INSIDE THE MINDS

IP Client Strategies in the Middle East and Africa

Leading Lawyers on Understanding Recent Developments and Proposed Changes, Managing Client Expectations, and Recognizing Regional Influences on Intellectual Property Law

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IP Law in Nigeria: New Trends and Challenges

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Legal Background

Trademarks

Nigeria is a member of the Paris Convention for the protection of industrial property. The laws currently guiding and regulating trademarks in Nigeria are founded in the Trade Marks Act, Cap. 436, Laws of the Federation of Nigeria, 1990 (enacted in 1965), and the Trade Marks Regulations (enacted in 1967). These laws have not been reviewed in spite of several international developments that have necessitated the convention member countries to update their local laws accordingly. Nigeria is also a treaty member to the Agreement on Trade-Related Aspects of Intellectual Property Rights, but falls short of updating its local laws in consonance.

Some of the seeming inertia was borne out of a deliberate protectionist policy, and to date, the local trademark laws do not recognize priority applications in convention countries. Similarly, the concept of "well-known marks" is not celebrated by local law and practice, which lay more emphasis on local use and application of the marks within the territory of Nigeria. Unlike the requirement in some other territories, it is perhaps noteworthy that "proof of use" or "affidavit of use" is not yet a condition for renewal of trademark registrations in Nigeria.

Nigeria recently acceded to the World Intellectual Property Organization treaty that established the African Regional Intellectual Property Office, but there is a resistance to import it into local usage to preserve the supremacy of country registrations.

In recent times, the concept of branding of "services" has gained ground in Nigeria. Without amending the substantive trademark law that covered "goods" only, the registration of "service marks" became effective in Nigeria in April 2007 by authority of executive fiat given by the federal minister of trade and commerce to that effect. The international classification of goods and services under the Nice Agreement of June 15, 1957, is now recognized in Nigeria.

Patents and Designs

The laws guiding and regulating patents and designs are contained in the Patents and Designs Act, Cap. P.2, Laws of the Federation of Nigeria, 2004, which was enacted in 1971 and has not been updated or amended thereafter. Nigeria signed the Patent Cooperation Treaty in 2003 and deposited the instrument to the World Intellectual Property Organization Office in 2005. Subsequently, Patent Cooperation Treaty national phase filings are now recognized and undertaken through the local Patents and Trademarks Office (PTO).

Copyright

Copyright is regulated under the Copyright Act, Cap. C. 28, Laws of the Federation of Nigeria, 2004, which was enacted in 1988. Piracy continues to constitute a major menace, and because of the various unsurmounted challenges in arresting piracy, copyright is not a popular or lucrative area of practice with intellectual property (IP) lawyers.

Technology Licensing/Royalty Agreements

Pursuant to the National Office for Technology Acquisition and Promotion (NOTAP) Act, Cap. N. 62, Laws of the Federation of Nigeria, 2004, registration of all technology transfer agreements that in any way involve the remittance of fees or royalties to the transferor (in freely convertible currency) are entrusted to a specialized institution known as the National Office of Technology Acquisition and Promotion. Regardless of any agreement pre-negotiated and reached between the contracting parties, the NOTAP may review remuneration terms and recommend otherwise.

To avoid payment for worthless technology in hard-earned foreign currency, it is specifically provided in Section 7 of the NOTAP Act that "no payment shall be made in Nigeria to the credit of any person outside Nigeria by or on the authority of the Central Bank of Nigeria or any licensed Bank in Nigeria in respect of any payments due under a contract or agreement mentioned in this Act unless a Certificate of Registration issued under the Act is presented by the party or parties concerned, together with a copy of the contract or agreement certified by the National Office in that

regard." The NOTAP Act applies to technical assistance agreements, trademark and know-how licenses, management service agreements, and so on, but does not impact trademark registered user arrangements, which do not attract royalty payments.

The NOTAP regulatory function and authority over "pricing" of royalties and fees payable in licensing agreements finds disfavor with many licensors who are not familiar with protectionist policies of developing countries who have a need to guide against "foreign exchange round-tripping" tendencies, whereby contracts are contrived as a basis for foreign exchange remittances.

Recent Changes and Challenges

The greatest challenge to Nigerian IP clients and lawyers as a whole is counterfeiting and product adulterations. Liberalized importation of goods by World Trade Organization treaty obligations brought these counterfeiting challenges to the fore, especially for developing countries in Africa that greatly rely on imported products. The federal government of Nigeria therefore deemed it necessary to tighten the regulatory environment to counteract the menace of product adulterations and counterfeiting.

Trade Malpractices Act, Cap. T. 12, Laws of the Federation of Nigeria, 2004

This act, which came into effect in 1992, creates certain offenses relating to trade malpractices and sets up a Special Trade Malpractices Investigation Panel to investigate such offenses. In this connection, the act makes it an offense for any person to "label, package, sell, offer for sale, or advertise any product in a manner that is false or misleading as to its quality, character, brand, name, value, composition, merit, or safety."

National Agency for Food and Drug Administration and Control Act, Cap. N. 1, Laws of the Federation of Nigeria, 2004

As successor to the functions of the Department of Food and Drugs Administration, the National Agency for Food and Drug Administration and Control (NAFDAC) was established in 1993 with functions, among others, of regulating and controlling the importation, exportation,

manufacturing, advertisement, distribution, sale, and use of food, drugs, cosmetics, medical devices, bottled water, detergents, and chemicals.

Pursuant to the enactment of the NAFDAC Act, no regulated product shall be manufactured, imported, exported, advertised, sold, or distributed in Nigeria unless it has been registered in accordance with the provisions of this act or regulations made under it. With effect from January 1999, evidence of registration by the NAFDAC has become one of the required supporting documents that must be presented to banks when purchasing foreign exchange for the importation of regulated products.

NAFDAC operations have been rather effective in demonstrating a national will to arrest the spate of counterfeiting. Unlike past practice where the IP client and their lawyers were exposed to protracted litigation to prosecute counterfeiting, the NAFDAC, as the regulator, has its own enforcement unit that is empowered to seal up any defaulting premises, destroy the offending products, and prosecute the case. Among other things, the NAFDAC requirements for registration include evidence of registration of the product trademark, power of attorney issued by the trademark proprietor to its local agent (who may be a manufacturer or vendor), certificate of manufacture and free sale, and so on. Furthermore, the NAFDAC may request the local vendor's proposed list of marketing and sales outlets, thereby indirectly making those outlets responsible for the stocks found on their shelves.

Undeniably, the NAFDAC pre-registration requirement for evidence of trademark registration has helped increase the workload of IP lawyers. Tussles over conflicting claims to proprietorships of marks have also kept IP lawyers busier.

Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act, Cap. C. 34, Laws of the Federation of Nigeria, 2004

This law was enacted in 1999 to provide for the prosecution of identified counterfeiters of drugs and processed foods, who knowingly sell products capable of causing harm to the consumers. Legal officers of the NAFDAC undertake the prosecution of offenders. In 2008, a baby's teething powder branded "My Pikin" was alleged to have been partly responsible for the

deaths of about twenty children who used the product. The NAFDAC analyzed the product batch and found it to have adulterated components unwholesome for human use. The NAFDAC proceeded to arrest and prosecute the manufacturers of the product.

IP Law Experiences and Challenges

The initial forum for dispute settlement available for IP is the PTO Opposition and Administrative Hearing Panel. Thereafter, appeals may proceed to the Federal High Court, and then the Court of Appeal, and ultimately the Supreme Court. The PTO proceedings are particularly important, because affidavit evidence provided to the PTO by way of statutory declarations (upon which the PTO based its ruling) shall be admissible as evidence in subsequent court litigations on the same subject. The Federal High Court is, however, the primary dispute forum for proprietors of registered trademarks to institute actions for "infringement," "passing off," and "cancellation proceedings."

Historically, almost all Nigerian IP matters were conclusively resolved through the PTO proceedings. This created a scarcity of Superior Court case law precedents. Adequate legal manpower resource is locally available to argue the IP cases, and because the Nigerian IP laws were fashioned after the British laws, English case law precedents are readily admissible.

The local PTO is still manually operated (i.e., not computerized), and the data preservation and filing systems have their imperfections. These imperfections of human error were highlighted by the Supreme Court in *Nabisco Inc. v. Allied Biscuits Co. Ltd.* [SC/257/1990]. The PTO registrar in his considered judgment found as follows:

> This is a case involving the registration of "RITZ & Device" Trade Mark. The Applicant (viz. Nabisco Inc.) filed their Application on 15th June, 1978 as against the Opponent who filed their own eight (8) months earlier on 31st October, 1977. Due to an unpardonable oversight on the part of the Registry, the latter Application was advertised for the Applicant in the Trade Marks Journal No. 15 Vol. II of 19th July 1982 at page 69, Letter of

> Acceptance culminating into this advertisement having been negligently issued by the Registry on 12th February, 1980. Whereas for the same Mark in the same Class in respect of the same goods for the Opponent, Letter of Acceptance had earlier been legally and validly issued on 7th December, 1980. The 1980 Letter of Acceptance ought to have been Letter of Refusal for conflict with an earlier Mark subject to Section 13(3) of the Trade Marks Act, 1965. But this was not done, thereby, giving cause for this Opposition…

Ogwuegbu, J.S.C., delivering the lead judgment of the Supreme Court, held that:

> From the totality of the pros and cons, I accept the Opponent's arguments (viz. Allied Biscuits Co. Ltd.) that they are first in law and that the Registry issued Letter of Acceptance in error. I find as a fact that the Applicant (viz. Nabisco) has not used the Mark sufficiently to acquire a reputation for the Mark in Nigeria… I accordingly accept the Opponent's evidence that the Applicant intended to destabilise the Nigerian market and her economy. Only an unreasonable tribunal would fail to take judicial notice or cognizance of commercial law promulgations of his government.

Thus Nabisco Inc. lost any claim to the "RITZ" trademark after a legal battle lasting more than ten years went all the way to the Supreme Court.

The recent deluge of applications inspired largely by the NAFDAC condition precedent requiring evidence of trademark proprietorship has put more pressure on the activities of the PTO. This has led to increased incidences of human error, leading to conflicting double registrations of trademarks.

