

Knowledge Management and Intellectual Capacitation through Patent and Technology Transfer

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Abstract.

It is expedient to introduce that this excerpt is the conclusion of the Chapter in a book published earlier by the speaker as: J.A. Ajienka & S.E. Iyuke. A paradigm shift: Patent, publish and product. The evolution of entrepreneurial University. University of Port Harcourt Press, Port Harcourt, pp. 47 - 60. ISBN 978-2954-04-7, 2015. The article commences with many attempts made by writers to give precise definition for an „invention“, which is a key requirement for patentability, but no single definition has been accepted by all and sundry, as a result, each country is allowed to provide its own regulations within their legal and judicial dispensation. Thus citing the case between Crossley Radio Corporation v. Canadian General electric Co Ltd (1936) D.L.R. 508, it was ruled that „It would be idle to attempt a comprehensive definition. In certain cases, the decision must necessarily be the result of nicety. It is a question of fact and degree depending upon practical considerations to a large extent rather than upon legal interpretation. On the other hand, the Nigerian Patents and Design Act 5 (PDA) attempts to define what constitutes an „invention“ for the purposes of granting a patent, whereby Section 1 of the Act stipulates the circumstances under which an invention could be considered patentable. Consequently, having shown the parallels between publications and patent specifications, is it true therefore that filing a patent application means that a publication cannot be submitted by the inventor(s)? The following answers are therefore proposed for the inevitable question as:

- *Although publishing does constrain the options available to the applicant in patenting his/her research findings, as for South Africa, a provisional patent application can be filed, which gives the applicant a priority date recognized internationally through the Paris Convention. This gives a period of one year before the next decisions have to be made. Thus papers on the invention may be published after such a filing has been effected.*
- *One exception to this is the USA, where the inventor can publish up to one year before filing a US patent application, but proper records must be kept in the form of log books with dates, time and signed.*
- *The United States allows a patent to be granted to the first to invent provided emphasis is placed on keeping dated and signed notebooks of one's research. There is also a new Act in the US, the America Invents Act (AIA) which prescribes first to file.*
- *In the rest of the world, a valid patent is granted to the first to file.*

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