

A BILL

FOR

AN ACT TO REPEAL THE TRADEMARKS ACT CAP 436, LFN 1990 AND PATENTS AND DESIGNS ACT, CAP 344, LFN 1990, TO PROVIDE FOR THE ESTABLISHMENT OF THE INDUSTRIAL PROPERTY COMMISSION OF NIGERIA AND MAKE COMPREHENSIVE PROVISIONS FOR THE REGISTRATION AND PROTECTION OF TRADEMARKS AND DESIGNS AND FOR RELATED MATTERS, 2025

Sponsored by Hon. Akarachi Etinosa Tosan Amadi

[] Commencement

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

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PART A

1.-(1) There is established, a body to be known as the Industrial Property Commission of Nigeria (in this Bill referred to as "the Commission") which shall be situated in the Federal Capital Territory, Abuja.

Establishment of Industrial Property Commission of Nigeria

(2) The Commission:

(a) shall be a body corporate with perpetual succession and a common seal;

(b) may sue and be sued in its corporate name; and

(c) may acquire, hold or dispose of any property, movable or immovable, for the purpose of carrying out its functions under this Bill.

2. There shall be appointed for the Commission a Governing Council (in this Bill referred to as "the Council"), which shall be responsible for the formulation of policies for the Commission and for the discharge of other functions conferred on the Commission by this Bill.

Appointment of the Governing of the Commission

3.-(1) The Council shall comprise of:

(a) a Chairman,

Composition of the Governing Council of the Commission

1 (b) one representative each of the following Ministries or Agencies,
2 who shall not be below the rank of Director or its equivalent.

3 (i) Federal Ministry of Industry, Trade and Investment;

4 (ii) Federal Ministry of Water Resources;

5 (iii) Federal Ministry of Health;

6 (iv) Federal Ministry of Environment;

7 (v) Federal Ministry of Science and Technology;

8 (vi) Economic and Financial Crimes Commission (EFCC);

9 (vii) Nigerian Customs Service; and

10 (viii) Nigerian Police Service;

11 (c) two legal practitioners in private practice with considerable
12 experience in industrial property law;

13 (d) one representative from the Standards Organization of Nigeria
14 (SON);

15 (e) two representatives of the Manufacturers Association of Nigeria;

16 and

17 (f) Registrar-General of the Commission; who shall all be appointed
18 by the President.

19 (2) The Chairman of the Council who shall be a person with not
20 less than (20) years post qualification experience in Industrial property shall
21 be appointed by the President.

Functions of
the Governing
Council of the
Commission

22 **4. The Commission shall:**

23 (a) supervise the administration of the law relating to industrial
24 property and ensure rapid and coordinated development of industrial property
25 in Nigeria;

26 (b) liaise with organs of the Government and other agencies for
27 proper enforcement of industrial property rights;

28 (c) monitor and supervise Nigeria's position in relation to
29 international conventions relating to industrial property matters and advise
30 Government; advise the Government on matters relating to industrial property

1 laws; its development, reforms and execution;

2 (d) advise on terms and conditions for the conclusion of bilateral
3 and multilateral agreements between Nigeria and any other country or
4 organization, with respect to industrial property law or administration;

5 (e) enlighten and inform the public on matters relating to industrial
6 property;

7 (f) maintain an effective industrial property documentation and
8 information centre;

9 (g) carry out such other duties as relate to industrial property as the
10 Minister may direct;

11 (h) do all such things as are necessary to carry out the provisions of
12 all laws relating to industrial property matters.

13 **5.-(1)** A person appointed as a member of the Council (not being
14 an ex-officio member) shall, hold office for a term of four years and shall
15 be eligible for re-appointment for a further term of four years and no
16 more.

Tenure of Office
of Members of
the Governing
Council

17 (2) The members of the Council other than the Registrar-General
18 shall be part-time members.

19 (3) The Chairman or any other member of the Council other than an
20 ex-officio member may be removed from the Council by the President on
21 the recommendation of the Minister if the person:

22 (a) becomes of unsound mind or is incapable of carrying out his
23 duties for any other reason; or

24 (b) becomes bankrupt or has made arrangement with his creditors;

25 (c) is convicted of a felony or any offence involving dishonesty; or

26 (d) is guilty of serious misconduct relating to his duty; or

27 (e) in the case of a person possessing professional qualifications, is
28 disqualified from practicing his profession; or

29 (f) resigns his office by notice in writing addressed to the Minister.

Remuneration of Membership of the Governing Council	1	6. The members of the Council shall be paid such remuneration and
	2	allowances as Government may determine.
Interpretation of Act	3	7. -(1) Subject to section 27 of the Interpretation Act, the Council
	4	may make standing orders regulating its proceedings.
	5	(2) The Chairman shall preside at every meeting of the Council and in
	6	his absence; the members present shall elect one of their number, other than
	7	the Registrar-General, to preside at the meeting.
	8	(3) The quorum for meetings of the Council shall be nine members.
	9	(4) The Council may call on any person who is not a member of the
	10	Commission to attend a meeting of the Council and advise the Council on any
	11	matter referred to it by the Commission, but the person shall not count towards
	12	the quorum of the meeting and shall not be entitled to vote at any meeting of the
	13	Council.
Disclosure of interest	14	8. -(1) Any member of the Council who has interest in any matter
	15	before the Council, whether pecuniary or otherwise, shall disclose the interest.
	16	(2) A disclosure under subsection (1) of this section shall be recorded
	17	in the minutes of the Council, and the member shall not take part after the
	18	disclosure, in any deliberation or decision of the Council with regard to the
	19	subject matter in respect of which his interest is thus disclosed.
	20	(3) Non-disclosure in accordance with this section shall be deemed to
	21	be a serious misconduct for the purposes of this Bill.
Appointment of the Registrar- General of the Commission	22	9. -(1) There shall be appointed by the President on the
	23	recommendation of the Minister, a Registrar-General for the Commission who
	24	shall be a legal practitioner of not less than fifteen years post-call and
	25	experience in industrial property law and administration.
	26	(2) The Registrar-General shall:
	27	(a) be the Chief Executive and Accounting Officer of the
	28	Commission;
	29	(b) be responsible for the day-to-day operation of the Commission,
	30	and subject to the general directives of the Council;

1 (c) hold office on contract appointment for a period of four years
2 and be eligible for re-appointment for a further period of four years and no
3 more, on such terms and conditions as may be determined by the Council
4 with the approval of the Minister of Commerce and Industry or appropriate
5 ministry.

6 (3) The Commission has the power to appoint such officers as it
7 may regard necessary for the discharge of its functions under this Bill
8 including the Registrars of Trademarks, Patents and Designs, and Plant
9 Varieties and Animal Breeds.

10 (4) There shall be appointed one or more Deputy Registrars of
11 Trademarks, Patents and Designs, and Plant Varieties and Animal Breeds
12 and one or more Assistant Registrars, who shall, subject to the control of the
13 Registrar-General, have all the powers conferred by this Act on the
14 Registrar-General, and the most senior in rank shall whenever the Registrar
15 is for any reason unable to fulfill his duties, act in his stead.

Appointment of
Deputy Registrars

16 (5) The Commission shall have the power to make rules and
17 regulations governing appointments, promotion and discipline in the
18 Commission, and may, subject to such conditions as it may think fit and to
19 any enactment, delegate any of its power relating to appointments and the
20 exercise of disciplinary control including dismissal, over its officers to the
21 Registrar-General.

22 **10.** Service in the Commission shall be approved service for the
23 purpose of the Pensions Act and accordingly, officers and other persons
24 employed in the Commission shall in respect of their service in the
25 Commission be entitled to pension, gratuity and other retirement Benefits
26 enjoyed by persons holding equivalent grades in the public service of the
27 Federation, to the extent that nothing in this Bill shall prevent the
28 appointment of a person to any office on terms which preclude the grant of a
29 pension and gratuity in respect of that office.

Service in the
Commission

Departments
of the Commission

- 1 **11.**-(1) The Commission, headed by the Registrar-General shall
2 consist of four departments, namely:
- 3 (a) the Patents and Designs Registry which shall administer the
4 Patents and Designs part of this Bill and shall be under the headship of the
5 Registrar of Patents and Designs who shall be a legal Practitioner and scientist
6 or an engineer of not less than 10 years post call and experience in science,
7 industrial property law and administration;
- 8 (b) the Trademarks registry, which shall administer the Trademarks
9 part of this Bill and shall be under the headship of the Registrar of Trademarks
10 who shall be a legal practitioner of not less than 10 years post call and
11 experience in industrial property law and administration;
- 12 (c) the Administration and Finance Department which shall be under
13 the headship of the Director of Administration and Finance who shall be a
14 person with not less than 10 years post qualification experience; and
- 15 (d) the Planning, Research and Statistics Department which shall be
16 under the headship of a Director of Planning, Research and Statistics who shall
17 be a person with not less than 10 years post qualification experience.
- 18 (2) Nothing in this subsection shall prevent the Commission, with the
19 consent of the Minister from establishing any additional Registry or
20 Department as the Commission may deem necessary for the proper and
21 effective administration of the provisions of this Bill.
- 22 (3) In this Bill, a Registrar and a Director have the same status. All
23 Registrars or Directors shall report to the Registrar-General.

Funds of the
Commission

- 24 **12.**-(1) The Commission shall establish and maintain a fund from
25 which all expenditure of the Commission shall be defrayed.
- 26 (2) There shall be paid and credited to the fund established in
27 pursuance of subsection (1) of this section:
- 28 (a) all such sums as may from time to time be granted to the
29 Commission by the Federal Government;
- 30 (b) all monies raised for the purposes of the Commission by way of

1 grants, loans, subsidies and donations, provided that, the Commission shall
2 not be obliged to accept a donation for a particular purpose unless, it
3 approves of the terms and conditions attached to such donation, if any;

4 (c) all statutory payments, fees and or charges for services rendered
5 by the Commission or any of its departments; and

6 (d) all other assets as may, from time to time, accrue to the
7 Commission.

8 (3) Every applicant for the registration of a Trademark, Patent and
9 Design, shall pay a prescribed amount for processing and publication which
10 shall be retained and maintained in a separate account by the Commission
11 for the publication of the Trademarks and Patents and Designs, Journals and
12 the amount for publication shall be as determined by the Commission.

13 **13.**-(1) The Commission shall keep proper accounts and records
14 and shall prepare in respect of each financial year, a statement of accounts in
15 such form as may be directed by the Auditor-General for the Federation.

Accounts and
Reports of the
Commission

16 (2) The accounts of the Commission shall be audited not later than
17 six months after the end of each financial year by auditors appointed by the
18 Commission.

19 **14.** The Commission shall, not later than 1st July in each year,
20 submit to the Minister, a report of the activities of the Commission
21 during the immediately preceding year.

Accounts and
Reports of the
Commission

22 **15.** The Commission may, make regulations generally, for the
23 purposes of the proper administration of industrial property law and matters
24 relating to it, subject to the approval of the Minister.

Regulations

25 **16.**-(1) Despite anything in any other enactment, no suit against the
26 Commission, a member or any staff of the Commission, for an act done:

Suits against the
Commission

27 (a) in pursuance or execution of his duties under this Bill or any
28 other enactment or law; or

29 (b) in respect of any alleged neglect or default in the execution of
30 this Bill or any other enactment, shall lie or be instituted in any Court unless,

1 the suit is commenced within twelve months next after the act, neglect or
2 default complained of or where the damage or injury continues, within twelve
3 months after the damage or injury ceases.

4 (2) No suit shall be commenced, against the Commission or any
5 member of staff of the Commission, before the expiration of a period of three
6 months after a written notice of intention to commence the suit is served upon
7 the Commission by the intending plaintiff or his agent.

8 (3) The notice referred to in subsection (2) of this section shall, clearly
9 state the cause of action, the particulars of claim, the name and place of abode
10 of the intending plaintiff and the relief which the persons claims.

Notice or
Summons

11 17. A notice, summons or other documents required or authorized to
12 be served upon the Commission under the provisions of this Bill or any other
13 enactment or law may, be served by delivering the same to the Registrar-
14 General of the Commission or by sending it by registered post addressed to the
15 Registrar-General at the office of the Commission.

No suit against
the Commission

16 18.-(1) In any action or suit against the Commission, no execution or
17 attachment or process shall be issued against the Commission without the
18 consent of the Attorney General of the Federation.

19 (2) Any sum of money which is by judgment of a Court awarded
20 against the Commission shall, subject to any direction given by the Court
21 where notice of the appeal has been given by the Commission in respect of the
22 judgment, be paid by the Commission from its general fund.

Directive from
the Minister

23 19. The Minister may, give to the Commission, directives of a general
24 or special character with respect to any of the functions of the Commission
25 under this Bill and it shall be the duty of the Commission to comply with such
26 directives.

Enforcement
of this Bill

27 20.-(1) Subject to the provisions of this Bill, any appointment, order,
28 requirement or application made, certificate issued or notice, decision,
29 determination, direction or approval given, or any other thing done under any
30 enactment before the coming into effect of this Bill, Shall, if in force at the

1 commencement of this Bill, continue in force, so far as it may have been
2 made, issued, given or done under the corresponding provisions of this Bill
3 or Regulations under this Bill.

4 (2) Any proceedings begun under the Patents and Designs Act and
5 Trademarks Act may be continued under those Bill.

6 **21.** A person who is refused the grant of a compulsory license by
7 the Competent Authority shall have the right of appeal to the Appeal Board.

8 **22.**-(1) There shall be established the Industrial Property Appeal
9 Board (in this Bill referred to as 'the Appeal Board") which shall be charged
10 with the duty of considering and determining any case referred to it by a
11 party aggrieved as a result of the Competent Authority's refusal to grant it a
12 compulsory license and any other case it has cognizance under this Bill.

Establishment
of the Appeal
Board

13 (2) The Appeal Board shall consist of a Chairperson and not less
14 than three or more than six other members appointed by the President on a
15 full time basis.

16 **23.**-(1) To be eligible for appointment as a Chairperson of the
17 Appeal Board, such a person shall have a minimum of fifteen (15) years
18 knowledge and experience in Industrial property Law and administration.

19 (2) To be eligible for appointment as a member of the Appeal
20 Board, such a person shall have a minimum of ten (10) years knowledge and
21 experience in industrial property law and administration, law or economics.

22 **24.** (1) The Chairman and members of the Appeal Board shall be
23 appointed by the President for a period of 5 years in the first instance and
24 may subject to performance be re-appointed for another term of 5 years and
25 no more.

26 (2) The Chairperson may:

27 (a) resign from the Tribunal;

28 (b) resign as Chairperson but remain as a member of the Tribunal,
29 by giving a one month notice to the President.

30 (3) A member of the Appeal Board may resign by giving a month

1 notice to the President.

2 (4) The President on the recommendation of the Federal Minister of
3 Industry, Trade and Investment:

4 (a) shall remove the Chairperson or a member, if it is not in the public
5 interest or interest of the Appeal Board for him to continue;

6 (b) may remove the Chairperson or a member of the Appeal Board
7 from office for:

8 (i) Serious misconduct;

9 (ii) Permanent incapacity; and

10 (iii) Engaging in any activity that may undermine the integrity of the
11 Appeal Board.

12 **25.**-(1) The Chairperson and members of the Appeal Board shall be
13 paid such remunerations and allowances as are determined by the Governing
14 Council.

15 (2) During the term of office of a member of the Appeal Board, the
16 member's salary, allowances or benefits may not be reduced.

17 PART B

The Trademark
Registrar and
his functions

18 **26.**-(1) There shall be an officer known as the Registrar of Trademark:
19 (in this Bill also referred to as "the Trademarks Registrar") who shall be
20 appointed by the Industrial Property Commission of Nigeria and whose office
21 shall be situated in the Federal Capital Territory, Abuja.

22 (2) The Trademarks Registrar shall, in the exercise of his functions
23 other than the taking of any decision, which under this Bill is subject to appeal
24 to the Court, act under the general direction of the Registrar-General.

25 (3) Any act or thing directed to be done by or to the Trademarks
26 Registrar may be done by or to any other officer in the office of the Registrar of
27 Trademarks on the direction of the Registrar-General.

The Deputy
Trademark
Registrar

28 (4) There may be appointed one or more Deputy Registrars of
29 Trademarks, and one or more Assistant Registrars of Trademarks who shall,
30 subject to the control of the Registrar-General have all the powers conferred by

1 this Bill on the Trademarks Registrar, and the most senior of whom shall
2 whenever the Trademarks Registrar is for any reason unable to fulfill his
3 duties, act temporary in his stead.

4 (5) The Trademarks Registrar shall have an official seal, which
5 shall be officially and judicially noticed.

6 27.-(1) There shall be kept the record called the register of
7 trademarks, in which shall be entered all registered trademarks with the
8 names and addresses of their proprietors, the date on which applications
9 were made for their registration, notifications of assignments and
10 transmissions, the names and addresses of all registered users and such other
11 matters relating to registered trademarks as may be prescribed.

The Register of
Trademarks

12 The register shall be kept under the control and management of the
13 Registrar-General at the Trademarks Registrar's office.

14 (2) The register shall, at all convenient times, be open to the
15 inspection of the public, subject to such rules as may be prescribed.

16 28. Subject to the provisions of Section 33 of this Bill, no person
17 shall be entitled to institute any proceeding to prevent, or to recover
18 damages for, the infringement of an unregistered trademark; but nothing in
19 this Bill shall all be taken to affect rights of action against any person for
20 passing off goods as the goods of another person or the remedies in respect
21 thereof.

22 29.-(1) A trademark shall be registered in respect of particular
23 goods and services or classes of goods and services, and any question arising
24 as to the class within which any goods or services fall shall be determined by
25 the Registrar-General.

26 (2) A person who is aggrieved by the decision of the Registrar'
27 General under this section may, apply to the Court for a review of the
28 decision.

29 30.-(1) Any sign or a combination of signs capable of
30 distinguishing the goods or services of one undertaking from those of other

1 undertakings shall be capable of constituting a trademark under this Bill.

2 (2) Where the signs are not inherently capable of distinguishing the
3 relevant goods or services, registration shall be dependent on the
4 distinctiveness of the goods or services acquired through use.

5 (3) The Registrar-General may require that signs be visually
6 perceptible as a condition for registration under this Bill.

7 (4) A mark shall not be validly registered if it is:

8 (a) incapable of distinguishing the goods or services of

9 (b) one enterprise from those of other enterprises;

10 (c) contrary to public order or morality; likely to mislead the public or
11 trade circles, in particular as regards the geographical origin of the goods or
12 services concerned or their nature and characteristics;

13 (d) identical with, or is an imitation of or contains as an element, an
14 armorial bearing, flag or other emblem, a name or abbreviation or initials of the
15 name of, or official sign or hallmark adopted by any country inter-
16 governmental organization or organization created by an international
17 convention, unless authorized by the competent authority of that country or
18 organization;

19 (e) identical with or in a confusing way similar to, or constitutes a
20 translation of a mark or trade name which is well known in Nigeria for identical
21 or similar goods or services or another enterprise, or if it is well known and
22 registered in Nigeria for goods or services which are not identical or similar to
23 those in respect of which registration is applied for as provided in the latter
24 case, that use of the mark in relation to those goods or services shall indicate a
25 connection between those goods or services and the owner of the well known
26 mark and that the interests of the owner of the well-known mark are likely to be
27 damaged by such use.

