industrial development and environmental safety. The country is therefore taking measures to regulate, control, and provide protection for the biological and genetic resources available in the country. The country is also in the process of enunciating a law for the protection of inventions and R&D results in this field. Furthermore, effort is being made to conduct an eco- survey of available biological resources.

24. It has however been observed that new varieties of plants and seeds are now being produced for instance, seeds that are disease or drought resistant and seeds with a shorter maturity life span and higher yield. The big challenge being faced is that such seeds are not usually available to the less privilege usually developing countries, where they are mostly needed to reduce hunger and poverty. If developing countries are to benefit from the increasing global changes in the protection of IPR increased economic and technological assistance need to be given to these countries.

25. It is also noted that developing countries have some traditional knowledge and plant varieties which were acquired by some experts in the developed countries, worked upon, patented and licensed without giving any compensation to the countries of origin. It is however expected that the Convention on Bio-diversity (CBD) which provides for sustainable conservation of biological resources, access to biological resources and benefits sharing will adequately take care of the above issue.

E. Business Methods and Software

26. Nigerians are going into the software industry at tremendous pace. Business Methods and Softwares obtained from developed countries are being restructured to suit local operations. New ones are also being developed locally, especially in the banking sectors, hotels, manufacturing companies, most of which are tailored towards their specific operations. However, the area is still bedeviled with problems such as inadequate power supply, telecommunication facilities and specialized training of personnel. I therefore wish to seize this opportunity to request for more training assistance from the World Intellectual Property Organization (WIPO) and to invite interested investors for joint ventures in the development programs in Nigeria.

F. Electronic Filing of Patent Applications

27. Presently, electronic filing of patent applications has not been introduced in the country. All the operations of the patent registry are being handled manually. In fact, this creates delay in quick delivery of services of the registry, particularly when conducting searches of patents registered previously. I am aware that WIPO is already assisting the department, to ensure the provision of the electronic filing system to improve the services and operations of the Patent Registry. Nigeria requires assistance with respect to the electronic filing for improved services and operations of the Patent Registry.

IV. FUTURE OF INTELLECTUAL PROPERTY RIGHTS

28. Intellectual Property Rights has a very bright future in Nigeria. Nigeria is a large country with great potentials in terms of human resources. There are a number of universities and research institutions conducting research activities in various fields. The inventions and research results arising from their efforts would be protected by the intellectual property system being established and this will go a long way in increasing the number of local patents. The increased awareness of the importance of IPR will further promote inventive, innovative and creative activities in the country. In addition, authors, musicians, phonogram producers have continued to embrace IPR and copyright protection for books, greeting cards, musical albums etc. IPR will therefore assume greater importance in the country in the future particularly as an Intellectual Property Commission will soon be established which will serve as an umbrella and single authority organization for all IPR matters in the country. With the establishment of this Commission, enforcement of IPR in Nigeria will also be greatly facilitated and this will further improve the country's image abroad, create confidence in the Nigerian investment climate, and increase the inflow of business activities to the country.

29. However we should not fail to see the problems that developing countries will face in the future with the stringent protection of IPR. This is likely to create marginalization and vulnerability of developing countries to the dictates of the owners of the IPR, who most times are not ready to transfer their technology at affordable prices. Most developing countries have a very low bargaining power and weak technological capabilities and the exorbitant prices of the new areas of high technology which have profound implications for basic human needs like food, security and health. A recent and very good example is the issue of essential drugs for combating global diseases (e.g. HIV) which are inaccessible to poor countries like Nigeria.

V. RECOMMENDATIONS

30. In view of the foregoing I wish to make the following recommendations:

(i) Review of Intellectual Property Laws

The WIPO and WTO should continue their assistance for Nigeria to review and update our domestic laws on IPR to international standards. Much is being desired in this respect, especially now that Nigeria is making the move to review its laws.

(ii) Creation of awareness program on intellectual property rights (IPR)

Efforts are already being made to create awareness on Intellectual Property matters in the country through the inclusion of the subject matter in the school syllabi of most institutions and the dissemination of the technology information contained in patent documents to researchers and scientists. WIPO's assistance is however still needed in the areas of training and the provision of facilities for enhanced program delivery.

(iii) Provision of incentives for inventors

There are great potentials within this country and the likes of Col. Ovadje and Abalaka are still ready to come up with unique inventions, if only incentives could be provided for inventors to develop their inventions up to prototype and commercial levels. Though Nigerian government is already making effort in this regard, assistance is also being requested from the International communities in form of grants and aids.

