THE ROLE OF INTELLECTUAL PROPERTY (IP) LAW IN THE GROWTH OF SMALL AND MEDIUM ENTERPRISES (SMES) IN NIGERIA

BY

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BEING A RESEARCH PROJECT SUBMITTED TO THE SCHOOL OF POSGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF ARTS LAW DEGREE (M.A)

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DECLARATION

I declare that this project report entitled "The Role of Intellectual Property (IP) Law in the Growth of Small and Medium Enterprises (SMEs) in Nigeria" has been carried out by me in the Department of Private Law, Ahmadu Bello University, Zaria. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this project report was previously presented for another Degree or Diploma at this or any other institution. It is hoped that this Project research work would be of immense contribution to knowledge.

Hajara Yunusa SALIHU	**Signature**	**Date**

CERTIFICATION

This Project Report entitled: "The Role of Intellectual Property (IP) Law in the Growth of Small and Medium Enterprises (SMEs) in Nigeria" by Hajara Yunusa SALIHU meet the regulatory governing the award of the MA in Private Law of the Ahmadu Bello University, and is approved for its contribution to knowledge and Literary presentation.

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DEDICATION

This work is dedicated to Almighty Allah (SWT) for giving me the resilience and foresight to undertake this work.

ACKNOWLEDGEMENT

All praise is due to Almighty Allah (SWT), most merciful, most gracious, through whom, righteous deeds are accomplished for giving me the strength to undertake this project.

I wish to specially thank you my supervisors, Prof. Yusuf Dankofa and Dr. D.C. John who took time to go through this work and have their necessary advice/support and constructive criticism without hesitation.

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To my wonderful siblings too many to mention for their contributions and show of love. Forgetting Mallama Zainab A. Haruna for teaching me the rudiments of intellectual property.

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TABLE OF ABBREVIATION

CBN	-	Central Bank of Nigeria
FDI	-	Foreign Direct Investment
GDP	-	Gross Domestic Product
IP	-	Intellectual Property
IPRs	-	Intellectual Property Rights
LFN	-	Laws of the Federation of Nigeria
MSME	-	Micro Small and Medium Enterprises
NAFDAC	-	National Food, Drug Administrative and Control
NACRDB	-	Nigeria Agricultural, Corporative and Rural Development Bank
NBCI	-	Nigeria Bank for Commerce and Industry
NBS	-	National Bureau of Statistics
NERFUND	-	National Economic Reconstruction Fund
NIDB	-	Nigeria Industrial Development Bank Ltd
NOTAP	-	National Office for Technology Acquisition and Promotion
OECD	-	Organization for Economic Co-operation and Development
SMECGS	-	Small and Medium Enterprise Credit Guarantee Scheme

SMEs	-	Small and Medium Enterprise
SMEDAN	-	Small and Medium Enterprise Development Agency
SMIEIS	-	Small and Medium Industries Equity Investment Scheme
SON	-	Standard Organization of Nigeria
TRIPS	-	Trade Related Aspect of intellectual Property
UAC	-	United Africa Company
UK	-	United Kingdom
UNESCO	-	United Nations Educational, Scientific and Cultural Organization
UNIDO	-	United Nations Industrial Development Organization
USA	-	United States of America
WIPO	-	World Intellectual Property Organization
WTO	-	World Trade Organization

ABSTRACT

This research entitled: "The Role of Intellectual Property (IP) Law in the Growth of Small and Medium Enterprises (SMEs) in Nigeria" was untaken to find out how IP laws can help SMEs thrive in the market place in the growth and development of Nigerian as it has done in other developed and developing countries; and if not, why and also to identify possible solutions. In pursuit of the above, the research examined the role of IP plays in the growth of SMEs. In the Nigerian economy, the characteristics of a typical Nigerian SMEs, investigated the performance of SMEs in the Nigeria economy, problems and prospects. It also recommended remedial measures to be taken to ensure a vibrant SME in Nigeria. The study of investigated the challenges of IP laws as it affects SMEs in Nigeria. The major findings of this research include; SMEs have played and continue to play significant role in the growth and development of many economies. In the case of Nigeria, SMEs have performed below expectation due to certain constraints ranging from our environment to our attitude and instability of government and change in government policies. SMEs, armed with IP rights such as trademark, patent, industrial design protection would play the crucial role of engine of growth, development and industrialization, wealth creation, poverty eradication, and employment creation.

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CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY.

The world over, entrepreneurship and small and medium enterprises (SMEs) have provided effective means of greater employment and improving the standard of living for people. SMEs are regarded as the engine of economic growth and development in most developing countries. The contributions of the SMEs in industrial sector to the Nigeria's Gross Domestic Product (GDP) are valued at about 46% thereby making it the second largest contributor to the nations GDP after the oil sector.[1] SMEs are also perceived as the key to Nigeria's economic growth, poverty alleviation and employment generation but their unimpressive performance in employment generation in recent year has generated a lot of research interests on their challenges and prospects.[2]

It is in recognition of the immense contribution of the SMEs to national development that Intellectual Property (IP) has stepped up to provide for protection, promotion and support for the SMEs.

IP is the product of one's intellectual activity and consist of different areas of creativity. These areas include industrial property and copyright and related rights. Intellectual Property

[1] Agango, O. "Government's Drive Towards SMEs Development in Nigeria", A Paper presented at the UK – Nigeria SME Networking Event held in Abuja, on Thursday, March 7, 2 013.
[2] Ayanda, A.M, Laraba, A.S., SMEs as a Survival Strategy for Employment Generation in Nigeria, Journal of Sustainable Development, Vol.4, No.1, February, 2011, p.201

Rights (IPRs) on the other hand are those rights derived from intangible property that protect innovation and reward innovative activity.[3]

IP is unique, as it is the fruit of personal creation and inventiveness. In virtually every instance, it stimulates progress, growth and transformation. Hence, society provides legal rights over IP to encourage the production of inventions and creative works that benefit society and so help innovators and creator make a living from their work.[4] The system is designed to benefit society as a whole by striking a balance between the creator and user i.e. ensuring that their needs are satisfied.

