

# **A CRITICAL ANALYSIS OF THE PROTECTION OF INDUSTRIAL DESIGN UNDER RWANDAN INTELLECTUAL PROPERTY LAW**

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## **Abstract**

Industrial design as one form of intellectual property refers to aesthetic ornamental and plays an important role in trading of consumer goods products through registration. However, the level of industrial and handicraft products protection in Rwandan law is quite low in comparison to other industrial property such as patents and trademarks. The objective of this research paper is to highlight major problems connected to the protection of industrial and handicraft products under Rwandan intellectual property law of 26<sup>th</sup> October 2009 and to propose effective mechanisms to be adopted for a better improvement in their protection.

The main challenges in protecting industrial design under Rwandan law are related to the substantive examination, the lack of sufficient infrastructures and strong enforcement mechanisms. However, as industrial designs play an important role among competitors as well as it protects the aesthetic and visual form of a product; it also constitutes a great asset to a company and serves as a means of attracting consumers by influencing their decision to prefer one product over another. Besides, industrial design supports the importance of trademarks in helping companies or individuals to differentiate their products from those of competitors and enhance the brand image of their products<sup>1</sup>. The reason why there is a need to provide effective protective mechanisms to assure designers of industrial and handicraft products to enjoy exclusive rights over their creativity during the period provided by the law.

**Key words:** Intellectual property, Industrial property, Industrial designs, Handicrafts product.

## **Introduction**

1 The designers of industrial products strive to create products whose shape or appearance will satisfy the aesthetic preferences of consumers as well as their expectations.

Intellectual property rights (IPRs) are the rights vested with persons over their creativity and innovation. Usually, a creator is granted an exclusive right over the use of his/her intellectual capital for a specific period of time<sup>2</sup>. They cover a broad range of legal rules that govern and regulate the ownership, use and transfer of the subject matter that is protected. It includes specifically the following main branches<sup>3</sup> :

- copyright and related rights (i.e. the rights of authors, performers, producers of sound recordings, broadcasting organizations and for architectural designs);
- Industrial property (trademarks and service marks, geographical indications, industrial design, patent, layout-design, trade secret etc.)<sup>4</sup>.

Thus, this research paper focuses on industrial property, especially on industrial design protection in Rwanda.

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2 P.GOLDSTEIN and E.KITCH, *Unfair Trademark, Copyright and Patent*, Thomson West, New York, 2005, p.322.

3 Article 4 of Rwandan law No 31/2009 of 26/10/2009 on the protection of intellectual property, in *OG*, no 50 bis. of 14 December 2009.

4 J. S.MCKEOWN, *Canadian intellectual property law and strategy: Trademarks, Copyright and Industrial design*, Oxford, New York, 2010, p.369.

Article 5, paragraph 5, of the Rwandan law No 31/2009 of 26/10/2009 on the protection of intellectual property defines “an industrial design and model as any assembly of lines or colors, and any plastic shape, associated with lines or colors that this assembly or shape gives a special appearance to an industrial or craft product and may serve as a model for the manufacture of an industrial or craft product”<sup>5</sup>.

This definition shows that a design may be an industrial or a craft product. It is related to the aesthetic or outward appearance of a product. It is what makes a product attractive or appealing to customers and visual appeal is one of the key considerations that influence the decision of consumers to prefer one product over another. Moreover, industrial designs help companies to differentiate their products from those of competitors and enhance the brand image of their products. This is why ensuring its proper protection through registration is so important<sup>6</sup>.

The Rwandan law on the protection of the intellectual property has been adopted on 26<sup>th</sup> October 2009. It regulates the

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5 See Article 5, paragraph 5 of Rwandan law on the protection of intellectual property.