(iv) Enforcement of Intellectual Property Laws

WIPO and other international agencies are enjoined to collaborate with developing countries like Nigeria in the enforcement of the legal regime on IPR, as this will assist in combating infringements, piracy, counterfeiting, passing-off and products faking that have bedeviled the economies in developing nations and has forced some intellectual property owners out of business.

(v) Provision of codified standards for the protection of cultural values and traditions

WIPO and other International Organizations should work out standards for the preservation and protection of African cultural standard values and traditions with which the territory is well endowed.

VI. CONCLUSION

31. In conclusion, the protection of intellectual property rights is fast becoming an important instrument and tool for the expansion of trade and generation of income when adequately exploited. With the new developments and challenges arising from the protection of intellectual property rights, it has become obvious that developing countries like Nigeria can benefit from the intellectual property system in the same way as industrialized countries. The noticeable problem is that Nigeria like any other developing country is yet to develop its technological capabilities that will enable the country compete favorably at the global market. However, with the increasing awareness and development of the intellectual property system, the impetus for the development of innovative and inventive skills, the commercialization of indigenous research and development in the country as well as the efforts being made to cope with the new developments and challenges posed by the protection of IPR, Nigeria stands to benefit from the economic potentials offered by the protection of IPR. In addition, Nigeria like other developing countries will further benefit from the protection of intellectual property rights and penetrate the global market by concentrating on its areas of economic advantage, the protection of appellations of origin and geographical indications; and utilized same as commercial strategies for distinguishing the local products from the region.

[Annex follows]

ANNEX

Table 1 (a) on the Summary of Registered Patent in Nigeria 1975 - 2000

S/N	Year	Category of Patents		
		Non-Conventional	Conventional	Total
		-	202	202
		-	148	148
		-	44	44
		-	1	1
		-	23	23
		-	30	30
		-	47	47
		-	50	50
		-	133	133
		-	102	102
		-	103	103
		-	33	33
		-	10	10
		-	61	61
		2	507	509
		2	480	482
		-	365	365
		34	252	286
		35	262	297
		46	213	259
		28	511	539
		59	485	544
		60	583	643
		28	366	394
		29	389	418
	(Jan – Oct)	24	352	376

Source: **Patent, Design and Trademark Registry**
Federal Ministry of Commerce – Abuja.