28 (5) For the purposes of this section: "sign" includes personal names,
29 letters, numerals, figurative elements and a combination of colours and a
30 combination of such sign.

1 31.-(1) Subject to the provisions of this section and of sections 32
2 and 33 of this part of this Bill the registration (whether before or after the
3 commencement of this Bill) of a person as proprietor of a trademark (other
4 than a certification trademark) in respect of any goods shall, if valid, give or
5 be deemed to have given to that person the exclusive right to the use of that
6 trademark in relation to those goods.

The necessity of
Register of
Trademarks

7 Without prejudice to the generality of the right to the use of a
8 trademark given by such registration as stated in sub-section (1), that right
9 shall be deemed to be infringed by any person who, not being the proprietor
10 of the trademark or a registered user thereof using it by way of the permitted
11 use, uses a mark identical with it or so nearly resembling it as to be likely to
12 deceive or cause confusion, in the course of trade, in relation to any goods in
13 respect of which it is registered, and in such manner as to render the use of
14 the mark likely to be taken:

15 (a) as being used as a trademark; or

16 (b) in a case in which the use upon the goods or in physical relation
17 thereto or in an advertising circular or other advertisement issued to the
18 public, as importing a reference to some persons having the right either as
19 proprietor or as registered user to use the trademark or to goods with which
20 such a person as stated above is connected in the course of trade;

21 (c) in the case of the use of an identical sign for identical goods or
22 services, a likelihood of confusion shall be presumed.

23 (3) The right to the use of a trademark given by such registration as
24 stated in subsection (2) above shall be subject to any conditions or
25 limitations entered on the Register, and the use of any such mark in any
26 circumstances to which, having regard to any such limitations, the
27 registration does not extend, shall not constitute an infringement of that
28 right.

29 (4) The conditions or limitations shall not cause the use of a
30 trademark to be unjustifiably encumbered by special requirements, such as

1 use with another trademark, use in a special form or use in a manner
2 detrimental to its capability to distinguish the goods or services of one
3 undertaken from those of other undertakings and this shall not preclude a
4 requirement prescribing the use of the trademark that identifies the undertaking
5 producing the goods or services along with, but without linking it to, the
6 trademark distinguishing the specific goods or services in question with that
7 undertaking.

8 (5) The use of a registered trademark, being one of two or more
9 registered trademarks that are identical or nearly resemble each other, in the
10 exercise of the right to the use of that trademark given by such registration as
11 stated above, shall not constitute an infringement of the right to the use of any
12 other of those trademarks given by such registration.

13 (6) The owner of a registered trademark has the exclusive right to
14 preclude any other person not having his consent, from using the trademark in
15 the course of trade for identical or similar signs, for goods or services which are
16 identical or similar to those in respect of which the trademark is registered,
17 where such use shall result in a likelihood of confusion.

18 (7) In the case of the use of identical sign for identical goods or
19 services, the likelihood of confusion shall be presumed.

20 (8) The right conferred by registration of a mark shall not extend to
21 acts in respect of articles which have been put on the market in any country by
22 the registered owner or with his consent.

23 32.-(1)The owner of a well-known mark has the exclusive right to
24 prevent all third parties not having the owner's consent from using in the course
25 of trade, a mark which is identical with or in a confusing way similar to or
26 constitutes a translation of, a mark or trade name which is well known in
27 Nigeria, for goods or services which are identical or similar to those in respect
28 of which the mark is well known, where the use would result in a likelihood of
29 confusion and in the case of the use of an identical sign for identical goods or
30 services, a likelihood of confusion shall be presumed.

1 (2) The rights of an owner of a registered well known mark under
2 subsection (1) of this section shall, extend to goods and services which are
3 not identical with or similar to those in respect of which the well-known
4 mark has been registered, provided that, the use of the sign in relation to
5 those goods or services indicate, a connection between those goods or
6 services and rights of the owner of the well-known mark are likely to be
7 damaged by such use.

8 **33.** As from the date of coming into operation of this Bill, civil
9 proceedings may be instituted under this Bill in respect of an infringement of
10 a registered trademark before the Appeal Board.

11 **34.**-(1) In an action for infringement of a registered mark, the
12 plaintiff may make an ex parte application supported by affidavit to the
13 Court for an order for the inspection of any house or premises where he
14 knows or suspects are kept, goods with his infringed marks on them, or his
15 infringed marks intended to be used on goods or in respect of services; and
16 for the seizure of such goods or marks.

17 (2) Where there is reasonable cause for suspecting that goods with
18 the infringed marks on them or the infringed marks intended to be used on
19 goods or in respect of services are in the house or premises, the Court may
20 issue an order on such terms as it deems fit authorizing the applicant to:

21 (a) enter the house at any reasonable time by day or night
22 accompanied by a police officer not below the rank of Assistant
23 Superintendent of Police;

24 (b) seize, detain and preserve the goods bearing the infringing
25 mark;

26 (c) inspect all or any documents in the custody or under the control
27 of the defendant relating to the action.

28 **35.**-(1) Subject to subsections (2) and (3) of this section, the
29 provisions of this Bill shall apply to collective marks.

30 (2) An application for registration of a collective mark shall

1 designate by a copy of the regulations governing the use of the collective mark
2 and where any change is made in respect of the regulation, the registered owner
3 of the collective mark shall notify the Registrar-General of such change.

4 (3) In addition to the grounds provided in sections 63 and 64 of this
5 Bill, the Registrar-General shall invalidate the registration of a collective mark
6 if the person requesting the invalidation proves that only the registered owner
7 uses the mark, or that the registered owner uses or permits its use in
8 contravention of the regulation referred to in subsection (2) of this section or
9 that the uses or permits the use in a manner liable to deceive trade circles or the
10 public as to the origin or other common characteristics of the goods or services
11 concerned.

12 (4) The registration of a collective mark or an application for a
13 collective mark may not be the subject of a license contract.

Register of
Trademarks

14 **36.**-(1) A name or designation may not be used as a trade name if, by
15 its nature or the use to which it may be put, it is contrary to public order or
16 morality and if, in particular, it is liable to deceive trade circles or the public as
17 to the nature of the enterprise identified by the name.

18 (2) trade names, the names shall be protected prior to or without
19 registration against any unlawful act committed by third parties and any
20 subsequent use of the trade name by a third party, whether by a trade name or a
21 mark or collective mark, or any such use of a similar trade name or mark, likely
22 to mislead the public, shall be deemed unlawful.

23 Notwithstanding any laws or regulations providing for any obligation to
24 register.

25 **37.** Nothing in this Bill shall entitle the proprietor or a registered user
26 of a registered trademark, to interfere with or restrain the use by any person of a
27 trademark identical with or nearly resembling it in relation to goods in relation
28 to which that person or a predecessor in title of his has continuously used that
29 mark from a date previous to:

30 (a) the use of the first-mentioned trademark in relation to those goods

1 by the proprietor or a predecessor in title of his; or

2 (b) the registration of the first-mentioned trademark in respect of
3 those goods in the name of the proprietor or a predecessor in title of his,
4 whichever first occurred, or (where such use is proved) to object to that
5 person being put on the register for that identical or nearly resembling
6 trademark in respect of those goods.

7 **38.** The registration of a trademark shall not interfere with:

Non interference
in registration of
trademark

8 (a) any bona fide use by a person of his own name or the name of his
9 place of business, or the name, or the name of the place of business, of any of
10 his predecessors in business; or

11 (b) the use by any person of any bona fide description of the
12 character or quality of his goods, not being a description that would be likely
13 to be taken as importing any such reference.

14 **39.**-(1) In order for a mark to be registrable under this Part, it shall
15 be distinctive.

16 (2) A mark is distinctive if, it is capable, in relation to the goods or
17 services in respect of which it is registered or proposed to be registered, of
18 distinguishing goods or services with which its proprietor is or may be
19 connected in the course of trade or business, from goods or services in the
20 case of which no such connection subsists, either generally or, where the
21 mark is registered subject to limitations, in relation to use within the extent
22 of the registration.

23 (3) In determining whether a mark is capable of distinguishing in
24 accordance with subsection (2) of this section, regard shall be to the extent to
25 which:

26 (a) the mark is inherently capable of distinguishing as required by
27 that subsection; and

28 (b) by reason of the use of the mark or of any other circumstances, it
29 is, in fact, capable of so distinguishing.

30 (4) Subject to the provisions of this Bill, the following in particular,

1 may be regarded as prima facie distinctive for purposes of registrability as a
2 mark:

3 (a) the name of a company, an individual or a firm represented in a
4 special or particular manner;

5 (b) the signature of the applicant for registration or a predecessor of
6 his in business;

7 (c) an invented word or invented words; or

8 (d) any word or words having no direct reference to the character or
9 quality of the goods or services and not being according to its ordinary
10 signification, a geographical name or surname.

Register of
trademarks

11 **40.**-(1) Subject to the provisions of subsection (2) of this section, no
12 trademark shall be registered in respect of any goods or description of goods
13 that is identical with a trademark belonging to a different proprietor or with an
14 earlier filing or priority date and already on the register in respect of the same
15 goods or description of goods, or that so nearly resembles such a trademark as
16 to be likely to deceive or cause confusion.

17 (2) In case of honest concurrent use, or other special circumstances
18 which in the opinion of the Court or the Registrar-General make it proper so to
19 do, the Court or the Registrar-General may permit the registration of
20 trademarks that are identical or nearly resemble each other in respect of the
21 same goods or description of goods by more than one proprietor, subject to
22 such conditions and limitations, if any, as the Court or the Registrar-General, as
23 the case may be, may think it right to impose.

24 (3) Where separate applications are made by different persons to be
25 registered in respect of the same goods or description of goods as proprietors
26 respectively of trademarks that are identical or nearly resemble each other, the
27 Registrar-General may refuse to register any of them until, their rights have
28 been determined by the Court or have been settled by agreement in a manner
29 approved:

30 (a) by the Registrar-General; or

1 (b) by the Court on an appeal from the Registrar-General.

2 (4) Nothing in this section, prevents the registration of a trademark
3 where the proprietor of the earlier trademark or other earlier rights consent
4 to the registration.

5 **41.** In all legal proceedings relating to a trademark registered under
6 this Bill (including applications under section 64 of this Bill) the original
7 registration of the trademark shall, after the expiration of seven years from
8 the date of that registration, be taken to be valid in all respects, unless:

9 (a) that registration was obtained by fraud; or

10 (b) the trademark offends against the provisions of section 30 of
11 this Bill.

12 **42.** If a trademark:

13 (a) contains any part not separately registered by the proprietor as a
14 trademark; or

15 (b) contains matter common to the trade or otherwise of a non-
16 distinctive character, the Registrar-General or the Court, in deciding
17 whether the trademark shall be entered or shall remain on the register, may
18 require, as a condition of its being on the register:

19 (i) that the proprietor shall disclaim any right to the exclusive use of
20 any part of the trademark, or to the exclusive use of all or any portion of any
21 such matter as aforesaid, to the exclusive use of which the Tribunal holds
22 him not to be entitled, or

23 (ii) a. that the proprietor shall make such other disclaimer as the
24 Tribunal may consider necessary for the purpose of defining his rights under
25 registration, provided that no disclaimer on the register shall, affect any
26 rights of the proprietor of a trademark, except such arise out of the
27 registration of the trademark in respect of which the disclaimer is made.

28 (1) A trademark may be limited in whole or in part to one or more
29 specified colours, and in any such case, the fact that it is so limited shall, be
30 taken into consideration by any Tribunal that decides on the distinctive

1 character of the trademark.

2 (2) If and so far as a trademark is registered without limitation of
3 colour, it shall be taken to be registered for all colours.

Geographical
indications of
goods

4 **43.**-(1) For the purposes of this section, "geographical indications"
5 are indications, which identify a good as originating from any country or region
6 or locality in that country where a given quality, reputation or other
7 characteristics of the good is attributable to its geographical origin.

8 (2) No person shall, in Nigeria, use any means in the designation or
9 presentation of a good that indicates or suggests that the good originates from a
10 geographical area other than the true place of origin and in a manner intended to
11 mislead as to the geographical origin of the good.

12 (3) The Registrar-General, shall on the request of the registered
13 proprietor of the trademark, refuse or invalidate the registration of a trademark
14 which contains or consists, in his opinion, a geographical indication with
15 respect to any good not originating in the territory indicated and is intended to
16 mislead as to the true place of origin.

Register of
trademarks

17 **44.**-(1) Any person proposing to apply for the registration of a
18 trademark may, if he so desires, apply to the Registrar-General in the
19 prescribed manner for advice as to whether the trademark appears to the
20 Registrar-General prima facie to be capable of distinguishing; and the
21 Registrar-General shall have power to give the advice asked for in the
22 application.

23 (2) In an application for the registration of a trademark as to which the
24 Registrar-General has given advice under this section in the affirmative is
25 made within three months after the giving of the advice, and the Registrar-
26 General, after further investigation or consideration, gives to the applicant
27 under section 45 of this Bill, notice of his objection to the acceptance of the
28 application on the ground that the trademark is not capable of distinguishing,
29 the applicant shall be entitled, on giving notice of withdrawal of the application

1 with the prescribed period, to have repaid to him any fee paid on the filing of
2 the application.

3 **45.**-(1) Any person claiming to be the proprietor of a trademark
4 used or proposed to be used by him who is desirous of registering it shall,
5 apply in writing to the Registrar-General in the prescribed manner for
6 registration.

7 (2) Subject to the provisions of this Bill, the Registrar-General may
8 refuse the application, or may accept it absolutely or subject to such
9 amendments, modifications, conditions or limitations, if any, as he may
10 think right.

11 (3) The conditions or limitations under subsection (2) of this
12 section shall not cause the use of a trademark to be unjustifiably encumbered
13 by special requirements, such as use with another trademark, use in a special
14 form or use in a manner detrimental to its capability to distinguish the goods
15 or services of one undertaking from those of other undertakings, but this
16 shall not preclude a requirement prescribing the use of the trademark
17 identifying the undertaking which produces the goods or services along
18 with, but without linking it to, the trademark distinguishing the specific
19 goods or services in question of that undertaking.

20 In the case of refusal or conditional acceptance, the Registrar-General shall,
21 if required by the applicant, state in writing, the grounds of his decision and
22 the materials used by him in arriving thereat, and the decision shall be
23 subject to appeal to the Court.

24 (4) An appeal under this section shall, be made in the prescribed
25 manner, and on the appeal, the Court shall, if required, hear the applicant and
26 the Registrar-General, shall make an order determining whether, and subject
27 to what amendments, modifications, conditions or limitations, if any, the
28 application is accepted.

29 (5) Appeals under this section shall, be heard on the materials
30 stated by the Registrar-General in pursuance of subsection (4) of this

1 section, and no further grounds of objection to the acceptance of the application
2 shall be allowed to be taken by the Registrar-General, other than those stated by
3 him, except by leave of Court; and if any further grounds of objection are taken,
4 the applicant shall be entitled to withdraw his application without payment of
5 costs on giving such notice as may be prescribed.

6 (6) The Registrar-General or Court may at any time, whether before
7 or after acceptance, correct any error in or in connection with the application, or
8 may permit the applicant to amend his application upon such terms as the
9 Registrar-General or the Court, as the case may be, thinks fit.

Acceptance of
registration

10 46.-(1) Subject to the provisions of this section, when an application
11 for registration of a trademark has been accepted, whether absolutely or subject
12 to conditions or limitations, the Registrar-General shall, as soon as may be after
13 acceptance, cause notice of the application as accepted to be published in the
14 Journal; and the notice shall set out all conditions and limitations subject to
15 which the application has been accepted.

16 (2) In the case of an application made under section 38 of this Bill, or
17 in any other case where it appears to him that it is expedient by reason of any
18 expedient by reason of any exceptional circumstances to do so, the Registrar-
19 General may, cause notice of an application for registration of a trademark to be
20 published in the Journal before acceptance.

21 (3) Where under subsection (2) of this section, notice of such an
22 application has been published in the Journal before acceptance, the Registrar-
23 General may, if he thinks fit, cause notice of the application to be published in
24 the Journal again when it has been accepted, but shall not be bound to do so.

Notice to
Registrar-General

25 47.-(1) Any person may within three months from the date of
26 publication under section 44 of this Bill of notice of an application, give notice
27 to the Registrar-General of opposition to registration.

28 (2) The notice shall be given in writing in the prescribed manner and
29 shall include a statement of the grounds of opposition.

30 (3) The Registrar-General shall, send a copy of every such notice to

1 the applicant; and within two months after the date on which copy is
2 received by the applicant, the applicant shall send to the Registrar-General
3 in the prescribed manner, a counter statement of the ground on which he
4 relies for his application and, if he does not do so, shall be treated as having
5 abandoned his application.

6 (4) If the applicant sends such a counter-statement as stated above,
7 the Registrar-General shall furnish a copy thereof to the persons giving
8 notice of opposition, and shall, after hearing the parties, if so required, and
9 considering the evidence, decide whether, and subject to what conditions or
10 limitations, if any, registration is to be permitted.

11 (5) The Registrar-General may request a person giving notice of
12 opposition or an applicant sending a counter-statement after receipt of the
13 copy of such a notice to give security as to costs of the proceedings before
14 him relating to the opposition, and in default of such security being duly
15 given, may treat the opposition or application, as the case may be, as
16 abandoned.

17 **48.**-(1) A decision of the Registrar-General under section 45 (4) of
18 this Bill shall be subject to appeal to the Court.

Litigation under
Register of
Trademarks

19 (2) An appeal under this section shall be made in the prescribed
20 manner, and on the appeal the Court, shall, if required, hear the parties and
21 the Registrar- General, and shall make an order determining whether, and
22 subject to what conditions or limitations, if any, registration is to be
23 permitted. On the hearing of an appeal under this section, any party may,
24 either in such manner as may be prescribed of by special leave of the Court,
25 bring forward further material for the consideration of the Court.

26 (3) On an appeal under this section, no further ground of opposition
27 to the registration of a trademark shall be allowed to be taken by an opponent
28 or the Registrar-General, other than those stated in pursuance of section 46
29 of this Bill by that or any other opponent, except by leave of the Court; and if
30 any further grounds of opposition are taken, the applicant shall be entitled,

1 on giving such notice as may be prescribed, to withdraw his application
2 without payment of the costs of the opponent or any of the opponents.

3 (4) On an appeal under this section, the Court may, after hearing the
4 Registrar-General, permit the trademark proposed to be registered to be
5 modified in any manner not substantially affecting its identity, but in any such
6 case, the trademark as so modified shall be advertised in the Journal, in the
7 prescribed manner before being registered.

8 (5) The Court may, require an appellant under this section to give
9 security for costs of the appeal, and in default of such security being duly given,
10 may direct the appeal to be treated as abandoned.

11 **49.**-(1) When an application for registration of a trademark has been
12 accepted, and either:

13 (a) the application has not been opposed and the time for notice of
14 opposition has expired; or

15 (b) the application has been opposed and the opposition has been
16 decided in favour of the applicant, the Registrar-General shall, unless the
17 application has been accepted in error, register the trademark.

