



# Intellectual Property, SMEs, and Economic Recovery in Nigeria

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## 1.1 Abstract

Small and Medium Enterprises (SMEs) are budding grounds for creativity and innovation. All over the world, SMEs exist and will exist, because of their indispensable contribution to the global economy, especially in wake of post COVID 19 economic recoveries across countries. This work revalidates the beneficial combination of Nigerian SMEs and IP towards the economic recovery of Nigeria; employment opportunities, tax revenue, wide variety of innovative products and technologies, inflow of FDIs into Nigeria, leading to an economic boost. This work identifies factors hindering an effective use of IP by Nigerian SMEs, chiefly lack of intellectual property knowledge by Nigerian SMEs. Succinct recommendations in tackling same are proffered.

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## 1.2 Introduction

SMEs are engine houses of various economies of the world. In Nigeria, SMEs contribute 50% of the national GDP, account for 96% of businesses and 84% of employment in the country.<sup>1</sup>To tackle the dual problems of the economic effects of the COVID 19 pandemic and economic recession, SMEs, as major propellers of the Nigerian economy must fully utilise intellectual property for economic recovery.

There are diverse classifications or definitions of intellectual property and SMEs. Intellectual property refers to creations of the mind such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.<sup>2</sup> It may also be described as a category of intangible rights protecting commercially valuable products of the human intellect.<sup>3</sup> In Nigeria, there are four major types of intellectual property; patent, trademarks, copyright and industrial design.

Small and medium sized enterprises (SMEs) are small businesses with limited workers and financial turnover.<sup>4</sup> The Central Bank of Nigeria defines an SME as a business entity that employs from 11 to 100 people and has 5 million to 500 million naira as assets.<sup>5</sup> The SMEDAN National Policy on Micro, Small and Medium Enterprises classifies small and medium sized enterprises on dual criteria of employment and assets (excluding land and buildings). The policy divides SMEs into three types namely, micro enterprise, small enterprise and medium enterprise. Micro enterprises are enterprises with less than 10 employees, and less than 5 million naira as assets; small enterprises have between 10 to 49

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1 PWC, 'Nigeria SME Survey' <<https://www.pwc.com/ng/en/events/nigeria-sme-survey.html>> accessed May 6, 2021.

2 WIPO 'What is Intellectual Property?' <<https://wipo.int/about-ip/en/>> accessed April 30, 2021.

3 Bryan A. Garner, Black's Law Dictionary (10<sup>th</sup> edn., Thomson Reuters 2014).

4 'What is Small and Medium Enterprises (SME)?' [www.mbaskool.com/business-concepts/marketing-and-strategy-terms/8583-sme-small-and-medium-scale-enterprises.html](http://www.mbaskool.com/business-concepts/marketing-and-strategy-terms/8583-sme-small-and-medium-scale-enterprises.html)>accessed May 11, 2021.

5 Ada Osakwe, Chris Oputa, Rasheed Kareem, Emeka Njokanma, Tata Fela-Durotoye, 'Nigeria, support your small and growing businesses' *The Guardian* (Lagos, 20 April 2020) <<https://m.guardian.ng/business-services/nigeria-support-your-small-and-growing-businesses/amp/>> accessed may 11, 2021.

employees and 5 million to 50 million naira as assets and medium enterprises have 50 to 199 employees and 50 million naira to 499 million naira as assets.<sup>6</sup>

Nevertheless, a cursory look at the various definitions of intellectual property and SMEs reveal that SMEs are results of creative ideas and inventions of individuals whilst intellectual property seeks to recognise, protect and reward such creative ingenuity. In face of the post COVID 19 economic reality characterized by 'divergent economic recoveries across countries and sectors',<sup>7</sup> SMEs as vital constituent of economies ought to capitalize on intellectual property to revitalise various economies of the world, Nigeria inclusive. This gives rise to a poser; how Nigerian SMEs can contribute to economic recovery with the tool of intellectual property. This knotty quandary is examined under the auspices of the benefits/importance of intellectual property for SMEs.

### **1.3 Intellectual Property, SMEs in the Path to Economic Recovery in Nigeria**

To start with, intellectual property offers a distinct identity and reputation for SMEs.<sup>8</sup>

Intellectual property such as trademarks allows for product differentiation that allows consumers easily identify the product of an SME from that of rival enterprises in the market place. With continuous production of quality products and services, over the years, a trademark may acquire goodwill, over its activities, in a given market. Intellectual property offers SMEs an exclusive, monopolistic right to secure and strengthen their position in the ever-competitive market.<sup>9</sup>In addition, intellectual property can generate revenue for SMEs through outright sale; assigning or licensing of intellectual property assets. Intellectual

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<sup>6</sup> SMEDAN National Policy on Micro, Small and Medium Enterprises.

<sup>7</sup> 'Managing Divergent Recoveries' IMF World Economic Outlook April 2021, Page 1 accessed 1 May, 2021.

