



# Intellectual Property, SMEs, and Economic Recovery in Nigeria

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## 1.1 Introduction

The *Covid-19* pandemic which plagued the World in 2020 took a toll on Global Economy and the Nigerian Economy was no exception, the attendant effect of the pandemic includes the closure of several industries and general restriction of movement which affected and still affects a lot of businesses negatively. Considering the devastating impact of the pandemic on various sectors of the economy, employers of labour and key players in the economy have had to go back to the drawing board to fix this loophole and revitalize the economy. Though Nigeria relies majorly on oil, her economy is also grown by pockets of corporate organisations covering almost all spheres

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of activities within the country, ranging from multinational corporations within the country and Small and Medium Enterprises (SMEs).<sup>1</sup>

SMEs are businesses that maintain revenues, assets or a number of employees below a certain threshold.<sup>2</sup> SMEs in Nigeria are broadly defined as businesses with turnover of less than 100 million per annum and/or less than 300 employees.<sup>3</sup> The SME sector is the backbone of major developed countries, as well as an important contributor to employment, economic and export growth.<sup>4</sup> In Nigeria, SMEs contribute to 48% of National Gross Domestic Product (GDP), account for 96% of businesses and 84% of employment.<sup>5</sup>

Intellectual Property (IP) rights are exclusive proprietary rights granted by law to the owners thereof, over intangible assets which are innovative products of the brain or the mind as opposed to personal or real properties.<sup>6</sup> They include patents, copyrights, trademarks, trade secrets, industrial designs, plants and animal variety, traditional knowledge and geographical indications. This essay shall examine the role of IP in building resilient SMEs and how this can impact the Nigerian economy positively. Specifically, where necessary, policy suggestions are provided to aid in the practicability of these solutions.

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<sup>1</sup> Uche Mekwunye, 'Nigeria: Small and Medium Scale Enterprises in Nigeria – An Overview of Initial Set Up' [22 November 2018] <https://www.mondaq.com/nigeria/directors-and-officers/757432/small-and-medium-scale-enterprises-in-nigeria-an-overview-of-initial-set-up> accessed 21 April 2021.

<sup>2</sup> Daniel Liberto and Janet Berry-Johnson, 'Small and Mid - size Enterprise (SME)' [14 November 2020] <https://www.investopedia.com/terms/s/smallandmidsizeenterprises.asp> accessed 12 May 2021.

<sup>3</sup> Banji Oyelaran-Oyeyinka, 'SME: Issues, Challenges and Prospects' (Financial System Strategy International Conference 2020).

<sup>4</sup> PwC, 'Nigeria SME Survey: Assessing Current Market Conditions and Business Growth Prospects' <https://www.pwc.com/ng/en/events/nigeria-sme-survey.html> accessed 12 May 2021.

<sup>5</sup> PwC (n 4).

<sup>6</sup> Femi Olubanwo and Oluwatoba Oguntuase, 'Nigeria: Strengthening Intellectual Property Rights and Protection in Nigeria' [11 March 2019] <https://www.mondaq.com/nigeria/trademark/788714/strengthening-intellectual-property-rights-and-protection-in-nigeria> accessed 21 April 2021.

## 1.2 Building Resilient SMEs with Intellectual Property

The stringent conditions set by financial institutions, lack of adequate collateral and credit information make accessibility to funds difficult for SMEs and this is a major obstacle to the growth of these SMEs.<sup>7</sup> With IP financing, small business owners are able to use IP assets to gain access to credit.<sup>8</sup> IP financing is a way to secure funding or raise money using IP assets.<sup>9</sup> IP may generate income for the SMEs through licensing, sale or commercialization of the IP products or services that may significantly improve an SME's market share or raise its profit margin.<sup>10</sup> Availability of finance for SMEs in Nigeria transcribes to availability of goods and increase in productivity in diverse sectors of the economy; this is poised to boost Nigeria's economy beyond what it is presently.

Notably, Energysquare, a company in France which specializes in the creation of wireless charging board for electronic devices has been able to solve the problem of financing their IP portfolio by licensing their technology to manufacturers.<sup>11</sup> IP collateralization also solves the problem of finance for SMEs. Being a form of IP financing, it allows a company pledge its IP assets as collateral in a loan agreement.<sup>12</sup> However, Nigeria does not yet have an IP system that

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<sup>7</sup> Mba Okechukwu Agwu and Cletus Izunwanne Emeti, 'Issues, Challenges and Prospects of Small and Medium Scale Enterprises (SMEs) in Port – Harcourt City, Nigeria' [2014] (3) (1) *European Journal of Sustainable Development* 101.

<sup>8</sup> WIPO, 'Intellectual Property Financing – An Introduction' (WIPO Magazine 2008) [https://www.wipo.int/wipo\\_magazine/en/2008/05/article\\_0001.html](https://www.wipo.int/wipo_magazine/en/2008/05/article_0001.html) accessed 14 May 2021.

<sup>9</sup> Upcounsel, 'Intellectual Property Financing: Everything You Need to Know' [26 November 2020] <https://www.upcounsel.com/intellectual-property-financing> accessed 25 August 2021.

<sup>10</sup> Idris, K. (2003). Intellectual Property: A Power Tool for Economic Growth. Switzerland: World Intellectual Property Organization cited by Sati-Salmah Sukarmijana and Olivia De Vega Saponga, 'The importance of intellectual property for SMEs: Challenges and Moving Forward' (International Agribusiness Marketing Conference 2013, IAMC 2013, 22-23 October 2013, Kuala Lumpur, Selangor, Malaysia).