If the conflicts are discovered after the statutory time limits reserved for opposition at the PTO, the applicant proprietor/manufacturer usually opts for court litigation, requesting the cancellation of the earlier defensive

registration of an international proprietor on grounds of "non-use" by that proprietor in the territory of Nigeria. Surprisingly, the limited exposure of the judiciary to the elements of IP law sometimes causes them to empathize with the local manufacturer, based on sentiments that the manufacturer is a national who has invested to create local jobs. Therefore, the Nigerian IP lawyer must painstakingly present the evidence and articulate the IP principles and law to score their points before the court.

Dispute resolutions at the level of PTO administrative hearings are relatively cheaper in terms of costs and are concluded within six months to two years. Once IP disputes get to court, the litigation process could take three to ten years to conclude, if it proceeds to appeal stage. Correspondingly, this is a much more expensive option in terms of legal costs.

Recommended Pre-emptive IP Strategies

To identify and resolve contentious issues at the PTO hearing stage, IP proprietors now commonly retain Thomson Compu-Mark "watch service" over their marks, thereby ensuring their ability to detect and oppose any conflicting marks advertised in the *Trade Marks Journal* before they proceed to formal registration.

Take, for example, the case of *In The Matter of Trademark "SEMPERMED" Application* (2009). Though lacking in any local defensive trademark registrations, the watch service detected the advertisement of Semperit's well-known mark in the Nigerian *Trade Marks Journal* by an applicant other than Semperit GmbH of Austria. A successful opposition by Semperit GmbH was predicated on ability to establish:

1. That the applicant was an erstwhile local distributor of Semperit who was aware of Semperit's international proprietary rights, and had not been granted any authority by Semperit to register the mark in Nigeria. Therefore the applicant could not lay claim to be the true inventor of the mark.
2. The prior "use" by Semperit GmbH within the territory of Nigeria, by virtue of the exhibited records of orders, invoices, and shipment records of "SEMPERMED" branded products ordered from

Semperit to Nigeria by the applicant, prior to the date it applied to register as proprietor of the trademark in Nigeria.

Defensive registrations by IP proprietors are recommended to pre-empt their marks being poached by manufacturers/importers who are constrained from undertaking local manufacturing and/or sales without establishing rights to the trademark proprietorship of the goods for NAFDAC registration requirements. Defensive registrations are particularly recommended for manufacturers and vendors of NAFDAC-regulated products.

Take, for example, the case of *In The Matter of Trademark "DASH" Application* (2007). Classic Soap Industries Limited applied to register "DASH," and was already producing and marketing branded products with NAFDAC registration, which was provisionally granted with support of trademark "acceptance" (prior to advertisement for oppositions in the *Trade Marks Journal*). This is permitted because of the protracted process in obtaining a final trademark registration certificate. The trademarks watch service of the Procter & Gamble Co. detected the advertisement of this well-known Procter & Gamble mark in the Nigerian *Trade Marks Journal*. A successful opposition by Procter & Gamble was predicated on the ability to establish:

1. That Procter & Gamble had validly subsisting and up-to-date renewals of the trademark "DASH" in Nigeria
2. Prior "use" established by shipments and advertisements of Procter & Gamble's "DASH" products to Nigeria

The human errors at the manually operated local PTO had made it possible for the "acceptance" of Classic Soap's application, which should have been refused from the onset, and might well have proceeded to registration, had it not been detected early enough for opposition before proceeding to formal registration. The NAFDAC was subsequently notified to de-register Classic Soap's erstwhile registration based on the PTO's ruling.

Also consider *In The Matter of Trademark "TIDE" v. "TIDI"* (2008). Liby-Tidi Nigeria Limited applied to register the "TIDI" trademark, and was already producing and marketing "TIDI" branded products, confusingly similar

phonetically and in packaging "getup" to "TIDE," with respect to the same class of goods. The trademarks watch service of the Procter & Gamble Co. detected the advertisement of this well-known Procter & Gamble mark in the Nigerian *Trade Marks Journal* before it proceeded to official registration status. A successful opposition by Procter & Gamble was predicated on the ability to establish:

1. That Procter & Gamble had validly subsisting and up-to-date renewals of the trademarks "TIDE" and "TIDE & Device" in Nigeria
2. That searches at the local Companies' Registry revealed the proprietors of Liby-Tidi Nigeria Limited to be citizens of the People's Republic of China, who by virtue of the registrations and sale of Procter & Gamble's "TIDE" products in China could not claim ignorance and honest adaptation of "TIDI" as being coined from its corporate name, viz. "Liby-Tidi"
3. Supporting records of previous shipments and advertisement of Procter & Gamble's "TIDE" to Nigeria

Again, save for the human errors at the manually operated local PTO, the application should have been rejected from the onset. The NAFDAC was subsequently notified of the PTO's refusal of Liby-Tidi's application, and formally requested to de-register their erstwhile registration for Liby-Tidi to manufacture and sell such branded products.

Once an offending trademark is allowed to proceed to registration without opposition, the legal right to institute court action against the offender for infringement or passing off is only available to the proprietor of a registered trademark. This principle was affirmed in the Supreme Court decisions *DYK Trade Limited v. OMNIA (Nigeria) Limited* (1997–2003) 4, IPLR Page 266, and *AYMAN Industries v. AKUMA Industries* (2003) 6 S.C. 44. If both marks have by acts of error or omission become registered, one of them has to institute cancellation proceedings against the other at the Federal High Court.

Records of previous sales/shipments/exportations of IP owners' branded products to the territory of Nigeria should be preserved in a specific archive. In the course of opposition or cancellation proceedings, this helps

the IP client and their lawyer establish "use" by them in Nigeria territory, prior to the date of application or registration by the other party, if indeed it is so.

With the global integration created by the technology of virtual advertising and marketing, records of and amounts expended on advertisements to the press that were designed specifically for the Africa and Middle East market, and extending to Nigeria, should be preserved in a specific archive to support claims of "use" through advertisement to the territory.

When an international IP client authorizes a local affiliate/subsidiary to market and/or manufacture its branded products within the local African market, it must ensure that such an arrangement is backed by formal license agreements to establish a direct nexus with the international IP client as the mark proprietor. Omission to do this may make the mark vulnerable for cancellation on grounds of non-use. We have seen it argued that the act of the subsidiary/affiliate differs from the act of the principal, and that the IP proprietor cannot be regarded as the user of the marks in the local territory, merely through the affiliate relationship. In other words, if it cannot be established that the trademarks are being applied under the license and control of the actual trademark proprietor, the mark proprietor could still be vulnerable to cancellation on grounds of non-use.

IP clients would be well advised to ensure the timely renewals/maintenance of their portfolio by their local IP lawyers/trademark agent. Otherwise, the mark could become vulnerable to be poached on the guise that it had ceased to be legally subsisting on the register. This "housekeeping" renewal strategy is keenly adopted by vendors and manufacturers of household consumer goods and drugs who have their goods on the Nigerian market, such as Procter & Gamble, the Gillette Company, the Coca-Cola Company, Kabushiki Kaisha Sony Computer Entertainment, Dabur India, Campina Nederland Holdings B.V., and Emzor Pharmaceutical Industries, among others.

Finally, before getting involved in a tussle, the IP client would be well advised to seek local counsel as to the merits and chances of their case, and evaluate the available data to support their claims to a superior title. Due to the protracted process of litigation in Nigeria, court litigation could be an

expensive option unworthy of prosecution if case prognosis gives less than a fifty/fifty chance of success on initial assessment. Local poachers of well-known trademarks would have expended money on marketing and packaging of branded products, and are sometimes willing to invest a bit more on their lawyer in order to stake their chances.

The chief executive of a local manufacturing company openly boasted in his memoirs that his product branding strategy included poaching vulnerable international well-known marks, which results in huge advertising savings to get his products known to the market. To achieve their aims, such minds "stress test" every potentially vulnerable legal status of the mark they wish to poach. For example:

1. Is the mark registered in this territory?
2. Is the mark locally registered but not renewed up to date?
3. Has the mark been used in this territory? If the mark is not registered in this territory, the opportunity is created to register by the applicant. If the mark is locally registered but the other items above provide any loopholes, cancellation proceedings could get initiated to expunge the mark to "clear the coast" for the new applicant.

An IP client who diligently observes the various IP pre-emptive strategies can feel confident that their proprietary rights will be adequately protected. The IP lawyer will rely on the law and the available facts and evidence rather than the "color" or "size" of their opponent. For example, in a recent case, Namaste Laboratories LLC was the registered proprietor of trademarks "Organic Root Stimulator" and "Organic Root Stimulator and Device." Initially they seemed unsure about challenging Unilever's application of the conflicting trademark "Organic Root and Device," merely because of the size of the opponent. However, based on the facts and the law, the opposition was successful in favor of Namaste.

Pending Changes

A comprehensive overhaul of the IP law regime is being contemplated, and an IP bill is under compilation. The bill anticipates that the various IP laws would be consolidated into a single legislation, and that compliance with

some treaty obligations would be introduced, such as formal recognition of service marks, and changing the tenure of trademark registrations to ten-year cycles, in place of current seven-year initial tenure with renewal cycles of fourteen years.

The local PTO plans to relocate to new and larger premises by the second quarter of 2009. The World Intellectual Property Organization has long been in discussions to facilitate computerization of the PTO, and it is anticipated that once computerized, the PTO should become more efficient.

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APPENDICES

- Local Requirements for Pre-Sale Registration of Regulated Products in Nigeria.
- NAFDAC Procedure for Registration of Imported Foods and Other Regulated Products into Nigeria.
- Sample format of "Certificate of Free Sale".
- Sample format of "Power of Attorney" for NAFDAC Registration.
- Requirements for Filing Nigerian Trade Mark Applications.
- Questionnaire Guide for Patents.
- Sample Trademark and Know-How License Agreement.
- NOTAP Guidelines for Technology Licensing/Royalty Agreements.

APPENDIX I

LOCAL REQUIREMENTS FOR PRE-SALE REGISTRATION OF REGULATED PRODUCTS IN NIGERIA.