Chart 1 (a) on the Summary of Registered Patent in Nigeria 1975

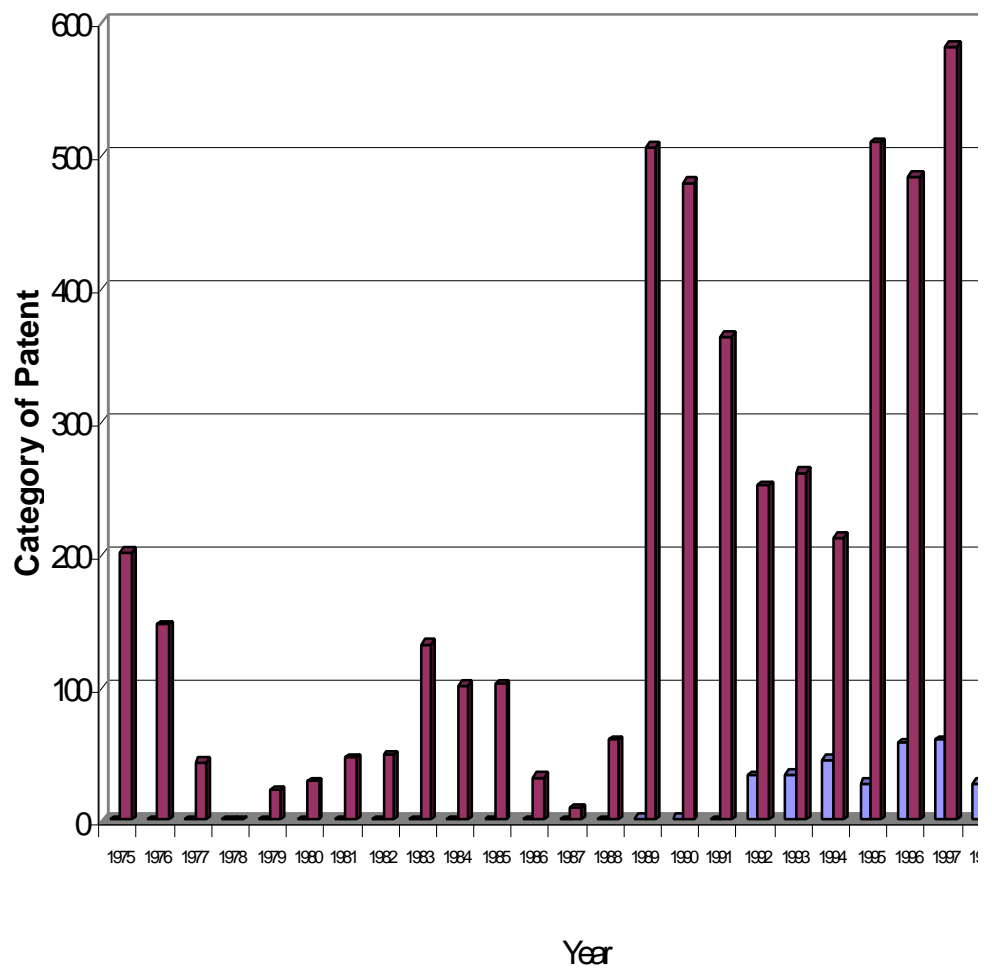


Table 1 (b) on the Summary of Registered Trademarks in Nigeria 1975 – 2000

/N	Year	Category of Trademarks		
		Domestic	Foreign	Total
		6	60	66
		9	161	170
		70	65	135
		-	-	
		-	-	
		28	59	87
		25	76	101
		25	99	124
		49	96	145
		109	107	216
		132	55	187
		186	81	267
		418	974	1,392
		333	708	1,041
		485	1496	1,981
		349	494	843
		335	722	1,057
		114	378	492
		349	1127	1,476
		392	1503	1,895
		429	603	1,032

Source: **Patent, Design and Trademark Registry**
Federal Ministry of Commerce – Abuja.

