

Intellectual Property, SMEs, and Economic Recovery in Nigeria

Moses Olanrewaju*

Faculty of Law, University of Ibadan, Nigeria

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1.1 Introduction

On the eve of 2020 New Year Celebration, the global economy was thrown into a spree of jubilations, especially as stock market shares recorded historic increases never seen in decades.¹ Nigeria, too, was not left out of the celebrations as it recorded a GDP growth of 2.27%,² the best ever seen since the 2016 recession: as a result, high hopes were nursed for the year 2020. But little did we know that on that same eve in 2019, China had reported the outbreak of a string of

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¹ Hutt R. (2020) Economic Effects of Covid-19 Around the World. Published by World Economic Forum. Retrieved at <https://www.weforum.org/agenda/2020/02/coronavirus-economic-effects-global-economy-trade-travel/>

² Yomi Kazeem. (2020) Nigeria's economy is making a comeback—but it's still not happening fast enough Retrieved at <https://www.google.com/amp/s/qz.com/africa/1807355/nigerias-economy-has-best-quarterly-growth-since-recession/amp/>

pneumonia-like cases on the streets of Wuhan, which was later declared as COVID-19.³ For a country like Nigeria, little did we know that one year down the line, this single occurrence would go on to spur a systemic reverse in our economic policies, from advancement to recovery.

Thus, when in the heat of the pandemic, oil prices dropped by 30%, government revenue was slashed by 50%⁴ and Nigeria's economy shrank by 6% in the second quarter of 2020 (notably the steepest since the first quarter of 2004), the focus of economic sustainability policies shifted to the major economic engine and largest employer of labour: the SMEs. The Central Bank of Nigeria defines SMEs as businesses with turnover of less than N100 million per annum and or less than 300 employees. For a sector that contributes roughly 48% to the national GDP, representing 96% of Nigeria's businesses while employing 84% of the national workforce, SMES are undeniably the determinants of Nigeria's economic recovery.

This partly explains why the Federal Government's Economic Sustainability Plan places laser-focus on SMES by providing amongst others low-interest loans to certain sectors, a Guaranteed Offtake Scheme for MSMEs boosting government patronage of indigenous products, payroll support to designated sectors, and easing of NAFDAC and other registration procedures.⁵ Flowing from the same stream, the newly enacted 2021 Companies and Allied Matters Act and Finance Bill combine to liberalise the SMEs markets and ease business operations in Nigeria. But more importantly, in the same year 2020, WIPO Nigeria Office began operations in Nigeria, indicating that a new era of Intellectual Property revitalisation has come to Nigeria and that our

³ World Health Organization (2020). Coronavirus. Published by WHO. Retrieved at <https://www.who.int/health-topics/coronavirus>

⁴ Viola Chow.(2020) Five Ways Renewable Energy in Nigeria Fights Poverty. Retrieved at <https://borgenproject.org/tag/the-nigeria-economic-sustainability-plan/>

⁵ State House (2020) What You Need to Know about Nigeria Sustainability Plan. Retrieved at <https://statehouse.gov.ng/news/what-you-need-to-know-about-the-nigeria-economic-sustainability-plan/>

SMEs must then leverage their intellectual property to raise the Nigerian economy to loftier heights. The million dollar question then is, will this be feasible for Nigeria?

1.2 Understanding the Nexus: Intellectual Property, SMEs and Economic Recovery

According to the World Intellectual Property Organization, intellectual property refers to creations of the mind; including works of arts, inventions, computer codes and programs, trademarks and commercial signs.⁶ Because the law understands the value of effort, time, thought and energy put into developing such creations, certain rights have been put in place to ensure that these rights are protected and creators make a fair return on their investments. In Nigeria, such intellectual property rights as copyrights in literary, musical, artistic, cinematographic works as well as sound recordings; trademarks such as logos, signs, trade names, taglines; patents covering inventions and new processes; industrial designs covering aesthetic designs of products; and trade secrets are the instrumentality through which these works can be owned, controlled, protected and enjoyed. In an article published on WIPO Magazine authored by Julian Crump, President of the FICPI,⁷ patents, copyrights, trademarks and trade secrets are the extremely vital intellectual property protections for SMEs seeking to optimally exploit their IPRs.⁸

If, in the case of Nigeria, SMEs must live up to their call as the key to revitalising Nigeria's economy, then SMEs must look within themselves, into their key IPRs and lock in the value of

⁶ World intellectual Property Organization. Retrieved at [https://www.wipo.int/publications/en/details.jsp?id=4528#:~:text=Intellectual%20property%20\(IP\)%20refers%20to,trademarks%20and%20other%20commercial%20signs.&text=It%20also%20introduces%20the%20work,%2C%20policy%2C%20information%20and%20cooperation.](https://www.wipo.int/publications/en/details.jsp?id=4528#:~:text=Intellectual%20property%20(IP)%20refers%20to,trademarks%20and%20other%20commercial%20signs.&text=It%20also%20introduces%20the%20work,%2C%20policy%2C%20information%20and%20cooperation.)