18 (2) Subject to the provisions of this Bill relating to international
19 arrangements, a trademark, when registered, shall be registered as of the date of
20 the application for registration, and that date shall be taken for the purposes of
21 this Bill to be the date of registration.

22 (3) On the registration of a trademark, the Registrar-General shall
23 issue to the applicant, a certificate of registration in the prescribed form with
24 the seal of the Registrar-General.

25 (4) Where registration of a trademark is not completed within twelve
26 months from the date of the application by reason of default on the part of the
27 applicant, the Registrar-General may, after giving notice of the non-
28 completion to the applicant in writing in the prescribed manner, treat the
29 application as abandoned, unless, it is completed within the time specified in
30 that behalf in the notice.

1 **50.**-(1) The registration of a trademark shall be for a period of
2 seven years, but may be renewed from time to time in accordance with the
3 provisions of this section. Renewal of
trademark
registration

4 (2) The Registrar-General shall, on application made by the
5 registered proprietor of a trademark in the prescribed manner and within the
6 prescribed period, renew the registration of the trademark for a period of
7 seven years from the date of expiration of the original registration or of the
8 last renewal of registration, as the case may be (which date is in the section
9 referred to as "the expiration of the last registration").

10 (3) At the prescribed time before the expiration of the last
11 registration of a trademark, the Registrar-General shall send notice in the
12 prescribed manner and the conditions as to payment of fees and otherwise
13 upon which a renewal of registration may be obtained, and, if at the
14 expiration of the time prescribed in that behalf those conditions have not
15 been duly complied with, the Registrar-General may remove the trademark
16 from the register, subject to such conditions, if any, as to its restoration to the
17 register as may be prescribed.

18 (4) Where a trademark has been removed from the register for non-
19 payment of the fee for renewal, it shall, nevertheless, for the purpose of any
20 application for the registration of a trademark during one year next after the
21 date of the removal, be deemed to be a trademark that is already on the
22 register:

23 Provided that the foregoing provisions of this subsection shall not
24 have effect where the Tribunal is satisfied either:

25 (a) That there has been no bona fide trade use of the trademark that
26 has been removed during the two year immediately preceding its removal;

27 (b) that no deception or confusion would be likely to arise from the
28 use of the trademark that is the subject of the application for registration by
29 reason of any previous use of the trademark that has been removed.

30 **51.**-(1) Where the proprietor of a trademark claims to be entitled to

1 the exclusive use of any part thereof separately, he may apply to register the
2 whole and any such part as separate trademarks. Each such separate trademark
3 shall, satisfy all the conditions of an independent trademark and shall, subject
4 to section 62 (2) of this Bill, have all the incidents of an independent trademark.

5 (2) Where a trademark and any part or parts thereof are, by virtue of
6 subsection (1) above, registered as separate trademarks in the name of the same
7 proprietor, they shall be deemed to be, and shall be registered as, associated
8 trademarks; and section 54 of this Bill shall apply to them accordingly.

9 **52.**-(1) Where a person claiming to be the proprietor of several
10 trademarks, in respect of the same goods or description of goods, which, while
11 resembling each other in the material particulars thereof, yet differ in respect
12 of:

13 (a) Statements of the goods in relation to which they are respectively
14 used or proposed to be used; or

15 (b) Statements of number, price, quality or names of places; or

16 (c) Other matter of a non-distinctive character which does not
17 substantially affect the identity of the trademark; or

18 (d) Colour .seeks to register those trademarks, they may be registered
19 as a series in one registration.

20 (2) All trademarks that are by virtue of the foregoing subsection
21 registered as a series in one registration shall be deemed to be, and shall be
22 registered as, associated trademarks; and section 54 of this Bill shall apply to
23 them accordingly.

24 **53.**-(1) Despite any rule of law or equity to the contrary, a registered
25 trademark shall, after the commencement of this Bill, be assignable and
26 transmissible either in connection with the goodwill or a business or not.

27 A registered trademark shall, after the commencement of this Bill, be
28 assignable and transmissible in respect either of all the goods in respect of
29 which it is registered, or was registered, as the case may be, or of some (but not
30 all) of those goods.

1 (2) Subsections (1) and (2) of this section, shall apply in regard to
2 an unregistered trademark used in relation to any goods, as they apply in
3 regard to a registered trademark registered in respect of any goods, if:

4 (a) at the time of the transmission of the unregistered trademark, it
5 is used in the same business as a registered trademark; and

6 (b) it is assigned or transmitted at the same time and to the same
7 person as that registered trademark; and

8 (c) it is so assigned or transmitted in respect of goods, all of which
9 are goods:

10 (i) in relation to which the unregistered trademark is used in that
11 business,

12 (ii) and be in respect of which the registered trademark is assigned
13 or transmitted.

14 (3) Where after the commencement of this Bill, a trademark is
15 assigned in respect of any goods and at the time of the assignment the
16 trademark is used in a business in those goods, then, if the assignment is
17 made otherwise than in connection with the goodwill of that business, the
18 assignee shall not acquire any rights under the assignment, until the
19 following requirements have been satisfied, that is to say, the assignee:

20 (a) Shall within six months from the date of the assignment or
21 within such extended period, if any, as the Registrar-General may allow,
22 apply to the Registrar-General for directions with respect to the
23 advertisement of the assignment; and Shall advertise the assignment in such
24 form and manner and within such period as the Registrar-General may
25 direct.

26 (4) Where the Registrar-General gives directions under subsection
27 of this section, for the advertisement of an assignment, he shall also cause
28 notice of the assignment to be published in the Journal.

29 54.-(1) Where a trademark that is registered, or is the subject of an
30 application for registration, in respect of any goods is identical with another

1 trademark that is registered, or is the subject of an application for registration,
2 in the name of the same proprietor in respect of the same goods or description
3 of goods, or so nearly resembles it as to be likely to deceive or cause confusion
4 if used by a person other than the proprietor, the Registrar- General may at any
5 time require that the trademarks shall be entered on the register as associated
6 trademarks.

7 (2) On application made in the prescribed manner by the registered
8 proprietor of two or more trademarks registered as associated trademarks, the
9 Registrar-General may dissolve the association as respect any of them, if he is
10 satisfied that there would be no likelihood of deception or confusion being
11 caused if that trademark were used by another person in relation to any of the
12 goods in respect of which it is registered, and may amend the register
13 accordingly.

14 (3) Any decision of the Registrar-General under this section shall be
15 subject to appeal to the Court.

16 **55.** Trademarks that are registered as, or are deemed by virtue of this
17 Bill to be, associated trademarks shall be assignable and transmissible only as a
18 whole, and not separately, but shall for all other purposes be deemed to have
19 been registered as separate trademarks.

20 **56.** Subject to the provisions of this Bill, the person for the time being
21 entered in the register as proprietor of a trademark shall, subject to any rights
22 appearing from the register to be vested in any other person, have power to
23 assign the trademark, and to give effectual receipts for any consideration for an
24 assignment thereof.

Associated
Trademarks

25 **57.-(1)**Where a person becomes entitled by assignment or
26 transmission to a registered trademark, he shall make application to the
27 Registrar-General to register his title, and the Registrar-General shall, on
28 receipt of the application and on proof of title to his satisfaction, register him as
29 the proprietor of the trademark in respect of the goods in respect of which the
30 assignment or transmission has effect, and shall cause particulars of the

1 assignment or transmission to be entered on the register.

2 (2) Except for the purposes of an appeal under this section or of an
3 application under section 64 of this Bill, a document or instrument in respect
4 of which no entry has been made in the register in accordance with the
5 provisions of subsection (1) of this section, shall not be admitted in evidence
6 in any Court, in proof of the title to a registered trademark, unless the Court
7 otherwise directs.

8 **58.**-(1) Subject to this and the next following section, a registered
9 trademark may be taken off the register in respect of any of the goods in
10 respect of which it is registered, on an application made by any person
11 concerned to the Court or, at the option of the applicant and subject to section
12 82 of this Bill, to the Registrar-General, on either of the grounds set out in
13 sub-section (2) of this section.

14 (2) The said grounds are:

15 (a) that the trademark was registered without any bona fide
16 intention on the part of the applicant for registration that it should be used in
17 relation to those goods by him, and that there has in fact been no bona fide
18 use of the trademark in relation to those goods by any proprietor thereof for
19 the time being, up to the date one month before the date of the application; or

20 (b) that up to the date, one month before the date of the application,
21 a continuous period of three years or longer elapsed during which there was
22 no bona fide use thereof in relation to those by any proprietor thereof for the
23 time being.

24 (3) The Tribunal may refuse an application made under this section
25 on either of the said grounds if it is shown that before the relevant date or
26 during the relevant period, as the case may be, there has been bona fide use
27 of the trademark, by any proprietor for the time being thereof, in relation to
28 goods of the same description as the goods to which the application relates,
29 being goods in respect of which the application relates, being goods in
30 respect of which the trademark is registered:

1 Provided that, where on any such application, it is shown as stated above, the
2 Tribunal shall not refuse the application:

3 (a) if the applicant has been permitted under section 39 of this Bill to
4 register an identical or nearly resembling trademark in respect of the goods in
5 question; or

6 (b) if the Tribunal is of the opinion that the applicant might properly
7 be permitted to register such a trademark.

8 (4) An applicant shall not be entitled to rely for the purposes of
9 subsection (2)(b) of this section, on any non-use of a trademark that is shown to
10 have been due to special circumstances in the trade and not to any intention not
11 to use or to abandon the trademark in relation to the goods to which the
12 application relates.

13 **59.**-(1) Where a trademark consisting of an invented word or invented
14 words has, with regard to any goods in respect of which it is registered and in
15 relation to which it has been used (in this subsection referred to as "the familiar
16 goods"), become so well known that its use in relation to other goods would be
17 likely to be taken as indicating a connection in the course of trade between
18 those goods and a person entitled use the trademark in relation to the familiar
19 goods, the trademark may, on the application in the prescribed manner of the
20 proprietor registered in respect of the familiar goods, be registered in his name
21 in respect of those other goods as a defensive trademark, despite that, the
22 proprietor registered in respect of the familiar goods, does not use or propose to
23 use the trademark in relation to those other goods, and notwithstanding
24 anything in section 56 of this Bill; and while so registered, the trademark shall
25 not be liable to be taken off the register in respect of those goods under section
26 56 of this Bill.

27 (2) The registered proprietor of a trademark:

28 (a) may apply for its registration in respect of those goods otherwise
29 than as a defensive trademark; or

30 (b) may apply for its registration in respect of any goods otherwise

1 than as a defensive trademark notwithstanding that, it is already registered in
2 his name in respect of those goods as a defensive trademark, in place, in
3 either case, of the existing registration.

4 (3) A trademark registered as a defensive trademark and that
5 trademark as otherwise registered in the name of the same proprietor shall,
6 notwithstanding that the respective registrations are in respect of different
7 goods, be deemed to be, and shall be registered as, associated trademarks,
8 and section 53 of this Bill shall apply to them accordingly. On application by
9 any person concerned to the Court or, at the option of the applicant and
10 subject to section 82 of this Bill, to the Registrar, the registration of a
11 trademark as a defensive trademark:

12 (a) may be cancelled on the ground that the requirements of
13 subsection (1) of this section, are no longer satisfied in respect of any goods
14 in respect of which the trademark is registered in the name of the same
15 proprietor otherwise than as a defensive trademark; or

16 (b) may be cancelled with regard to any goods in respect of which it
17 is registered as a defensive trademark on the use of the trademark in relation
18 to those goods would be taken as giving the indication mentioned in the said
19 subsection (1).

20 (4) The Registrar-General may, at any time, cancel the registration
21 as a defensive trademark of a trademark of which there is no longer any
22 registration in the name of the same proprietor, otherwise than as a defensive
23 trademark.

24 (5) Except as otherwise expressly provided in this section, the
25 provisions of this Bill shall apply in respect of the registration of trademarks
26 as defensive trademarks and of trademarks so registered as they apply in
27 other cases.

28 **60.**-(1) Subject to the provisions of this and the next following
29 section, a person other than the proprietor of a trademark may be registered
30 as a registered user thereof in respect of all or any of the goods in respect of

1 which it is registered (otherwise than as a defensive trademark) and either with
2 or without conditions or restrictions.

3 (2) The use of a trademark by a registered user thereof in relation to
4 goods or services:

5 (a) with which he is connected in the course of trade; and in respect of
6 which for the time being the trademark remains registered and

7 (b) he is registered as a registered user, in this Bill referred to as "the
8 permitted use" of that trademark: provided that, where the registration of a
9 person as a registered user is subject to any conditions or restrictions, "the
10 permitted use" in his case does not include, any use which does not comply
11 with those conditions or restrictions.

12 (3) For the purposes of section 56 of this Bill and for any other
13 purpose for which the use of a trademark is material under this Bill or at
14 common law, the permitted use of a trademark shall be deemed:

15 (a) to be use by the proprietor thereof; and

16 (b) not to be use by a person other than the proprietor.

17 (4) Subject to any agreement subsisting between the parties, a
18 registered user of a trademark shall be entitled to call upon the proprietor
19 thereof to take proceedings to prevent infringement thereof, and, if the
20 proprietor refuses or neglects to do so within two months after being so called
21 upon, the registered user may institute proceedings for infringement, in his
22 own name as if he were the proprietor, making the proprietor a defendant:
23 provided that, a proprietor so added as defendant shall not, be liable for any
24 costs, unless, he enters an appearance and takes part in the proceedings.

25 (5) Nothing in this section shall confer on a registered user of a
26 trademark, any assignable or transmissible right to the use thereof.

27 **61.**-(1) Where it is proposed that a person should be registered as
28 (registered user of a trademark to the Registrar-General in the prescribed
29 manner and shall, furnish him with a statutory declaration made by the
30 proprietor, or by some persons authorized to act on his behalf and approved by

1 the Registrar-General: the proprietor and the proposer registered user shall,
2 apply in writing:

3 (a) Giving particulars of the relationship, existing or proposed,
4 between the proprietor and the proposed registered user, including
5 particulars showing the degree of control by the proprietor over the
6 permitted use which their relationship will confer and whether it is a term of
7 their relationship that the proposed registered use shall be the sole registered
8 user of that there shall be any other restriction as to persons for whose
9 registration as registered users application may be made;

10 (b) Stating the goods in respect of which registration is proposed;

11 (c) Stating any conditions or restrictions proposed with respect to
12 the characteristics of the goods, to the mode or place of permitted use is to be
13 for a period or without limit of period, and, if for a period, the duration
14 thereof, and shall also furnish the Registration with such further documents,
15 information or evidence as may be required under the regulations or by the
16 Registrar-General.

17 (2) When the requirements of the foregoing subsection have been
18 complied with, and if the Registrar-General, after considering the
19 information furnished to him under that subsection, is satisfied that in all the
20 circumstances, the use of the trademark in relation to the proposed goods or
21 any of them by the proposed registered user, subject to any conditions or
22 restrictions which the Registrar- General thinks proper, would not be
23 contrary to the public interest, the Registrar may register the proposed
24 registered user in respect of the goods as to which he is to satisfied, subject as
25 aforesaid.

26 (3) The Registrar-General shall refuse an application under the
27 foregoing provisions of this section if, it appears to him that the grant thereof
28 would tend to facilitate trafficking in a trademark. The Registrar-General
29 shall, if so required by an applicant, take steps for securing that information
30 given for the purposes of an application under the foregoing provisions of

1 this section (other than matter entered in the register) is not disclosed to rivals
2 in trade.

3 (4) Without prejudice to the provisions of section 64 of this Bill, the
4 registration of a person as a registered user:

5 (a) may be varied by the Registrar-General as regards the goods in
6 respect of which, or any conditions or restrictions subject to which, it has
7 effect, on the application in writing in the prescribed manner of the registered
8 proprietor of the trademark to which the registration relates;

9 (b) may be cancelled by the Registrar-General on the application in
10 writing in the prescribed manner of the registered proprietor or of the registered
11 user or of any other registered user of the trademark; or

12 (c) may be cancelled by the Registrar-General on the application in
13 writing in the prescribed manner of any person on any of the following ground,
14 that is to say, that the:

15 (i) registered user has used the trademark otherwise than by way of
16 the permitted use, or in such a way as to cause, or to be likely to cause,
17 deception or confusion;

18 (ii) proprietor or the registered user misrepresented, or failed to
19 disclose, some fact material to the application for the registration, or that the
20 circumstances have materially changed since the date of the registration;

21 (iii) registration ought not to have been effected having regard to
22 rights vested in the applicant by virtue of a contract in the performance of
23 which he is interested.

24 (5) Provision shall be made by the Regulations for the notification of
25 the registration of a person as a registered user to any other registered user of
26 the trademark, and for the notification of an application under the last
27 foregoing subsection to the registered proprietor and each registered user (not
28 being the applicant) of the trademark, and for giving to the applicant on such an
29 application, and to all persons to whom such an application is notified and who
30 intervene in the proceedings in accordance with the Regulations, an

1 opportunity of being heard.

2 (6) The Registrar-General may, at any time, cancel the registration
3 of a person as a registered user of a trademark in respect of any goods in
4 respect of which the trademark is no longer registered.

5 (7) A license contract concerning a registered mark, or an
6 application for a contract license shall be submitted to the Registrar-
7 General, who shall keep its contents confidential but shall record it and
8 publish a reference to it and the license contract shall have no effect against
9 third parties until the submission has been made.

10 **62.**-(1) No application for the registration of a trademark in respect
11 of any goods shall be refused, nor shall permission for such registration be
12 withheld, on the ground only that it appears that the applicant does not use or
13 propose to use the trademark:

14 (a) if the Tribunal is satisfied that a body corporate is about to be
15 constituted, and that the applicant intends to assign the trademark to the
16 body corporate with a view to the use thereof in relation to those goods by
17 the body corporate; or

18 (b) if the application is accompanied by an application for the
19 registration of a person as a registered user of the trademark, and the
20 Tribunal is satisfied that the proprietor intends it to be used by that person in
21 relation to those goods and the Tribunal is also satisfied that that person will
22 be registered as a registered user thereof immediately after the registration
23 of the trademark.

24 The provisions of section 57 of this Bill shall have effect, in relation to a
25 trademark registered under the power conferred by the foregoing
26 subsection, as if for the reference in subsection (1)(a) of that section to
27 intention on the part of an applicant for registration that a trademark should
28 be used by him there were substituted a reference to intention on his part that
29 it should be used by the body corporate or registered user concerned.

30 (2) The Tribunal may, as a condition of the exercise of the power

1 conferred by subsection (1) of this section, in favour of an applicant who relies
2 on intention to assign to a body corporate as aforesaid, require him to give
3 security for the costs of any proceedings before the Tribunal relative to any
4 opposition or appeals, and in default of such security being duly given may
5 treat the application as abandoned.

6 (3) Where a trademark is registered in respect of any goods under the
7 power conferred by subsection (1) of this section, in the name of an applicant
8 who relies on intention to assign to a body corporate as aforesaid, then, unless
9 within three months, or within such further period as the Registrar-General
10 may on application being made to him in the prescribed manner allow, the body
11 corporate has not been registered as the proprietor of the trademark in respect
12 of those goods, the registration shall cease to have effect in respect thereof at
13 the expiration of that period, and the Registrar-General shall amend the register
14 accordingly.