Daily, new products appear in the market and this is as a result of continuous human activity. The innovative and creative capacity, however, is not always fully exploited as many SMEs are not aware of the IP system or the protection it can provide for their inventions, brand and designs. The result is, a good invention or creativity is lost to larger competitions that are in better position to commercialize the product or service at more affordable price, leaving the true inventor without any financial benefit or reward.

IPRs enable people to benefit from their innovations, creative work and prevent others from copying or unfairly gaining from the inventor's creativity and investment. With IP protection, it deters potential infringement and turns ideas into business assets with real market value. IP is an increasingly important asset that must be continually nurtured, protected and stimulated to grow.

[3] WIPO Publication, What is Intellectual Property, WIPO Publication No. 450(E) p.3.
[4] Intellectual Property: Source of Innovation, Creativity, Growth and Progress. A Publication of International Chamber of Commerce, August, 2005, p.4. http://www.iccwbo.org accessed on 4th June, 2013, 9:11:56 pm

Different types of IP, literary and artistic creation, invention, brand names and designs are protected through copyright, patents, trademarks and design protection respectively. This in turn, encourage the production of a wide range of quality goods and services which helps maintain fair competition. In today's competitive markets, it is relevant that creators prevent others from copying their product by creating a strong brand identity. This can only be possible through the strategic use of one or more types of IPRs to differentiate their products. By doing this, right holders, increase their commercial value, engage in different types of business partnership, obtain valuable competitive intelligence thereby saving research, development, marketing time and resource.[5]

SME are in the forefront in most developed and developing countries, when a country is considered developed, it is the private sector which consists predominantly of entrepreneurs and SMEs that is developed and vice versa. Countries concerned with its economic growth must pay attention to protecting and enforcement of IPRs.

Foreign direct investment (FDI) is attracted into a country when an investor knows that there is return on investment and this can be achieved mostly with protection in IPRs[6]. Nigeria, through IPR's can explore huge investment opportunities which will result in increased revenue.

Nigeria's quest to be one of the biggest twenty economies in the world by the year 2020 cannot be realized without the contributions of SME's. This will be possible when this category of business is property and legally structured, well managed and professionalized.[7]

[5] Making Intellectual Property work for Business. A Handbook for chambers of Commerce and Business Association setting up intellectual property services. ICC and WIPO, 2011 p.13
[6] Aganga, O. Op.cit
[7] Onuoha, B.C., "Professionalizing Business in the South-East Region in Nigeria", International Journal of Academic Research in Business and Social Sciences, Vol.2, No.3, 201, p.199

1.2 STATEMENT OF RESEARCH PROBLEM

SME's have been identified as the driving force in job creation, base for industrial development and poverty alleviation. Yet use of IP remains a myth to many SME's[8]. The fact that SME's have not made the desired impact on the Nigerian economy inspite of the efforts and support of past and present government administration is worrisome. Below are some of the problems which the study wants to tackle.

a. Non-use of IP asset. Many SMEs rarely think of the intangible property which is more valuable and focus mainly on the tangible property.
b. Getting SME's and IP acquainted. SME's proprietors don't know how to effectively mange their business along with IP.
c. Initiative and creativity. Most SMEs are not properly and legally structured, no managerial ability and lack expertise and professionalism
d. How can intellectual property generate wealth in business?
e. Cumbersome nature of acquiring the intellectual property asset.

1.3 AIMS OF THE RESEARCH

Given the vital role and contribution which SME's, play in other developed and developing countries, and the continues evolution of innovations and creativity, it is pertinent that this research be carried out. Therefore, the objectives of the research are as follows:

.a. This research is aimed at the general public (especially SME proprietors) to recognize the existence of the inexhaustible use of IPR's and its application to SME's.

[8] Rutaihwa, J., Does Small and Medium Enterprises (SMEs) understand the concept of Intellectual Property Rights on their Business? (2012) http://work.bepress.com/phanseinruachwa/i/, accessed 8th June, 2012 accessed on 29th August, 2013, 10:11 pm

b. This research is meant primarily to examine the role of IP in the growth of SMEs in Nigeria. In this vain, attempt will be made to clearly reveal, how important IP and IPR's issues amongst others, the development of IPRs protection are in Nigeria.

c. This research will enable greater and more effective use of IP asset management strategies by SMEs for strengthening their competitiveness, especially in developing countries and economics in transition

d. This research is also aimed at how, when properly utilized, IP can be a tool for poverty alleviation through trade and value for consumers and provide a guarantee of source and quality. It will also reveal how government policies that have been put in place can be managed for continues growth and development of SMEs.

e. This research is thus, intended to find strategies suitable for the development and survival of SME, make appropriate recommendations for at least, reducing the identified problems, challenges and constraints militating against the growth of SMEs and how they can properly manage available IPRS illuminating all the intricacies embedded therein.

1.4 SCOPE OF THE RESEARCH

This research will address the topic having regard to its operation in Nigeria. Recourse would be had to Nigeria law on the subject matter and international instrument pertaining the subject matter of which Nigeria is a signatory.

The research shall cover the definition of IP, nature and essentials ranging from the various types of IPRs, its application to each subject matter and the role it plays in the growth of

SMEs. Attempt shall also be made to define SMEs, their characteristics, problems and challenges however the discussions are inexhaustible.

1.5 JUSTIFICATION OF THE RESEARCH

Almost everyone in the society is a user and potential creator of IP. Hence, new duty situations have emerged and will continue to. This work is necessary as it will examine how IP have been able to protect and handle evolving innovations and creativity and how IP has been able to catch up with modern trends.

In everyday business, SME's are somehow forced to continuously innovate in order to survive in the market. Hence, they continue to innovate, improve on existing one's and create new designs. It becomes necessary that SMEs should protect their intangible asset.

This work will enable proprietors of SMEs know how to protect their innovations, benefit from the fruits of their creativity and seek solutions to recent problems associated with IP theft.