6 WIPO, “*Introduction to industrial design*” , available on [www.wipo.int/ebookshop](http://www.wipo.int/ebookshop), accessed on 5<sup>th</sup> May 2014.

protection of copyright and related rights and industrial property including patent for inventions, trademarks, geographical indications, industrial designs, utility model, the layout-designs of integrated circuits and undisclosed information including trade secrets as provided by Article 4 of Rwandan law on the protection of intellectual property<sup>7</sup>.

From 1963 to 2008, the Ministry of Commerce was the institution responsible for all industrial property policy and legislative work as well as its administration but after the creation of the Rwanda Development Board, the latter took over the administration of Intellectual Property<sup>8</sup>. While there has been some protection in the field of industrial property through registration, the level of registered industrial designs remains quite low<sup>9</sup> in comparison to patents and trademarks. For example, in December 2011, the registered industrial property without distinguishing nationals and foreigners was the following: 7889 trademarks, 232 Patents and 48 Industrial designs<sup>10</sup>.

7 See Article 4 of Rwandan law on the protection of intellectual property.

8 Organic Law No 53/2008 of 2/9/2008 establishing RDB and determining its responsibilities, Organization and functioning, in OG no special of 5/9/2008.

9 Database from the registrar of industrial designs in Rwanda Development Board, consulted on 25<sup>th</sup> October 2011.

10 Interview with Makuza Désiré, one working in the Office of Registrar General: Intellectual Property service conducted on 22<sup>nd</sup> December 2011.

It is surprising that in the field of industrial design, the country still faces significant challenges with regard to their registration. The legal issues raised are to know why Rwandans and foreign investors are not motivated in protecting their industrial and handicrafts products. What are the main obstacles designers are facing in registering their industrial and handicraft product? What are the strategies to be taken in order to promote innovation and creativity in the field of industrial design and handicraft products? Those are the main questions on which this research is based.

### **1. Overview on the protection of industrial design in Rwanda**

The law of February 25<sup>th</sup>, 1963 on industrial design comprised only ten articles. It did not provide “any details on the substantial requirements for design protection; only formal condition for the deposit was provided”<sup>11</sup>. A part from article one “which dealt with the acquisition of exclusive rights on industrial design through deposit in the Ministry in charge of economic affairs, and article two providing one, three or ten years of protection”<sup>12</sup>, no definition of industrial design was provided in the law. Likewise,

11 See articles 1, 2, 3, 5 of the law of February 25, 1963 on industrial designs..

12 *Idem*, article 1 and 2.

the subject matter and the condition of protection were not provided for.

In the context of correcting the gap and the weakness of the above mentioned law, Rwandan legislator adopted the law protecting intellectual property in 2009 after the ratification of different international and regional conventions on the protection of intellectual property such as the Paris Convention on the protection of industrial property<sup>13</sup>, the Trade Related Aspects of Intellectual Property Rights agreement which set up basic standards for national and regional laws on industrial design protection, the African Regional Intellectual Property Office Protocol on patent and industrial design<sup>14</sup> and the Hague agreement on international registration of industrial design<sup>15</sup>. With regard to the protection of industrial designs at international level, there are two approaches: the patent approach which requires substantive examination before registration and the copy-right approach where there is no need of

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13 See the law no 17/1983 of August 18, 1983 on accession of Rwanda to the Paris convention for the protection of industrial property.

14 Harare Protocol on patents and industrial designs within the framework of African Regional Industrial property organization adopted on December 10, 1982 at Harare and Ratified by Rwanda by the Presidential order NO 17/01 of 16/2/2011.

15 Hague agreement concerning registration of Industrial design for protection in several countries at the same time has been ratified by Rwanda on February 16, 2011.

registration<sup>16</sup>. It is to be mentioned that Rwanda opted for the patent approach.

## **2. Challenges in protecting industrial designs in Rwandan law**

As mentioned above, there is a few numbers of registered industrial designs in comparison to other types of industrial property. Businesses are interested in protecting their trademarks while their interests in protecting industrial designs remain quite low<sup>17</sup>. Challenges are mainly related to infrastructure and enforcement mechanisms, the lower level of industrialization and technology in the country, lack of public awareness and few foreign industrial designs protected in Rwanda.