NATIONAL AGENCY FOR FOOD AND DRUG ADMINISTRATION AND CONTROL ("NAFDAC")

1. INTRODUCTION

This publication is intended to enlighten members of the general public and to provide necessary guidance to lawful transactions in manufacturing, importation, exportation or advertising of a number of products referred to as "regulated products" which are subject to various regulatory controls within the mandate of the National Agency for Food and Drug Administration and Control ("NAFDAC').

2. REGULATED PRODUCTS:

The National Agency for Food and Drug Administration Control Act No. 15 of 1993 as amended by Act No. 20 of 1999 defines "Regulated Product" as "Processed foods, medicines for human and animal use, cosmetics, medical devices, detergent, packaged water, and chemicals."

3. REGISTRATION OF REGULATED PRODUCTS:

3.1 For the benefit of everyone, and in order to promote compliance with the law, it is necessary to draw attention to the most fundamental and very important provision of the law, which prohibits the manufacture, importation, etc. of unregistered products in Nigeria. For the avoidance of doubt, registration of every regulated product is made mandatory by the Drugs and Related Products (Registration, etc.) Act No. 19 of 1993 as amended by Act No. 20 of 1999 which provides that no Processed Food, Drug, Drug Products, Cosmetics, Medical Device, or Packaged Water shall be **manufactured, imported, exported, advertised, sold, or marketed in Nigeria**

unless it has been registered in accordance with the provisions of the Act or regulations made under it.

3.2 **GENERAL GUIDELINE FOR A PROSPECTIVE MANUFACTURER OF REGULATED PRODUCTS**:

The manufacture of any regulated product will be lawful only if the product has been duly registered by NAFDAC. However, authority is granted by the Agency for the initial manufacture of an unregistered product intended for submission as a sample for registration. In this regard, a prospective manufacturer is required to contact the NAFDAC office nearest to the location of the proposed manufacturing establishment where an application detailing the product(s) to be manufactured is to be submitted.

3.3 At this stage, it is in the interest of the applicant that the proposal is reviewed with the NAFDAC official who should see and comment on the sketches of the proposed factory layout, the production flow chart, and also offer any other advice that will facilitate compliance with official requirements. Following this, the applicant pays the appropriate fee for the pre-production inspection.

3.4. The essence of the pre-production inspection is to assess the suitability of the location of the production site and the facilities, including personnel available for manufacturing the proposed regulated product. If the outcome of the pre-production inspection is satisfactory, the applicant is advised to obtain, on payment of the appropriate fees, the relevant Form for registration of the product. It is at this stage that the actual registration processes begin.

3.5 The registration Form, when duly completed, is submitted to the NAFDAC Registration Division, in the State from where it is eventually forwarded to the Registration Division in Lagos, together with all the documents, including packaging materials and labels, as specified in the Form.

3.6 It is important to emphasize that the completion and submission of an application form does not guarantee registration status of the product; hence, nothing should be done to violate the provisions of the law.

3.7 Following a satisfactory review of the completed Form the Registration Division initiates action for the appropriate NAFDAC Inspectorate office to schedule a pre-registration inspection in consultation with the applicant, who pays the prescribed pre-registration inspection fee. At this stage, a very comprehensive inspection of the manufacturing establishment is undertaken to establish the level of sanitation of the premises, the suitability of the personnel and the equipment used, the steps taken to ensure the quality of the raw materials, and compliance of all manufacturing processes with other requirements of Good Manufacturing Practice (GMP). Samples are collected and submitted to the NAFDAC Laboratory for analysis if the GMP is deemed satisfactory.

4. REGISTRATION EVALUATION

Following a satisfactory outcome of pre-registration inspection and a favorable report of laboratory analysis of the samples, necessary briefs are prepared and brought before the NAFDAC Product Approval Committee for assessment and eventual decision.

4.1 On approval, the applicant pays the prescribed fee for a product license and is issued a Certificate of Registration valid for five (5) years. From then on, the product can be manufactured and marketed freely throughout the country while the Agency from time to time carries out routine inspection of the establishment to ensure that the GMP standards are maintained.

4.2 It is important to note that throughout the process of product registration, the failure of the applicant to respond promptly to queries or inquiries raised by NAFDAC will lead to automatic suspension of further processing of the application.

5. GENERAL GUIDELINES FOR A PROSPECTIVE AGENT OF A FOREIGN MANUFACTURER OF REGULATED PRODUCTS:

5.1 Again, it needs to be emphasized that it is unlawful to import into Nigeria any regulated product not duly registered by NAFDAC.

5.2 Agents of foreign manufacturers are to take the necessary steps to ensure that regulated products intended for the Nigerian market are registered before consignments of such products are imported into the country. In the event of any violation in this regard, the consignment of the unregistered product would be cleared from the ports to a bonded warehouse at the expense of the importer. Thereafter, the importer is prosecuted and the products forfeited to the Government together with any assets or property obtained or derived directly or indirectly from the commission of the offense.

5.3 As in the case of locally manufactured products, the Agency will normally authorize the importation of small quantities of unregistered products for the purpose of submission as samples for registration.

5.4 A written authorization specifying the quantity of the unregistered product to be imported can be obtained from the Registration Division of NAFDAC.

5.5 On arrival of the imported samples and presentation of the authorization to the NAFDAC inspectors at the port, the consignment will be treated the same way as other normal imported consignments. Before the consignment is therefore cleared from the port, the importer is required to present the following:

i. Authorization to import samples of the unregistered product.
ii. Bank draft for the prescribed port inspection fee.
iii. Properly completed Customs bill of entry.
iv. Certificate of Analysis of the product issued by the manufacturer.
v. Certificate of manufacture and free sale issued by

a Government Authority empowered by law in the country of origin to exercise regulatory control over the product.

In order to conform with labeling regulations, the imported sample has to carry the following information:

(a) Full name of the manufacturer.
(b) Full location address of the manufacturer.
(c) Name of the product (brand and generic names where applicable)
(d) Date of manufacture.
(e) Expiry date or best before date.
(f) Batch Number.
(g) Direction for storage and use.

5.6 It is at this stage that the Registration Form is procured on payment of appropriate fee, and when duly completed, it is submitted to the Registration Division along with the samples and other documents as specified in the Form. A very important document among the requirements is the Notarized Power of Attorney granted by the foreign product manufacturer to the domiciled agent in Nigeria. The completion and submission of the form mark the beginning of the actual registration process.

5.7 The registration process now proceeds in the same manner as for locally manufactured products and in this regard, the contents of paragraph 4.6. -4.9 above are all relevant.

6. GENERAL GUIDELINES FOR PROSPECTIVE EXPORTERS OF REGULATED PRODUCTS:

6.1 The purpose of NAFDAC control on export of regulated products is to ensure that products from Nigeria are wholesome, safe, and of good quality so that the image of the country is not tarnished in the international trade arena. It is in this way that the country's foreign exchange earnings can be enhanced.

6.2 It is again important to stress that only registered regulated products can be lawfully exported from Nigeria.

Therefore, whether the product is locally manufactured or imported, it is expected to have satisfactorily undergone the registration processes.

6.3 In order to export a regulated product, a prospective exporter makes to the Director-General (NAFDAC) an application accompanied with the stipulated fee per consignment of intended export attaching the following documents:

(i) Evidence of registration of the regulated product with NAFDAC.
In the case of fish and fishery products the evidence required is registration as an exporter of seafood.
(ii) Registration Certificate granted by the Nigerian Export Promotion Council;

The following details of the product shall be provided, namely:

(i) Name and full address of the manufacturer.
(ii) Batch Numbers
(iii) Date of manufacture.
(iv) Expiry date or best before date.
(v) Destination of intended export.
(vi) Certificate of analysis of the product batch by batch.

6.4 The Agency issues an export certificate with the full details of the product(s) batch by batch to be exported if:

(i) Establishment maintains the standard requirements of Good Manufacturing Practice (GMP).

(ii) The regulated product passes NAFDAC laboratory tests.

6.5 It is important to note that for fish and fishery products, the report on the status of Good Manufacturing Practice in the establishment and the results of NAFDAC

laboratory tests on the products, are forwarded to the Federal Department of Fisheries, and the Federal Ministry of Agriculture and Natural Resources for their further action and issuance of export certificates.

7. GENERAL GUIDELINES FOR THE IMPORTATION OF REGULATED PRODUCTS:

When a foreign-made regulated product is duly registered by NAFDAC, it can be lawfully imported, distributed, and sold in Nigeria. The procedures for the importation of such regulated products are as follows:

7.1 Importer shall submit to the NAFDAC office whose operations cover the port (air, sea, or land boarding) where the goods are to be landed, the following documents prior to physical inspection or "formal" sampling of the regulated product:

(a) Properly completed customs bill of entry.
(b) Evidence of registration of the regulated product.
(c) The original of combined certificate of manufacture and free sale issued by the appropriate Health Authority in the country of the product origin.
(d) The original certificate of analysis of the product.
(e) Other additional information required:
    (i) Evidence of payment of a prescribed fee in bank draft made payable to NAFDAC.
    (ii) Address of the importer's warehouse.
    (iii) An undertaking duly signed by the importer that the product will not be sold until confirmed fit for human use by the NAFDAC laboratory.

(f) In the case of milk, fish, and fishery products, a copy of a certificate of radiation test issued by an appropriate government agency in the country of origin will be required in addition to (a-e) above.

(g) In case of drugs, the following additional documents would be required as well:

(i) Evidence that the importer is a Pharmacist or employed the services of a Pharmacist.

(ii) Copy of the current annual certificate of registration/retention of premises issued by the Pharmacist Council of Nigeria (PCN)

(iii) Copy of the current annual license of the superintending pharmacist issued by the Pharmaceutical Society of Nigeria (PSN)

(iv) Evidence of a permit issued by NAFDAC Directorate of Narcotics and Controlled Substances if the imported product is a controlled drug or chemical.

APPENDIX II

NAFDAC PROCEDURE FOR REGISTRATION OF IMPORTED FOODS AND OTHER REGULATED PRODUCTS INTO NIGERIA

NATIONAL AGENCY FOR FOOD AND DRUG ADMINISTRATION AND CONTROL ("NAFDAC") REGISTRATION AND REGULATORY AFFAIRS DIRECTORATE

STEP I: DOCUMENTATION

The following documents (all originals and two (2) set of photocopies) are to be submitted to the LOD:

(1) **Power of Attorney or Contract Manufacturing Agreement (where applicable)**

Power of Attorney

(a) Notarized by Notary Public in the country of manufacture.
(b) Issued by the manufacturer of the product.
(c) Signed by the Managing Director, General Manager, Chairman or President of the Company, stating the names of the products to be registered. The Power of Attorney shall also indicate authority to register product with NAFDAC. Valid for not less than five (5) years.