15 **63.**-(1) Where under the provisions of this Bill, use of a registered
16 trademark is required to be proved for any purpose, the Tribunal may if and so
17 far as the Tribunal thinks right, accept use of an associated registered
18 trademark, or of the trademark with additions or alterations not substantially
19 affecting its identity, as an equivalent for the use required to be proved.

20 (2) The use of the whole of a registered trademark shall for the
21 purposes of this Bill be deemed to be also a use of any registered trademark,
22 being a part thereof, registered in the name of the same proprietor by virtue of
23 section 49 of this Bill.

24 (3) The use of a trademark by another person shall be recognized as
25 use of the trademark for purpose of maintaining the registration the use is
26 subject to the control of its owner.

27 **64.** The application in Nigeria of a trademark to goods to be exported
28 from Nigeria, and any other act done in Nigeria in relation to goods to be so
29 exported which, if done in relation to goods to be sold or otherwise traded
30 within Nigeria, would constitute use of a trademark therein, shall be taken to

1 constitute use of the trademark in relation to those goods for any purpose for
2 which such use is material under this Bill or at common law.

3 **65.**-(1) Any person concerned who alleges:

Entry into
register

4 (a) that any entry has not been inserted in, or has been omitted
5 from, the register; or

6 (b) that any entry has been made in the register without sufficient
7 cause; or

8 (c) that any entry wrongly remains on the register; or

9 (d) that any error or defect exists in any entry on the register, may
10 apply in the prescribed manner to the Court or, at the option of the applicant
11 and subject to section 82 of this Bill, to the Registrar-General, and the
12 Tribunal may make such order for making, expunging or varying the entry
13 as the Tribunal thinks fit.

14 (2) The Tribunal may in any proceedings under this section decide
15 any question that it may be necessary or expedient to decide in connection
16 with the rectification of the register.

17 (3) In case of fraud in the registration, assignment or transmission
18 of a registered trademark, the Registrar-General may himself apply to the
19 Court under the provisions of this section.

20 (4) Any order of the Court rectifying the register shall direct that
21 notice of the rectification shall be served in the prescribed manner on the
22 Registrar- General, and the Registrar-General shall on receipt of the notice
23 rectify the register accordingly.

24 **66.**-(1) Any person concerned may apply to the Court or, at the
25 option of the applicant and subject to section 82 of this Bill, to the Registrar-
26 General for an order under this section on the ground of any contravention
27 of, failure to observe, a condition entered on the register in relation to a
28 trademark.

29 (2) The Registrar-General may apply to the Court for an order
30 under this section on the ground stated above.

1 (3) On an application under the foregoing provisions of this section,
2 the Tribunal may make on the ground stated above sue order as the Tribunal
3 thinks fit of striking out or varying the registration of the trademark in question.

4 **67.**-(1)The Registrar-General may, on request made in the prescribed
5 manner by the registered proprietor:

6 (a) correct any error in the name or address of the registered proprietor
7 of a trademark;

8 (b) enter any change in the name or address of the person who is
9 registered as proprietor of a trademark;

10 (c) cancel the entry of a trademark on the register; strike out any goods
11 or classes of goods from those in respect of which does not in any way extend
12 the rights given by the existing registration of the trademark.

13 (2) The Registrar-General may, on request made in the prescribed
14 manner by a registered user of a trademark, correct any error, or enter any
15 change, in the name or address of the registered user.

16 (3) Any decision of the Registrar-General under this section shall be
17 subject to appeal to the Court.

18 **68.**-(1 The registered proprietor of a trademark may apply in the
19 prescribed manner to the Registrar for leave to add to or alter the trademark in
20 any manner not substantially affecting the identity thereof, and the Registrar-
21 General may refuse leave or may grant it on such terms and subject to such
22 limitations as he may think fit.

23 (2)The Registrar-General may cause an application under this section
24 to be advertised in the Journal in any case where it appears to him that it is
25 expedient so to do, and where he does so, if within the prescribed time from the
26 date of the advertisement any person gives notice to the Registrar-General in
27 the prescribed manner of opposition to the application, the Registrar-General
28 shall after hearing the parties if so required, decided the matter.

29 (3) Any decision of the Registrar-General under this section shall be
30 subject to appeal to the Court.

1 (4) Where leave as stated above is granted, the trademark as altered
2 shall be advertised in the Journal, unless it has already been advertised, in
3 the form to which it has been altered, in an advertisement under subsection
4 (2) of this section.

5 **69.**-(1) The Commission may make such regulations and prescribe
6 such forms as it thinks expedient, for empowering the Registrar-General to
7 amend the register, whether by making or striking out or varying entries
8 therein, so far as may be requisite for the purpose of adapting the
9 designation therein of the goods or classes of goods in respect of which
10 trademarks are registered to any amended or substituted classification that
11 may be prescribed.

12 (2) The Registrar shall not, in exercise of any power conferred on
13 him for the purpose stated above, make any amendment to the register that
14 would have the effect of adding any goods or classes of goods to those in
15 respect of which a trademark is registered (whether in one or more classes)
16 immediately before the amendment is to be made, or of antedating the
17 registration of a trademark in respect of any goods:

18 Provided that this subsection shall not have effect in relation to
19 goods as to which the Registrar is satisfied that compliance with this
20 subsection in relation thereto would involve undue complexity and that the
21 addition of antedating, as the case may be, would not affect any substantial
22 quantity of goods and would not substantially prejudice the rights of any
23 person.

24 (3) A proposal for the amendment of the register for the purpose
25 aforesaid:

26 (a) shall be notified to the registered proprietor of the trademark
27 affected;

28 (b) shall be subject to appeal by the registered proprietor to the
29 Court;

30 (c) shall be advertised in the Journal with any modifications; and

1 (d) may be opposed before the Registrar by any person concerned on
2 the ground that the proposed amendment contravenes the provisions of
3 subsection (2) of this section.

4 (4) The decision of the Registrar on any opposition under subsection
5 4 of this section shall be subject to appeal to the Court.

6 (5) Regulations under this section shall not have effect until published
7 in the Federal Gazette.

8 **70.**-(1) A mark capable of distinguishing in the course of trade, goods
9 certified by any person in respect of origin, material, method of manufacture,
10 quality, accuracy or other characteristic, from goods not so certified shall be
11 registrable as a certification trademark in respect of those goods in the name, as
12 proprietor thereof, of that person:

13 Provided that, a mark shall not be so registrable in the name of a
14 person who carried on a trade in goods of the kind certified.

15 (2) Without prejudice to the generality of the right to the use of a
16 certification trademark given by such registration as stated above, that right
17 shall be taken to be infringed by any person authorized by him under the rules
18 in that behalf using it in accordance therewith, uses a mark identical with it or
19 so nearly resembling is as to be likely to deceive or cause confusion, in the
20 course of trade, in relation to any goods in respect of which it is registered, and
21 in such manner as to render the use of the mark likely so as to be taken either:

22 (a) as being used as a trademark: or

23 (b) in a case in which the use is use upon the goods or in physical
24 relation thereto or in an advertising circular or other advertisement issued to the
25 public, as importing a reference to some person having the right either as
26 proprietor or by his authorization under the relevant rules to use the trademark
27 or to goods certified by the proprietor.

28 (3) The right to the use of a certification trademark given by such
29 registration as stated above shall be subject to any conditions or limitations
30 entered on the register, and the use of any such mark as stated above in any

1 circumstances to which, having regard to any such limitations, the
2 registration does not extend shall, not constitute an infringement of that
3 right.

4 (4) Where a certification trademark is one of two or more
5 registered trademarks that are identical or nearly resemble each other, the
6 use of any of those trademarks in exercise of the right to the use of that
7 trademark given by registration shall not constitute an infringement of the
8 right in the use of any other of those trademarks so given.

9 (5) There shall be deposited at the office of the Registrar in respect
10 of every trademark registered under this section, rules approved by the
11 Commission for governing the use thereof, which shall include provisions
12 as to the cases in which shall include provisions as to the cases in which the
13 proprietor is to certify goods and to authorize the use of the trademark, and
14 may contain any other provisions that the Commission may require or
15 permit to be inserted therein (including provisions conferring a right of
16 appeal to the Registrar-General against any refusal of the proprietor to
17 certify goods or to authorize the use of the trademark in accordance with the
18 rules).

19 (6) Rules deposited under subsection (6) of this section, shall be
20 open to inspection in like manner as the register.

21 (7) A certification trademark shall not be assignable or
22 transmissible otherwise than with the consent of the Commission.

23 (8) The provisions of the First Schedule of this Bill shall have effect
24 with respect to the registration of a mark under this section and to marks so
25 registered.

26 **71.**-(1) Any person who has applied for protection for any
27 trademark in a Convention country of his legal representative or assignee
28 shall be entitled to registration of his trademark under this Bill in priority to
29 other applicants; and the registration shall have the same date as the date of
30 the application in the Convention country:

1 Provided that:

2 (a) this subsection shall not apply, unless, application for registration
3 is made within six months from the application for protection in the
4 Convention country; and

5 (b) nothing in this section shall, entitle the proprietor of the trademark
6 to recover damages for infringements happening prior to the actual date on
7 which his trademark is registered in Nigeria.

8 (2) The registration of a trademark shall not be invalidated by reason
9 only of the use of the trademark in Nigeria during the period specified in this
10 section as that within which the application may be made.

11 (3) The application for the registration of a trademark by virtue of this
12 section shall be made in the same manner as an ordinary application for the
13 registration of a trademark under this Bill.

14 (4) Where a person has applied for protection for any trademark by an
15 application which:

16 (a) in accordance with the terms of a treaty subsisting between any
17 two or more Convention countries, is equivalent to an application duly made
18 in anyone of those Convention countries; or

19 (b) in accordance with the law of any Convention country, is
20 equivalent to an application duly made in that Convention country, he shall be
21 deemed for the purposes of this section to have applied in that Convention
22 country.

23 (5) In this Bill, "Convention country" means a country in the case of
24 which there is for the time being in force a declaration made by the President,
25 with a view to the fulfillment of a treaty, convention, arrangement or
26 engagement, declaring that country is a Convention country:

27 Provided that, a declaration may be made as aforesaid for the
28 purposes either of all or of some (but not all) of the provisions of this Bill, and a
29 country in the case of which a declaration is made for the purposes of some (but
30 not all) of the provisions of this Bill is in force shall be deemed to be a

1 Convention country for the purposes of those provisions only.

2 (6) A declaration made under this section shall not have effect until
3 published in the Federal Gazette.

4 (1) The Commission may make regulations to:

5 (a) regulate the practice under this Bill, including the service of
6 documents;

7 (b) classify goods for the purposes of registration of trademarks;

8 (c) make or require duplicates of trademarks and other documents;

9 (d) secure and regulate the publishing and selling or distributing, in
10 such manner as the Minister thinks fit, of copies of trademarks and other
11 documents;

12 (e) prescribe the fees to be paid in respect of applications,
13 registrations and other matters under this Bill;

14 (f) prescribe anything required or authorized by this Bill to be
15 prescribed by regulations;

16 (g) extend the time limited by this Bill for the performance of any
17 act, whether at the discretion of the Registrar-General or otherwise;

18 (h) impose restrictions as regards the registration under this Bill of
19 the arms, flags, emblems, titles or other distinctive marks of any country or
20 international organization;

21 (i) generally for regulating the business of the office of the
22 Registrar-General and all things by this Bill placed under the direction or
23 control of the Registrar-General, or the Commission.

24 (2) Regulations under this section shall not have effect until
25 published in the Federal Gazette-

26 (i) Where any discretionary or other power is given to the Registrar
27 General by this Bill or the regulations, he shall not exercise that power
28 adversely to an applicant for registration or the registered proprietor of
29 trademark without (if duly required so to do within the prescribed time)

Regulations on
Trademarks

1 giving to the applicant or registered proprietor an opportunity of being heard.

2 (ii) In all proceedings before the Registrar-General under this Bill, the
3 Registrar-General shall have power to award to any party such costs as he may
4 consider reasonable, and do direct how and by what parties they are to be paid,
5 and any such order may, by leave of the Court or a Judge thereof, be enforced in
6 the same manner as a judgment or other of the Court to the same effect.

7 (iv) The rights of a registered proprietor are infringed if another
8 person without the authority, license or consent of the registered proprietor,
9 does or causes the doing of any act which that other person is precluded from
10 doing under this Bill.

11 (2) An infringement of the rights of a registered proprietor under this
12 Bill shall be actionable at the suit of the registered proprietor in question; and in
13 an action for an infringement, all such reliefs by way of damages, injunction,
14 accounts or otherwise shall be available to the plaintiff as is available in any
15 proceedings in respect of the infringement of other proprietary rights.

16 (3) If a trademark has been granted in respect of any goods or services
17 and the same goods or services are manufactured or offered by a person other
18 than the registered proprietor, the goods or services shall in the absence of
19 proof to the contrary be presumed to have been manufactured or offered by that
20 person.

21 The grantee of a license under this Bill from a registered proprietor may, be
22 registered letter, require the licensor to institute proceedings under
23 subsection(1) of this section in respect of any infringement indicated by the
24 grantee in the letter and if the licensor unreasonably refuses or neglects to
25 institute the proceedings, the licensee may institute the proceedings in his own
26 name without prejudice to the right of the licensor to intervene in the
27 proceedings. m-in all legal proceedings relating to a registered trademark
28 (including applications under section 64 of this Bill), the fact that a person is
29 registered as proprietor of the trademark shall be prima facie evidence of the
30 validity of the original registration of the trademark and of all subsequent

1 assignments and transmissions thereof.

2 (a) In all legal proceedings in which the validity of the registration
3 of registered trademark comes into question and is decided in favour of the
4 proprietor of the trademark, the Court may certify to that effect; and if it so
5 certifies, in any subsequent legal proceedings in which the validity of the
6 registration comes into question, the proprietor of the trademark or
7 obtaining a final order of judgment in his favour shall, be entitled to his cost:
8 unless in the subsequent proceedings, the Court certifies that he ought not to,
9 have them.

10 (b) In all proceedings before the Court under this Bill, the costs of
11 the Registrar-General shall be at the discretion of the Court, but the
12 Registrar-General shall not be ordered to pay the costs of any other of the
13 parties;

14 (c) In any action or proceedings relating to a trademark or trade
15 name the Tribunal shall admit evidence of the usages of the trade concerned
16 and of any relevant trademark or trade name or set-up legitimately used by
17 other persons

18 (c) (1) In any legal proceedings in which the relief sought includes
19 alteration or rectification of the register, the Registrar-General shall have
20 the right to appear and be heard, and shall appear if so directed by the Court.

21 (2) Unless otherwise directed by the Court, the Registrar-General
22 instead of appearing and being heard may, submit to the Court a statement in
23 writing, signed by him, giving particulars of the proceedings before him in
24 relation to the matter in issue or of the grounds of any decision given by him
25 affecting it or of the practice of the office of the Registrar-General in like
26 cases or of such other matters relevant to the issues, and within his
27 knowledge as Registrar-General, as he thinks fit, and the statement shall be
28 deemed to form part of the evidence in the proceedings-

29 (a) The Court, in dealing with any question of the rectification of
30 the register (including applications under the provisions of section 39 of

1 this Bill), shall have power to review any decision of the Registrar-General
2 relating to the entry in question or the correction sought to be made.

3 (b) In any appeal from a decision of the Registrar-General to the Court
4 under this Bill, the Court shall have and exercise the same discretionary powers
5 as under this Bill as are conferred upon the Registrar-General.

6 (c) Where under any of the foregoing provisions of this Bill, an
7 applicant has an option to make an application either to the Court or to the
8 Registrar-General.

9 (1) if an action concerning the trademark in question is pending, the
10 application shall be made to the Court;

11 (2) if in any other case, the application is made to the Registrar-
12 General, he may, at any stage of the proceedings, refer the application to the
13 Court, or he may, after hearing the parties, determine the question between
14 them, subject to appeal to the Court.

15 (a)-(1) In any proceedings under this Bill before the Registrar-
16 General, the evidence shall be given by statutory declaration, except in so far
17 as the Registrar otherwise directs; but in any case where the Registrar thinks it
18 right to do so, he may take evidence viva voce instead of or
19 in addition to evidence by statutory declaration.

20 (2) Where in any such proceedings any evidence has been given by
21 means of a statutory declaration, that evidence may, in the case of an appeal, be
22 given before the Court by means of that statutory declaration instead of by
23 affidavit; but any evidence given by statutory declaration before the Court by
24 virtue of this subsection shall have all the incidents and consequences of
25 evidence given by affidavit.

26 (3) The Chief Judge of the Federal High Court may, with respect to
27 any proceedings before the Registrar-General under this Bill or any part of the
28 evidence viva voce, make rules as to the-

29 (a) examination of the parties, and of witnesses, on oath or
30 affirmation; and

1 (b) the procedure of securing the attendance of witnesses and the
2 production of documents.

3 (4) Rules made under subsection (3) of this section, shall not have
4 effect until published in the Federal Gazette.

5 **72.**-(1)A printed or written copy of any entry in the register,
6 purporting to be certified by the Registrar-General and sealed with the seal
7 of the Registrar-General, shall be admitted in evidence in all Courts and in
8 all proceedings without further proof or production of the original.

9 (2)Any person requiring such a certified copy as stated above shall
10 be entitled to obtain it on payment of the prescribed fee. A certificate
11 purporting to be under the hand of the Registrar-General as to any entry,
12 matter or thing that he is authorized by this Bill or the rules to make or do
13 shall be prima facie evidence of the entry having been made, and of the
14 contents thereof, and of the matter or thing having been done or not done.

15 **73.**A person who makes or causes to be made in the register a false
16 entry, or a writing falsely purporting to be a copy of an entry in the register,
17 or produces or tenders or causes to be produced or tendered in evidence any
18 such writing, knowing the entry or writing to be false commits an offence
19 under this Bill.

Discretionary
powers of the
Registrar-General

20 **74.** Subject to the provisions of this Bill, a civil proceeding may
21 be instituted before the Appeal Board by a person who alleges
22 infringement of his registered trademark.

Legal proceedings
on trademarks

23 **75 .**A person who knowingly gives false information commits an
24 offence and is liable on conviction to imprisonment for a term not exceeding
25 two years or to a fine of up to N1,000,000 or both such imprisonment and
26 fine.

27 **76.**Any person who intentionally makes a representation- Representation

28 (1) with respect to a mark not being a registered mark to the effect
29 that it is registered;

30 (2) to the effect that a registered mark is registered in respect of any

1 goods or services of which it is not registered; or

2 (3) to the effect that registration of a mark gives an exclusive right: to
3 its use in any circumstances in which having regard to limitations entered on
4 the register, the registration does not give that right, commits an offence.

5 77.-(1) Any person who in connection with any trade, business
6 calling, or profession without the authorization of the appropriate authority
7 uses the Coat of Arms of Nigeria (or Coat of Arms so closely resembling it as to
8 be calculated to deceive) in any manner calculated to lead to the belief that he is
9 duly authorized to use the Coat of Arms of Nigeria; or

10 (a) uses any device, emblem or title in any manner calculated to lead
11 to the belief that he is employed by or supplies goods to the President or the
12 Governor of a State in his official capacity as such, commits an offence under
13 this Bill.