### **2.1 Problems related to intellectual property infrastructures**

The most fundamental element related to infrastructures in protecting industrial design is Rwandan intellectual property law which provides the grant of legal protection after examination of novelty<sup>18</sup>

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16 Industrial design protection, available at <http://www.wipo.int/freepublications>, accessed on 20<sup>th</sup> October 2011.

17 Database from the registrar of industrial designs in Rwanda Development Board, consulted on 25<sup>th</sup> October 2011.

18 See Article 90 on Rwandan law on intellectual property.

### 2.1.1 Problems related to the provision providing substantive examination

The requirement of novelty means that a design is new if no identical design has been disclosed in any place in the world<sup>19</sup>. This is a big challenge for the office of registrar general at Rwanda development Board to assess novelty. The later necessitates the maintenance of search file which can very often be almost impossible to maintain, since on the basis of a condition of unqualified universal novelty, it would need to include all designs made at any time, in any party of the world since the commencement of recorded history<sup>20</sup> with skilled personnel to undertake it.

For example, according to the interview I had with Miss TETA Isibo who protected three craft products in February 2010 for a period of three years each one, she told me :” the staff in charge of registering designs has difficulties to know and understand the individual creativity and added value of a product of handcraft “<sup>21</sup>. Moreover, she added :” the fact that the registered designs are not yet published in Official Gazette or the non-existence of industrial property journal may be a

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19 *Ibidem*.

20 World Intellectual Property Organization, *op.cit.*, p116.

21 Interview with TETA Isibo, the Director Manager of Inzuki designs who protected rings and Jewelry made out of sisal , conducted on 1st November 2011.

problem which could lead to imitation and copying of others’ registered industrial or handicraft product because of the lack of public awareness”<sup>22</sup>.

However, in most European countries, where national procedures involve search and examination for novelty, registration can provide registrant with confidence that his/her design is valid and not infringing any other previously published designs. It is to be noted that such systems are now in the minority countries<sup>23</sup>.

For example, from 1<sup>st</sup> October 2006, the United Kingdom Registry no longer undertakes examination for novelty. This requirement related to the substantive examination is no longer in place so that it is left to third party to challenge the design for lack of novelty and individual character in subsequent invalidity or infringement proceedings<sup>24</sup>. In Korea, they have an Intellectual Property Office with qualified examiners. According to article 25(2) of Korean intellectual property act, the qualifications of examiners are prescribed by a Presidential Decree<sup>25</sup>.

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22 *Ibid*.

23 L. BENTLY and B. SHERMAN, *Intellectual property Law*, 3<sup>rd</sup> edition, Oxford, University Press, 2009 p.616.

24 H. NORMAN, *Intellectual Property law*, Oxford, University Press, New York, 2011, p276.

25 Article 25(2) of Korean Industrial Design Protection Act, enacted by act No7289, December 31, 2004.

Unlike Rwanda where the Department of the Office of Registrar General has different duties such as registering Mortgages, Security interest in movable property, Businesses and intellectual property<sup>26</sup>. Particularly, in intellectual property service, there is no expert in that field, reason why it should be better to equip that service with specialized examiners<sup>27</sup>.

Finally, Article 193 of Rwandan law on intellectual property provides that: “when the competent authority finds that both formal and substantive requirements are fulfilled, he/she registers the industrial design, publishes its reference and issues to the applicant a registration certificate for industrial design. However, in case the competent authority finds that all exigencies don’t meet the requirements of the law, he/she shall reject the application and it is provided that the latter is allowed to recourse to administrative appeal against such decision”<sup>28</sup>.

Moreover, it is unfortunate to note that since the execution Ministerial Order putting on place the members of appeal committee, no case had been submitted to that committee and any registered de-

sign had been published<sup>29</sup>.