Contract Manufacturing Agreement

(a) Notarized by Notary Public in the country of manufacture.
(b) Signed by both parties stating names and designations of the signatories with the names of all the products to be registered and other relevant clauses clearly explained in unambiguous language.

(2) **Certificate of Manufacture and Free Sale shall**:

a. Be authenticated by the Nigerian Embassy in the country of manufacture; or any other embassy or High Commission of any commonwealth or West Africa country where no Nigerian Embassy or High Commission exists.

b. Be issued by relevant health/regulatory body or any incorporated body from exporting countries once such document is endorsed by the relevant government authority of the country.
c. Indicate the name of manufacturer and products to be registered.

(3) **Comprehensive Certificate of Product Analysis shall:**
a. Be issued by the manufacturer
b. Indicate the name and designation of analyst

(4) **Certificate of Business Incorporation** of Applicant (i.e., Local Representative/Distributor/Manufacturer) with Corporate Affairs Commission in Nigeria.

(5) **CERTIFICATE OF REGISTRATION OF BRAND NAME/TRADEMARK** with the local PTO/Trademark Registry in the Ministry of Commerce in Nigeria. This should be done in the name of the owner of trademark as the case may be.

(6) **Expired License** (For product renewal).

(7) **Application letter for Import Permit** by local representative (Applicant).

(8) Duly completed Food and other Regulated Product Registration Form purchased with bank draft in prescribed fees per product in favor of "National Agency for Food and Drug Administration and Control."

STEP II: IMPORT PERMIT
On satisfactory documentation, import permit (i.e., permit to import samples for registration) shall be obtained from the Food Registration Division on payment of prescribed fees with five percent (5%) VAT inclusive.

STEP III: PRODUCT VETTING: The following are to be submitted for sample vetting:

(a) **A letter of invitation for the inspection** of factory abroad from the manufacturer, and it shall state the name and full location address of the

factory (not administrative office address); Name, E-mail address, Current phone, and Fax No. (office and mobile phones) of contact person overseas; Name of Airport closest to location and Guide Map illustrating the shortest Land/Air route to the factory; Name, Full location address, Telephone No., Fax No. and E-mail address of local agent; Name(s) of product(s) for registration.

(b) A copy of the **import permit and receipt** of payment for import permit.

(c) **Certificate of Analysis** of the product(s).

(d) **Three (3) well labeled* vetting samples** of the product(s)

Acknowledgment of receipt of samples shall be issued on receipt of satisfactory vetting samples.

STEP IV: LABORATORY ANALYSIS

The following are to be submitted for laboratory analysis:

(a) **Bank Draft of N777,000.00 (5% VAT inclusive) per product in favor of National Agency for Food and Drug Administration and Control ("NAFDAC').**

Breakdown: a. N640,000.00 for processing fee + N32,000 (5%) VAT
b. N100,000.00 for product license +N5,000 (5%) VAT

NOTE: 25% of total cost of registration for Products manufactured in ECOWAS country.
60% of total cost of registration for renewal of product license.

(b) Acknowledgement of receipt of vetting samples received from LOD II

(c) Product samples for analysis.

NOTE

- All letters to be addressed to: **THE DIRECTOR (R&R) NATIONAL AGENCY FOR FOOD AND DRUG ADMINSTRATION AND CONTROL, CENTRAL LABORATORY COMPLEX, OSHODI, LAGOS**
- For further enquiry call the following numbers: 234-1-4772452-3; 4772456, 4772458, 4703688; 4712158
  E-mail: nafdac@nafdac.gov.ng;
  website: www.nafdac.gov.ng

*Labeling

1. Labeling shall be informative and accurate.
2. Minimum requirements on the package label:

(a) Name of product – brand name or common name must appear in bold letters.

(b) Full Location address of the manufacturer.

(c) Provision for NAFDAC registration Number on product label.

(d) Batch Number, Manufacturing Date, and Best Before Date.

(e) Net contents of essential ingredients in metric weight units in case of solids, semi solids, and metric volume in case of liquids.

(f) In the case of food, the ingredients must be listed by their common names in order of their predominance by weight unless the food is standardized, in which case the label must include only those ingredients which the standard makes optional.

(g) Food additives must be declared on the label. Spices, flavors, and colors may be listed as such, without naming the specific materials, but any artificial color or flavors must be identified as such.

(h) Labeling of Food for Special Dietary Uses:
"Special Dietary Use" may be defined as a particular use for which a food purports or is represented to be used, including, but not limited to the following:

(i) Supplying a special dietary need that exists by reason of physical, physiological, pathological, and other conditions, including the condition of disease, convalescence, pregnancy, lactation, infancy, allergy, hypersensitivity to food, underweight, or the need to control sodium intake.

(ii) Supplying a vitamin, mineral, or other ingredient for use by humans to supplement the diet by increasing total dietary intake.

(iii) Supplying a special dietary need by reason of being a food for use as the sole item of the diet. Manufacturers and importers of food in this class (including infant formula) must consult the Registration Division of the Agency before importing or manufacturing food represented by labeling or otherwise as dietary food.

(i) When special dietary foods are labeled with claims of disease prevention, treatment, mitigation, cure, or diagnosis they must comply with the guidelines for drugs and be registered as medicinal products.

(j) The label must contain directions for safe use where appropriate or necessary on the information panel (IP) or on the package insert (PI).

(k) Any regulated product which is labeled in a foreign language shall **NOT** be considered for registration unless an English translation is included on the label and package insert (where applicable).

NOTE: (i) Failure to comply with these requirements may result in the disqualification of the application or lead to considerable delay in the process of registration.

(ii) Endorsement/Engrossment of the applicable NAFDAC Registration number on the product label facilitates customs clearance. By implication, Manufacturer/Exporter and Local Distributor/Importer have to factor this cost implication in their projections.

APPENDIX III

SAMPLE FORMAT OF "CERTIFICATE OF FREE SALE"

Department

FREE SALE CERTIFICATE – NIGERIA *[*Name]*
Health Commissioner

TO WHOM IT MAY CONCERN:

Based upon information provided to me, I hereby certify that the following products:

[**List product brand names*]

are manufactured in accordance with all relevant local, state and federal health laws by the [**Name of Manufacturer Company*], whose corporate headquarters is in [**Address*], in the United States of America.

These products are being sold freely in all of the states and territories of the United States of America. In addition to being sold in the United States, the same aforementioned products are offered for export by the [**Name of Manufacturer Company*].

Very truly yours

Consular Legalization
*
by Nigerian Embassy

*[*Name*
Commissioner of Health
Department of Health

STATE OF _____
COUNTY OF _____

Subscribed and sworn to
before me this_____
day of_____200___

X_____
Notary Public

APPENDIX IV

SAMPLE FORMAT OF "POWER OF ATTORNEY" for NAFDAC REGISTRATION

[**On Letterhead of Trademark Proprietor*]

POWER OF ATTORNEY

To whom it may concern:

[**Name of Trademark Proprietor*], a corporation organized under the laws of United States of America, with [**Address of Trademark Proprietor*], U.S.A., hereby authorizes [**Name and Address of Local Agent in Nigeria*], to register, import, and distribute in Nigeria the following products: [**List of product brands*]

Granted and Executed in the City of _____, on _____ day of_____200

Consular Legalization
*
by Nigerian Embassy

_____
*[*Name of Officer]*
*[*Title/Position of Officer]*

STATE OF _____
COUNTY OF _____

Subscribed and sworn to
before me this_____
day of_____200___

X_____
Notary Public

APPENDIX V

REQUIREMENTS FOR FILING NIGERIAN TRADEMARK APPLICATIONS

1. **Applicant's details**
   The full name(s), nationality, and physical address of the applicant (to be advised to local Agent/Attorney).

2. **The Trademark**
   - One clear negative print (i.e., for publication in Trade Marks Journal) and bromide copies on durable paper of the trademark, in plain type letters; figures and lines must be clear and distinct.
   - A representation may not exceed a total area of 5.5cm in width and length.

** All the above will be locally prepared by local Agent/Attorney, if provided with a sample of the prospective trademark.*

The local PTO is still manually operated, and these durable prints of mark are retained on file to be affixed on Certificates of Registration/Renewal/Assignments.

3. **Goods and Services**
   - The full range of goods and services covered or proposed to be covered by the trade/service mark.
   - Nigeria presently follows the International Classification of Goods and "Service Marks" which were introduced by governmental executive fiat with effect from April 2007.
   - A separate application is filed for each class of goods or services for which the trademark is to be registered.

4. **Power of Attorney/Authorization of Agent**
   - A Power of Attorney simply signed, with full particulars of name(s), address(es), and nationality of the applicant(s). Full name(s) and capacity of the signatory when applicant is a firm/company.
   - Consular Legalization of any document is not a legal requisite; i.e., not necessary.

