



INTELLECTUAL PROPERTY UNDER DIGITAL HEALTH IN NIGERIA: COLLABORATION AGREEMENT AS A MECHANISM FOR REDRESS

Introduction

Digital health refers to digital products or services that can be used to monitor, diagnose, and prevent diseases and conditions. Recently, there has been an increase in the use and deployment of digital health globally, and Nigeria is not left behind. The development and proliferation of internet-enabled phone applications, wearables and implants, electronic health records, predictive medicine, telemedicine, artificial intelligence, and other digital platforms are all capable of protection under the Intellectual Property Law in Nigeria.

This article examines the various types of Intellectual Property (“IP”) rights under digital health in Nigeria and collaboration agreements as a mechanism for enforcing these IP rights.

Types of Intellectual Property Rights under Digital Health in Nigeria

Intellectual property protection under digital health in Nigeria is widely spread from patents, copyright, trade secrets and industrial design.

a. Patents

A patent is an exclusive right or protection granted in respect of an invention which may be a product or a process that provides a new and inventive way of doing something or offers a new and inventive technical solution to a problem. Thus, digital health technologies are capable of patent protection.

Digital health software can be protected under patent law in Nigeria if it satisfies the basic patentability requirements. Unlike copyright which protects software codes, a patent protects the invention, including the method and processes used in developing the software, once fixed in a tangible format. Not all software is eligible for patent protection. Software is eligible for patent protection if it is new. It involves an inventive step that needs to be more obvious to people knowledgeable in the field and capable of industrial application.

An application for a patent is made to the Registrar of Patents and accompanied by a description of the relevant invention with any appropriate plans and drawings. The right to patent an invention is vested in the first to file a patent application in Nigeria. Patents remain in force for twenty (20) years from application.



b. Industrial design

An industrial design consists of creating a shape, configuration, or composition of pattern or colour, or combination of patterns and colours in three-dimensional forms, containing aesthetic value. It can be a two- or three-dimensional pattern used to produce a product. Industrial design protects the visual appearance of digital health applications, for example, the design of the device, tools, and the web. These appearances make the product more appealing to consumers.

Industrial design can be protected by registration with the Nigerian Patents and Designs Registry. An industrial design is registrable if it is new and not contrary to public order or morality.

A registered design is protected for five (5) years from the date of the application for registration. Protection may be renewed for two consecutive periods of five (5) years, each upon payment of the prescribed fees.

c. Copyright

Copyright can be used to protect digital health software, algorithm, and digital health applications that can collect and store data for healthcare. Data alone cannot obtain IP Protection, but a collection of data arranged systematically or methodically in a database is potentially protected by copyright.

To enjoy protection, the inventor must be a citizen and or domiciled in Nigeria, or his work must have been initially published in Nigeria. This also includes works made during employment, commissioned works, assigned and licensed works, and works made by citizens or domiciled in countries that are parties to treaties to which Nigeria is a signatory.

Copyright can be protected by registration with the Nigerian Copyright Commission. This protects the exclusive right granted to an originator of creative work to reproduce the work for a certain period.

d. Trade Secret

A trade secret is a formula, practice, process, design, instrument, pattern, or compilation of information that is not generally known or reasonably ascertainable by which a business can obtain an economic advantage over competitors or customers. Trade secret protection is also increasingly used by digital health companies to protect their data, processes, and innovations.

Unlike industrially developed countries in the world, Nigeria has no existing legislation for the protection of trade secrets. Trade secret protection in Nigeria is mostly derived from common law principles under contracts, torts, and other legal principles.

Collaboration Agreement as a Mechanism for Redress

When two or more individuals work together on an invention, a collaboration agreement is vital for parties seeking to join forces on a commercial project. A collaboration agreement is a legally binding document that defines the intricate details of the partnership, including the respective duties and obligations of each party and the profit-sharing structure and compensation. Notably, the agreement provides a mechanism for redress in case one party fails to fulfill its commitments.


The collaboration agreement is important because, although not legally required, it is commonly used for private commercial contracts between collaborating parties. It is a formal written document that can provide valuable assistance in legal proceedings in case of non-compliance or disputes and clarify the relationship with other parties involved. It also establishes a mutual understanding of each party's obligations and ensures a designated point of contact for addressing concerns.

A collaboration agreement defines the respective rights in the IP, not only among creators themselves but also to third parties that seek to purchase or licence the IP rights or infringe those rights. Collaborating parties may modify the terms to reflect the peculiar arrangement and circumstances.

In the absence of an agreement, the rights of parties who have expended time and labour in a joint effort and who subsequently dispute those rights may be determined by law or ruling, which may not be satisfactory to either party.

Some common clauses in a collaboration agreement include:

- 1. Description of parties and purpose of the agreement:** This clause describes each party in a bid to minimize confusion and ensure the certainty of parties.
- 2. Roles and responsibilities:** It defines each party's roles and responsibilities in the agreement. It helps to prevent misunderstandings and ensures that the project runs smoothly according to the intended plan.
- 3. Sharing Formula:** To ensure successful collaboration, it is important to document the financial aspects in writing, clarify payment obligations, and include legal remedies such as damages for non-payment and limited liability clauses to prevent losses.
- 4. Confidentiality Clause:** Private or confidential information exchange is common among project parties and crucial for business success. Incorporating a confidentiality clause in your agreement outlines rules and boundaries that protect against unauthorized information sharing.
- 5. Ownership Structure:** To ensure the proper use of assets, it is crucial to document the ownership and transfer of intellectual property created during collaborations with multiple parties. This can be achieved by including licensing agreements for all parties involved.
- 6. Non-compete:** A non-compete clause is a provision that restricts parties from soliciting each other's employees, customers, or business partners after the termination of the collaboration.



7. Liability Clause: In ensuring adequate protection when collaborating with other parties, outlining the risks and assigning responsibility for damages is important.

8. Dispute Resolution Clause: The collaboration agreement should include a clearly-defined dispute resolution process. This process should identify how disputes will be resolved and what laws will be applicable. The clause specifies the forum and resolution methods, such as mediation, arbitration, or litigation.

9. Termination Clause: The clause outlines the termination circumstances, notice period, and parties' respective rights upon termination.

CONCLUSION

There has been an increase in the development and proliferation of internet-enabled phone applications, wearables and implants, electronic health records, predictive medicine, telemedicine, artificial intelligence, and other digital platforms. Hence, there is a need to protect intellectual property rights under Nigeria Law.

One viable means to enforce a person's intellectual property rights is to enter into a collaboration agreement with partners. This agreement defines the intricate details of the partnership, including each party's respective duties and obligations and the profit-sharing structure and compensation. It provides a mechanism for redress in case one party fails to fulfill its commitments.



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