Contradictory, it is even surprising that the law provides that an industrial design shall be registered without a guarantee of novelty even if a substantive examination has been made by the empowered authority<sup>30</sup>. This raises the question to know what may be the importance of such substantive examination if it does not assure a guarantee of novelty.

As discussed above, a registered design has no guarantee of novelty, so any interested person may request the competent court to cancel the registration of an industrial design if he/she proves that the registered design lacks novelty, is contrary to public order or morality, or when the owner of the industrial design registration is not the creator or his/her rightful claimant<sup>31</sup>. In the same way, Rwandan legislator should, like the United Kingdom, no longer consider such substantive examination and I do agree with Lionel Bently who argued that: “ it is better that the validity of a given design be decided on the basis of an *inter partes* dispute”<sup>32</sup>.

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26 Interview with SANGANO Yves, a worker at RDB, Office of Registrar General, Conducted on 22<sup>nd</sup> October 2011.

27 *Ibid.*

28 See article 193 of Rwandan law on the protection of intellectual property.

29 Interview with RUHIMA M. Blaise, one who is in charge of registering industrial design and patent, interviewed on 25<sup>th</sup> October 2011.

30 See article 100 of Rwandan law on intellectual property.

31 *Idem*, article 101.

32 L. BENTLY and B. SHERMAN, *op.cit.*, p.624..

The World Intellectual Property Organization in its Marketing crafts and visual arts: Role of intellectual property magazine, it is argued that “the special nature and the lack of a clear definition and classification of handicraft may lead to difficulties in registering craft products”<sup>33</sup>. It is worth mentioning that Rwandan law on intellectual property provides handicraft to be protected as an industrial design, but, there is no definition and classification of a handicraft which can be registered as such. It is also worth noting that Rwanda is not even a member of the Locarno agreement for international classification of industrial designs<sup>34</sup>. More importantly, the country has not adopted its national classification system for industrial design. This is also a challenge in registering industrial design in Rwandan intellectual property which justify why registered hand craft products remain quite low.

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33 Even if there is no definition of a handicraft in Rwandan law, UNCTAD/WIPO, in the guide on marketing crafts and visual arts: the role of intellectual property, it is provided that crafts products can be classified under broad divisions primarily based on materials used or combination of materials and technique. The six main categories given in the field of handicraft are the following: Basket, leather, metal, pottery, textiles and wood.

34 The Locarno agreement for International classification of industrial design was adopted by countries members to Paris Convention at Locarno on October 8, 1968 and amended on September 28, 1979.

### 2.1.2 Problem related to dual protection for an industrial design by copyright

Article 195, paragraph 10 of Rwandan intellectual property law on the protection of copyrights and related rights states that “: a work of applied arts such as handicraft works produced by industrial process is granted by the provisions relating to industrial designs”<sup>35</sup>. This leads to the existence of the cumulative or dual protection of industrial design by copyright rules. However, the Rwandan legislator did not determine the extent to which, and the conditions under which, such protection is conferred, including the level of originality. This is an important and difficult question which has to be answered. In many countries where cumulative protection is available, the overlap or extent of dual protection varies considerably; for example, the copyright is suspended for the entire period during which registered design right subsists<sup>36</sup>.

In the same context, registering works of applied art like as handicraft works is of shorter duration than copyright protection. So making a choice between copyright and design right is never automat-

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35 See article 195, paragraph 10 of Rwandan law on intellectual property

36 WIPO, *op.cit.*, p.25.

ic; in a given situation a decision should be made only after taking all benefits of both types of protection into account<sup>37</sup>.

As far as works of applied art or handicrafts works protection are concerned, copyright protection may apply and may represent an attractive option for Small and Medium Enterprises<sup>38</sup> because it gives a long term of protection. As a result, it is important to establish the principle of cumulation of design protection and copyright but also to establish the extent of copyright protection and the conditions under which such protection is conferred.