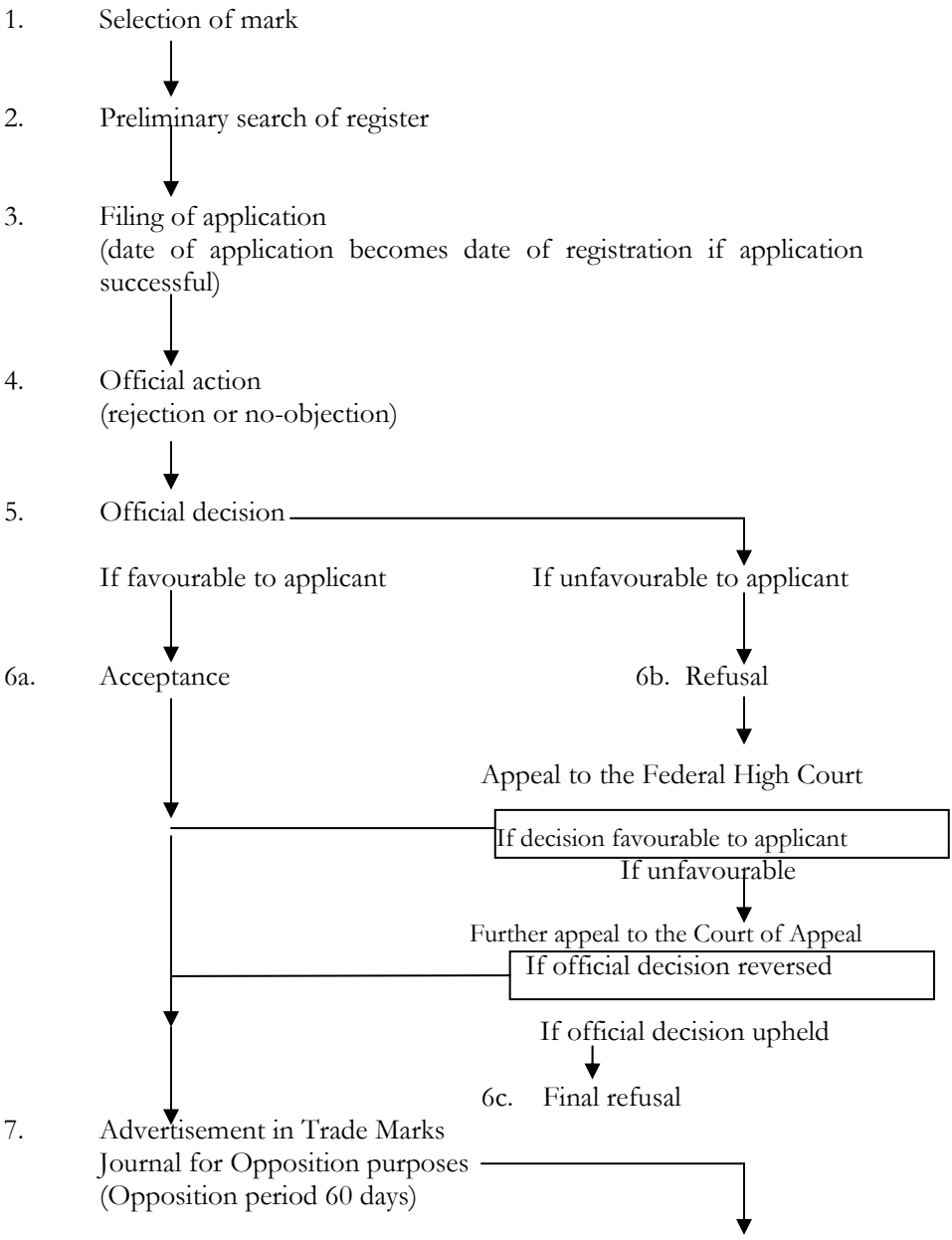
5. **Translation**

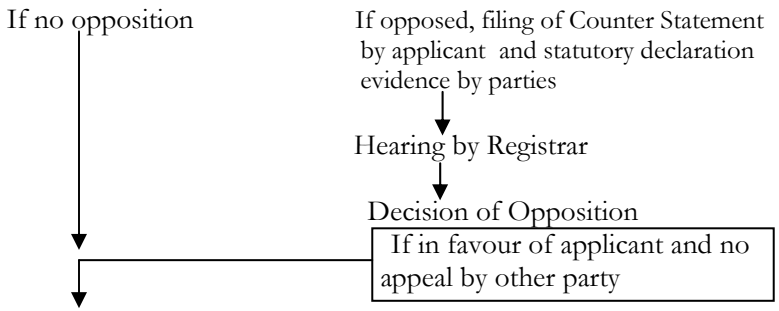
If the certified copy of the basic application is in a language other than English, a translation with a declaration from the translator is required to be filed with the certified copy of the application.

Also, if the mark contains words in a language other than English, the English translation of the words must be filed with the application.

APPENDIX VI

FLOW-CHART FOR TRADE MARK APPLICATION AND DISPUTES FORUM





8. Payment of Registration fee

9. Issue of certificate of registration

(If in favour of opponent, sequence of appeals to the court possible by applicant as in 6b. above

APPENDIX VII

NIGERIA
QUESTIONNAIRE GUIDE - *For Patents*

(1) Documents which are required for patent applications and how many copies of each are required. In particular, how many copies of a patent specification would be required? Does any document have to be legalized or notarized?

Patent Documents		***No. of Copies***	***Legalized or Notarized***
(i)	Covering letter of Local Agent	One (1)	Not Required
(ii)	Patent Form No. 1(b)	One (1)	"
(iii)	Patent Form No. 2 (viz. Authorization of Agent)	One (1)	"
(iv)	Patent Form No. 3 with Complete Specifications and Claims (in English)	Two (2)	"
(v)	Abstract	Two (2)	"
(vi)	Drawings	Two (2)	"
(vii)	Declaration for Convention Application	One (1)	"
(vii)	Copy of Priority application duly certified by the Industrial Property Office (or its equivalent) in the country where the earlier application was made.	One (1)	"
(ix)	Assignment by Inventors	One (1)	"

(2) What are the minimum requirements for filing patent applications?

- {Same as for (1) above}

(3) Within what period of time after filing an application do documents which were not available at the application filing date have to be lodged? Are extension fines payable?

Patent Document	***Time period***
- Three (3) months	- No extension fines

*Inability to lodge all documents within timeframe may lead to refusal of application on assumption of abandonment

(4) Are faxed transmissions of documents acceptable?

Patent Faxed documents	***Recommendations***
NO	Claims, Specifications, Drawings, and Abstracts to be e-mailed to Local Agent.

(5) Can the patent specification be filed in the English language? Does a translation have to be filed? If so, into what language and within what period of time after filing the application?

English	***Translation***	***Language***	***Period of time to file translation***
Yes	Yes i.e., if specification is not in English.	English	Three (3) months

(6) How can filing costs of patent applications be minimized?

(i) Claims, Specifications, Drawings, and Abstracts to be e-mailed to Local Agent, who will file forthwith before outstanding documents arrive via Air Courier.

(ii) Ideally, by identifying in advance the requisite supporting documentation and filing them together, i.e., Authorization of Agent Form; Deed of Assignment; Priority Document.

(iii) Due to global instances of mail pilferage and postal delays, it is deemed **safer** (although more expensive) for ALL important **original** documents to be transmitted via DHL/TNT/UPS Air Courier instead of mail postage.

(iv) In view of the attendant incidental expenses of air courier, piecemeal transmission of documents would have corresponding cost implications on transactions.

(7) In general, how long after the application is filed does the official filing receipt become issued with the official serial number for the application?

- Within two to three (2 – 3) weeks

(8) Are patent applications subjected to substantive examination?

No (* Relies largely on evidence of priority application in a Convention Country.)

(a) If so, about how long after the application is filed does patent examination take place? Can examination be delayed?

Time to Examination	**Can examination *be delayed?***
	Yes/No

(*N/A - As of now, the local PTO has no qualified **Examiner**
- Reliance placed on Convention Priority)

(b) If there is no substantive examination, in general how long after the application filing date is the patent registration granted?

"Sealed Letters of Patent" registration obtainable within four to eight (4 – 8) weeks AFTER submission of all relevant forms and documents.

(9) Are maintenance fees payable while patent applications are pending? If so, when?

NO

(10) Are renewal fees payable after patent grant, and if so when?

YES ***When:*** Annually

(11) Is the country a member of the Paris Convention and PCT?

Member of:

(a) Paris Convention
(b) PCT
(c) _____
(d) _____
(e) _____

(12) What is the duration or term of patents and what is the commencement date thereof?

Duration	***Commencement date***
- Twenty (20) years	- from date of filing the relevant patent application.

(13) Is there provision for extension of term of a patent?

NO

If yes, summary of details:

N/A

(14) Is working of the invention in the country required? If so, what are the requirements, and what penalties can be incurred for non-working?

NO

Requirements: N/A

Penalties: N/A

(15) Does any foreign patent registration extend automatically to the country?

NO

(16) Is patent protection available in the country merely by confirmation of a patent registration obtained in another country?

NO

- *****However, supporting evidence of earlier registration in the U.S. PTO or other Convention Country shall facilitate registration in Nigeria.

(17) Is utility model protection available?

[*Unless filed on the basis of supporting priority application in another Convention Country].

(18) ***Other Useful Comments/Remarks/ Advisories***

Because the local PTO is still manually operated, for the time being, there is no automatic online access to WIPO for verification of Priority PCT Application. Therefore, reliance is placed on certified copy of the PCT priority filings, for national phase filings.

APPENDIX VIII

TRADEMARK & KNOW-HOW LICENSE AGREEMENT

This **Trademark and Know-How License** is effective on this ____day of _____200_,
By and between:

BUBBLES NIGERIA LTD., a private company registered and existing under the laws of Nigeria, with address at [**Address*], Nigeria (hereinafter called LICENSEE).

And

BUBBLES LLC, a corporation registered and existing under the laws of United States of America, with address at [**Address*], United States of America (hereinafter called LICENSOR).

In this Agreement, both parties are collectively referred to as "Parties" and Individually as "Party"

WHEREAS:

A. LICENSOR is an affiliate company of the registered owners of the Trademarks in the *[*List of products*] which LICENSEE will produce and market in Nigeria under world-famous trademarks listed in Appendix I (hereinafter referred to as the "Trademarks") and is authorised to license/sub-licesnse the same;

B. The Trademarks are international renown, used on high quality products widely sold throughout the world and the LICENSEE has accordingly requested permission to manufacture and distribute in Nigeria the products (hereinafter referred to as the "Products") to which the Trademarks shall be affixed;

C. LICENSOR has also agreed to supply to the LICENSEE, from time to time, secret specifications and formulae, confidential instructions, know-how, marketing intangibles, information and data required for the preparation of the products (said specifications, instructions, know-how and marketing intangibles being hereinafter referred to as "Intangibles");

D. The Trademarks and Intangibles constitute valuable industrial property rights
of the LICENSOR;

NOW, THEREFORE, IT IS HEREBY AGREED as follows::

1. LICENSOR hereby grants to LICENSEE, who accepts, the right and license to use the Trademarks *[*List of products*] in the categories listed in Appendix I (the "Products") to be manufacutured and sold for ultimate consumption within the present territory of the Federal Republic of Nigeria (referred to hereafter as the "Territory").