⁷ International Federation of Intellectual Property Attorneys (FICPI)

⁸ Intellectual Property Rights

their IP assets. That said, the peculiarity of the Nigerian SMEs will determine the extent of the usefulness of their IP cum economic recovery strategies.

First, most SMEs in Nigeria die within five years of existence, some go into extinction between six and ten years of existence while only about ten percent survive.⁹ Safe to say, an average SME in Nigeria lives in perpetual fear of running out of capital or revenue streams. Meanwhile, a 2019 EUIPO study revealed that SMEs that have at least one IPR are 21% more likely to experience a growth period, and a subsequent 2021 research showed that the percentage could be higher if SMEs had more than one IPR.¹⁰ Although the setbacks in Nigeria's economy account for the drawbacks of SMEs, the potential of IP to SMEs is the same across board. Patents can offer 20 years of protection and monopoly over an invention while boosting revenue through license sales and royalty revenues; trademarks help to build brand identity and boost brand recognition, serving to distinguish the brand from others; copyrights protect computer codes, valuable data, literary works; trade secrets protect crucial business information. All these IPRs combine to attach commercial value to the intellectual property, thereby boosting the business assets and investability. This way, it becomes easier, for example, to be acquired by or merge with bigger companies, or to merely partner with such companies.

Secondly, financing lies at the core of business growth, and what better way to convince investors than a collection of registered IP rights that evidence commitment and personal belief in business potentials? In Nigeria, it is not unusual to find businesses scurrying for venture capital financing and this makes incorporating the company at the Corporate Affairs Commission (CAC) a

⁹ SMEs: European Center of Sustainable Development. Retrieved at <https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.ecsdev.org/images/V3N1/agwu%2520101-114.pdf&ved=2ahUKEwjZqpSh-urwAhWGC-wKHYtgDLQQFjABegQIBBAG&usq=AOvVaw0W3FP3DFXJrObcZ2-uXGB>

¹⁰ Ibid

fashionable trend for SMEs. However, the bar has been raised higher than usual. An article co-authored by Harvard Law School IP Professor William Fisher demonstrated that against the backdrop of the 1990s, intellectual property has become a deal-breaker for Venture Capitalists, as intellectual property assets have in recent years become generally attractive to these organizations.¹¹ Investors understand that IP assets comprise 80% of a business value, and a business lacking identifiable IP assets may be found wanting in due diligence and business valuation.¹² This is especially essential for businesses in early stages having a huge practicable idea but lacking adequate financing, distribution networks and personnel. Thus, SMEs seeking to secure funding must have a robust and identifiable IP portfolio.

Third, it is somewhat unarguable that for SMEs, there is the fear of having their business ideas copied by bigger competitors. Without a doubt, the fanciest SMEs today are typically the most disruptive ones: upending established rivals by providing cheaper and alternative products in a more Innovative way. Clear examples are in the fintech industry where the likes of Paystack, Cowrywise, Piggyvest, starting out as disruptive financial services startups have redefined how we think of finance.¹³ For companies with similar disruptive products, there is the scare of being whisked off the field, but this would not be necessary if such companies had identifiable and registered IP assets in place. IP protections simply exist for these reasons: to protect their innovative edge, products and business ideas, with a solid backing of the law in cases of infringement or unfair trade practices.

¹¹ William Fisher, Christopher Venin. What venture capitalists expect from your company's intellectual property. Retrieved at http://www.buildingipvalue.com/n_us/97_101.htm

¹² Five reasons Why Investors love Intellectual Property <https://www.eu-startups.com/2018/01/5-reasons-why-investors-love-intellectual-property/>

¹³ Harnessing Nigeria's Fintech Potentials(2020). Retrieved at <https://www.mckinsey.com/featured-insights/middle-east-and-africa/harnessing-nigerias-fintech-potential>

The role of SMES as the major driver of Nigeria's economy is clear as day. However, to maximize their potentials, SMEs must embrace and develop their IP so as to maximize their economic potentials and enjoy full protection. So how can we rejig existing IP structures to boost SMEs in their agenda of economic recovery?

1.3 Revisiting Intellectual Property Structures for Economic Recovery

Revisiting our IP structures relies on an effective implementation of a tripod solution, namely registration, enhancement and enforcement. This tripod solution is what India adopted in its 2016 National Intellectual Property Policy which served to boost investment and investability of its small businesses by speeding up patent and trademark processing and applications, increasing awareness of IP rights among Indian businesses, and providing implementing regulatory tools to facilitate the enforcement of registered IP rights.¹⁴ According to Patrick Kilbride, Senior Vice President for the Global Innovation Policy Center (GIPC) at the U.S. Chamber of Commerce, this policy in particular has skyrocketed India high on the global innovations ranking while spurring a systemic boost in its local economy.