## 2.2 The problem related to the enforcement infrastructures

The new intellectual property law includes provisions on enforcement of exclusive rights and provides a range of powers to the extra judiciary and judiciary system for remedies. The police, customs authorities, commercial courts play a great role to address Intellectual Property enforcement while the office of the registrar general in charge of intellectual property intervenes for arbitra-

tion matters<sup>39</sup>.

### 2.2.1 Extra judicial remedies: arbitration

Since litigation is expensive, Article 13, paragraph 12, of Rwandan law on intellectual property states that “the competent authority that has the daily management of intellectual property has to arbitrate all disputes arising from intellectual property”. Surprisingly, specifically in the domain of industrial design, since the handover from the Ministry of Commerce to Rwanda Development Board in 2008, any complaint related to the infringement of a registered design has been brought to the empowered authority for arbitration as provided by the law<sup>40</sup>. The reason should be the ignorance or lack of public awareness of the existence of such remedies. This weakness in the implementation of the law should lead to the necessity of public education in order to make them aware of their rights and obligations in that field of intellectual property.

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<sup>37</sup> The owner of copyright work enjoys perpetual moral rights while economics rights duration is the life of author and for fifty years after his/her death as provided by art.217 of Rwandan intellectual property law.

<sup>38</sup> It is to be noted that in some countries such as Kenya, designs that are the subject of a copyright protection are not registrable.

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<sup>39</sup> MINICOM, *op.cit.*, p.6.

<sup>40</sup> Interview with RUHIMA M.Blaise, *supra* note 135.

### 2.2.2 Judicial remedies

The main reason for acquiring intellectual property protection is to be able to reap the benefits of the creations. This could be possible if intellectual property rights acquired can be enforced otherwise, infringers and counterfeiters will always take advantage of the absence of effective enforcement mechanisms<sup>41</sup>.

#### 2.2.2.1 Civil court proceedings

The law establishing the commercial courts and determining their organization, functioning and jurisdiction in its Article 3, paragraph 10, provides that “the Commercial Court branch of the High Court of Rwanda under whose jurisdiction Intellectual Property issues fall are competent to settle issues related to intellectual property”<sup>42</sup>. However, it is unfortunate to be noted that from 2009 up to date, no court proceeding has been initiated in order to enforce exclusive rights embodied in industrial design or handicraft product in Rwandan law<sup>43</sup>. In this regard, a question may arise to know whether design rights are not violated or

whether the owner of industrial design faces some difficulties to initiate a court proceeding in order to get remedies.

According to Article 103 of Rwandan law on intellectual property, it is provided that “the owner of a protected industrial design rights is allowed to file an action in court proceeding against any person who forges an industrial design by carrying out it without his/her consent”. Therefore, the owner of the exclusive right should initiate a civil court proceeding or a criminal action before the competent court. Such action against infringers aimed at preventing further infringements and allows the rightful owner to recover the losses incurred<sup>44</sup>. However, any modality to calculate the compensation has been provided in the law.

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41 GOLDSTEIN, P. and KITCH, E, *supra note* 2, p.257.

42 Organic law n° 59/2007 of 16/12/2007 establishing the commercial courts and determining their organization, functioning and jurisdiction, in *O.G* n° 5 of 1st march 2008.

43 Supreme Court, Enforcement of intellectual property available on [www.supremecourt.gov.rw](http://www.supremecourt.gov.rw), accessed on 15<sup>th</sup> September 2011.

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44 F. Xavier KALINDA, *intellectual property course material note*, NUR, 2010, unpublished, p 77.

Moreover, while commercial courts are specialized jurisdictions which have intellectual property in their competence, there are no specialized judges in the field of intellectual property and there is no provision in the law concerning the assessment of damages. This should have consequences in handling issues related to intellectual property infringement, reason why since 2009 up to date, any case has been settled in the context of industrial design<sup>45</sup>.