IP is fast developing and hence deserves a continuous protection from theft of virtually all the intangible products of human creativity. A good understanding of these law is necessary not because of the commercial value attached to the rights granted but to stop the commercial activities of another person unlawfully enjoying the rights of the true owner.

1.6 RESEARCH METHODOLOGY

This research shall be undertaken on the basis of existing literatures and articles on the subject matter i.e. it will be based on doctrinal method. The source on the subject matter includes:

1. The copyright Act, cap C28, Laws of the Federation of Nigeria, 2004

2. Patents and Designs Act, Cap P2, Laws of the Federation of Nigeria, 2004 and

3. Trademarks Act, Cap T 13, Law of the Federation of Nigera,2004

Other international instruments which Nigeria is signatory to are; the Paris convention for the protection of industrial property (1963), the Berne convection for the protection of literary and artistic wok (1886), the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) (1996) administered by the Worlds Trade Organization (WTO).

1.7 LITERATURE REVIEW

Having in mind its dynamic nature, IP is a very wide subject mater. It coves topics such s trademarks, copyright, patents, industrial design and geographical indication F.O Babafemi's[9] book being a pioneering work in this area, have written extensively on intellectual property law J.O.Asien[10], Okanny, M.C.[11] Olueze I.M.[12] have also made his own immense contribution to the law of IP in the Nigerian society P.O Ocheme[13] have written basically on copyright.

These writers have expressed their views on what IP is, it's evolution, the various types of IP, it's importance, effects of registration, infringement and remedies.

W.R. Conish,[14], Lahore A[15]. have also made their own succinct contributions in the foreign scene. Stakeholders in this area have also made their own tremendous contributions.

[9] Babafemi, F.O. Intellectual Property law in Nigeria, Justinian Books limited, Ibadan, Nigeria, (2005)
[10] Asien, J.O. Nigerian Copyright law and Practice, Nigerian Copyright Commission Abuja. (2002)
[11] Okanny, M.C. Nigeria Law of Property Enugu Fourth Dimension Publishers, (1986)

[12] Olueze, I.M. Nigeria Copyright Law, Appa Megalink International Ltd (1998)

[13] Ocheme, P. The law and Practice of Copyright in Nigeria, Ahmadu Bello University Press Ltd, Zaria. (2000)
[14] Cornish, W.R. Intellectual Property, Sweet and Maxwell, London (1996)
[15] Lahore, A. Intellectual Property in Australia: Copyrights, Sidney Butterworth's, (1977)

However, they do not provide the reader with the application of IP to business or SME's. They have not shown a practical application of these rights to an average SME proprietor.

The World Intellectual Property Organization (WIPO) have dedicated a section on its website that deals mainly with SME's. They provide readers with useful IP information contained in articles, case studies and forthcoming IP/SME, relevant events. Sadly, very few Nigerian, or the SME proprietors are aware of this or have access to internet facilities.

This essay will analyze the practicability and application of the views expressed by these writers and its relevance to modern times. This research will also examine the laws and principles governing the subject matter with a view to proffering possible solution and/or suggestion to findings thereto.

1.8 ORGANIZATIONAL LAYOUT

The organizational layout of this research is to provide a report of all the findings related to the objective of this research.

The research is divided into five chapters. Chapter one introduces generally the subject matter, the focus of the research and highlights the component of a legal research work.

An attempt is made in chapter two to define the concept of IP, its essential, the relevant legislations governing IP, and its importance.

Chapter three discusses generally, the role of IP in the growth of SMEs. The various ways by which SMEs can exploit IPRs is also analyzed.

In chapter four, an evaluation of SMEs in Nigeria is discussed. It highlight the challenges faced by SMEs and government policies for the continuous growth and development of SMEs in Nigeria.

This research is concluded in chapter five with summary, findings, recommendations and conclusions of the subject matter already discussed.

CHAPTER TWO

CONCEPTUAL CLARIFICATION OF KEY TERMS

2.1 INTRODUCTION

The scope of Intellectual Property (IP) is very wide. The field encompasses such legal concepts as trademarks, patents, design as well as copyright. Other legal concepts treated as species of IP are trade secrets, confidential information, utility model and geographical indications. All these deal in one way or the other with the protection of the fruits of man's creative efforts. It might be a poem that you write, the name your hairdresser thinks up to sell his or her service or a mother's invention for a non spill cup for babies[1].

The man who thinks up a distinctive and original name, device or get-up to market his goods in order to make the goods easily recognizable or even more attractive to the average purchaser and had over a period of time procured through the quality of his goods substantial goodwill for the name, device or get-up deserves some protection for such name[2].

In this chapter, we are going to attempt clarification of the concepts of IP and small and medium enterprises (SMEs) together with the relevant legislation governing them.

[1] Intellectual Property: Source of innovation, creativity, growth and progress www.iccwbo.org accessed 19th August, 2014

[2] Oriola, "Anton Pillar Order As a Weapon of Protection of Intellectual Property Right", modern Practice Journal of Finance and Investment, vol. 3, No. 3, (1999), p.1

2.2 MEANING AND NATURE OF INTELLECTUAL PROPERTY (IP)

The World Intellectual Property Organization (WIPO) defines IP as:

Creation of the mind: inventions, literary and artistic works, and symbols, names, images and designs used in commerce[3].

The term IP has come into vogue relatively recently. To describe property rights in most of the various intangible products of the human intellect, sometimes the term is used to include copyright, the law of confidence and others are classified as industrial property rights such as patent, trademark and industrial design[4].

IP is that area of law which concerns legal rights associated with creative effort or commercial reputation. It includes the right to exclude others from using the thing i.e. it is a negative right.

People, particularly laymen think of property as in tangible property such as House, furniture, clothes, shoes, cars. Hardly do they think of the intangible property such as the rights, privileges, immunities etc. Like other tangible property, IP can be bought, sold, leased, transferred, licensed and assigned.

IP law deals with the protection of inventions. It is also a means of safeguarding the fruits of one's creativity and maintaining one's incentives to invest in innovations. WIPO sums it up in the following words.