Likewise, the first step to positioning IP as a veritable tool in helping to leapfrog our local economy is by incentivizing IP registration and ownership. The cost and length of time expended on registering IP combined with the procedural bottlenecks can be utterly discouraging. Currently, it takes about a year to register a trademark and patent,¹⁵ and not to mention the challenges

¹⁴ With Sustained Momentum for Intellectual Property, India Gains Ground, New U.S. Chamber Report Shows.(2020). Retrieved at <https://www.uschamber.com/press-release/sustained-momentum-intellectual-property-india-gains-ground-new-us-chamber-report>

¹⁵ Ufuoma Akpotaire, "How Long Does the Trademark Registration Process Take in Nigeria?" (Nigerian Law Intellectual Property Watch Inc., July 2018) <https://nlipw.com/how-long-does-the-trademark>

inventors face during patent registration such as the absence of a definite timeline for registration process.¹⁶

In recognition of the crucial role of SMEs, the Trademarks Registry should create allowances by providing a distinct registration procedure for businesses with significantly lower registration costs. This will synergize with the efforts of the Registry in digitisation and automation of trademarks and patents to create a database while automating application processes.¹⁷ Also making ownership of IP assets an added advantage for SMEs seeking to access government financing or business patronage will boost registration of IP assets for businesses. This is similar to what obtains under the 2020 Finance Act via Section 23 of the Company Income Tax Act incentivizes companies to develop and acquire software, possible only where the software is patented.¹⁸

The second phase is enhancement of IPRs. This phase consists in enabling the law to help SMEs maximize their intellectual property rights by providing supporting legal and extra-legal structures. Using IP assets to gain access to credit is an exemplary strategy Nigerian government can implement to build an IP-aware economy. IP financing has been in practice since as far back as 2008, existing in forms of auction and transfer of IP assets in exchange for funds.¹⁹ For a start, this might understandably be a culture shock for Nigerians, but not for foreign companies where IP finance is usual practice. Such companies can be offered tax holidays and concessions for offering credits in exchange for acquired local IP assets. Also, all stakeholders should make

¹⁶ Nigeria: Patent Registration in Nigeria, (2018), Retrieved at <https://www.mondaq.com/nigeria/patent/703362/registration-of-patent-in-nigeria>

¹⁷ Keynote Address by H.E. Otunba Adeniyi Adebayo (Minister of Industry, Trade and Investment) on behalf of the Vice President, Federal Republic of Nigeria, Prof. Yemi Osinbajo SAN: Role of Small and Medium Enterprises (SMEs) in Driving Economic Recovery in Nigeria Through Markets and Intellectual Property (IP) https://www.wipo.int/meetings/en/details.jsp?meeting_id=63248

¹⁸ Highlights of Finance Act 2021. Retrieved at https://www.ey.com/en_gl/tax-alerts/nigeria-highlights-of-finance-act-2020

¹⁹ Intellectual Property Financing – An introduction.(2008). Retrieved at https://www.wipo.int/wipo_magazine/en/2008/05/article_0001.html

concerted efforts in ensuring that the Copyright Bill and Industrial Property Bill are passed, as they represent global best practices that can help businesses enhance their IPs. For instance, the proposed Commission under the Industrial Property Bill will help to foster a smooth administration of trademarks and patents while the Copyright Bill will help to clamp down on digital piracy through the help of Internet Service Providers.

The final stage is enforcement of IPRs. Without a doubt, litigation and court battles have not been forthcoming as channels for enforcement of IPRs due to systemic infrastructural deficit, corruption and red tapism. It is against this backdrop that the Nigerian Copyrights Commission in partnership with the WIPO Arbitration and Mediation Center on Alternative Dispute Resolution have enabled SMEs to adopt alternative systems for solving IP related disputes instead of approaching the courts.²⁰ These disputes cut across licensing agreements, technology transfer agreements, data processing agreements, consultancy agreements, as well as cases arising out of agreements in settlement of prior court litigation.²¹ To a very large extent, this will help to sidestep the costs and bad publicity incidental to litigation.

1.4 Conclusion

For an oil rentier nation like Nigeria, anchoring our economic recovery on a volatile market like oil and gas is unsafe, and euphemistically so. SMEs constitute 96% of Nigerian businesses meaning SMEs hold the key to revitalising our economy. With the incredible advances in technology, intellectual property has undoubtedly become the new oil. If our country must lock into its vast

²⁰ Mediation and Arbitration for Copyright Disputes in Nigeria NCC-WIPO Collaboration. Retrieved at <https://www.wipo.int/amc/en/center/specific-sectors/ipoffices/nigeria/index.html>

²¹ WIPO Caseload Summary WIPO Mediation, Arbitration, Expert Determination Cases and Good Offices Requests <https://www.wipo.int/amc/en/center/caseload.html>

potentials, then a tripod solution cutting across IP registration, enhancement and enforcement must lie at the core of its economic policies.