#### 2.2.2.2 Criminal court proceedings

According to article 258 of Rwandan law on intellectual property, upon the request of the owner of the protection title, or of any interested person, a court may order the following: “the cessation of release of counterfeit goods infringing owners’ rights into the channel of commerce, the disposal, the seizure, forfeit or destruction of infringing goods”<sup>46</sup>. However, such measures had never been implemented in protecting industrial design.

It is worth noting that in Criminal Investigation Department (CID), there is a division having to deal with economic crime with a section in charge of intellec-

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45 Interview with RWIZIBUKA M. Libérata, the clerk in commercial high court, conducted on 26<sup>th</sup> October 2011.

46 Article 258 of the Rwandan law on intellectual property.

tual property; that service lacks skilled personnel in the field of intellectual property<sup>47</sup>. For example, according to the interview I had with MASASU, the chief of the section of intellectual property in CID, He said: “from 2010 to November 2011, we have received only four cases in the field of intellectual property which have been filed in court”. He added that: “the police had limited technical and human capacity to address such claims”<sup>48</sup>. In addition, in criminal cases, the lack of testing and detection ability meant that it is difficult to surmount the requirements of proof in court<sup>49</sup>.

It should be kept in mind that robust enforcement mechanisms of Intellectual Property are necessary. Without effective enforcement, and qualified law enforcement officials who fully understand intellectual property laws; the latter laws, however well-drafted, are meaningless<sup>50</sup>. Consequently, effective enforcement mechanisms are also basic elements of intellectual property infrastructure. In addition, Public awareness of IP, including its demystification make it understandable to the general public<sup>51</sup>.

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47 Interviews with RUHIMA M. Blaise, *supra note* 135.

48 Interview with MASASU, chief of intellectual property section in CID, conducted on 14<sup>th</sup> December 2011.

49 MINICOM, *supra note* 29, p10.

50 *Ibid*.

51 *Ibid*.

### 2.3 Lower level of industrialization and technology

Rwanda as a landlocked country faces many challenges in developing its sector of industries and technology. In this regard, the industrial sector is currently small, contributing on average around 15 per cent of Gross Domestic Product (GDP)<sup>52</sup>. Furthermore, in order for Rwanda to compete in an increasingly competitive global economy and open trading system, it must build and acquire appropriate science, technology and innovation to produce more value added goods and services<sup>53</sup>.

#### 2.3.1 Challenges in industry sector

Industrialization and human resource development are part of the Government of Rwanda strategy for achieving the Vision 2020. Despite the developments in the last 5 years, Rwanda industrial base remains generally weak and uncompetitive<sup>54</sup>. Among the most challenges facing industrial sector in Rwanda, energy cost is a major impediment to the Rwandan industrial sector, there is inadequate

52 MINICOM, "National Industry policy", available at <http://www.minicom.gov.rw/>, accessed on 11th November 2011.

53 *Id.*, p.23.

54 REMA, "Rwanda state of environment and outlook report", available on <http://www.rema.gov.rw/>, accessed on 10<sup>th</sup> November 2011.

energy supply. Here, electricity has been identified as the biggest challenge to the growth and performance in Rwanda sector of industry<sup>55</sup>. In this regard, apart from Sulfo Rwanda and Inyange industry which protected the shape of their bottles other Rwandan industries did not protect the design of their products. A question may be raised to know why industries working in Rwanda did not protect the design of their product. The answer should be ignorance of the advantage such procedure offers to the company and the challenges meet while trying the registration procedure.

#### 2.3.2 Challenges in technology sector

Rwanda, with its low human development and per capita income, has a weak foundation of science, technology and innovation. This is a challenge faced by the country with significant economic and structural limitations arising from heavy reliance on certain commodities, limited physical and communication infrastructures as well as institutional limitations. From an innovative perspective, there are also a number of specific characteristics of the system in Rwanda which include: a weak innovation system with few resources devoted 55 Among 26 /48 registered industrial designs, only Sulfo Rwanda has registered eleven products related to the shape of its bottle and soap with Inyange industry which recently has protected the shape of its bottle.

to innovative activities, the dominance of externally controlled firms in high value sectors meaning that local enterprises have less decision-making powers related to innovation, significant levels of instability because firms are micro or small with macro-economic uncertainty limiting long-term innovative activity<sup>56</sup>.