<sup>8</sup> Urwin P.K., 'Valuing Brands in the UK Economy' cited in Sati-Salmah Sukarmijan and Olivia De Vega Sapong, 'The Importance of Intellectual Property for SMEs; Challenges and Moving Forward' <[https://www.researchgate.net/publication/270875011\\_The\\_Importance\\_of\\_Intellectual\\_Property\\_for\\_SMEs\\_Challenges\\_And\\_Moving\\_Forward](https://www.researchgate.net/publication/270875011_The_Importance_of_Intellectual_Property_for_SMEs_Challenges_And_Moving_Forward)> accessed April 22, 2021.

<sup>9</sup> 'Intellectual Property for Business', WIPO-WASME Special Program On Practical Intellectual Property Rights Issues For Entrepreneurs, Economists, Bankers, Lawyers and Accountants, Geneva, October 6 to 9, 2003.

property enhances the value of SMEs, thus attracting direct investments, grants and loans for such enterprises.<sup>10</sup>

An untapped financing opportunity by Nigerian SMEs is intellectual property collateral. This involves the use of IP rights as collateral/security for loans. Based on the Secured Transactions in Movable Assets Act 2017, intellectual property can be used by SMEs to secure loans from financial institutions.<sup>11</sup>To penetrate international markets, SMEs can register the relevant IP in the target market. This will attract international collaborations through franchise, license or joint ventures, eliciting in additional revenue for the SMEs and FDIs for Nigeria.

SoleRebels, an Ethiopian SME registered its trademark at the United States Patent and Trademark Office (USPTO), to safeguard its entry into the USA market.<sup>12</sup>With the aforementioned benefits of intellectual property to SMEs, positive economic effects ensue, clearing the pathway for Nigerian economic recovery. There would be motivation among SMEs, leading to availability of wide variety of products, technologies and services to satisfy the local needs of Nigerians, increased employment, increased tax revenues, export promotion while attracting foreign direct investment.

Long before the COVID 19 pandemic, several countries have recognised the indelible benefit of the utilisation of intellectual property by SMEs in economic growth and are utilizing intellectual properties for economic recovery. For instance, the Japan Patent Office offers several IP support/program for SMEs such as establishing IP Total Support Centres to aid SMEs in resolving IP related problems, accelerated examination system for patent

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<sup>10</sup> Sati-Salmah Sukarmijan and Olivia De Vega Sapong, 'The Importance of Intellectual Property for SMEs; Challenges and Moving Forward' <[https://www.researchgate.net/publication/270875011\\_The\\_Importance\\_of\\_Intellectual\\_Property\\_for\\_SMEs\\_Challenges\\_And\\_Moving\\_Forward](https://www.researchgate.net/publication/270875011_The_Importance_of_Intellectual_Property_for_SMEs_Challenges_And_Moving_Forward)> accessed April 22, 2021.

<sup>11</sup> Section 222(3) of the Secured Transactions in Movable Assets Act defines movable assets as tangible or intangible property other than real property. More so, Section 222 of the Companies and Allied Matters Act 2020 allows Nigerian SMEs registered as companies to create a charge over such intellectual property.

<sup>12</sup> WIPO, 'Treading a New Path for IP and Development in Africa' <<https://www.wipo.int/advantage/en/details.jsp?id=2915>> accessed April 22, 2021.

application by SMEs, fee reduction/exemption system for patent applications by SMEs, amongst others.<sup>13</sup> The Korean Intellectual Property Office (KIPO) also provides IP support services/programs for SMEs to enhance IP capacities of Korean SMEs. Such examples include; the establishment of regional IP Creation Zones to provide training on securing IP rights and commercialization of creative idea, IP Stepping Stone, IP wings program (to provide consultation and assistance for SMEs with less than 7 years of maturity). Other innovative IP programs by the KIPO include the Global IP Star Enterprise Promotion Project in which the KIPO identifies promising SMEs with high export potentials and provide such 'Global IP Star Company' with IP related support<sup>14</sup> and the provision of patent fee exemption for SMEs.<sup>15</sup>

Nigeria is in the bid to reposition her economy as she names her 2021 Budget, the Budget of Economic Recovery and Resilience, yet Nigerian SMEs face several factors militating against effectual use of intellectual property. Most Nigerian SMEs underutilise intellectual property due to lack of awareness of usefulness of IP system.<sup>16</sup> Another issue is the cantankerous problem of high rate of IP infringement, connected to the poor enforcement of intellectual property rights in the country. Outdated intellectual property legislations also counter the optimum use of intellectual property by Nigerian SMEs.<sup>17</sup>

Furthermore, there exists multiplicity of IP regulatory bodies in Nigeria, riddled with bureaucratic bottlenecks and lack of collaboration amongst them.

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<sup>13</sup> Japan Patent Office, Asia-Pacific Industrial Property Center, Japan Institute for Promotion, Invention and Innovation, 'Intellectual Property Management for SMEs' <[https://www.jpo.go.jp/e/news/kokusai/developing/training/textbook/document/index/intellecual\\_property\\_management\\_for\\_smes\\_2016.pdf](https://www.jpo.go.jp/e/news/kokusai/developing/training/textbook/document/index/intellecual_property_management_for_smes_2016.pdf)> accessed April 26, 2021.