14 (2) Nothing in subsection (1) of this section shall be construed as
15 affecting the right, if any, of the proprietor of a mark containing any such Coat
16 of Arms, device, emblem or title to continue to use that mark.

17 (3) In this section, "the appropriate authority" -

18 (a) in relation to the Coat of Arms of Nigeria and to employment by or
19 the supply of goods or services to the President, means the President; and

20 (b) in relation to employment by or supply of goods or services to the
21 Governor or a State or Local Government Council, means the Governor or that
22 State.

Falsification of
registered mark

23 78.-(1) A person who-

24 (a) forges any registered mark; or

25 (b) falsely applies to goods any sign so nearly resembling registered
26 mark as to be calculated to deceive; or

27 (c) makes, disposes of, or has in his possession any die, block,
28 machine or other instrument for the purposes of forging, or of being used for
29 forging a registered mark or

30 (d) causes any of the things mentioned in paragraphs (a) and (b) of

1 this section to be done, shall, subject to the provisions of this Bill unless he
2 proves tha he acted without intent to defraud, commits an offence and is
3 liable on conviction to a fine and treble damages as determined by a Court of
4 competent jurisdiction.

5 (3) For the purposes of this section, a person shall be deemed to
6 forged a mark who either-

7 (a) without the consent of the proprietor makes that mark as to be
8 calculated to deceive; or

9 (b) falsifies any genuine mark whether by alteration, additions,
10 effacement or otherwise.

11 **79.** A person who sells, or exposes, or has in his possession for sale
12 or any purpose of trade, manufacture or business, any goods or things to
13 which any forged mark is applied, or to which any mark or sign so nearly
14 resembling a registered mark as to be calculated to deceive is falsely applied
15 as the case may be, shall, unless he proves:

16 (1) that, having taken all reasonable precautions against
17 committing an offence against this Bill had, at the time of the commission
18 of the alleged offence, no reason to suspect the genuineness of the mark, and
19 that on demand made by or on behalf of the prosecutor, he gave all the
20 information in his power with respect to the persons from whom he obtained
21 such goods or things; or

22 (2) that otherwise he had acted innocently, commits an offence.

23 **80.**-(1)Where an offence under this Bill is committed by a body Offences
24 corporate or firm or an association of individuals:

25 (a) Every director, manager, secretary or other similar officer of the
26 body corporate;

27 (b) every partner or officer of the firm;

28 (c) every person concerned in the management of the affairs of the
29 association; or

30 (d) every person who was purporting to act in such capacity as

1 aforesaid, shall severally be guilty of that offence and liable to be proceeded
2 against and punished for the offence in like manner as if he had himself
3 committed the offence, unless he proves that the act or omission constituting
4 the offence took place without his knowledge consent or connivance.

5 (3) In relation to a body corporate whose affairs are managed by its
6 members, "director" means a member of the body corporate.

Legal proceedings
on trademarks

7 **81.** Where a person is charged with an offence under this Part of this
8 Bill, the Court may, if satisfied that at time of his arrest or charge, he had in his
9 possession, custody or control, goods bearing the alleged infringing mark,
10 order that the goods be delivered up to the proprietor of the registered mark or
11 to such other person as the Court may direct.

12 **82.** Except as otherwise provided, every person who commits an
13 offence under this Part of the Bill is liable, on conviction, and at the discretion
14 of the Court, to a fine of up to N1,000,000 and shall in any case, forfeit every
15 chattel, article, instruction or thing by means of or in relation to which the
16 offence has been committed.

Notice to the
Custom Service

17 **83.**-(1) The proprietor of the trademark in any good may give notice
18 in writing to the Nigerian Customs Service (in this section referred to as "the
19 Department").

20 (a) that he is the bona fide owner of the trademark in the goods: and

21 (b) that he requests the Department during the period specified in the
22 notice, to treat as prohibited good, goods to which this section applies:
23 provided that, the period specified in a notice under this subsection shall not
24 exceed five years and shall not extend beyond the end of the period for which
25 the trademark is to subsist.

26 (2) This section applies to any goods made outside Nigeria, which if it
27 had been made in Nigeria, would be infringing on the trademark.

28 (3) Where a notice has been given under this section in respect of any
29 goods and has not been withdrawn, the importation into Nigeria, at a time
30 before the end of the period specified in the notice, of the goods to which this

1 section applies shall, subject to the provisions of this Bill, be prohibited:
2 provided that where the goods to which the trademark relates have been
3 lawfully placed in the market in any country by or with the consent of the
4 proprietor, a licensee or any other authorized person.

5 (4) Where a notice is given under subsection (1) of this section in
6 respect of any goods, neither the Department nor any member, officer,
7 servant or agent of the Department shall be liable to the proprietor or to any
8 other person for any act or omission by the Department or its servants or
9 agents in relation to the notice: Provided that, where the proprietor has
10 suffered loss as a result of any such act or omission and a fee has been paid or
11 is payable to the Department in respect of the notice, an amount equal to the
12 loss or to the amount of the fee for one year, whichever is less, shall be repaid
13 by the Department to the owner or, if the fee has not been paid, shall be
14 waived.

15 (5) The Minister of Interior may make regulations prescribing the
16 form in which notices are to be given under this section, and requiring a
17 person giving such a notice, either at the time of giving the notice or at the
18 time when the goods in question are imported, or at both of those times, to
19 furnish the Department with such evidence, and to comply with such other
20 conditions as may be specified in the regulations; and any such regulations
21 may include such incidental and supplementary provisions as the Minister
22 of Interior considers expedient for the purposes of this section.

23 (6) Without prejudice to the generality of subsection (5) of this
24 section, regulations made under that subsection may include provision for
25 requiring a person who has given a notice purporting to be a notice under this
26 section to pay such fees in respect of the notice as may be prescribed by the
27 regulations.

28 (7) For the purposes of the Customs and Excise Management Act,
29 any fees paid in pursuance of any regulations made under this section shall
30 be treated as money collected on account of the Department.

1 (8) Notwithstanding anything in the Customs and Excise
2 Management Act, a person shall not be liable to any penalty under that Act
3 (other than forfeiture of the goods) by reason that any goods are treated as
4 prohibited goods by virtue of this section.

5 (9) This section shall have effect as if it formed part of the Customs
6 and Excise Management Act.

7 **84.** There shall be paid to the Officer of the registrar, such fees as are
8 prescribed by regulations made under this Bill.

9 **85.** Any staff of the office of the Registrar who discloses to any other
10 person (not being a member of the Tribunal or an officer of the office
11 authorized to receive such information) any information concerning any
12 document, drawing, photograph, plan, model or any other information
13 whatsoever, which to his knowledge represents or illustrates-

14 (1) any existing or proposed machinery, installation or other
15 structure; or

16 (2) any industrial property right submitted in an application for
17 registration under this Bill, Commits an offence and is liable on conviction to
18 imprisonment for; term of 12 months or to a fine of N500,000 to both such
19 imprisonment and fine.

20 (1) The Registrar shall, from time to time, publish a journal (in this
21 Bill referred to as "the Journal") to be known as the Trademarks Journal.

22 (2) There shall be published in the Journal all matters required by
23 or under this Bill to be so published and all such other matters relating to
24 trademarks as the Registrar thinks fit.

25 **86.**-(1) Where the relations between two or more persons interested in
26 a trademark are such that no one of them is entitled as between himself and the
27 other or others of them to use it except:

28 (a) on behalf of both or all of them; or

29 (b) in relation to an article with which both or all of them are
30 connected in the course of trade, those persons may be registered as joint

1 proprietors of the trademark, and this Bill shall have effect in relation to any
2 rights to the use of the trademark vested in those persons as if those rights
3 had been vested in a single person.

4 (3) Subject to the foregoing subsection, nothing in this Bill shall
5 authorize the registration of two or more persons who use a trademark
6 independently, or propose so to use it, as joint proprietors thereof.

7 **87.**-(1) There shall not be entered in the register, any notice of any
8 trust, whether express, implied or constructive; and no such notice shall be
9 receivable by the Registrar-

Trust-ship of
Trademarks

10 (i) Subject to the provisions of this Bill, equities in respect of a
11 trademark may be enforced in like manner as in respect of any other personal
12 property.

13 Where by this Bill any act has to be done by or to any of person in connection
14 with a trademark or proposed trademark or any procedure relating thereto,
15 the act may, under and in accordance with the Regulations, be done by or to
16 an agent of that person duly authorized in the prescribed manner.

17 PART C:

18 **88.**-(1) Subject to this section, an invention is patentable:

Patentable
Inventions

19 (a) If it is new, involves an inventive step and is capable of
20 industrial application; or

21 (b) if it constitutes an improvement upon a patented invention and
22 also is new, involves an inventive step and is capable of industrial
23 application; or

24 (c) in the case of a computer programme, if it is not of a scientific or
25 mathematical nature and does not contravene the provisions of this Bill.

26 (2) For the purposes of subsection (1) of this section:

27 (a) an invention is new if, it does not form part of the state of the art;

28 (b) an invention results from inventive step if, it does not obviously
29 follow from the state of the art, either as to the method, the application, the
30 combination of methods, or the product which it concerns, or as to the

1 industrial result it produces; and

2 (c) an invention is capable of industrial application if, it can be
3 manufactured or used in any kind of industry.

4 (3) In subsection (2) of this section, "the art" means the art or field of
5 knowledge to which an invention relates and "the state of the art" means
6 everything concerning that art or field of knowledge which has been made
7 available to the public anywhere and at any time whatever (by means of a
8 written or oral description, by use or in any other way) before the date of the
9 filing of the patent application relating to the invention or the foreign priority
10 date validly claimed in respect of the invention.

11 An invention shall not be deemed to have been made available to the public
12 merely by reason of the fact that, within the period of six months preceding the
13 filing of a patent application in respect of the invention, the inventor or his
14 successor in title exhibited it in an official or officially recognized international
15 exhibition.

16 (4) Patents cannot be obtained in respect of:

17 (a) diagnostic, therapeutic and surgical methods for the treatment of
18 humans or animals;

19 (b) plant varieties, animals or plant and animal breeds, or essentially
20 biological processes for the production of plants or animal;

21 (c) inventions, the publication or exploitation of which are contrary to
22 public order or morality, and the protection of human, animal or plant life or
23 health or which are likely to be seriously prejudicial to the environment.

24 (5) Principles and discoveries are not inventions for the purposes of
25 this Bill.

26 (1) Subject to this section, the right to a patent in respect of an
27 invention is vested in the statutory inventor who is the person who, whether or
28 not he is the true inventor, is the first to file, or validly claim a foreign priority
29 for, a patent application in respect of the invention.

30 (2) Where an invention is jointly made by two or more persons, the

1 right to the patent shall belong to all of them jointly.

2 (3) The true inventor is entitled to be named as such in the patent,
3 whether or not he is the statutory inventor, and the entitlement in question is
4 not modifiable by contract.

5 (4) If the essential elements of a patent application have been
6 obtained by the purported applicant from the invention of any other person
7 or from the person's successor in title without the consent of that person or
8 his said successor both to the obtaining of those essential elements and to the
9 filing of the application, all rights in the application and in any patent
10 granted in pursuance of the application shall be deemed to be transferred to
11 that other person or his said successor, as the case may be.

12 (5) Where an invention is made in the course of employment or in
13 the execution of a contract for the performance of specified work, the right to
14 a patent in the invention is vested in the employer or, as the case may be, in
15 the person who commissioned the work.

16 (6) Where the inventor in subsection (5) of this section is an
17 employee, and:

18 (a) his contract of employment does not require him to exercise any
19 inventive activity but he in making the invention used data or means that his
20 employment put at his disposal; or

21 (b) the invention is of exceptional importance, the inventor is
22 entitled to fair remuneration taking into account his salary and the
23 importance of the invention.

24 (7) The entitlement referred to in subsection (6) is not modifiable
25 by contract and may be enforced by civil proceedings.

26 **89.**-(1) There shall be a Registrar of Patents and Designs (in this
27 Bill referred to as "the Patents Registrar") who shall be appointed by the
28 Commission and whose office shall be situated in the Federal Capital
29 Territory, Abuja.

Patents Registrar

30 (2) The Patents Registrar shall, in the exercise of his functions

	1	other than the taking of any decision, which under this Bill is subject to appeal
	2	to the Court, act under the general direction of the Registrar-General.
Patents Registrar	3	There may be appointed one or more Deputy Registrars of Patents and Design
	4	and one or more Assistant Registrars of Patents and Design who shall, subject
	5	to the control of the Registrar-General, have all the powers conferred by this
	6	Bill on the Patents Registrar, and the most senior of whom shall whenever the
	7	Patents Registrar is for any reason unable to perform his duties, act
	8	temporarily, in his stead.
	9	(3) The Patents Registrar shall have an official seal which shall be
	10	officially and judicially noticed.
Register of Patents and Designs	11	90. -(1) There shall be kept the record called the Register of Patents
	12	and Designs in which shall be entered all registered patents and designs with
	13	the names and addresses of their owners, the date on which applications were
	14	made for their registrations, notifications of assignments and transmissions,
	15	the names and addresses of all registered users and such other matter relating to
	16	registered Patent and Design as may be prescribed.
	17	(3) The register shall be kept under the control and management of the
	18	Registrar-General at the Patents Registrar's office.
	19	91. -(1) Every patent application:
	20	(a) shall be made to the Registrar and shall contain:
	21	(a) the applicant's full name and address and, if that address is outside
	22	Nigeria, an address for service in Nigeria,
	23	(b) a description of the relevant invention with any appropriate plan
	24	and drawing,
	25	(c) a claim or claims,
	26	(d) an abstract; and
	27	(e) such other matters as may be prescribed.
	28	(b) shall be accompanied by:
	29	(i) where appropriate, a declaration signed by the true inventor

1 requesting that he be mentioned as such in the patent and giving his name
2 and address, and

3 (ii) if the application is made by an agent, a signed power of
4 attorney but notwithstanding any rule of law, or legislation, certification of
5 the signature of the power of attorney shall not be necessary;

6 (c) shall be subject to the payment of the prescribed application fee.

7 (2) In an application under this section:

8 (a) the description referred to in subsection (1) (a) (ii) of this
9 section shall disclose the relevant invention in a manner sufficiently clear
10 and complete for the invention to be put into effect by a person skilled in the
11 art or field of knowledge to which the invention relates and shall be used for
12 the purposes of interpretation of a claim;

13 (b) the claim referred to in subsection (1)(a)(ii) of this section shall:

14 (i) be clear and concise,

15 (ii) define the protection sought, and

16 (iii) be fully supported by the description but shall not go beyond
17 the limits of the description;

18 (c) The abstract shall not be taken into account for the purpose of
19 interpreting the scope of protection but shall merely be used for the purpose
20 of technical information; and

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

23 (3) An application under this section shall relate to one invention
24 only or to a group of inventions so linked as to form a single general
25 inventive concept and:

26 (a) the applicant may up to the time when the application is in order
27 for grant:

28 (i) amend the application, provided that the amendment does not
29 go beyond the disclosure in the initial application, and

30 (ii) divide the application into two or more applications known as

1 divisional applications, but each divisional application shall not go beyond the
2 disclosure in the initial application;

3 (b) each divisional application is entitled to the initial date and where
4 applicable, the priority date of the initial application, so however that, the fact
5 that a patent has been granted on an requirement of unity of invention under
6 paragraph (a) of this subsection shall not be a ground for the invalidation of the
7 patent.

8 (4) Where the applicant for a patent seeks to be availed of a foreign
9 priority in respect of an earlier application made in a country outside Nigeria:

10 (a) the applicant shall attach to his application under subsection (1) of
11 this section, a written declaration showing:

12 (i) the date and number of the earlier application,

13 (ii) the country in which the earlier application was made, and

14 (iii) the name of the person who made the earlier application; and

15 (b) not more than three months after the making of the application
16 under subsection (1) of this section, the applicant shall furnish the Registrar
17 with a copy of the earlier application certified as correct by the Industrial
18 Property Office or its equivalent in the country where the earlier application
19 was made;

20 (c) the effect of the declaration in paragraph (a) of this subsection
21 shall be as provided in any international convention to which Nigeria is a party.

22 (5) The applicant shall furnish the Registrar-General with: the date
23 and number of any application for a patent filed by the applicant in a country
24 outside Nigeria (in this section referred to as a "foreign application") which
25 relates to the same or is essentially the same invention as that claimed by the
26 application filed with the office of the Registrar- General.

27 (a) the following documents relating to any of the foreign applications
28 referred to in paragraph (a), that is, a copy of:

29 (i) any communication received by the applicant concerning the

1 results of any search or examination carried out in respect of the foreign
2 application,

3 (ii) the patent granted on the basis of the foreign application,

4 (iii) any final decision rejecting the foreign application or refusing
5 the grant requested in the foreign application, and

6 (iv) any final decision invalidating the patent granted on the basis
7 of the foreign application referred to in paragraph (a) of this subsection.

8 **92.**-(1) The Registrar-General shall substantively examine every
9 patent application as to its conformity with section 90(1), (3) and (4) of this
10 Bill.

Application for
Patents and Design

11 (2) Where the provisions in Subsection (1) have not been complied
12 with, the Registrar-General may reject the application and notify the
13 applicant of same.

14 (3) Where the provisions of Section 105(4) of this Bill has not been
15 complied with, the Registrar-General shall disregard any claim of foreign
16 priority.

17 (4) Where the examination mention in subsection (1) of this
18 subsection shows that a patent application satisfied the requirements of
19 Section 105(1) and (3) of this Bill, a patent may be granted to the applicant.

20 (5) Where the examination under this section shows that section
21 105(4) of this Bill has been complied with, the foreign priority claimed shall
22 be mentioned in the patent grant.

23 (6) Patents that are granted may be challenged as to their validity.

24 **93.**-(1) A patent shall be granted by the issue to the patentee of a
25 document containing:

26 (a) the number of the patent in the order of grant;

27 (b) the name and address of the patentee and, if that address is
28 outside Nigeria, an address for service in Nigeria;

29 (c) the dates of the patent application and the grant;

30 (d) if foreign priority is claimed:

1 (i) an indication of that priority, and
2 (ii) the number and date of the application on which the claim is based
3 and the name of the country where it was made;

4 (e) the description of the invention (with any relevant plans and
5 drawings) and the claims; and

6 (f) where appropriate, the name and address of the true inventor.

7 (2) The Registrar shall maintain a Register of Patents which shall
8 consist of duplicates of the documents issued under subsection (1) of this
9 section, together with such further matter as is required by this Bill to be
10 registered.

11 (3) As soon as may be after a patent has been granted under subsection
12 (1) of this section, the Registrar-General shall cause to be published:

13 (a) a notification of the grant containing the details mentioned in
14 paragraphs a) to (f) of that subsection (except the description and the plans and
15 drawings, if any); or

16 (b) if a summary form of notification is prescribed, a notification in
17 that form.

18 (4) when the registrar grants a patent under this Act, the Registrar
19 shall make available a copy of the patent to any member of the public on the
20 payment by that person of the prescribed fee.

Right to preclude

21 **93.**-(1) A patent confers upon the patentee the right to preclude any
22 other person from doing any of the following acts

23 (a) where the patent has been granted in respect of a product, the act of
24 making, importing, selling or using the product, or stocking it for the purpose
25 of sale or use; and

26 (b) where the patent has been granted in respect of a process, the act of
27 applying the process or doing, in respect of a product obtained directly by
28 means of the process, any of the acts mentioned in paragraph (a) of this
29 subsection.