2. This licence/sub-license is granted on condition that the Products shall be manufactured by LICENSEE in the Territory in strict accordance with the methods, specifications, manufacturing standards or usage factors which may be furnished by LICENSOR to LICENSEE from time to time, to the end that the Products shall be of a standard and quality satisfactory to LICENSOR.

3. LICENSOR shall upon the signing of this Agreement and from time to time thereafter furnish the LICENSEE with know-how and information which shall include, but not be limited to:-
   - proprietary formula, methods, specifications, usage factors and manfacturing standards for the Prodcuts;
   - formula changes and improvements reflecting LICENSOR's latest world-class technology and advacements which LICENSOR considers appropriate for the Products;
   - training of LICENSEE's personnel in the manufacture and testing of the Products;
   - list of specifications for raw and packaging materials and ingredients including techniques and procedures for quality control handling and storage;
   - consumer learning and market research data drawn from other locations;
   - advice on advertising and copy strategies for the Products.

4. When needed for the Products, LICENSOR or its affiliates shall supply to LICENSEE those proprietary ingredients or materials which may be required to produce the Products according to standards and specifications supplied by LICENSOR. Those proprietary ingredients and materials shall be supplied to LICENSEE at prices to be indicated by LICENSOR from time to time in line with LICENSOR's prevailing international prices. In any event, LICENSEE shall be free to procure himself with ingredients and materials from other sources if the prevailing international pirces are more favorable than those quoted by LICENSOR, provided these materials and ingredients meet the standards and quality LICENSOR has set for its Trademarks. Any proprietary ingredient or material supplied by LICENSOR shall be used only in the production of the Products for which they have been specified and shall be stored in accordance with the instructions of LICENSOR. No sample may be given to any other party without written consent of LICENSOR;

5. LICENSEE shall pay to LICENSOR continuing royalty equal to three(3%) per cent of the total net sales in the Territory of all products bearing the Trademarks.

   "Net Sales" shall mean the total gross invoice price of all products bearing the Trademarks sold by or for the LICENSEE, less returns, discounts and rebates.

   The royalty herein provided shall be computed on an annual basis. Payment for the fees thus calculated shall be remitted by LICENSEE so that the amount is received by LICENSOR in U.S. Dollars within thirty (30) days following the end of each year.

   All amounts due as royalty shall be converted by LICENSEE into U.S. Dollars at the official exchange rate prevailing at the end of the month for which the royalty is being paid.

6. LICENSEE shall take inventories, make accounts and reports in the form and content and at the time requested by LICENSOR. In addition, LICENSEE shall dispatch to LICENSOR, on request, reports of its own quality controls, laboratory analyses, production runs, etc.;

7. LICENSOR may inspect the factory of LICENSEE and the conditions of manufacture of the Products from time to time. LICENSEE agrees to submit, at its cost, samples of the Products for inspection and analysis, whenever and as requested by LICENSOR, to enable LICENSOR to assure that the Products are being made in accordance with the methods, formulae, specifications and usage factors prescribed by LICENSOR, and that they conform to the standards and quality established by LICENSOR. LICENSEE shall dispose of finished product which does not meet specification at its cost and shall not use raw and packaging materials which do not meet specifications.

8. LICENSOR shall furnish details of sizes, package copy and designs which LICENSEE agrees to use with the Products, their labels, containers, advertisements and other promotional materials.

9. LICENSEE shall obtain all licenses, permits, visas and other rights or government or municipal authorisations necessary or desirable to carry out fully this Agreement.

10. LICENSEE acknowledges that the ownership of the Trademarks and all rights relating thereto pertain to the registered owners of such trademarks, and agrees that LICENSEE shall obtain no right of ownership or any other right whatsoever over or in relation to the Trademarks, particularly through any right herein permitted.

11. LICENSEE shall give notice in writing to LICENSOR of any infringement or threatened infringement of the Trademarks. LICENSOR retains the right to take proceedings in or out of a court of law which may be necessary or proper to stop the infringement of the Trademarks. LICENSEE shall, at LICENSOR's request and cost, take proceedings consistent with the law to stop any infringement, if necessary litigating in its own name and at its cost, and in any event, the Parties shall cooperate to the fullest extent possible to protect the rights of either Party in respect of the Trademarks.

12. LICENSOR shall, at its own expense, defend, indemnify and hold harmless the LICENSEE inluding its officers, directors, agents, employees and representatives from any claims or suits based upon an alleged infringement of or violation of any intellectual property rights of any third person, whether they be a patent, trade secret,

trademark or copyright, and shall pay all damages, awards, profits, interests, attorneys' fees and cost levied against the defendant(s) in said claims or suits.

This indemnification shall not apply in such cases where the infringement is based on LICENSEE's use of the Trademarks and Products in combination with any trademarks, technology, equipment or materials not provided by LICENSOR.

The warranties and indemnification of this section are conditional upon LICENSEE immediately notifying LICENSOR of any such claim or suit and permitting LICENSOR to control completely the defence against any allegation of infringement or violation of any intellectual property right.

13. LICENSOR warrants that the Trademarks and know-how which it will make available to LICENSEE under the terms of this Agreement will be of similar high standards to those used with demonstrated success by LICENSOR in other locations world wide.

14. LICENSEE undertakes not to use the Trademarks after the termination of this Agreement.

15. During the term of this Agreement, LICENSEE shall not package, manufacture or sell any brand in a product category competitive to any of the Products, except with the agreement of LICENSOR.

16. LICENSOR and LICENSEE shall keep secret and shall not in any way disclose to any other party, even after the termination of this Agreement, any information on the Trademarks or on the Products or on the business of the other acquired by reason of or in connection with this Agreement.

17. This Agreement shall be binding upon and inure to the benefit of LICENSOR, its successors or assigns, provided these are companies in which all or substantially all of the shares of stock are owned by LICENSOR. However, the Agreement is personal to LICENSEE and shall not be assigned, in whole or in part, unless LICENSOR's written consent is first obtained.

18. This Agreement shall be for an initial duration of three years starting ____ day of _____ 200__, and shall renew on the same terms for successive periods of three years subject to the approval in writing of the National Office for Technology, Acquisition and Promotion of the Federal Ministry of Science and Technology in Nigeria. Either party may terminate this Agreement by giving to the other 180 days advance written notice for the end of the initial 3 year period or the end of any subsequent 3 year period.

19. Any of the following occurences affecting either of the Parties hereto shall give the right to the other to terminate this Agreement forthwith: (i) the insolvency, bankruptcy or liquidation of a Party; (ii) the seizure, confiscation, expropriation or appropriation of any of its assets by any third party; and (iii) the appointment of a receiver or liquidator for any such assets or shares.

20. If either Party breaches any provision of this Agreement, the other Party shall have the right, exercisable at any time thereafter, to terminate this Agreement by giving the Party in default not less than sixty (60) days advance written notice of termination. The said notice, however, shall have no effect if the Party in default cures the default before the date of termination specified in the notice.

21. This Agreement may be amended by mutual agreement to include additional trademarks or to remove trademarks from Appendix I.

22. Any reference in this Agreement to LICENSOR shall be deemed to include any affiliate company or companies which LICENSOR shall designate to exercise its rights or perform its functions hereunder.

23. Any notice given hereunder shall be in writing sent by registered airmail or by telefax subsequenly confirmed in writing and sent by courier delivery or registered mail, with acknowledgment of receipt, addressed as the case may be to:

BUBBLES NIGERIA LIMITED
*[*Address*]*
Attention:_____
Telephone:_____
Telefax No.:_____
E-Mail:_____

BUBBLES, LLC
*[*Address*]
Attention:_____
Telephone:_____
Telefax No.:_____
E-Mail:_____

or such other address as either of the Parties may from time to time designate by notice to the other.

The period of notice shall count starting 60 days from the date of posting of the letter, provided the notice is in fact received or could have been received in due course.

24. No departure from the terms of this Agreement shall obligate either Party to permit any subsequent departure, and no waiver of any of the provisions hereof shall be deemed to be a waiver thereafter of any such provision or of any succeeding breach thereof. This Agreement may not be altered or expanded except by a written instrument signed by the Parties and stated therein to be an amendment or expansion hereof.

25. In the event of a dispute arising out of this Agreement or a breach hereof, the Parties hereto shall use their best efforts to settle such dispute amicably.

If they fail to reach an amicable solution within a period of 60 days, then dispute shall be finally settled in accordance with the provisions of the Nigerian Arbitration Laws and Procedures. The arbitration shall take place in Lagos, Nigeria, and be conducted in English.

26. This Agreement shall be subject to Nigeria law.

IN WITNESS WHEREOF, the Parties have signed this Agreement on the dates and places indicated below.

BUBBLES NIGERIA LIMITED	**BUBBLES, LLC**
By:_____	By:_____
Date:_____	Date:_____
Place:_____	Place:_____

APPENDIX I

LIST OF LICENSED TRADEMARKS

Trademarks	Registration Certificate Number	Product(s) Covered

APPENDIX IX

REVISED GUIDELINES ON ACQUISITION OF FOREIGN TECHNOLOGY

Introduction

In the process of implementing the provisions of NOIP Act, Cap 268 Laws of the Federation of Nigeria 1990 as amended by Decree No 82 of 1992, it became necessary to provide "Internal Guidelines on Evaluation and Payments in Technology Transfer Agreements" and "Guidelines to Assist Nigerian Enterprises in Negotiating Transfer of Technology Agreements." These were considered necessary in order to clarify the provisions of the Act that established The National Office for Technology Acquisition and Promotion (NOTAP) and to enlighten the private and organised business community on the applicable payment rates as well as to guide them in the negotiation of technology transfer agreements.