> *Intellectual property rights are like any other property rights. They allow the creator, or owner, of a patent, trademarks or copyright to benefit from his or her own work or investment. These rights are*

[3] http://www.wipo.intlabout-ip/en/ accessed on 8th May, 2014
[4] Ibid

> *outlined in Article 27 of the Universal Declaration of Human Rights, which sets forth the right to benefit from the protection of moral and material interests resulting from authorship of any scientific, literary, or artistic production*[5].

IP law limits what can be protected and for how long. IP rights don't protect ideas. They protect only expressions of ideas, in the case of copyrights, and inventions fulfilling certain strict and well-established criteria in the case of patents[6].

One purpose of the IP right system is to provide incentives to innovators to produce new invention and creations. This in turn provides society with a steady stream of innovations that fuel economic, cultural and social progress, help to alleviate poverty and disease, and enrich our cultural heritage.

Throughout the history of human civilization, both material and intangible assets have always formed the constituent of wealth[7]. However, IP rights, the result of the industry of innovation have continued to play a leading role in the wealth of nations.

IP rights have continued to play leading role in the development of most countries and regions of the world. Europe and North America have fully apprehended the dynamics of IP. Other regions like South America and Asia are responding in measured steps that underscore the role of IP in the current pursuit of national, regional and international initiatives[8].

[5] What is intellectual property. WIPO publication N. 450 (E) p.3
[6] Jaiya, U.S. IP Rights and Innovation in SMEs A paper submitted to the OECD as a background Document to the 2nd OECD Ministerial Conference. http://www.wipo.int/sme assessed on 19th May, 201
[7] Adewopo, A. Development in IP in Africa http://www.Adewopo-Dev-of-IP-african.2 accessed on 6th August, 2014
[8] Ibid

In Nigeria, IP has a deep historical root. It has been argued that IP right existed in the local communities in Nigeria long before and after the coming of the colonial masters[9].

Music and folklore were some of the creativity of the local community. These folktales described in folk were passed over to generation after generations as a joint communal responsibility[10]. These would qualify as subject matters in copyright.

In Nigeria, long before the advent of modern technology, copper, gold, bronze were mined. Looms were used for weaving textiles which varied from one part of the country to another. These could have been easily patented. The secrecy of traditional medicines which were peculiar to a particular family could as well qualify as trade secrets.

Marks were used to identify the origin of goods e.g. holes, cutlass and even clothes. However, these marks were not confined to goods alone. They were applied to human beings to signify their ethnic origin e.g. the Yoruba people of western Nigeria bear marks on their cheek, while an Egbura man bears a single mark on his left cheek[11].

An IP right owner has an inherent moral right and monopolistic economic right. Moral right in the sense that, as the author of a work, he has the paternity of the intellectual creation and protects the personal and reputational value of a work. He decides whether he wants to disclose the work to the public[12]. The economic right relates to the creations commercial value and grants the author a monopoly to exclusively exploit his creation for a certain period.

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[9] Abdulkarim, I. "Customary Intellectual Property: In Customary Courts in Nigeria". In: Jamo, et al. (eds). Administration of Justice in the Customary Court of Nigeria; Problems and Prospect, A Publication of Private Law Dept, Fac. Of Law, A.B.U, Zaria, (2009) p.242

[10] Beier, U. "Yoruba Operas", Journal of internal Library of African Music, vol. 1 (1954). p.12

[11] Abdulkarim, I. op cit, p.245

[12] Law of intellectual Property. 1, school of Law, national Open University of Nigeria, www.nov.edu.ng accessed on 10th July, 2014

The essence of IP rights is to prevent others from gaining unlawfully from someone else's creation. The unfair taking of the results of the application of human intellect may infringe on more than one single right. We shall examine the concept of copyright, trademarks, industrial designs and patent.

2.2.1 COPYRIGHTS

Copyright is one among the intangible, incorporeal, invisible and abstract proprietary rights granted by law to the creator or originator of a tangible, corporal, visible and real object. It is an abstract property incorporated in a physical property although the ownership of the latter need not necessarily be vested in the holder of the former[13].

Black's Law Dictionary defines copyright as:

> *The right of literary property as recognized and sanctioned by positive law. An incorporeal right granted by statute to the author or originator of certain literary or artistic production, whereby he is invested for a limited period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them*[14].

Copyright is the exclusive right (limited in time)[15] vested in an author of literary, artistic, music, sound recordings, photographs, cinematography, publish, sell or transfer his creative work[16].

Copyright in Nigeria is a statutorily granted right exercisable by certain group of persons[17], over some designated works of arts[18], and upon specified terms and conditions as provided by the law[19].

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[13] Ocheme, P.A. The Law and Practice of Copyright in Nigeria, A.B.U, press limited, Zaria (2000)
[14] Black, H.C.C. Blacks Law Dictionary, 5th ed S.t. Paul Minn West Publishing Company, (1990) p.304
[15] S 1 (3) (4), 52 (3), 1st, 2nd, 3rd, and 4th Schedules, S 5 (3) Copyright Act, Cap 28 L.F.N. 2004
[16] Oriole, A. op cit, p.507.
[17] S 10 and 11, Copyright Acts, op cit

2.2.2 PATENT

A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem[20].

It is a bundle of monopoly rights granted to an inventor or his assignee for a stated duration permitting him to prevent other persons from exploiting his invention without his consent[21].

2.2.3 TRADEMARKS

A trademark or brand-name is a distinctive sign which identifies certain goods or services as those produced or provided by a specific person or enterprise[22]. It is a mark used by a trade in the course of trade, to distinguish the goods on which it is applied from other goods of the same description[23].

Section 67 of the Trademark Act[24] defines Trademark to mean a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate, a connection, the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any indicator of the identity of that person, and means in relation to a certification of trademark, a mark registered or deemed to have been registered.