30 (2) The scope of the protection conferred by a patent shall be

1 determined by the terms of the claims; and the description (and the plans and
2 drawings, if any) included in the patent shall be used to interpret the claims.

3 (3) The rights under a patent shall not extend to:

4 (a) an act done privately and on a non-commercial scale;

5 (b) the use of the invention for a scientific research, including
6 experimentation on the invention to test the invention or improve it;

7 (c) the use of the invention for teaching purposes;

8 (d) the preparation of medicines under individual prescription; or

9 (e) any act including testing, making or any other act solely for
10 purposes reasonably related to the development, submission of information
11 required under any law in Nigeria that regulates the manufacture,
12 construction and use of any product;

13 (f) an act done in respect of a product covered by the patent after the
14 product has been lawfully sold in any country; and

15 (g) the use of articles on an aircraft, a land vehicle or vessel of any
16 other country which temporarily or accidentally enters the airspace, territory
17 or waters of Nigeria.

18 (2) Where, at the date of the filing of a patent application in respect
19 of a product or process or at the date of a foreign priority validly claimed in
20 respect of the application, a person other than the applicant:

21 (3) Where, at the date of the filing of a patent application in respect
22 of a product or process or at the date of a foreign priority validly claimed in
23 respect of the application, a person other than the applicant:

24 (a) was conducting an undertaking in Nigeria; and

25 (b) in good faith and for the purposes of the undertaking, was
26 manufacturing the product or applying the process or had made serious
27 preparations with a view to doing so, then, notwithstanding the grant of a
28 patent, there shall exist a right (exercisable by the person for the time being
29 conducting the undertaking, and not otherwise) to continue the manufacture
30 or application, or to continue and complete the preparations and thereafter,

1 undertake the manufacture or application, as the case may be, and in respect of
2 any resulting products, to do any other act mentioned in subsection (1) of this
3 section.

Register of Patents
and Designs

4 **94.**-(1) Where it is required that an undisclosed test or data, the
5 origination of which involves a considerable effort, be submitted as a condition
6 of approving the marketing of pharmaceutical or agricultural chemical
7 products which utilize new chemical entities, the data shall be protected
8 against unfair commercial use.

9 (2) The data required under subsection (1) of this section shall be
10 protected against disclosure except:

11 (a) where it is necessary to protect the public; or

12 (b) steps are taken to ensure that the data is protected against unfair
13 commercial use.

Expiry Date

14 **95.**-(1) Subject to this Bill, a patent shall expire at the end of the
15 twentieth year from the date of the filing of the relevant patent application.

16 (2). A patent shall lapse, if the prescribed annual fees are not duly
17 paid in respect of it: provided that:

18 (a) a period of grace of six months shall be allowed for the payment of
19 the fees; and

20 (b) if the fees and any prescribed surcharge are paid within that
21 period, the patent shall continue as if the fees had been duly paid.

22 (3) The expiration or lapse of a patent shall be registered and notified.

Surrender of a
patent

23 **96.**-(1) Subject to subsection (2) of this section, the patentee may
24 surrender a patent by written declaration addressed to the Registrar-General.

25 (2) The surrender of a patent:

26 (a) may relate to all or any of the claims made by the patent;

27 (b) subject to paragraph (d) of this subsection, shall be registered and
28 notified;

29 (c) shall not be effective until it has been registered; and

30 (d) if it relates to a patent as to which a contractual license or license of

1 right is registered, shall be registered only if it is accompanied by the written
2 consent of the licensee.

3 **97.**-(1) Subject to this section, on the application of any person
4 (including a public officer acting in the exercise of his functions) the Court
5 shall declare a patent null and void:

Declaration of a
patent by Court
null and void

6 (a) if the subject of the patent is not patentable under section 1 of
7 this Bill; or

8 (a) if the description of the invention or the claim does not conform
9 with section 90(2) of this Bill; or

10 (b) if for the same invention a patent has been granted in Nigeria as
11 the result of a prior application or an application benefiting from an earlier
12 foreign priority.

13 (2) Subsection (1) of this section may apply to the whole of a patent
14 or to any particular claim or claims made by it.

15 (3) For the purpose of disposing of an application under subsection
16 (1) of this Section the Court on the motion of the applicant or of its own
17 motion may require the patentee of the relevant patent to produce in
18 evidence any of the following:

19 (a) a list of any publications or earlier patents referred to in
20 connection with a patent application made in respect of the same invention
21 by the patentee to the appropriate authority in any' country outside Nigeria;

22 (b) any proceedings relating to the patent application in question or
23 any patent granted in pursuance of it; and

24 (c) any publications or patents mentioned in any report sent to the
25 patentee by a governmental or inter-governmental research or investigation
26 institute.

27 (4) Where a declaration is made under subsection (1) of this
28 section:

29 (a) The patent in question shall be deemed to have been null and
30 void since the date of its grant, so however that, it shall not be necessary to

1 repay royalties paid by any licensee, unless, the Court so orders, and

2 (b) The proper officer of the Court shall inform the Registrar General,
3 who shall register and publish the declaration.

4 (5) The Court:

5 (a) Shall not make a declaration under subsection (1) of this section
6 without first giving the patentee an opportunity to be heard;

7 (b) In applying subsection (1) of this section, shall have regard only to
8 the state of affairs existing when the proceedings were instituted; and

9 (c) Shall dismiss an application under subsection (1) of this section if,
10 the applicant (not being a public officer) fails to satisfy the Court that he has a
11 material interest in making the application.

Intervention
of the Courts

12 **98.**-(1) Subject to this section, if a patentee (not being precluded by
13 the terms of any previously registered license from granting a further license)
14 applies in writing to the Registrar-General for the words "licenses of right" to
15 be registered in respect of his patent, the Registrar-General shall enter the
16 words accordingly in the Patents Register and notify the entry.

17 (2) Where an entry is made under subsection (1) of this section in
18 respect of a patent:

19 (a) any person shall have the right to obtain a license to exploit the
20 patent on such terms as, failing agreement between that person and the
21 patentee, shall be fixed by the Court on the application of that person; and

22 (b) the amount of the annual fees payable in respect of the patent shall
23 be reduced by half, the reduction first taking effect in relation to the annual fees
24 first payable after the date of the entry.

25 (3) A patentee may, at any time, apply to the Registrar-General for an
26 entry under subsection (1) of this section to be cancelled; and, if no licenses
27 have been granted under this section or all the grantees agree, the Registrar
28 shall thereupon cancel the entry and notify the cancellation, but only after
29 payment of all annual or other fees which would have been payable if the entry
30 had never been made.s

1 (4) The grantee of a license under this section shall not be entitled
2 to assign the license or grant further licenses under it.

Layout design
licenses

3 (5) Subsections (1)(b), (2)(a), (3) and (6) of section 158 of this Bill
4 shall apply in relation to licenses granted under this section as they apply to
5 licenses and contracts under section 158 of this Bill.

6 **99.** The provision of the First and Second Schedules to this Bill
7 shall have effect in relation to compulsory licenses and the use of patents for
8 the service of government agencies.

9 **100.**-(1) A layout - design is original if it is the result of its creator's
10 own intellectual effort and is not common place among creators of layout-
11 designs and manufacturers of integrated circuits at the time of its creation.

12 (2) A layout - design which consists of a combination that is
13 common place shall be protected only if the combination, taken as a whole,
14 is original within the meaning of subsection (1) of this section.

15 **101.**-(1) The right to a layout-design protection:

16 (a) belongs to the creator of the layout-design and may be assigned
17 or transferred by succession;

18 (b) where two or more persons jointly created the layout-design,
19 belongs to them jointly.

20 (2) Where a layout-design was created in execution of a
21 commission or an employment contract, the right to the layout-design
22 protection belongs, in the absence of any contractual provision to the
23 contrary, to the person who commissioned the work or to the employer.

24 **108.**-(1) A protection under this Bill does not depend upon whether
25 or not the integrated circuit which incorporates the protected layout design is
26 self- incorporated in an article.

27 (2) Subject to subsection (3) of this section, and to section 134, the
28 effect of the protection makes the following acts unlawful if performed
29 without the authorization of the right holder:

30 (a) reproducing, whether by incorporation in an integrated circuit

1 or otherwise, the protected layout-design in its entirety or any part of it, except
2 the act of reproducing any part that does not comply with the requirement of
3 originality referred to in section 119 of this Bill;

4 (b) importing, selling or otherwise distributing for commercial
5 purposes the protected layout-design, is incorporated or an article
6 incorporating such an integrated circuit in so far as it continues to contain an
7 unlawfully reproduced layout-design.

8 (3) The effect of the protection of a layout-design under this Bill shall
9 not extend to:

10 (a) the reproduction of the protected layout-design for private
11 purposes or for the sole purpose of evaluation, analysis, research or teaching;

12 (b) the incorporation in an integrated circuit of a layout- design
13 created on the basis of such analysis or evaluation and which is itself original in
14 the meaning of section 119 of this Bill or the performance of any of the acts
15 referred to in subsection (1) of this section in respect of that layout-design;

16 (c) the performance of any of the acts referred to in subsection (2) (b)
17 of this section, where the act is performed in respect of a protected layout-
18 design, or in respect of an integrated circuit in which the layout-design is
19 incorporated, that has been put on the market by, or with the consent of the right
20 holder;

21 (d) the performance of any of the acts referred to in subsection (2) (b)
22 of this section in respect of an integrated circuit incorporating an unlawfully
23 reproduced layout-design or any article incorporating such an integrated
24 circuit, where the person performing or ordering such an act did not know and
25 had no reasonable ground to know when acquiring the integrated circuit or the
26 article incorporating such an integrated circuit, that it incorporated an
27 unlawfully reproduced layout-design, but after the person receives sufficient
28 notice that the layout-design was unlawfully reproduced, he may perform any
29 of the said acts, only with respect to the stock on hand or ordered before that
30 time and shall be liable to pay to the right holder, a sum equivalent to a

1 reasonable royalty as is payable under a freely negotiated license, in respect
2 of the layout-design; or the performance of any of the acts referred to in
3 subsection (1) (b) of this section, where the act is performed in respect of an
4 identical layout-design which is original and has been created independently,
5 by a third party.

6 **109.**-(1) The protection of a layout-design under this Bill shall
7 commence:

8 (a) on the date of the first commercial exploitation anywhere in the
9 world, of the layout-design by or with the consent of the right holder,
10 provided an application for protection is filed, by the right holder, the
11 Registrar-General's office within the limit referred to in section 135 (3) of
12 this Bill, or;

13 (b) on the filing date accorded to the application for the registration
14 of the layout- design filed by the right holder, if the layout-design had not
15 been previously exploited commercially, anywhere in the world.

16 (2) The protection of a layout-design under this Bill shall terminate
17 at the end of the tenth calendar year after the date of commencement of the
18 protection.

19 **110.**-(1) An application for the registration of a layout-design shall
20 be in writing and shall be filed with the Registrar-General's office.

21 (2) A separate application shall be filed for each layout-design.

22 (3) The application shall:

23 (a) contain a request registration of the layout-design in the
24 Register of Layout-Designs and a brief and precise designation of the
25 layout-design;

26 (b) indicate the name, address, nationality and, if different from the
27 address, the habitual residence of the applicant;

28 (c) be accompanied by the power of attorney appointing the
29 representative of the applicant, if any, and by a copy of the drawing of the
30 layout-design along with information defining the electronic function which

1 the integrated circuit is intended to perform; but the application may omit such
2 parts of the copy or drawing that relate to the manner of manufacture of the
3 integrated circuit, provided that, the parts submitted are sufficient to allow the
4 identification of the layout-design;

5 (d) specify the date of first commercial exploitation of the layout-
6 design anywhere in the world or indicate that the exploitation has not
7 commenced; and

8 (e) provide particulars establishing the right to protection under
9 section 120 of this Bill.

10 (4) Where the application does not duly comply with the requirements
11 of subsection (2) of this section, the Registrar shall notify the applicant of the
12 defects and invite him to correct them within two months, and if the defects
13 are corrected within the time limit, the Registrar shall accord as the filing date,
14 the date of receipt the application contained an express or implicit indication
15 that the registration of a layout-design is requested and indications allowing the
16 identity of the applicant to be established, accompanied by a copy or drawing
17 of the layout-design.

18 (5) Where the requirements in subsection (4) of this section were not
19 complied with at the date of receipt of the application but are corrected within
20 the time limit, the date of the receipt of the required correction shall be deemed
21 to be the filing date of the application and the Registrar shall confirm the filing
22 date and communicate it to the applicant, but if the defects are not corrected
23 within the time limit, the application shall be deemed not to have been filed.
24 Each application for protection of a layout-design shall be subject to the
25 payment of the prescribed fees, but, if the fee is not paid, the Registrar-
26 General's office shall notify the applicant that the application is deemed not to
27 have been filed, unless, payment is made within two months from the date of
28 the notification and if the application fee is not paid within that time limit, the
29 application shall be deemed not to have been filed.

30 **111.**-(1) The Registrar's office shall maintain a Register (in this Bill

1 referred to as the "Register of Layout-Designs") in which the office shall, for
2 each protected layout-design, effect all the recordings provided for in this
3 Bill.

4 (2) Where an application complies with the requirements of section
5 123 of this Bill, the Registrar shall register the layout-design in the Register
6 of Layout-Designs without examination of the originality of the layout-
7 design, the applicant's entitlement to protect or the correctness of the facts
8 stated in the application.

9 (3) The Register of Layout-Designs shall contain the number, title,
10 filing date and, where indicated in the application under section 123(2)(d) of
11 this Bill, the date of the world, of the layout-design as well as the name and
12 address of the right holder and other prescribed particulars.

13 (4) Any person may consult the Register of Layout-Designs and
14 obtain extracts from the Register, subject to the payment of the prescribed
15 fee.

16 (5) The registration of a layout-design shall be published in the
17 Industrial Property Gazette;

18 (1) Where the essential content of an application for a layout-
19 design has been taken from the layout-design of another, the person may, in
20 writing, request the Registrar-General to transfer the application to him and
21 where the application has already resulted in a registration, that person may,
22 within three years from the publication of the registration, in writing, request
23 the Registrar-General to transfer the registration to him and rectify the entry
24 in the Register accordingly.

25 (2) The Registrar-General shall on receipt of a request under
26 subsection (1) of this section, send immediately a copy of the request to the
27 right holder, and, within the prescribed period and in the prescribed manner,
28 the right holder may send to the Registrar a counter statement of the grounds
29 on which the right holder relies.

30 (3) If the right holders sends a counter-statement, the Registrar

1 shall furnish a copy of the counter-statement to the person requesting the
2 transfer, and after hearing the parties if either or both parties wish to be heard,
3 consider the merits of the case, and decide whether to transfer the application or
4 registration and, where applicable, whether to rectify the register.

5 **112.**-(1) Any change in the ownership of a protected layout-design
6 shall in writing and once the layout-design has been registered, the change in
7 ownership shall, at the request of any interested party made to the Registrar-
8 General's office, be recorded and published by the Registrar-General but the
9 change shall have no effect against third parties until the recording is effected.

10 (2) Any license contract concerning a layout-design shall, upon
11 registration of the layout-design be submitted to the Registrar's office which
12 office shall keep its content confidential but shall publish a reference to the
13 license contract which license contract has no effect against third parties until
14 the submission is made.

15 **113.**-(1) Any interested person may request that the registration of a
16 layout-design be cancelled on the grounds that:

17 (a) the layout-design is not protectable under sections 119 and 135 of
18 this Bill; or

19 (b) the right holder is not entitled to protection under section 120 of
20 this Bill; or

21 (c) where the layout-design has been commercially exploited
22 anywhere in the world, before the filing of the application for registration of the
23 layout-design, the said application was not filed within the time limit referred
24 to in sections 122(1) and 135(3) of this Bill).

25 (2) Where the grounds for cancellation are established with respect to
26 a part only of a layout-design, only the corresponding part of the registration
27 shall be cancelled.

28 (3) A request for the cancellation of the registration of a layout-design
29 under subsections (1) and (2) of this section shall be filed with the Registrar-

1 General or the Court in writing and the request shall state the grounds on
2 which it is based.

3 (4) Any cancelled layout-design registration or part of the
4 cancelled layout-design shall be regarded as null and void from the date of
5 commencement of the protection.

6 (5) The final decision of the Registrar-General or the Court shall be
7 notified to the Registrar who shall record it and publish a reference to the
8 decision as soon as possible.

9 **114.** Where an applicant's ordinary residence or principal place of
10 Business is outside Nigeria he shall be represented by an agent resident in
11 Nigeria.

12 **115.-(1)** An infringement under this Bill consists of the
13 performance of any act which is unlawful under section 121 of this Bill.

14 (2) On the request of the right holder or of his licensee, if the latter
15 has requested the right holder to institute Court proceedings for a specific
16 relief and the right holder has refused or failed to do so within reasonable
17 period, the Court may grant an injunction to prevent infringement or an
18 imminent infringement, award damages and grant any other remedy
19 provided for under the law.

Litigation under
layout-design
Licenses

20 (3) An action under subsection (2) of this section may be initiated
21 only after a application for registration of the layout-design has been filed
22 with the Registrar's office.

23 **116.-(1)** A person who, without authorization knowingly performs
24 any act which is unlawful under section 120 of this Bill commits an offence
25 under this Bill and is liable, on conviction to a fine of up to N500,000 or
26 treble damages at the discretion of the Court.

27 (2) The Court may also order the seizure, forfeiture or destruction
28 of the layout designs, integrated circuits or articles concerned or any
29 materials or implements the predominant use of which has been in the
30 commission of the offence.

Layout-design
and Minister's
decision

1 117.-(1) Where:

2 (a) the public interest in particular, national security, nutrition, health
3 or th development of other vital sectors of the national economy requires the
4 exploitation of a protected layout-design for public non-commercial use; or

5 (b) a judicial or an administrative body has determined that the
6 manner of exploitation of a protected layout-design, by the right holder or his
7 licensee, is anti-competitive, and the Minister is satisfied that the exploitation
8 of the layout-design in accordance with this section may remedy such practice,
9 the Minister may decide that, even without the authorization of the right holder,
10 a Government agency or a third person designated by the Minister may exploit
11 the layout-design.

12 (2) The exploitation of a layout-design shall be:

13 (a) limited, in scope and duration, for the purpose for which it was
14 authorize and be predominantly for the supply of the domestic market and non-
15 exclusive;

16 (b) subject to the payment to the right holder of an adequate
17 remuneration for the exploitation, taking into account the economic value of
18 the Minister's authorization, as determined in the Minister's decision and,
19 where applicable, the need to correct anti-competitive practices.

20 (3) Upon the request of the right holder or of the beneficiary of the
21 authorization, the Minister may, after hearing the parties, if either or both wish
22 to be heard, vary the terms of the decision authorizing the exploitation of the
23 layout-design to the extent that changed circumstances justify the variation.

24 (4) Upon the request of the right holder, the Minister shall terminate
25 the non- voluntary license if he is satisfied that the circumstances which led to
26 his decision have ceased to exist and are unlikely to recur or that the beneficiary
27 of the authorization has failed to comply with the terms of the authorization.