Table 1 (b) on the Summary of Registered Trademarks in N

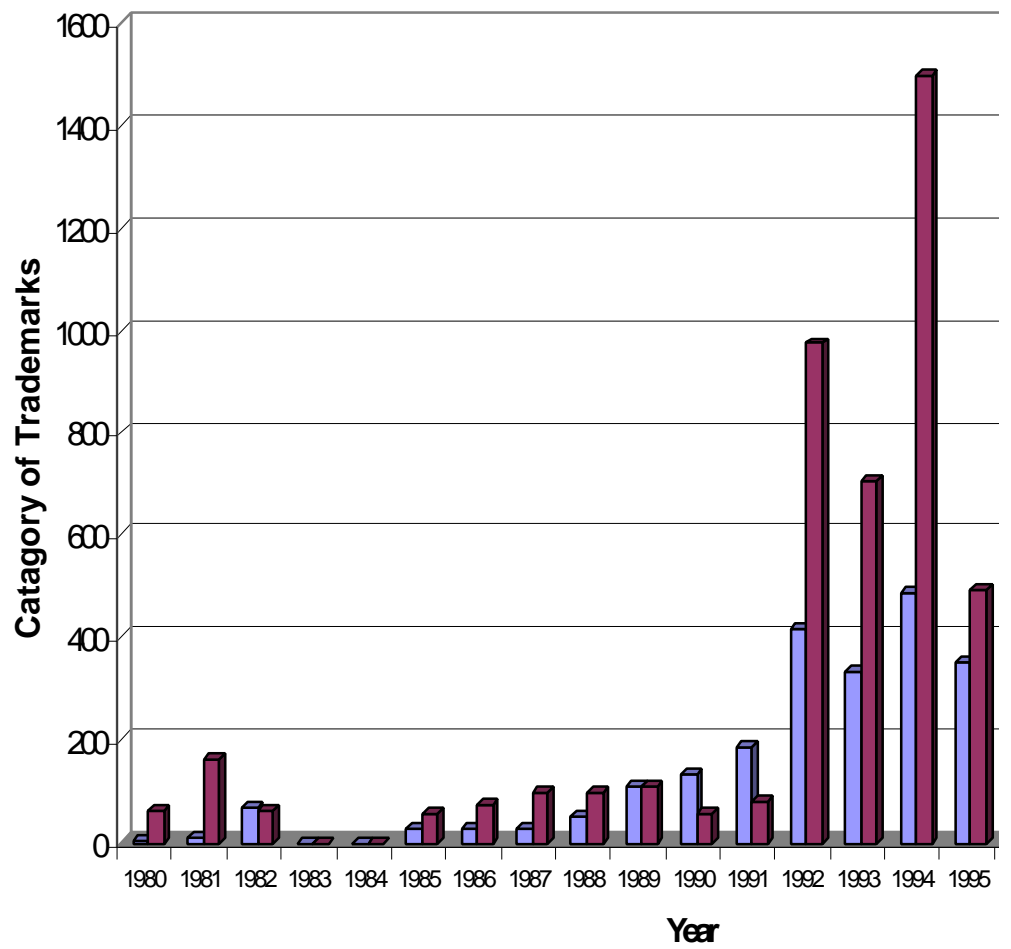
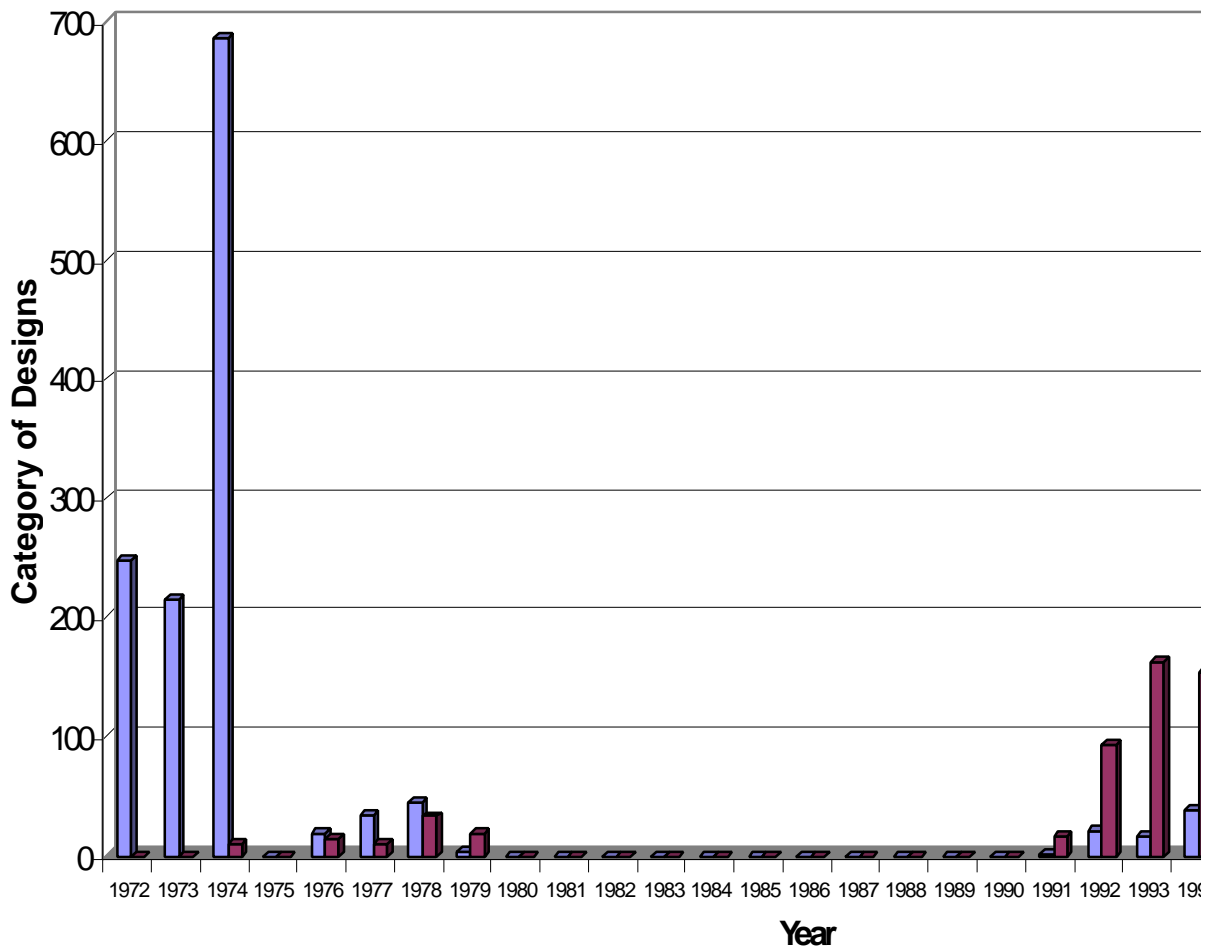


Table 1 (c) on the Summary of Registered Industrial Designs in Nigeria 1972 – 2000

S/N	Year	Category of Designs		
		Textiles	Non Textiles	Total
		247	N/A	247
		214	N/A	214
		686	11	697
		N/A	N/A	N/A
		19	14	33
		35	10	45
		44	33	77
		3	19	22
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		1	17	18
		21	93	114
		16	162	178
		38	154	192
		27	241	268
		27	247	274
		38	693	677
		1	473	474
		2	563	358
		N/A	275	75

Table 1 (c) on the Summary of Registered Industrial Designs in Ni



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