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[18] Ibid S. 1
[19] Ibid S. 14 and 15
[20] Intellectual Property some Basic Definitions WIPO Publication No. 488 (E) http://www.wipo.inte/ebookship. accessed on 15th August, 2014
[21] Ohieze, I.M. Nigerian Copyright Law, Appa Megalink International Ltd, (1998) p.86
[22] Intellectual property: Some Basic Definitions op cit
[23] Okany M.C. Nigerian law of Property, Enugu Fourth Dimension Publishers, (1986), p.333
[24] Cap T 13, L.F.N. 2004

The Supreme Court had course to make a pronouncement on the meaning of a trademark thus[25]:

> *"A trademark is a mark used or proposed to be used in relation to goods for the purpose of indicating or so soon to indicate a connection in the course of between the goods and a proprietor or registered used to use the mark".*

2.2.4 INDUSTRIAL DESIGN

The Patent and Design Act[26] provide that any combination of lines or columns or both and any three dimensional form, whether or not associate with colours, is an industrial design, if it is intended by the creator to be used as a model or pattern to be multiplied by industrial process and is not intended solely to obtain in a tested result. It is the ornamental or aesthetic aspect of an article produced by industry or handcraft.

2.3 MEANING AND NATURE OF SMALL AND MEDIUM ENTERPRISES (SMES)

The Notion of SMEs was introduced into the development landscape as early as the late 1940s and the primary aim was to improve trade and industrialization in the present developed nation[27].

The definition of SME are usually derived in each country, based on the role of SME in the economy, policies and programs designed by particular agencies or institutions empowered to develop SMEs can also be defined based on certain criteria including turnover, number of employees, profit, capital employed, available finance, market share and relative size within the industry.

[25] Ferodo Ltd Ibefo Industries Ltd (2004) SNWLR (pt 868) 317 at 347, per musdapher, JSC.
[26] Cap p2, L..F.N. 2004
[27] Adewopo, A. op cit

SMEs have continued to be a popular phrase in the business world. The definition depends mainly on the level of development of the country. In developed countries like the USA, UK and Canada, the definition criterion adopted a mixture of annual turnover and employment levels[28]. In Japan, small business are described as "Ocusho Kigyo" which refers to small and medium firms that may secure capital up to 100 million Japanese yen and less than 299 employees in manufacturing. In India, a small business involves a capital investment in plant and machinery not exceeding RS 351khs[29].

In Nigeria, Small and Medium Industries Enterprises Investment Scheme (SMIEIS) defines SME as any enterprise with a maximum asset base of two hundred million naira (N200m) excluding land and working capital and with a number of staff employed not less than 100 or more than 300[30].

The Federal Ministry of Commerce and Industry defines SMEs as firms with a total investment (excluding cost of land but including capital) if up to N750,000 and paid employment of up to 50 persons[31]. The Nigerian bank for commerce and industry defines a small scale enterprise as one whose capital does not exceed N750,000.

The Central Bank of Nigeria in its monetary policy circular No.22 of 1988, defined Small Scale Enterprises as having an annual turnover not exceeding N500,000. In the 1999 budget, the federal government of Nigeria defined small scale enterprise for purpose of commercial bank loans as those with annual turnover not exceeding N500,000 and for Merchant Bank loans, those

[28] Ufot, E.R., Reuben, E.G. et al SMEs and Nigeria Economic Development Mediterranean Journal of Social Sciences. MCSER Publication. Rome, Italy, vol. 5 No. 7 (2014) p. 657
[29] Ibid
[30] Ayanda, A.M., Laraba, A.S., SMEs As a Survival Strategy for Employment Generation in Nigeria, Journal of Sustainable Development, vol 1.4, No. 1 (2011) p.21
[31] Ibid

enterprises with capital investment not exceeding N2 million (excluding cost of land) or a maximum of N5 million[32].

There is however no universally accepted definition of SMEs which makes it relatively difficult to define SMEs.

Based on the structure of manufacturing in Nigeria, SMEs are now defined on the basis of employment i.e. in micro/cottage industries, 1-10 workers, small scale industries, 11-100 workers, medium scale industries, 101-300 workers, large scale industries 301-above[33].

2.4 RELEVANT LEGISLATION AND LEGAL REQUIREMENTS IN USING INTELLECTUAL PROPERTY (IP) ASSETS IN NIGERIA

The principal law regulating IP laws in Nigeria include

a. Copyright Act, Cap C28 LFN 2004

Other regulations made in pursuance to the powers given in the Copyright Act includes.

i. Copyright (Security device) Regulations (1999) S.21[34]
ii. Copyright (optical disc plant) Regulation (2006)
iii. Copyright (Video Rental) Regulation (1999)
iv. Copyright (Collective Management Organization) Regulation (2007) S.39(7)[35]
v. Copyright (Reciprocal extension) Order (1972) S41[36]
vi. Judicial Precedent

[32] Ekpenyong, B.D., Nyong. M.O. Small and Medium Scale of Finance. AERC Research Paper 16, African Economic Research Consortium, Zakuna Printers Ltd, Nairobi, Kenya (1992) p.13
[33] Chibundu, C. Strategies for Nigerian SMEs to Grow www.tdnew.org accessed on 15th August, 2014
[34] Copyright Act, Cap C28, L.F.N. 2004
[35] Ibid
[36] Ibid

b. Patents and Designs Act, Cap P2 L.F.N (2004)

c. Trademarks Act, Cap T13, L.F.N (2004).

Recent development in World Intellectual Property Organization (WIPO) has brought in its wake the need to reawaken Nigeria and make it the beneficiary of international development[37]. WIPO is constituted of 184 members states, with forty eight (48) of them in Sub-Sahara Africa[38]. WIPO administers twenty-five (25) treaties of which Nigeria is signatory to six (6). They include;

a. Berne Convention (1886)

b. Universal Copyright Convention (1955)

c. Trade Related Aspect of Intellectual Property (TRIPS) Agreement (1996)

d. WIPO – Copyright Treaty (1996)

e. Rome Convention (1980)

f. Convention on the Protection of Audio Visual performances (2012)

The subject matter of copyright in Nigeria, can be found in Section 1(1) of the Copyright Act[39] which include; literary, Artistic, Musical, Broadcast, sound recordings, cinematograph films. For copyright to subsist in any of the works listed above, it must satisfy some conditions.