In view of above, Rwanda, in its vision 2020, took the decision to invest in technology and to increase the level of its industries. Furthermore, the country is still building appropriate science, technology, innovation-entrepreneurial, engineering, and technical/vocational capacity to produce more value added goods and services in order to compete in an increasingly competitive global economy and open trading system<sup>57</sup>.

However, for the development process to be a success, Rwanda must embrace the future and exploit innovations in Science and technology to complement its cultural strengths<sup>58</sup>. Nowadays in Rwanda, the rate of adoption and integration of science and technology in socio-economic life is very low and the shortage

of technically qualified professionals is visible at all levels.

For that reason it will have to develop the teaching of science and technology at high school and university levels<sup>59</sup>.

This will facilitate the creation of high and intermediate technology enterprises and develop access to Information Communication and Technology (ICT) down to the administrative Sector level, in accordance with the national ICT plan<sup>60</sup>.

#### **2.4 Lack of interest for investors to protect their industrial design in Rwanda**

Rwanda has one of the most open foreign direct investment regimes. The laws and regulations do not place restrictions on Foreign Direct Investment (FDI) entry and establishment or any discrimination on incentives and facilities enjoyed by local investors. All foreign investments are allowed without screening or restriction of amount or sector, and foreign investors are granted national treatment for most intents and purposes. Likewise, Rwanda provides a number of incentives to both local and foreign investors. This is an important avenue that can be used strategically by the government to direct FDI towards in-

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56 MINICOM, *supra note*29, p12.

57 Ministry in the office of President in charge of science and technology, Mapping science and technology for industrial development in Rwanda: Linking Research and Development between Industries and Higher Learning Institutions for Industrial Development, p.20.

58 MINECOFIN, *Rwanda Vision 2020*, p.20.

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59 *Ibid.*

60 Ministry in the office of President in charge of science and technology, *op.cit.*, p.30.

novation and creative industries. Such an approach would buttress the specific IP related issues linked to the objectives of encouraging innovation and creativity, facilitating technology transfer and investments<sup>61</sup>. Despite government policy to put in place laws attracting foreign investment in the country, it is unfortunate that since the adoption of the 2009 law on intellectual property, only Tusker and Heineken have protected the design of their products within RDB<sup>62</sup>.

### **2.5 Lack of independent institution in charge of managing intellectual property**

As earlier noted, RDB has a section in charge of the management of intellectual property. This is a positive step made by the country but which is not enough. This institution lacks intellectual property rights experts such as specialized examiner and controller. However, in most of countries, it is provided an independent office, a commission or institution having in its attributions only the protection of intellectual property within the country<sup>63</sup>. Such independent institution

61 MINICOM, *National industry policy*, p. 8.

62 RDB, Statistics of registered design from 1973 up 2011.

63 With regard to institution of the protection of intellectual property, for example Kenya has Kenya industrial property institute (KIPI) which facilitates national registration of industrial designs while registered community designs in European Community are administered by the

could be benefit for the efficiency management of intellectual property.

### **3. Improving industrial designs protection in Rwanda**

Considering all challenges discussed above linked to the protection of industrial designs under Rwandan intellectual property law, some efficient and effective measures are necessary to be undertaken while encouraging creators in protecting the shape of their industrial and handcraft products. Those include among others: Intellectual property law reform, Public awareness campaigns, availability for detection and testing equipment and manuals for key agencies etc.

#### **3.1 Intellectual property law reform**

As said before, there are two approaches in protecting industrial design: patent approach and copyright approach. Instead of using both patent and copyright approach which requires formal and substantive examination, better could be to consider only formal examination and no longer consider substantive examination. Likewise in other countries, the Rwandan legislator may review the law on intellectual property and abrogate provisions related to the substantive examination Office for Harmonization in the Internal Market (for the Trade Marks and Designs).