<sup>14</sup> KIPO, 'Promoting the Creation and Utilization of IP' <[https://www.kipo.go.kr/upload/en/download/annualreport\\_2018\\_07.pdf&ved](https://www.kipo.go.kr/upload/en/download/annualreport_2018_07.pdf&ved)> accessed April 26, 2021.

<sup>15</sup> Jae-Hong Baek, 'Korean National Experience on Building Intellectual Property Awareness and Capacity of Small and Medium Enterprises' <[http://www.OMPI.ch/edocs/sme/en/wipo\\_ip\\_bak\\_03\\_www\\_34145.pdf&ved](http://www.OMPI.ch/edocs/sme/en/wipo_ip_bak_03_www_34145.pdf&ved)> accessed April 22, 2021.

<sup>16</sup> 'Intellectual Property for Business', WIPO-WASME Special Program On Practical Intellectual Property Rights Issues For Entrepreneurs, Economists, Bankers, Lawyers and Accountants, Geneva, October 6 to 9, 2003.

<sup>17</sup> Merchandise Marks Act was enacted as far back as 1916, the Patents and Designs Act enacted in 1970 while the Trademarks Act enacted in 1965.

## 1.4 Policy Proposals and Recommendations

The following recommendations are preferred towards addressing the identified problems affecting the utilization of IPRs by SMEs to support economic recovery in Nigeria.

A comprehensive national policy on intellectual property tailored according to the peculiar IP needs of the country should be adopted. The policy must establish a contemporary legal framework for intellectual property, with stringent punishment for IP violators. Cases on intellectual property should be designated to special High Court divisions. Pending IP legislation such as Trademarks Bill, Patents and Designs Bill and the Industrial Property Commission Bill should be passed. It is advocated that IP regulatory and enforcement agencies intellectual property agencies in Nigeria should be strengthened, to facilitate a reliable IP system in Nigeria.<sup>18</sup> Regular, independent assessment of these agencies to review their performance in terms of intellectual property should be undertaken. More so, these agencies should collaborate with SMEs associations, academic institutions, financial institutions and other agencies that support SMEs.

An awareness campaign that simplifies the complex nature of intellectual property into simpler, relatable terms for SMEs should be organised. This will entail collaboration between IP regulatory agencies, the Federal Ministry of Industry, Trade and Investment and its state counterparts, Chambers of Commerce, SMEs associations, Intellectual Property and Technology Transfer Offices (IPTTOs).

The basics of intellectual property must be taught in Nigerian tertiary institutions. The establishment of intellectual property clubs should be encouraged, especially in Faculties of Law, Business, Engineering, Science and Technology.

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<sup>18</sup> Some IP regulatory and enforcement agencies include Nigerian Copyright Commission, Trademarks, Patents and Designs Registry, National Office for Technology Acquisition and Promotion, National Agency for Food and Drug Administration and Control, Nigerian Customs Service, Standards Organisation of Nigeria.

Nigeria should domesticate and fully implement international IP treaties such as the WIPO Internet Treaties, the Marrakesh Treaty and the Beijing Treaty whilst leveraging on international intellectual property organisations such as World Intellectual Property Organization.

Special IP support centres for SMEs as in Japan should be attached to IP regulatory bodies and SMEs support agencies/associations.<sup>19</sup> IP subsidies for SMEs, such as, reduction in patent application/ patent fees, support for international intellectual property registration, as done in Japan, South Korea, should be introduced. Intervention funds for SMEs need to introduce a compulsory prerequisite that successful SMEs must undergo IP training. SMEs must put in place an effective in-house IP management strategy involving acquisition, exploitation, monitoring.<sup>20</sup> SMEs can utilise intellectual property resources such as WIPO IP diagnostics tool and Google Alert, which can be used to track the use of their intellectual property on the internet and enforcement of intellectual property.

## 1.5 Conclusion

The saddening economic reality of the Nigerian economy has spurred in its citizenry, a burst of creativity, manifested through SMEs. With a strong national IP policy and adequate knowledge of intellectual property by SMEs, these small enterprises would be on track to making significant contribution towards the economic recovery of our dear nation.

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<sup>19</sup> Japan Patent Office 'Intellectual Property Management For SMEs' <[https://www.jpo.go.jp/e/news/kokusai/developing/training/textbook/document/index/intellectual\\_property\\_management\\_for-smes\\_2016](https://www.jpo.go.jp/e/news/kokusai/developing/training/textbook/document/index/intellectual_property_management_for-smes_2016)> accessed April 26, 2021.

<sup>20</sup> Carl Osunde, 'Small and Medium Enterprises: Management of Intellectual Property Rights in Nigeria' <<https://www.longdom.org/open-access/small-medium-enterprises-management-of-intellectual-property-rights-in-nigeria-2375-4516-100080.pdf&ved>> accessed April 21, 2021.

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