First, sufficient efforts must have been expended on the work that gives it an "Original" character. Originality is a fundamental principle of copyright. It is in fact regarded as the basis of

[37] Adewopo. A. op cit
[38] Ibid
[39] Copyrights Act, op cit

the protection given by the law of Copyright to particular forms of expression[40]. It was held in the case of **Yusuf Ladan v. Shakallo Com Ltd & 2 Ors**[41] that:

> *The word "original" does not mean that the word must be the expression of original or inventive thought. The Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work but that it should originate from the author.*

In the case of **Offrey v. Chief S.O Oza and Ors**[42], the court held inter alia:

> *That copyright would exist in a product if that product is the result of some substantial or real expenditure of mental or physical energy of the author and lebel, or skill exercised where not negligible or common place ones and that the amount of label or skill, judgment or ingenuity required to support successfully a claim for copyright was a question of fact or degree in every case.*

In the words of Peterson J. in **University of London Press Ltd v. University Tutorial Press Ltd**[43]

> *The word original does not in this connection mean that the work must be the expression of original or innovative thought. Copyright Acts are not concerned with the Originality of idea, but with the expression of though and in case of "literary work" with the expression of thought, in print or writing. The originality, which is required, relates to the expression of the thought. But the Act does not require that the expression must be in an original or novel*

[40] Lahore, A. Intellectual Property in Australia: copyright, Sidney Butterworhs, (1979) p. 81
[41] (1972) NCLR 428
[42] (unreported) suit No Hos/23/68
[43] (1916)2 ch. 601

form, but that the work must not be copied from another work – that is should originate from the author.

Simply put, the work must not be copied.

The second condition to be fulfilled is the condition of fixation. The work shall be fixed in any definite medium of expression now known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device[44].

Thirdly, their must be a legal relationship that exist between the author and the work to Nigeria or a prescribed international body[45].

However, certain exceptions are created in derogation from the rights afforded by the above provisions in the 2nd and 3rd schedules to the Act[46]. They include, fair dealing for the purpose of research, private use, criticism and review or the reporting of current event. Hence, the right to copyright is not absolute.

Section 14 of the Act[47] set out what constitute infringement of Copyright whilst Section 15[48] provides that an infringement of copyright shall be actionable at the suit of the owner, assignee or licencee as the case may be in the Federal High Court exercising jurisdiction in the place where the infringement occurred and in an action for such an infringement, all such relief by way of damages, injunction, accounts or otherwise shall be available to the plaintiff as is

[44] Section 13, copyrights Act, op cit
[45] Ibid S. 2,3,4,5.
[46] Copyright Act, op cit
[47] Ibid
[48] Ibid

available in any corresponding proceedings in respect of infringement of other proprietary rights[49].

In the area of patent, patents are granted in respect of innovations. Accordingly, an invention is patentable if it's is new, results from an inventive activity and capable of industrial application[50].

An invention is said to be new if it does not form part of the state of the Art[51]. State of the Art here means everything concerning that art or field of knowledge which has been made available to the public anywhere at anytime whatever before the date of the filing of the patent application relating to the invention in which the inventor wants to claim.

An invention is said to result from an inventive activity if it does not flow from the state of the art as to the method of application in the use of it or combination of methods or product which it concerns or industrial result it produces[52].

Oliver C.J. in Windsurfing's case[53] held that to determine if an invention results from an inventive activity;

1. The court must identify the inventive concept
2. It must be assumed that the person normally skilled in the art but unimaginative is familiar with common general knowledge of the art at the priority date
3. Identifying what differences, if any exist between the matter know or used at the time of the invention.

[49] Ibid S. 16, 17, 18, 19, 22.
[50] S. 1 (2) (a) and (b), Patent and Designs Act, Cap P2, L.F.N. 2004
[51] S. 1 (2) (a) Ibid
[52] S. 1 (2) (b) Ibid
[53] Wind Surfing Int'l Inc V. Tabur Marine (Great britain) Ltd. (1985) R.P.C. 59 CE

4. Asking whether that skilled person, if he had no knowledge of the alleged inventor, would have regarded those differences as if obvious.

A patent is capable of industrial application if it can be manufactured or used in any kind of industry, including agriculture[54]. A patent is granted for a maximum period of twenty years (20) from date of filling of the relevant patent application[55].

Like patent, unlike copyright, an Industrial Design requires registration with a state authority after satisfaction of certain conditions by the applicant[56]. These conditions include novelty and compatibility with public order and morality[57].

An owner of a registered design has the right to preclude others from reproducing the design in the manufacture of a product, importing, selling or utilizing for commercial purpose or holding such a product for the purpose of selling it or of utilizing it for commercial purposes[58]. A registered design subsists for a period, of fifteen (15) years, initial period of five years renewable for two (2) consecutive periods of five (5) years each[59].

As regards Trademarks, for purposes of registration, the register of trademarks is divided into Part A and Part B. For a mark to qualify for registration in Part A, it must be distinctive as set out in section 9 of the Act[60] whilst mark for registration in Part B must meet the test of capacity to distinguish prescribed in section 10[61].

[54] S. 1 (2) (c), patent and Designs Act, op cit
[55] S. 7 Ibid
[56] S. 15, 16, and 17, Ibid
[57] S. 13 Ibid
[58] S. 19 Ibid
[59] S. 20 Ibid
[60] Trademarks Act, Cap T 13, L.F.N. 2004
[61] Ibid

Scandalous and Deceptive marks[62] are not registrable as well as names of chemical substances[63]. Identical and resembling marks are as well not registrable.

By section 18[64] any person claiming to be the owner of a trademark used or proposed to be used by him and who is desirous of registering it must apply in writing to the Registrar[65] in the prescribed manner for registration in Part A or Part B and Registrar has the discretion to register though his decision in this regard is subject to appeal in the Federal High Court.