28 (5) Notwithstanding subsection (4) of this section, the Minister shall
29 not terminate an authorization, if he is satisfied that the adequate protection of
30 the legitimate interests of the beneficiary of the authorization justifies the

1 maintenance of the authorization, the enterprise or business of the
2 beneficiary of the authorization or with the part of the enterprise or business
3 within which the layout-design is being exploited.

4 (6) A request for the Minister's authorization shall be accompanied
5 by evidence that the right holder has received, from the person seeking the
6 authorization, a request for a contractual license, but that the person has been
7 unable to obtain the license on reasonable commercial terms and conditions
8 and within a reasonable time.

9 (7) A decision of the Minister under this section may be the subject
10 of an appeal before the Court;

11 (1) The Registrar shall give a party to any proceedings before him
12 an opportunity of being heard before exercising any discretionary power
13 vested in the Registrar by this Bill, adversely against the party.

14 (2) If the Registrar is satisfied that the circumstances justify it, he
15 may, upon receiving a written request, extend the time for doing any act or
16 taking any proceedings under this Bill, upon notice to the parties concerned
17 and upon such terms as he may direct.

18 (3) An extension under subsection (2) of this section, may be
19 granted notwithstanding that the time for doing the act or taking the
20 proceedings has expired but the time for filing an application referred to in
21 section 135(3) may not be extended.

22 **118.** The provisions of any international treaties in respect of
23 industrial property to which Nigeria is a party shall apply to matters dealt
24 with by this Bill.

25 **119.**-(1) The Minister may by regulations, prescribe details for the
26 implementation of this Part of this Bill and the regulations
27 may in particular, provide for the payment of fees in
28 connection with applications for the registration of layout-designs of an
29 integrated circuit and matters related to it.

30 (2) The Registrar may issue administrative instructions relating to

1 the procedures under this Bill, the Regulations made under the Bill and to the
2 other functions of his office.

3 **120.**-(1) For the purposes of this Part of this Bill:

4 "integrated circuit" means a product, in its final form or an intermediate form,
5 in which the elements, at least one of which is an active element, and some or
6 all of the interconnections are integrally formed in a piece of material and
7 which is intended to perform an electronic function;

8 "layout-design" is synonymous with 'topography' and means the three-
9 dimensional disposition, however expressed, of the elements, at least one of
10 which is an active element, and of some or all of the interconnects of an
11 integrated circuit, or such a three-dimensional disposition prepared for an
12 integrated circuit intended for manufacture;

13 "right holder" means the natural person who, or the legal entity which, is to be
14 regarded as the beneficiary of protection referred to in section 121 of this Bill.

15 (2) A protection under this Bill may be obtained for layout-designs of
16 integrated circuits if, and to the extent that, they are original within the meaning
17 of section 119 of this Bill..

18 (3) A registration may only be applied for if, the layout-design has not
19 yet been commercially exploited anywhere in the world, for more than two
20 years prior to the coming into force of this Bill.

21 (4) A protection under this Bill shall not be available for layout-
22 designs which have been commercially exploited anywhere in the world, for
23 more than two years prior to the coming into force of this Bill.

24 **121.** A utility model certificate may be granted in respect of an
25 invention in accordance with the provisions of sections 137 to 138 of this Bill.

Invention
Certificate

26 **122.** An invention is eligible for a utility model certificate if it is new
27 and industrially applicable.

28 **123.**-(1) Subject to the provisions of this Bill, the provisions of Part II
29 of this Bill shall apply, mutatis mutandis, to utility model certificates or
30 applications therefore as if they were patents.

1 (2) Section 1 of this Bill shall not apply in the case of inventions
2 for which model certificates are requested and accordingly:

3 (a) in the examination of an application for utility model certificate
4 it shall not be necessary to consider whether the invention is patentable
5 under section 1 of this Bill; and

6 (b) the grounds of opposition shall not include absence of an
7 inventive step as required by paragraph (b) of sub-section (1) of section 116
8 of this Bill.

9 (3) A utility model certificate shall not be revoked or invalidated
10 under sections 116 and 155 of this Bill respectively, on the ground that the
11 invention on which it is based lacks an inventive step.

12 (4) Where:

13 (a) the right to a patent conflicts with the right to a utility model
14 certificate in the case referred to in subsection (2) of section 2; or

15 (b) a patent and a utility model certificate are interdependent within
16 the meaning of paragraphs 2 and 3 of Part 1 in the First Schedule to this Bill;
17 the said provisions shall apply as if the word "patent" wherever it occurs,
18 were replaced by the words "patent or utility model certificate"

19 **124.**-(1) The term of the utility model certificate shall expire at the
20 end of seven years from the date of filing of the application and, accordingly,
21 subsection 1 shall not apply to a utility model certificate.

22 (2) A utility model certificate shall not lapse merely on the ground
23 of non- working.

24 **125.**-(1) At any time before the grant of a utility model certificate or
25 a notification of rejection of the application, an applicant for a utility model
26 certificate may, upon payment of a prescribed fee, convert his application to
27 a patent application, which shall be accorded the filing date of the initial
28 application.

29 (2) A converted application under subsection (1) of this section
30 shall not be reconverted.

1 **126.** Any person who imitates or counterfeits an invention knowing or
2 having reason to believe that a utility model certificate has been issued in
3 respect of it under this Part of this Bill or knowingly sells, exhibits or imports
4 with intent to sell any counterfeit or imitated article in respect of which a
5 certificate has been granted under this Part of this Bill commits an offence, and
6 liable on conviction to imprisonment for a term not exceeding one year or to a
7 fine not exceeding N500,000.00 or to both.

8 **127.** Any person who without the consent of the owner of a utility
9 model certificate:

10 (a) makes for sale or hire; or

11 (b) imports into Nigeria; or

12 (c) in the course of business:

13 (i) sells or lets for hire, or

14 (ii) offers or exposes for sale or hire, or

15 (iii) stocks for the purpose of sale or hire, or

16 (iv) exhibits in public, or

17 (v) distributes, any article which is and which he knows or has reason
18 to believe is protected by a grant of utility model certificate under this Part
19 commits an offence and is liable, on conviction to a fine, at the discretion of the
20 Court, of up to N1,000,000 or treble damages, whichever is greater.

21 **128.**-(1) For the purposes of this Bill, any composition of lines or
22 colours or any three dimensional form, whether or not associated with lines or
23 colours is deemed to be an industrial design, provided that the composition or
24 form gives a special appearance to a product of industry or handcraft.

25 (2) Where application is made for the registration of an industrial
26 design, the design shall be presumed to be new at the filing time, except, in so
27 far as the following provisions of this section provide otherwise.

28 A protection under this Bill does not extend to anything in an industrial design
29 which serves solely to obtain a technical result and to the extent that the
30 protection leaves no freedom as regards arbitrary features of appearance.

1 **129.**-(1) Subject to this section, an industrial design is registrable
2 if:

3 (a) it is new; and

4 (b) it is not contrary to public order or morality.

5 (2) An industrial design is not new if, before the filing date of
6 application for registration, it has been made available to the public
7 anywhere and at any time by means of description, use or in any other way,
8 unless it is shown to the satisfaction of the Registrar that, the creator of the
9 design could not have known that it had been made so available.

An Industrial
Design

10 (3) An industrial design shall not be deemed to have been made
11 available to the public solely by reason of the fact that within the period of
12 six months preceding the filing of the application for registration, the creator
13 has exhibited it in an official or officially recognized exhibition.

14 (4) An industrial design is not new merely because it differs in
15 minor or inessential ways from an earlier design or concerns a type of
16 product, other than the type with which an earlier design is concerned.

17 **130.**-(1) Subject to this section, the right to registration of an
18 industrial design shall be vested in the statutory creator, that is, the person
19 who, whether or not he is the true creator, is the first to file, or validly claim a
20 foreign priority for, and made application for registration of the design.

21 (2) The true creator shall be entitled to be named as such in the
22 Register, and the entitlement in question shall not be modifiable by contract.

23 (3) if the essential elements of an application for the registration of
24 an industrial design have been obtained by the purported applicant from the
25 creation of another person without the consent of that other person, both to
26 the obtaining of those essential elements and to the filing of the application,
27 all rights in the application and in any consequent registration shall be
28 deemed to be transferred to that other person.

29 Where an industrial design is created in the course of employment or in the
30 execution of a contract for the performance of specified work, the ownership

1 of the design shall be vested in the employer or as the case may be, in the person
2 who commissioned the work.

3 (4) Where the creator of an industrial design is an employee, then, if
4 his contract of employment does not require him to exercise any creative
5 activity, but he has in creating the design, used data or means that his
6 employment has put at his disposal:

7 (a) he shall be entitled to fair remuneration, taking into account his
8 salary and the importance of the design which he has created; and

9 (b) the entitlement in question is not modifiable by contract and may
10 be enforced by civil proceedings.

Application for
an Industrial
Design

11 **131.**-(1) An application for the registration of an industrial design
12 shall be made to the Registrar of Patents and Designs, and:

13 (a) shall contain:

14 (i) a request for registration of the design,

15 (ii) the applicant's full name and address and, if that address is outside
16 Nigeria, an address for service in Nigeria,

17 (iii) a specimen of the design or a photographic or graphic
18 representation of the design, an indication of the kind of product (or, where a
19 classification has been prescribed, the class of product) for which the design
20 will be used, and

21 (2) such other matter as may be prescribed, and

22 (i) shall be accompanied by: where the applicant is not the creator, the
23 request shall applicant's right to the registration of the industrial design and
24 where appropriate, a declaration signed by the true creator requesting that he be
25 named as such in the Register and giving his name and address, and

26 (ii) if the application is made by an agent, a signed power of attorney
27 (so however that, notwithstanding an) rule of law, legalization or certification
28 of the signature of the power of attorney shall be unnecessary).

29 (c) he shall be subject to the payment of the prescribed fee.

30 (3) Where an applicant for the registration of an industrial design

1 seeks to avail himself of a foreign priority in respect of an earlier application
2 made in a country outside Nigeria:

3 (a) He shall append to his application under subsection (1) of this
4 section a written declaration showing:

5 (i) the date and number of the earlier application,

6 (ii) the country in which the earlier application was made, and

7 (iii) the name of the person who made the earlier application; and

8 (b) not more than three months after the making of the application
9 under subsection (1) of this section, he shall furnish the Registrar-General
10 with a copy of the earlier application certified correct by the Industrial
11 Property Office (or its equivalent) in the country where the earlier
12 application was made;

13 (c) a declaration made by him under paragraph (a) of this
14 subsection shall have effect as provided for in any international Convention
15 to which Nigeria is a party.

16 (4) At the time of filing an application, the application may contain
17 a request that the publication of the industrial design upon registration, be
18 deferred for a period not exceeding twelve months from the date of filing or,
19 if priority is claimed, from the date of priority of the application.

20 **132.-(1)** The Registrar-General shall:

21 (a) accord as the filing date, the date of receipt of the application,
22 provided that, at the time of receipt, the application contains indications
23 allowing the identity of the applicant to be established and the required
24 graphic representations of the article that embodies the industrial design;

25 (b) if he finds that the application did not, at the time of receipt,
26 fulfill the requirements referred to in paragraph (a) of this subsection, invite
27 the applicant to file the required correction and accord as the filing date, the
28 date of receipt of the required correction, but if no correction is made, the
29 application shall be treated as abandoned.

30 (2) The Registrar shall examine every application for registration

1 of an industrial design as to its conformity with sections 144 (1)(b) and 146 of
2 this Bill, and:

3 (a) if the application fails in any respect to conform with section
4 144(1) (b) or 146 (1) or (2) of this Bill, the Registrar shall reject the application;
5 and

6 (b) if the application fails in any respect to conform with section 146
7 (3) of this Bill, the Registrar shall disregard any claim for foreign priority.

8 (3) Where the substantive examination mentioned in subsection (1) of
9 this section shows that an application for the registration of an industrial design
10 satisfies the requirements of sections 144(1)(b) and 146 of this Bill the design
11 shall be registered in accordance with the application and, where the said
12 examination shows that section 146(3) of this Bill has been complied with
13 regarding a claim for foreign priority, the foreign priority claimed shall be
14 recorded in the Register.

15 (1) An industrial design shall be registered by the issue to the
16 applicant of a registration certificate containing:

17 (a) the number of the design in order of registration;

18 (b) the name and address of the registered owner and if that address is
19 outside Nigeria, an address for service in Nigeria;

20 (c) the date of the application and of the issue of the registration
21 certificate;

22 (d) if foreign priority is claimed:

23 (i) an indication of the fact, and

24 (e) a reproduction or representation of the design and an indication of
25 the kind (or, where a classification has been prescribed, the class) of products
26 for which it will be used; and

27 (f) where appropriate, the name and address of the true creator.

28 (2) The Registrar-General shall maintain a Register of Industrial
29 designs which shall consist of duplicates of the registration certificates issued
30 under subsection (1) of this section, together with such further matter as is

1 required by this Bill to be registered.

2 (3) Within a reasonable time after a design has been registered
3 under Subsection (1) of this section, the Registrar shall cause to be
4 published:

5 (a) a notification of the registration containing the details
6 mentioned in paragraphs (a) to (f) to that subsection; or

7 (b) if a summary form of notification is prescribed, a notification in
8 that form.

9 **133.-(1)** An applicant for the registration of an industrial design
10 may ask for the design to not be published for a, specified period not
11 exceeding twelve months from the date of the application; and, where he
12 does so, then, notwithstanding any other provision of this Bill:

13 (a) the specimen and other matters mentioned in section 146(1) (a)
14 (iii) and (iv) of this Bill shall be kept in a sealed package, which shall be
15 opened by the Registrar:

16 (i) when the specified period as elapsed, or

17 (ii) if, before the specified period has elapsed, the applicant asks for
18 the application to be converted into an open application, or

19 (iii) if the package is still sealed, at the expiration of twelve months
20 after the date of the application,

21 (b) a provisional registration certificate shall be issued and a
22 provisional notification published under section 148 of this Bill, each of
23 which shall exclude the reproduction and other matters mentioned in section
24 148(1)(e) of this Bill;

25 (c) the institution of legal proceedings on the basis of a registered
26 industrial design during the period of deferment of publication shall be,
27 subject to the condition, that the information contained in the Register and in
28 the file relating to the application has been communicated to the person
29 against whom the action is brought;

30 (d) when the sealed package has been opened pursuant to

1 paragraph (a) of this subsection, the Register shall proceed in accordance with
2 sections 147 and 148 of this Bill in so far as he has not already done so and, if
3 authorized by those sections, shall issue a revised registration certificate and
4 publish a revised notification which shall have the same effect as any other
5 certificate issued or notification published under section 148 of this Bill.

6 (2) Notwithstanding subsection (1) of this section, a sealed package
7 may be opened by the Registrar-General at any time on the direction of a Court
8 and shall be resealed when the Court no longer requires it:

9 Provided that, if the time at which the package may be opened under
10 subsection (1)(a) of this section arrives before the Court has ceased to require
11 it, the package shall be deemed to have been duly opened at that time and shall
12 not be resealed.

13 **134.**-(1) Registration of an industrial design confers upon registered
14 owner the right to preclude any other person from doing any of the following
15 acts:

16 (a) reproducing the design in the manufacture of a product;

17 (b) importing, selling or utilizing for commercial purposes a product
18 reproducing the design; and

19 (c) holding such a product for the purpose of selling it or of utilizing it
20 for commercial purposes.

21 (2) The reproduction of a registered industrial design is not lawful for
22 the purposes of sub-section (1) of this section, merely because it is an
23 application of an earlier design to an article other than an article to which the
24 earlier design was applied.

25 (3) The rights conferred by this section:

26 (a) shall extend only to acts done for commercial or industrial
27 purposes; and

28 (b) shall not extend to acts done in respect of a product incorporating a
29 registered industrial design after the product has been lawfully sold in any
30 country.

1 **135.**-(1) Subject to this Act, registration of an industrial design:

2 (a) shall be effective in the first instance for five years from the date
3 of the application for registration; and (i) on payment of the prescribed fee
4 may be renewed for two further consecutive periods of five periods of five
5 years.

6 (2) The fee mentioned in subsection (1) (b) of this section shall be
7 paid within the twelve months immediately preceding the renewal period to
8 which it relates: provided that:

9 (a) a period of grace of six months after the beginning (the renewal
10 period shall be allowed for the payment of the fee; and

11 (b) if the fee and any prescribed surcharge are paid within that
12 period, this subsections shall be deemed to have been complied with.

13 (3) The fact that the registration of an industrial design has ceased
14 to be effective or has been renewed shall be registered and the Registrar-
15 General shall provide notice of such to the registered owner of the design.

16 **136.**-(1) Subject to subsection (2) of this section, the registered
17 owner of an industrial design may renounce the registration by a written
18 declaration addressed to the Registrar-General.

19 (2) A renunciation under subsection (1) of this section:

20 (a) may be limited -

21 (i) to any particular kind or kinds of product, or

22 (ii) if a classification of products has been prescribed, to any
23 particular class of classes of product, or

24 (iii) if the application for registration comprised several designs, to
25 anyone or more of those designs;

26 (b) subject to paragraph (d) of this subsection, shall be registered
27 and notified;

28 (c) shall not be effective until it has been registered; and if it relates
29 to a design as to which a contractual license is registered, shall be registered
30 only if:

1 (i) it is accompanied by the licensee's written consent to registration,
2 (ii) the licensee has in the license contract agreed that this paragraph
3 shall not apply.

4 **137.**-(1) Subject to this section, on the application of any person
5 (including a public officer acting in the exercise of his functions), the Court
6 shall declare the registration of an industrial design to be null and void:

7 (a) If the design, because of its failure to conform with section 144(1)
8 9b) of this Bill, ought not to have been registered; or

9 (b) if the design fails to comply with section 144(1)(a) or 145 of this
10 Bill.

11 (2) Where:

12 (a) a declaration under subsection (1) of this section relates to an
13 application comprising several designs; and

14 (b) the grounds for making the declaration affect only some of those
15 designs, the declaration shall apply only to the designs so affected.

16 (3) Where a declaration is made under subsection (1) of this section:

17 (a) the registration in question shall be deemed, to the extent specified
18 in the declaration, to have been null and void ab initio, so however that it shall
19 not be necessary to repay royalties paid by any licensee unless the Court so
20 orders; and

21 (b) the proper officer for the Court shall inform the Registrar, who
22 shall register and notify the declaration.

23 (4) The Court:

24 (a) shall not make a declaration under subsection (1) of this section
25 without first giving the design owner an opportunity to be heard; in applying
26 subsection (1) (a) of this section, shall have regard only to the state of affairs
27 existing when the proceedings were instituted; and

28 (b) shall dismiss an application under subsection (1) of this section, if
29 the applicant (not being a public officer) fails to satisfy the Court that he has a
30 material interest in making the application.

1 **138.**-(1) A person concerned who alleges that an entry has not been
2 inserted in, or has been omitted from, the register; or

3 (a) that an entry has been made in the register without sufficient
4 cause; or

5 (b) that an entry wrongly remains on the register; or

6 (c) that an error or defect exists in any entry on the register, may apply in the
7 prescribed manner to the Court or, at the option of the applicant and subject
8 to section 157 of this Bill, to the Registrar, and the Tribunal may make such
9 order for making, expunging or varying the entry as the Tribunal thinks fit.