The profound changes that have unfolded in the national and global economies since the last edition of the Revised Guidelines, resulting from dramatic developments in technology, as well as the far-reaching implications of the WTO have made the revision of the guidelines imperative in order to ensure effective assimilation and diffusion of foreign technology to Nigerians. The objectives of the revised guidelines are to create better understanding of the pertinent issues in technology transfer agreements in line with the implementation and interpretation of the NOTAP Act with a view to strengthening the negotiating capabilities of Nigerians with the transferors, and also to improve the quality of agreements submitted to the Office for registration. The revised guidelines will therefore serve as a useful guide in the drafting of technology transfer agreements by Nigerian parties. The effects of globalisation and the need to strengthen the industry-research linkage and ensure adequate support services for technology transferees also made the review of the current rates of payment in Technology Transfer transactions inevitable. In addition to the foregoing, the current trend in the international market has been a shift from regulatory and control measures to promotional and developmental roles. This is with the view to meeting the new challenges of global technological changes aimed at attracting foreign technology and investment and also to take maximum advantage of government deregulation policy as it affects foreign investment and capital inflow into the country.

1. **General Rules Applicable to all Technology Transfer Contracts**

   Some of the general rules that should be considered in all technology contracts/agreements are the following:

   (i) All technology contracts should include a provision whereby the recipient enterprises in Nigeria acquires explicit rights for the use and exploitation of the technology in question, and the period covering these rights should be clearly specified in the contract.

   (ii) For the evaluation of a contract, the main features of the process or products to be licensed should be clearly defined.

   (iii) In cases where the Nigerian enterprise is acquiring the right to practice a process, the concept of know-how should be clearly expressed and defined in the contract.

In this connection, concepts such as "technical information" or "technical services" should only be treated as complementary to the know-how.

(iv) The remuneration for the various aspects of a contract is to be related to the most essential elements of the said contract in order to properly ascertain the value of licensor's contribution.

(v) When a technology contract involves various components, each should be evaluated separately and the corresponding remuneration determined, not to ascertain the relative cost of each, but also to provide the basis for determining the licensor's responsibility, concerning the performance of any of the elements of the technology package.

(vi) In projects of special importance, the concept of net present value should be introduced as a tool for evaluating the overall remuneration.

(vii) Where the main element of a contract relates to a technological process, licensor has to provide process performance guarantees as required, in order to critically determine its adequacy.

(viii) Process guarantees are to be covered by licensor's financial responsibility and his liability should cover explicity rights for the use and exploitation of technology in question, and the period covering these rights should be clearly specified in the contract.

(Ix) If the option to pay liquidated damages is available, there should be a provision for the Nigerian enterprise to exercise this right in an independent manner.

(x) To ensure a continuous flow of information between licensor and licensee during the life of the contract, such a contract should provide for access to licensor's plants and related R&D facilities and results.

2. Development of National Technological Capability (Manpower and Training)

(a) Clauses should be provided in Technology agreements to ensure the employment, exposure and training of the appropriate and right calibre Nigerian staff from the design stage of the project where applicable.

(b) In all technology transfer arrangements, emphasis should be placed on the employment of Nigerians with relevant scientific and technological background to understudy the foreign experts with a view to taking over from them within the shortest possible time. It should therefore be mandatory to have a Management Succession Programme as well as a Comprehensive Training Programme in such agreement in order to ensure full indigenization of management and technology positions. In this regards, it is mandatory that no foreign experts be recruited for any project in the country for which qualified Nigerians are available.

3. **Supply of Plant and Machinery**
   (a) Any plant and machinery that can be produced locally henceforth should not be allowed to be imported.
   (b) Where the importation of plant and machinery is inevitable, a comprehensive software package including workshop drawings, engineering designs, operating manuals, sources of components and spare parts should accompany such plant and machinery.
   (c) Arrangements should be made to ensure the local design and fabrication of components and spare parts of such imported machinery and equipment.
   (d) In every supply agreement, provision should be made for a manufacturing programme with specified time limit to ensure the local design and fabrication of the spare parts and components of the plants and machinery and thereby ensuring increase in local-value-addition.

4. **Local Value Addition and CKD supplies and Intermediate Products.**

It is recognised that local value addition by its impact on domestic resources and skills level contributes in strengthening the technological structure and conserving the foreign exchange of any country. The concept of CKD manufacturing plant, therefore, could be a starting point for creating a national ancillary industry. However, following the experiences of South Korea, Portugal and Japan, amongst others, a CKD plant must have a target and a manufacturing plan to ensure progressive increase in local value addition. To this end, agreements should have a clause stipulating such plans. This underscores the need to develop indigenous design and fabrication capabilities.

In addition to the revenue obtained through technology payments, a very significant source of income to the foreign company is often the supply of equipment, components, or intermediate products.

In this connection, it is important to ensure that the recipient company is not contractually obligated to acquire said products from a specific source only. The national enterprise should have the right to decide the most convenient source for acquiring these products on an internationally competitive basis. If the recipient enterprise decides on its own free-will to acquire certain products from the licensor, on a continuing basis, the cost of such products should be deducted from the base that will be used for the computation of royalties. Additionally, the following should receive the attention of the National Office:

- The contract should provide that components or intermediate products are to be supplied by licensor at internationally competitive prices.

- The manner for determining such prices should also be prescribed either in the contract or in a related document.

- On a selective basis, the "most favoured license clause" should be incorporated in the contract; particularly, if the same component or intermediate product is supplied by

licensor to any other licensee in a third country.

Where the licensor buys on account of licensee, equipment, components or intermediate products, a provision should be made to ensure that the price to be charged to the Nigerian enterprise shall be the same as the price paid by licensor, plus reasonable handling charges (normally) not to exceed a predetermined ceiling fixed by Government from time to time and

Where the licensor is the manufacturer of said products, a provision should be made to ensure that the price to be charged to the Nigerian enterprise shall not be higher than the cost at which such items are entered in the books and accounts of the licensor at the next stage of production, in his own plant.

5. Consultancy Services.

To facilitate assimilation and ensure greater involvement of Nigerians, consultancy services required to execute a project should be obtained from Nigerian consultancy firms. However, where foreign consultancy is considered necessary, a Nigerian consultancy firm should be the prime consultant. Consultancy Agreements should spell out the following:-

i. Definite objectives of the contract ;
ii. Detailed description of the scope of the work programme to be accomplished;
iii. The time table and targets;
iv. Estimate of hours for each task in the programme including training
v. A description of the project team;
vi. Involvement of the management team;
vii The fee estimates usually based on man/hours; and
viii. The billing procedure.

6. Technical Assistance

Payments for technical assistance would normally be covered through "know-how fees". This would be examined in close detail and a differentiation made between lump sum payments and those for the continuing supply of technical assistance over the life of the contract.

In connection with the question of know-how payments, the following should be taken into consideration :

When the object or the contract covers technical know-how that could assimilated by the recipient company over a short period of time, i.e. use of formulae, drawings, specifications, etc; payments on a continuous basis should not be accepted.

Concerning the know-how incorporated in drawings, formulae etc ; no limitations should be accepted other than those pertaining to a limited confidentiality obligation.

Concerning the use of non-patented know-how, the National Office should not accept any restriction on the use of said know-how after termination of the contract.
For practical purposes the evaluation of payments concerning technical assistance is classified in the following manner.

A. Pre-Operational Phase

(i) Pre-investment studies;
(ii) Technical assistance, for the purchase of equipment;
(iii) Design, fabrication, and supply of equipment and machinery;
(iv) Technical assistance in the erection and installation of plants;
(v) Plant start up;
(vi) Training of technical personnel in the above areas;

B. Operational Phase

(i) Assistance in the purchase of equipment spares, raw materials, etc.
(ii) Quality control.
(iii) Assistance in the operation of the plant including repair and maintenance efficient production, etc.
(iv) Technical improvements of processes and products.
(v) Technical services to clients.
(vi) Training of technicians in licensor's or licensee's plant.

In all Technical Assistance Arrangements, the following should be taken into account:
- the technical capability of licensee.
- the contract should clearly specify the various services involved and the corresponding payments for them.
- the contract should clearly specify the time required to efficiently cover the various services in the pre-operational phase.
- the contract states the relationship between the kind of assistance to be supplied by licensor and the complexity of the manufacturing process.
- the contract should take cognisance of the degree of technical changes in the industrial sector in question.

7. Basic or Detailed Engineering

The supply of engineering services relies on the technical capability of licensor. In practice, basic and detailed engineering could be obtained from different sources, and it is therefore important to define the degree of responsibility of all parties involved.

When licensor is responsible for supplying basic engineering together with process technology, licensee should obtain specific guarantees in the following areas:
(i) Volume of production;
(ii) Yields; and
(iii) Quality of end products;

It is important that the amount of payments for engineering services should be compared with alternative offers or substantially similar basis. This therefore stresses the need for competitive bidding in all contracts. Finally, it would be essential that contracts covering the supply of basic and/or detailed engineering should clearly specify the type and scope of these services as well as the manner in which the corresponding payments should be effected.

8. Managerial Assistance

The kind and scope of these services will greatly depend on the functions to be covered. In general terms, these services should be obtained over a specific period of time, covering among others, the following aspects

(i) Planning and programming;
(ii) Research and development activities;
(iii) Inventory control and accounting;
(iv) Financing and purchasing; and
(v) Promotion and marketing;

Managerial or administrative services have to be evaluated in consideration of the following:

(i) The sector in which they are applied;
(ii) The requirements of the recipient party;
(iii) The type and scope of the recipient party;

In this context, the following should be considered :

(a) A definition of the different services involved.
(b) The provision for training programme in order that the various functions can gradually be covered by licensee's staff.
(c) Payments for these services shall be viewed in relation to the economic benefits to the recipient company and the nation.
(d) The responsibilities and functions of licensor should be clearly defined.

9. Access to Improvements in Technology

There is a need to provide for access to improvements on technology during the period of the agreement. This should include both patented and non-patented developments. When the technology acquired under a contract has been clearly defined, there is less scope for disagreement between the parties as to what constitutes an improvement.

It is frequently considered in technology contracts, that the recipient enterprises is also obliged to assign to the technology supplier the patents, trade marks, innovations or

improvements achieved through its own efforts. These are normally referred to as grant-back provisions.

There is a need to ensure that national enterprises are duly protected by retaining the ownership of said improvements and to provide that the exchange of information between the parties, during the life of the agreements is to be conducted on the basis of reciprocity concerning the followings:-

(i) the degree of exclusivity of the use of said improvements;
(ii) the territory in which improvements are going to be applied ; and
(iii) the remuneration for obtaining access to said improvements by either party;

In actual practice, most technological developments during the life of the agreement will be achieved by the foreign company, but, it is essential to establish as a matter of principle, that national enterprises must make effort to obtain recognition for their own technological development.