<sup>11</sup> Timothee le Quesne, the Co-Founder and CEO of Energysquare, (World Intellectual Property Day Message, 21 April 2021) <https://www.wipo.int/ip-outreach/en/ipday/> accessed 16 May 2021; Catherine Jewell, 'Energysquare makes wireless recharging a reality' [March 2021] [https://www.int/wipo\\_magazine/en/2021/01/article\\_0004.html](https://www.int/wipo_magazine/en/2021/01/article_0004.html) accessed 18 May 2021.

<sup>12</sup> Aparthiba Debray, 'IP as Collateral' [23 February 2021] <https://www.iiprd.com/ip-as-collateral/> accessed 25 August 2021.

robustly supports IP Finance. In May 2017, Kenyan President Uhuru Kenyatta, passed a law allowing borrowers to use IP to secure commercial loans aimed at boosting access to credit.<sup>13</sup> In Nigeria, access to loans is majorly tied to ownership of tangible assets and no framework exists for the auction of IP assets. As a way of facilitating access to finance for SMEs, laws regulating banks and other financial sectors should be revised to allow IP assets to be treated as security for financial transactions. Also, the Nigerian Government in collaboration with IP organisations should set up IP finance houses that will oversee the commercialization of IP assets.

Secondly, SMEs face a major problem of infringement of ideas by their competitors. Importantly, SMEs can leverage on the IP system to protect their rights and thus enjoy exclusivity of ideas, inventions and works. IP rights protect SMEs from unfair trade practices that are beyond their control. While confidentiality agreements help to curtail infringement on a smaller scale, ideas communicated to a larger audience are at risk of being replicated.<sup>14</sup> By patenting your innovation, you acquire exclusive rights over everything that concerns it. Julius K9, a leading dog harness manufacturer in Europe, has been able to leverage on the protection afforded to SMEs by IP rights in protecting the brand connected to their innovation, the design and the technical content.<sup>15</sup> In Nigeria, the mechanisms for the protection and enforcement of IP rights are ineffective. To protect SMEs from unfair competition in the market, there is need to review and strengthen IP regulatory and enforcement framework in Nigeria and ensure that they are in tandem with changing times and accommodate trends in the market. Also, IP courts should be established to deal sanctions on business owners who infringe IP rights.

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<sup>13</sup> Franklin Okeke, 'Nigeria: New Horizons: Utilising IP As Security For Financing Transactions in Nigeria' [11 May 2020] <https://www.mondaq.com/nigeria/trademark/931972/new-horizons-utilising-ip-as-security-for-financing-transactions-in-nigeria> accessed 16 May 2021.

<sup>14</sup> Omplule Modibela, IP Lawyer, WIPO (World Intellectual Property Day Message, 21 April 2021) <https://www.wipo.int/ip-outreach/en/ipday/> accessed 16 May 2021.

<sup>15</sup> Gyula Julius Sebo, Founder and CEO Julius K9, WIPO (World Intellectual Property Day Message, 21 April 2021) <https://www.wipo.int/ip-outreach/en/ipday/> accessed 16 May 2021.

SMEs also face challenges in marketing their innovation. IP can be efficiently used as an important tool in creating an image for your business in the minds of your current and potential customers and in positioning your business in the market.<sup>16</sup> According to Hongbing Chen, a trademark specialist in WIPO, trademark and branding are increasingly becoming an integral part of successful enterprises and SMEs can take advantage of collective marks, certificate marks and geographical indications which will help to expand their impact in the market as a group and increase sale into international markets.<sup>17</sup> This will be particularly useful in Nigeria since we have so many home-grown innovations such as Tie & Dye in Ogun State, Ijebu Garri in Ijebu Ode and other cultural expressions that should ordinarily be sold within and outside the country.<sup>18</sup> The ability for SMEs to market their innovations internationally with geographical indication will allow them enjoy immense profit and increase the income generated from foreign markets in the country leading to a general improvement in our economy.

### 1.3 Conclusion

IP is an important component of a country's economic development where a continuous creation of IP from time to time will increase the investment and trading activities in the country.<sup>19</sup> The role innovative SMEs play in driving economic growth cannot be overemphasized. With IP Financing, IP Protection and an IP environment that generally favours SMEs, there will be increase in the

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<sup>16</sup> Perbadanan Harta Intelek Malaysia: <http://www.myipo.gov.my/> accessed 5 September 2013 cited by by Sati-Salmah Sukarmijana and Olivia De Vega Saponga, 'The importance of intellectual property for SMEs: Challenges and Moving Forward' (International Agribusiness Marketing Conference 2013, IAMC 2013, 22-23 October 2013, Kuala Lumpur, Selangor, Malaysia).

<sup>17</sup> Dagna Litzenberger-Vinet, Interview with Hongbing Chen, trademark specialist, WIPO (World Intellectual Property Day Message, 21 April 2021) <https://www.wipo.int/ip-outreach/en/ipday/> accessed 16 May 2021 .

<sup>18</sup> Kasim Waziri, 'Geographical Indications and SMEs' (IP & SMEs: Taking your Ideas to the Market, WIPO Webinar, 29 April 2021).

<sup>19</sup> Gee, H. L. (2007). Impact of the Intellectual Property System on Economic Growth. WIPO-UNU Joint Research Project cited by Sati-Salmah Sukarmijana and Olivia De Vega Saponga, 'The importance of intellectual property for SMEs: Challenges and Moving Forward' (International Agribusiness Marketing Conference 2013, IAMC 2013, 22-23 October 2013, Kuala Lumpur, Selangor, Malaysia).

nation's GDP and a positive impact on the economy. For this purpose, it is important to educate the general public on IP rights and the short and long term benefits that business owners stand to gain from using them. This can be done by organizing trainings and workshops on IP for start-ups and small business owners.