10 (2) The Tribunal may in any proceedings under this section, decide
11 any question that it may be necessary or expedient to decide in connection
12 with the rectification of the register.

13 (3) In case of fraud in the registration, assignment or transmission
14 of a registered patent or design, the Registrar-General may himself apply to
15 the Court under the provisions of this section.

16 (4) Any order of the Court rectifying the register shall, direct that
17 notice of the rectification be served in the prescribed manner on the
18 Registrar, and the Registrar shall, on receipt of the notice rectify the register
19 accordingly.

20 (5) The power to rectify the register conferred by this section 1
21 includes power to remove a registration in Part A of the register to Part B of
22 the register.

23 **139.**-(1) A person concerned may, apply to the Court or, at the
24 option of the applicant and subject to section 157 of this Act, to the Registrar
25 for an order under this section on the ground of any contravention of, or
26 failure to observe, a condition entered on the register in relation to a patent or
27 design.

28 (2) The Registrar may apply to the Court for an order under this
29 section on the ground stated in subsection (1);

30

1 (3) On an application under subsections (1) and (2) of this section, the
2 Tribunal may make such order as the Tribunal thinks fit for striking out or
3 varying the registration of the patent or design in question.

4 **140.**-(1) The Registrar may, on request made in the prescribed manner
5 by the registered owner-

6 (a) correct any error in the name or address of the registered owner of
7 a patent or design;

8 (b) enter any change in the name or address of the person who is
9 registered as an owner of a patent or design;

10 (c) cancel the entry of a patent or design on the register;

11 (d) strike out any goods or classes of goods from those in respect of
12 which a patent or design is registered; or

13 (e) enter a disclaimer or memorandum relating to a patent or design
14 which does not in any way extend the rights given by the existing registration
15 of the patent or design.

16 (2) The Registrar may, on request made in the prescribed manner by a
17 registered user of a patent or design, correct any error, or enter any change, in
18 the name or address of the registered user.

19 (3) Any decision of the Registrar under this section shall be subject to
20 appeal to the Court.

21 **141.** Where under the provisions of section 154, 155, and 156 of this
22 Bill, an applicant has an option to make an application to the Court or to the
23 Registrar-General:

24 (a) if an action concerning the patent or design in question is pending
25 the application shall be made to the Court;

26 (b) if in any other case the application is made to the Registrar-
27 General, he may, at any stage of the proceedings, refer the application to the
28 Court, or he may, after hearing the parties, determine the question between
29 them, subject to appeal to the Court.

30 **142.**-(1) Subject to this section:

1 (a) the owner of a patent or a registered industrial design may by a
2 written contract signed by the parties, grant a license to any person to exploit
3 the relevant invention or design; and

4 (b) in the absence of any provision to the contrary in the contract,
5 the licensee shall be entitled to do anywhere in Nigeria in relation to the
6 patent or design, any of the acts mentioned in section 113 or 117 of this Bill,
7 as the case may be.

8 (2) Where a license is granted under subsection (1) of this section:

9 (a) the license shall be registered, and shall be of no effect against
10 third parties until registration is effected and the prescribed fee paid; and

11 (b) the registration shall be cancelled at the request of the licensor if
12 the Registrar is satisfied that the license has been terminated.

13 (3) Any clause in a contract for a license under subsection (1) of this
14 section is null and void, in so far as it imposes on the licensee in the industrial
15 or commercial field, restrictions which do not derive from the rights
16 conferred by the relevant patent or design or are unnecessary for the
17 safeguarding of those rights: provided that:

18 (a) Limitations concerning the scope, extent, territory or duration
19 of the exploitation of the patent or design or the quality or quantity of the
20 products in connection with which the patent or design may be exploited;
21 and

22 (b) in the case of a patent, limitations justified by the interest of the
23 licensor in the technically efficient exploitation of the subject of the patent,
24 are not restrictions of the kind mentioned in this subsection.

25 (4) In the absence of any provision to the contrary in a contract for a
26 license under subsection (1) of this section:

27 (a) the grant of the license shall not prevent the licensor from:

28 (i) Granting further licenses to other persons, or

29 (ii) himself exploiting the relevant patent or design;

30 (b) the license shall not be assignable by the licensee; and

1 (c) the licensee shall not be entitled to grant further licenses.

2 (5) Where a contract under subsection (1) of this Section provides for
3 a licensee to grant further licenses, this section shall apply in relation to any
4 such further license as it applies in relation to licenses granted under the said
5 subsection (1).

Minister's
Directives

6 (6) The Minister, if he is satisfied that it is in the interest of Nigeria
7 and its economic development to do so, may by order in the Federal
8 Gazette, provide that contracts under subsection (1) of this section (or any
9 specified class thereof) shall, in so far as they involve the payment of
10 royalties outside Nigeria, be invalid without the approval of such authority
11 as may be specified in the order.

An assignment
or transfer of
an Industrial
Design

12 **143.**-(1) Subject to this section, a person's rights in a patent
13 application, in an application for the registration of a joint design, in a patent
14 or in a registered design may be assigned, transferred by succession or held
15 in joint ownership.

16 (2) An assignment under subsection (1) of this section shall be in
17 writing and signed by the parties.

18 (3) An assignment or transfer by succession under sub-section (1) of
19 this section shall have no effect against third parties, unless it has been
20 registered and the prescribed fee paid.

21 (4) In the absence of any provision to the contrary, joint owners of a
22 patent or registered design may, separately transfer their shares, exploit the
23 patented invention, utilize the registered design or exercise the rights conferred
24 by section 113 or 117 of this Bill, as the case may be; but a license under this act
25 may not be granted by joint owners otherwise than jointly.

26 (5) Any reference (however expressed) in this Bill to an applicant for
27 a patent, an applicant for the registration of a design, the owner of a patent or
28 design includes unless the context otherwise requires, a reference to any
29 predecessor or successor in title and, where appropriate, to joint applicants,
30 joint patentees or joint owners,

1 144.-(1) The rights of a patentee or design owner are infringed if
2 another person, without the license of the patentee or design owner, does or
3 causes the doing of any act which that other person is precluded from doing
4 under section 113 or 117 of this Bill, as the case may be.

5 (2) An infringement of the rights of a patentee or design owner
6 shall be actionable at the suit of the patentee or design owner in question;
7 and in any action for such an infringement, all such relief by way of
8 damages, injunction, accounts or otherwise shall, be available to the
9 plaintiff as is available in any corresponding proceedings in respect of the
10 infringement of other proprietary rights.

Litigation resulting
from an assignment
or transfer of an
an Industrial
Design

11 (3) For the purposes of civil proceedings in respect of the
12 infringement of the rights of the owner: if the subject matter of a patent is a
13 process for obtaining a product, the Court may order the defendant to prove
14 that the process used to obtain an identical product is different from the
15 patented process;

16 (a) any identical product when produced without the consent of the
17 owner of the patent shall, in the absence of proof to the contrary, be deemed
18 to have been obtained by the patented process in any of the following
19 circumstances:

20 (i) if the product obtained by the patented process is new, or

21 (ii) If there is substantial likelihood that the identical product was
22 made by the process and the owner of the patent has been unable through
23 reasonable efforts to determine the process actually used.

24 (4) The grantee of a license under this Bill from a patentee or design
25 owner may, by registered letter, require the licensor to institute proceedings
26 under subsection (1) of this section, in respect of any infringement indicated
27 by the grantee in the letter; and, if the licensor unreasonably refuses or
28 neglects to institute the proceedings, the licensee may institute them in his
29 own name, without prejudice to the right of the licensor to intervene in the
30 proceedings.

1 (5) In requiring the production of evidence, the Court before which
2 the proceedings referred to in subsection (4) of this section are taking place
3 shall take into account, the legitimate interests of the alleged infringer in not
4 disclosing his manufacturing and business secrets. A person who without the
5 consent of the patentee:

6 (1) makes for sale or hire; or

7 (2) imports into Nigeria; or

8 (3) processes in the course of business with a view to committing any
9 act of infringement; or

10 (4) in the course of business:

11 (a) sells or lets for hire, or

12 (b) offers or exposes for sale or hire or

13 (c) stocks for the purpose of sale or hire, or

14 (d) exhibits in public, or

15 (e) distributes, any article or substance or method or process of
16 manufacture which is and which is an which he knows or has reason to believe
17 is protected by a grant of patent under this Part, commits an offence and is
18 liable, on conviction to a fine of at least N1,000,000.00 or treble damages at
19 the discretion of the Court.

20 **145.** A person who knowingly:

21 (a) counterfeits or imitates an article; or

22 (b) imports or exhibits for the purpose of sale any counterfeited or
23 imitated article; in respect of which a patent has been granted under this Part,
24 commits an offence and is liable on conviction to a fine of at least
25 N1,000,000.00 or treble damages at the discretion of the Court.

26 **146.** Where a person is charged with an offence under section 161 or
27 162 of this Bill the Court may, if satisfied that at the time of his arrest or charge,
28 he had in his possession, custody or control:

29 (a) in the course of business an infringing copy of the invention:

30 (b) or any counterfeit or imitation of the invention, order that the copy

1 of the invention or the counterfeit or imitation of the invention be delivered
2 up to the patentee or to such other person as the Court may direct.

3 **147.** If any person makes or causes to be made, a false entry in the
4 Register of Patents, or a writing falsely purporting to be a copy of any entry
5 in such register, or produces or tenders, or causes to be produced or tendered
6 in evidence any such writing knowing the entry to be false, he commits an
7 offence and is liable, on conviction to a fine of at least N1,000,000.00 or
8 treble damages at the discretion of the Court.

9 **148.-(1)** If any person falsely represents that any article sold by
10 him is patented in Nigeria or is the subject of an application for a patent in
11 Nigeria, he commits an offence and is liable on conviction to a fine of at least
12 N1,000,000.00 or treble damages at the discretion of the Court.

13 (2) For the purposes of subsection (1) of this section, a person shall
14 be deemed to represent:

15 (a). that an article is patented in Nigeria, if there is stamped,
16 engraved or impressed on, or otherwise applied to the article, the word
17 "patent" or "patented" or some other word, expressing or implying that a
18 patent for the article, has been obtained in Nigeria; or

19 (b). that an article is the subject of an application for a patent in
20 Nigeria, if there are stamped, engraved or impressed on, or otherwise
21 applied to, the article, the words "patent applied for," "patent pending," or
22 some other words, implying that an application for a patent for that article
23 has been made in Nigeria.

24 **149.-(1)** Jurisdiction to hear and dispose of legal proceedings
25 under this Bill is hereby vested in the Federal High Court and, the provisions
26 of this Bill applicable to legal proceedings under that Act shall apply with
27 necessary modifications.

28 (2) The Court hearing proceedings under this Act may sit with and
29 be advised by two assessors having expert knowledge of matters of a
30 technological or economic nature.

1 (3) The Chief Judge of the Federal High Court may, make rules of
2 Court for the regulation of legal proceedings, under this Bill if he thinks it
3 necessary to do so-

4 (1) The Commission with the approval of the Minister may, with a
5 view to the fulfillment of a treaty, convention or other international
6 arrangement or agreement to which Nigeria is a party, declare by order in the
7 Federal Gazette that any country specified in the order is a convention country
8 for the purposes of this section.

9 (2) So long as there is in force an order under subsection (1) of this
10 section declaring a country to be a convention country, a patent application or a
11 design application in Nigeria, if an earlier corresponding application for the
12 protection of an invention or the registration of a design has been made in that
13 convention country, shall be treated as having been made on the date when that
14 earlier application was made.

15 (3).Subsection (2) of this section shall not apply where the earlier
16 application was made:

17 (a) in the case of an invention, more than twelve months; or

18 (b) in the case of a design, more than six months, before the
19 application in Nigeria.

20 (3) Where a person has applied for the protection of an invention or
21 the registration of a design by an application which:

An Industrial
Design under
international
convention

22 (a) in accordance with a treaty, convention or other international
23 arrangement subsisting between any two or more convention countries is
24 equivalent to an application duly made in anyone of those convention
25 countries; or

26 (b) in accordance with the law of any convention country is
27 equivalent to an application duly made in that convention country, he shall be
28 deemed for the purposes of this Bill to have applied in each of those convention
29 countries or in that convention country, as the case may be.

30 Where a patent application or a design application is to be treated by virtue of

1 subsection (2) of this section as having been made on the date of an earlier
2 application in a convention country, that earlier date is referred to in this Bill
3 as a foreign priority, and in this Bill the express "foreign priority" shall be
4 construed accordingly.

5 **150.**-(1) The Registrar-General may, correct any clerical error in an
6 entry in the Register, but before doing so shall give the person to whom the
7 entry relates, an opportunity to make representations.

8 (2) Any person:

9 (a) may consult the Register free of charge during the prescribed
10 hours; and

11 (b) on payment of the prescribed fee, may obtain a copy of any
12 entry in the Register.

13 (3) A copy of an entry in the Register sealed with the Registrar-
14 General's seal shall be admissible as evidence of what is stated therein; and
15 any document purporting to be such a copy shall be presumed, until the
16 contrary is proved, to be what it purports to be.

17 (4) Any person aggrieved by a decision of the Registrar-General in
18 the exercise of his functions under this Bill may, appeal to the Court.

19 (5) The Registrar shall, publish a journal to be known as the Patents
20 and Designs Journal, in which shall be published all such matters as are
21 required by this Bill to be published or notified and such other matters
22 relating to patents and designs as the Registrar- General thinks fit.

Patents and
Designs Journal

23 (6) Subject to this Bill and any rules made under section 134(b)
24 of this Bill, the Registrar-General shall maintain and make entries in the
25 Registrar-General thinks fit.

Powers of the
Registrar-General
to make entries

26 (7) Any act or thing directed to be done by or to the Registrar-
27 General may also be done by any officer in the office of the Registrar-
28 General under the direction of the Registrar-General.

29 **151.** Subject to Part II of the First Schedule to this Bill, a patent or

1 registered design shall have the same effect against the State as against an
2 individual.

3 **152.**-(1)The Commission may make rules:

4 (a).prescribing anything requiring to be prescribed for the purposes of
5 this Bill, (Including summary forms of notification of the grant of a patent and
6 the registration of a design, and classifications of products to which designs
7 relate);

8 (b).regulating the manner in which the Registrar-General shall
9 maintain and make entries in the Register; and

10 (c) containing such administrative or procedural provisions as appear
11 to him to be necessary or expedient in order to facilitate the operation of this
12 Bill.

13 (d).establishing qualifications and procedures for substantive
14 examination of applications for patents, designs, etc. as required by this Bill.

15 (2) The Minister of Industry with the approval of the Federal
16 Executive Council may make rules establishing schemes to encourage
17 inventive activity; and, without prejudice to the generality of the foregoing,
18 any such scheme may include provision for the payment of grants to persons
19 who have discovered or perfected, or appear to have reasonable prospects of
20 discovering or perfecting, important inventions which cannot be further
21 developed for financial reasons.

22 MISCELLANEOUS PROVISIONS

Miscellaneous
Provisions

23 (a) In this Bill, the following Acts are repealed-

24 (1) The Trademarks Act Cap 436, Laws of the Federation of Nigeria,
25 1990.

Consequential
Amendment

26 (2) The Patents and Designs Act Cap 344, Laws of the Federation
27 of Nigeria,1990.

Savings and
Transitional
Provisions

28 (b) Save as otherwise provided under this Bill, all regulations,
29 orders and other Subsidiary legislations made under these aforementioned
30 Acts in force immediately before the coming into force of this Bill shall, as

1 far as it not inconsistent with the provisions of this Bill, continue in force
2 as if they had been made under this Bill and shall be treated accordingly.

3 (c) Any fund established by or under any of the provisions of the
4 repealed Acts by this Bill shall vest in the Industrial Property Commission of
5 Nigeria as established under this Bill.

6 **153.** In this Bill, unless the context otherwise requires, the Interpretation
7 following expressions have meanings assigned:

8 (a) "Assignment: means assignment by act of the parties
9 concerned;

10 (b) "collective mark" means a mark used or proposed to be used in
11 the course of Trade or business for the purpose of distinguishing the goods or
12 services of the members of a particular association, cooperative, union or
13 other collective groups from goods or services of other persons;

14 (c) "Commission" means the Industrial Property Commission of
15 Nigeria established by Section of the Industrial Property Commission of
16 Nigeria Act of 2010.

17 (d) "Court" means the Federal High Court;

18 (e) "Journal" in Part B means the Trademark Journal published for
19 Trademarks; in Part C means Patent and Design Journal published for
20 Patents and Designs;

21 (f) "Limitations" means any limitations of the exclusive right to the
22 use of a trademark given by the registration of a person as owner thereof,
23 including limitations of that right as to manner of use, as to use in relation to
24 goods to be sold or otherwise traded in any place in Nigeria, or as to use in
25 relation to goods to be exported to any market outside Nigeria;

26 (g) "Mark" includes a device, brand, heading, label, ticket, name,
27 signature, word, letter, numeral, or any combination thereof;

28 (h) "Minister" means the Federal Minister charged with
29 responsibility for Commerce;

- 1 (i) "Permitted Use" has the meaning assigned by Section of this Bill;
- 2 (j) "Person concerned" in relation to any matter, does not include the
3 Registrar, Registrar-General, or designees;
- 4 (k) "Prescribed" means in relation to proceeding before the Court,
5 prescribed by the rules of Court, and in other cases, prescribed by this Bill or
6 the Regulations;
- 7 (l) "Register" shall mean the register of Trademarks for Trademarks;
8 Register of Patents and Designs for Patents and Designs;
- 9 (m) "Registered Trademark" means a trademark that is actually on the
10 register;
- 11 (n) "trade name" means the name or designation identifying and
12 distinguishing an enterprise;
- 13 (o) "registered user" means a person who is for the time being
14 registered as such under the Bill;
- 15 (p) "Registrar" means the Registrar of Trademarks and of Patents and
16 Designs, in Parts B and C respectively;
- 17 (q) "Regulations" means regulations made by the Minister under the
18 Bill.
- 19 (r) "Service mark" means a mark used or proposed to be used in the
20 course of business for the purpose of distinguishing the services provided by
21 one enterprise, from the service of other enterprises;
- 22 (s) "trademark" means, except in relation to a certification trademark,
23 a mark used or proposed to be used in relation to goods or services for the
24 purpose of indicating, or so as to indicate, a connection in the course of trade
25 between the goods and some person having the right either as owner or as
26 registered user to use the mark, whether with or without any indication of the
27 identity of that person, and means, in relation to a certification trademark, a
28 mark registered or deemed to have been registered under this Bill;
- 29 (t) "transfer" means transfer by operation of law, devolution on the

1 personal representative of a deceased person, and any other mode of transfer
2 not including assignment;

3 **154.** This Bill may be cited as the Industrial Property Commission Citation
4 of Nigeria (Establishment) Bill, 2025.

EXPLANATORY MEMORANDUM

This Bill seeks to establish the Industrial Property Commission of Nigeria that strengthens all issues Corporate businesses in Nigeria such as Patent and Designs Rights etc. which will definitely facilitate the ease of doing business in Nigeria.