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With regard to dual protection of applied art work by copyright and industrial design, the Rwandan legislator has to establish the extent of copyright protection and the conditions under which such protection is conferred. Moreover, IP law should contain provisions on assessment of damages in case of infringement. Furthermore, specialized judge in the field of intellectual property must be affected in commercial court.

### 3.2 Public awareness campaigns

There are both short-term and medium-term needs related to public education and awareness. The short-term technical and financial support should be directed to developing and delivering programs about the importance of innovation and creativity while the medium-term, technical and financial support will be needed to develop targeted programs for the private sector and professional bodies, such as the association, as well as the media<sup>64</sup>.

### 3.3. Detection and testing equipment and manuals for key agencies

In the medium to the longer-term, finan-

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<sup>64</sup> *Id.*, p.14.

cial and technical support is required to purchase and maintain basic detection and testing equipment for the police, customs office. In additionally, support will be needed for the development of IP enforcement manuals for all the key agencies. Such manuals would provide a background to the law and international standards, practices and procedures in detection and testing, the rights and obligations of complainants and third parties and procedures for seizure and destruction of infringing goods as well as key distinctions between criminal cases and civil commercial cases. These manual could also include information regarding any common procedures or coordination requirements in the context of the EAC customs procedures<sup>65</sup>.

### GENERAL CONCLUSION

In this era of globalization and rapid expansion of economy, intellectual property and the corresponding rights over intellectual property are crucial to the economic, social and technological development for any country beyond doubt. In effect, Rwanda has enacted the laws for protecting all intellectual property rights. Industrial Design is one component under legal regime of Intellectual Property Rights which plays an important role in the trading of consumer products. Importantly, the protection

<sup>65</sup> MINICOM, *op.cit.*, p.15.

conferred to the designer's innovation is needed for industries to use the design and gain the market share by protecting new designed products or goods for a certain period of time.

In this regard, Rwanda Development Board facilitates national and foreign registration of industrial designs to improve the competitiveness of a business and to bring in additional revenue in one or more of the following ways: encourage investment in a better design and helps ensure a fair return on investment, benefits consumers and public at large by promoting fair competition and honest trade practices, promote aesthetically attractive products and prevent misappropriation through imitation or copying. However, Rwanda still faces some challenges in protecting industrial design. Most of them are related to infrastructure, enforcement mechanism, lower level of industrialization and technology, lack of public awareness. Consequently, effective mechanism must be taken in order to protect effectively designer's exclusive rights over their innovative creation such as the intellectual property law reform, public awareness campaign, enhancement of effective enforcement mechanism.

Even though Rwandan law regulating intellectual property has no problem

in the compliance with international standard for the protection of industrial designs, but in order to provide the public with a greater assurance encouraging creativity and the establishment of a conducive market climate, possible amendments and additional provisions over the current legislation are particularly necessary to strengthen the design protection conferred by the law. As a whole, administrative procedure for the registration can be applied with some improvement in the legislation. In view of the foregoing, one may suggest the following recommendations:

As the procedures applied for the design registration are different among countries, harmonization on the procedure will be necessary to provide a greater assurance in the protection of industrial design in the era of market globalization. In this regard, formal but not substantive examination of industrial design application is considered appropriate for Rwanda. The legislator should make changes where double protection exists. Such changes could consist in the institution of specific provisions relating to protection of industrial designs within the copyright law, which could avoid the inconvenience of such dual protection.

Rwanda must adhere to Locarno

agreement for a better Classification of Industrial Designs or adopt its national classification. This should facilitate the managing institution in registration of new designed products. Finally, educating law enforcement officials and equipping industrial property service with expert examiner and controller should facilitate a better implementation and administration of IPRs.

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