While Section 15(1) of Copyright Act[66] and Section 25(2) of the Patent and Designs Act[67] provides for remedies for infringement, there is no such express provision in the Trademarks Act[68]. Equity and common law have long treated trade marks as "property" and have protected them as in such terms of reliefs provided against infringement[69]. In other words, trademarks and names have crystallize into "property" with the torts of passing off and injurious falsehood as weapons of protection long before the concept of registration of Trademarks emerged[70].

However some companies have been successful sued for infringement. In case of Trebor Nigeria v Associated industries Limited,[71] the plaintiffs had for many years marketed in Nigeria peppermint tablets called "Trebor". From 1963 they had manufactured and marketed them as a virtual monopoly. The defendants had until 1969. Being there distributors. In 1971, the

[62] S. 11, Ibid
[63] S 12, Ibid
[64] Trademarks Act, op cit
[65] Registrar of Trademarks
[66] Cap P2, L.F.N. 2004
[67] Cap P2. L.F.N. 2004
[68] Trademarks Act, op cit
[69] Oriola, A op cit p. 20
[70] Cornish, W.R. Intellectual Property, Sweet and Maxwell, London (1996) p.517
[71] (Unreported) K/127/71

defendants put on the market a peppermint to similar packaging to that of the infringement of trademark or alternatively for damages for "passing off".

The court held amongst other that even though there are similarities and dissimilarities in the two product, the issue in the case is to be decided not on a detailed and careful comparison but on the much vaguer impression which a casual observes would get. It is, of course appearance to the eye that is relevant not verbal description. The plaintiffs were successfully able to establish their claim of passing off.

In Plateau publishing and ors v Adophy,[72] the plaintiff in an action which he brought against the appellants in the federal High court Sokoto division claimed against the defendants jointly and severally the sum of ₦250,000.00 as general and special damages for the infringement of plaintiffs copyright in a literary work. The infringed work "After Tarka, what next? Special tribute" was substantially reproduced in material form in the edition of Sunday standard of 4th May, 1980 without the license or approval of the plaintiff.

The learned trail judge awarded the plaintiff N25,000.00 for infringement and additional damages of N10,000. A perpetual injunction against the defendant was also granted from sale, were or dealings in plaintiffs work. It was also held amongst others, that for a defendant and in a copyright action to plead innocence of ownership of the copyright, under S12 (2)[73] the defendant must allege and prove that at the time of the infringement of the copyright, he was not aware on suspecting that copyright subsisted in the work.

[72] (1986) 4 NWLR P. 205
[73] Copyright Act Cap C28 L.F.N. 2004

In the case of Defacto Works Limited v Odumotun Trading Company,[74] the plaintiffs, are bakers and distributors of wrapped bread, and for sometime used wrappers laid out in the colours of yellow and brown with the name De Facto written in large scroll betters in chocolate colours, the defendants are also bakers and distributors of wrapped bread changed to wrappers bearing the same colours i.e. yellow and brown with the name ODUNS in large scroll letters in chocolate colour. The plaintiffs instituted these proceedings against the defendants for injunction, damages accounts and delivery up for destruction of offending wrappers. The court held that the essence of a passing off action is the likelihood of deception to the consumers of the commodity involved and such likelihood may be brought about by the layout of the colours even though the details of the designs are not identical or similar. The court held that the plaintiffs are entitled to an injunction restraining the defendants from passing off their bread as that of the plaintiffs and also damages.

In Arewa Textile Plc and ors v Finetex Ltd,[75] the respondent instituted an action at the Federal High Court, Kaduna claiming infringement by the appellants, of its registered patent No. RP12024 in respect of a "method and apparatus" of producing textile material. The respondent at the trial court claimed that itself and one Boaty company Ltd, its technical partners had invented the technology upon which the patent was granted. At the conclusion of hearing, the trial court granted the claims of the respondent and awarded damages against the appellants. Being dissatisfied, the appellants appealed to the court of Appeal, unanimously allowing the appeal, the court held amongst others that, by virtue of S24 (1) and (3) of the patents and Designs Act, an assignment or transfer third parties unless it has been registered and the prescribed fees paid. It also held that the presumption raised by S 25 (3) patent and Designs Act applies only to where

[74] (Unreported) LD/164/56
[75] (2003) 7 NWLR pt 819 @ 322

the product is not new but had been produced through other processes. In such a situation, the Onus lies on the plaintiff to establish that the product was made by the patented process in breach of the registered patent.

2.5 SUMMARY

Basically, we have found out that IP is dynamic and it's scope very wide. SMEs on the other hand have no universally accepted definitions. It varies from country to country, each with it's own unique criteria of defining SME. We have also examined the various legislations governing the use of IP assets in Nigeria. Indeed, to know the value of an SME, one has to look at the IP asset it uses.

CHAPTER THREE

ROLE OF INTELLECTUAL PROPERTY (IP) LAW IN THE GROWTH OF SMALL AND MEDIUM ENTERPRISES (SMEs)

3.1 INTRODUCTION

SMEs have been generally acknowledged as having huge potential and indispensable component of national development in both developed and developing countries. Current developments in the global economy have brought about the ascendancy of intellectual property (IP). In the new global economy, wealth is generated through creating and harnessing the value of knowledge[1]. Today, however, knowledge forms the greater part of the new wealth[2] consequently, IP rights, the result of the industry of innovation have continued to play a leading role in the wealth of nations.

In Africa, IP issues are taking centre stage in discussion on development of the continent. It is against this backdrop that discussions on how IP play vital role in the growth of SME will be made.

[1] Adewopo, A., Development in IP in Africa. http://www.Adewopo-dev-of-ip-in-Africa-1. Accessed on 6th August, 2014.
[2] Idris, K., IP: A Power Tool for Economic Growth. WIPO, Publication, No.888 p.55

3.2 IMPORTANCE OF INTELLECTUAL PROPERTY (IP) TO SMALL AND MEDIUM ENTERPRISES (SMES)

A few years back, IP was not often discussed. Individuals and organization alike weren't aware of IP rights and did not appreciate that the could commercially exploit their IP Rights (IPRs) or that IPRs are valuable assets.