10. Disaggregation of Technology Package

It is necessary to evolve a broad national approach to reduce the size and magnitude of imported technology package in the country. The pre-investment stage comprising the initial feasibility study and the detailed project report, covering the principal techno-economic aspects, should increasingly be undertaken by national agencies. Where this is not possible for reasons of project complexity, domestic agencies should be closely associated with the preparation of the detailed project studies. Basis and detailed engineering, including plant designs, would at the moment need to be imported, but domestic agencies should increasingly be associated. However, with Nigeria's present civil engineering capability, civil construction and ancillary services should normally be provided by domestic agencies and enterprises to the maximum extent possible. Such services are definitely available, and the introduction of foreign agencies often constitutes a major disincentive to domestic consultancy services and civil construction capability.

In machinery selection, erection and installation also, foreign technology services should be kept to the minimum necessary. It is principally in respect of manufacturing technology that acquisition of foreign processes and know-how become necessary, and it must be ensured that acquisition is full and complete.

11. Territorial Considerations

Under this heading, two questions deserve special attention
The first is the territory of manufacture, which is normally restricted to one country. In this connection, the degree of exclusivity to be obtained should be clearly specified in the contract.

The second relates to the territory of sales. This aspect requires careful consideration to ensure the possibility for exports to other countries. As a general rule, the Nigerian enterprises should acquire the right to export to other countries.

12. Export Provisions

In connection with the issue of export, the National Office for Technology Acquisition and Promotion may adopt the following criteria:.

A contract may not be accepted when:

(a) It contains a total prohibition for the export of products manufactured under license, as it precludes the possibility of sales abroad during the whole duration of the agreement.

(b) The contract imposes the obligation not to export to certain countries of interest where the licensor has not granted exclusive rights.

(c) The contract establishes ceiling on export sales volumes and the economic viability of the project depends on an important export component.

(d) It obliges the national enterprise to export only through the licensor, to the detriment of licensee's successful marketing efforts in third countries.

The criteria to deal with territorial restrictions will be applied with the necessary flexibility in order to eliminate those provisions that in actual practice affect the possibilities of growth of the National enterprises and the external trade policy of the country.

13. Arbitration

The manner of selection of arbitrators and the procedure for arbitration in accordance with the Nigerian Arbitration procedures should be clearly specified in the agreement. However, the legislation should specifically provide that the governing law of the contract should be that of Nigeria.

14. Guarantees

Every contracts should ensure the provision of guarantees at the various stages of the project wherever applicable:-

Performance guarantees are considered essential in projects where licensor is providing basic engineering and where his responsibility extends beyond the supply of process technology.

- Performance guarantees should always be provided in the purchase of equipment and machinery,
- A guarantee clause related to delays that may be incurred by Licensor in the supply of technical information, i.e. research, reports, drawing, specifications, operating manuals etc., should be negotiated in the following manner:
  The licensor should furnish a Bank Guarantee wherein the concerned Bank would return to licensee certain sum of money for all front-end payments if a claim is made by licensee, in relation to the contract, if licensor has not fulfilled its obligations in the provision of said service.

15. Duration

Under the provisions of the NOTAP Act, the period of 10 years is stipulated as the maximum period beyond which an agreement should not be registered. NOTAP will however register agreements with longer terms where:

(a) the technology proposed to be transferred is complex and it is proven to the satisfaction of NOTAP that the technology requires a longer duration for proper absorption as in Petrol-Chemical Plant, Iron and Steel, Space and Computer Technologies etc;

(b) it is internationally recognised that the technology involved is a rapidly changing one and the transferee requires to be kept abreast of the frequent changes/ development to remain competitive as in Electronics, Computers, Telecommunication;

(c) the licensee is granted the right to sub-license the technology over a period of 10 years

(d) it is considered to be in the National interest.

16. Monitoring of Technology Agreements

The monitoring of the implementation of Technology Transfer Agreements is one of the statutory functions of the National Office for Technology Acquisition and Promotion (NOTAP) under the provisions of the enabling Law. Specifically section 4(e) of Cap 268 LFN empowers the National Office to monitor on a continuous basis, the implementation of any contract or agreement registered in accordance with the provisions of the Act.

OBJECTIVES

The objectives of the monitoring exercise include:

i To ensure that technology acquired or to be acquired meets the long term development objectives of the country and that acquisition is made under fair and equitable conditions.

ii To assess the level of compliance by both the transferees and transferors to the terms, conditions and obligations in the technology agreements as approved and registered by NOTAP.

iii To determine the level of absorption, assimilation and adoption of the foreign technology being transferred by the recipient companies.

iv To assess the rate at which foreign raw materials and components are being substituted with local inputs and its effects on the quality of the products.

v To assess the extent to which technology is actually being transferred to and assimilated by the Nigerian personnel through adequate implementation of the training programmes contained in the registered agreements.

vi To gather accurate data/information for policy formulation.

vii To determine the level of self-reliance attained by the Nigeria Enterprises.

viii To identify the problems and constraint which militate against the absorption of foreign technology and/or technology development with a view to finding solutions to them.

17. Title of Agreements

All Agreements must be classified under the following titles:

i) Technical services
ii) Patent license
iii) Trademark License
iv) Know-How License
v) Software License (Information Technology)
vi) Management Services
vii) Consultancy

18. Information Technology Agreements (IT):

All Applicants for IT agreements must provide concrete evidence of end users of the products or third parties. The applicant should also submit a copy of certificate of installation for jobs done.

- Annual Technical Support (ATS) must not exceed 10%. It should be between 5-10% of the License fee
- Local Vendors must be involved in all Annual Technical Support for Software Agreements or updates and the Local Vendor's fee, which should be at least 30% of the Annual Technical Support (ATS) fee and should be paid in local currency. Evidence of payment to the Local Vendor must be submitted.
- All Agreements involving Software should contain full details of the Licensor, including website, post address, etc.
- All Information Technology (IT) Agreements must complete "TTA" Pre-Qualification Form.
- Project related to communications, petroleum products, & broadcasting should be accompanied by Registration Certificates or Approval Letters from relevant supervising Agencies or Authorities.

19. Royalties and other Technology Payments

The globalization of the world economy, and the WTO Agreements have led to the liberalisation of trade, including trade in technology acquisition. Nonetheless in order to stem the pressure on the national external sector, it is imperative to retain the present technology fee structure, which are as follows.

Applicable rates of fees will be as follows:

(a) **Royalty:-** Henceforth, royalty in respect of Know-How, Patent and other Industrial Property Rights shall range from 1-5% of net sales. As a matter of policy, payments for the use of foreign Trademark will not be allowed except where the Trademark is internationally recognized one accompanied with licensed Know-How and the product is meant for export market. More importantly, Trademark fee will not be allowed in respect of any agreement where the Trademark owner has over 75% of the equity in the local company.

- Technology transfer fees should be based on locally manufactured goods and not imported goods.

(b) **Technical Services:-** Fees shall be settled on per diem rate on man-hour, man-day or man-month basis, not tied to net sales/turnover etc.

(c) **Expatriate salaries (PHR):** In all Agreements, other then technical services meant for long/short term services, the salaries of expatriate shall not be taken into consideration when computing the technology fees payable through CBN Form A, rather company should remit the salaries through Personal House Remittance (PHR) subject to the usual document requirements.

(d) **Management Services:-**

- A management fee ranging between 2-5% of profit before tax should apply to management services except for the management of Hotels by International Hotel chains. However, management services project where profit is not anticipated during the early years will attract a fee ranging from 1-2% of net sales during the first three to five years only.
- Hotel Services - A basic fee or lumpsum not exceeding 5% of turnover plus an incentive fee not exceeding 12% of Gross Operating Profit (GOP) shall be applicable. Other payments which are internationally accepted within the applicable Hotel chains may also be allowed. Only hotels initially located in the disadvantaged areas will attract the upper limits of the basic and the incentive fees.

(e) **Consultancy Services:** Lumpsum payments are allowed in line with the International Technology Market Prices based on man/day or month - rates taking account of the nature of services to be performed. However, all such payments shall not exceed 5% of total project cost.
The man day/-month rates that will be applicable will take account of the complexity and the sophistication of the technological services to be rendered.

Some Consultancy Agreements, especially Agreements relating to execution of contract, the applicant must furnish the Office with evidence of the award of contract. Such evidence shall be by way of a letter of award or an agreement between the parties. All instruments of award of contract presented to the Office must specifically state the contract price for the project, location of the project etc and the project shall be monitored.

(f) **Agricultural and Agro-Allied Projects:-** Payments for services in this sector would be based on lump-sum at the initial years (gestation period) where no sales or profit are anticipated. However, after the gestation period. payments shall be based on net sales like in other sectors.

(g) **Incentive Remuneration:-** For the purposes of this revised guidelines, incentive remuneration will be allowed to deserving cases where:-

(i) the local value addition is not lower than 70%
(ii) the products are intended for Export Market
(iii) the benefit derived by the Enterprise is considered desirable in the national interest.

(h) **Renewals:-** Generally, payments in respect of Renewal Agreements may attract lower remunerations. However, such renewals will not be automatic but will be considered on merit based on submission of annual progress report.

(i) **Definition of Net Sales: -** Net Sales shall generally be defined as "Net exfactory sales price of the product exclusive of excise duties, and other taxes minus the cost of the standard bought out components and the landed cost of imported components irrespective of the source of procurement including customs duties, insurance and freight.

(j) **Separation of Net Sales for each product**
For Companies with variety of products the Net Sales must refer to the very products(s) for which Agreement is being sought and not Company's total turnover. Such Net sales must be verified from Company's Annual Report.

Companies with several product lines should separate the net sales of each product in their audited accounts so as to pay royalty for specific product(s) covered by the industrial property rights and not on the entire/total sales of the company.

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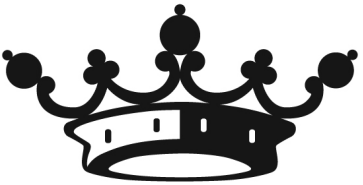

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