The value of IP is usually not adequately appreciated. It's potential for providing opportunities for future profit is widely underestimated by SMEs. When legally protected, IP may generate an income for SMEs through licensing, sale or commercialization of the IP – protected products or services that may significantly improve an enterprises market share or raise its profit margin[3]

IPRs provide a right holder with an exclusive right to prevent others from commercially using design, trademark, and invention, literary or artistic work. Depending on the IP strategy, of each company, IPRs are used by companies to meet a wide range of additional business objective. IPRs maybe used to obtain access to new market, enhance the reputation of a company as technology leader through access to, or ownership of, key patented technologies, create a corporate identity through trademark and branding strategy; increase the market value of a company in case of a merger or acquisition.

Every product or service that we use in our daily lives is as result of a long chain of small innovation. The different types of IPRs allow SMEs to own their creativity and innovation in the

[3] IP for Business: WIPO SME Division http://www.wipo.int/sme p.15 accessed on 9th August, 2014.

same way they can own physical property[4]. This, SMEs which own IPRs can control be rewarded for its use. This in turn encourages innovation and creativity to the benefit of us all. The progress and prosperity of humility depend on its creativity in technical and cultural fields. Legal protection of new creations promotes further investments and leads to innovation.

The encouragement and protection of IP stimulates growth leading to the creation of new jobs new industries and improves the quality of life.

SME proprietors who an IPRs have an exclusive set of rights in the market over their creations. For example a patented invention allows a monopoly of twenty (20) years[5] and means that a patent provides it's owner with a right to prevent or exclude all others from commercially using it.

The trademark on your pen is also IP and helps the producer to market the product and develop a loyal clientele. This would be the case with almost any product or service in the market place.

IP assist SMEs in almost every aspect of business development and competitive strategy. From product development to produce design; from service delivery to marketing and from raising financial resources to exporting or expending business abroad through licensing or franchising[6].

[4] Nwokocha, U. Nigeria Intellectual Property: Overview of Development and Practice, NIALS Journals of Intellectual Property (NJIP) Vol.1, p.102 (2012)
[5] Section 7, Patent and Design Act, Cap P2, L..F.N. 2004
[6] http://www.wipo.int/sme accessed on 9th August, 2014

3.3 IP AND BRANDING: WHAT'S IN A NAME?

Many entrepreneurs especially SMEs proprietors may not know how to go about developing a brand or believe that brands are reserved only for large and multinational corporations.[7] However, a brand is a powerful tool for marketing and a key asset for creating value for a business for any kind of enterprise. Any SME that must survive in a competitive market must develop a brand image alongside its business plan.

A brand can be a trade name, a sign, symbol, Slogan or anything that is used to identify and distinguish a specific product, service or business.[8] Branding gives a business a significant edge above other competitors. A strong brand communicates feelings of trust and responsiveness to its customers.

A brand is not just a mark or a logo, it is the primary identity of a product, service or business. It serves to create associations and expectations among products made by a producer. Branding is more or less a promise of service and quality image, recognition, investment, vision, mission and pride. It can also be a "promise of an experience" and conveys to consumers a certain assurance as to the nature of the product or service they will receive and also the standards the supplier or manufacturer seeks to maintain.

[7] Jaiya, G.S. IP Rights and Innovation in SMEs. A Paper submitted to the OECD as a Background Document to the 2nd OECD Ministerial Conference. http://www.wipo.int/sme/ accessed on 9th May, 2014.
[8] Lom, H. Branding: How to use IP to Create value for year Business www.wipo.int/sme/en accessed on 4th August, 2014

The Winged Hourglass logo of the LONGINES watch making company is the oldest valid trademark in the Trademarks International Registry at WIPO.[9] It was originally registered in Switzerland in 1889 and filed under the Madrid Agreement in 1893.

Also, the "SWOOSH" is the well known symbol by NIKE. Originally, the logo included the shoemaker's name, but at the end of the nineties, the name disappeared.[10] Today, the recognition of a simple swoosh automatically bring our attention on Nike.

Developing a brand is a milestone in the preparation of every strategic business plan. A good knowledge of trademarks, applicable industrial designs, collective marks, geographical indications is crucial to develop a successful branding. To be successful, a brand must be clear, send a credible message and be specific. The brand must have a point of difference i.e. it must be recognizable, desirable, credible and properly communicated to it's target group.

3.4 RAISING CAPITAL THROUGH INTELLECTUAL PROPERTY (IP)

IP financing practices are gaining more and more attention as they provide alternative means to companies, mainly SMEs and start-ups to fully exploit the value of their IP assets.[11] IP assets such as patents, copyrights, trademarks can help innovative firms gain access to financing by acting as collateral or security for loans and signaling the quality of a venture to investors.[12]

An IP owner may choose to license, assign or sell the rights to other enterprises in exchange for lump sum, payments or royalties, in order to generate additional income for the enterprise.

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[9] Salviati, F.G.C., The Importance of Intellectual Property (IP) for Economic Growth and Business Competitiveness. http://www.wipo.int/sme/en. accessed on 10th July, 2014.

[10] Ibid

[11] IP Assets for Financial Advantages, European IPR Help desk. http://ec.europa.eu/enterprise/initiatives. accessed on 10th July, 2014

[12] Garcia, J.M. Using IP to Raise Finance for Innovation. World Bank Publication No. 4 (2014) p.3

SMEs can raise capitals by licensing out its IP rights to a third party. The revenue resulting from licensing has the potential of increasing the market value of an SME.

An IP right can also be used as collateral to raise capital for an SME. Here, lenders will use an SMEs IP assets to determine the credit worthiness of an SME.

Another way SME proprietors may acquire better position to capitalize on the potential benefits of its IP assets and extract it full value is by conducting an IP[13]. This entails identifying, monitoring and valuing its SMEs IP assets so as to make sure the company is benefiting from its IP asset. By so doing, SMEs will be able to make informed decisions, when it comes to acquiring IP assets, knowledge of its enterprise IP will assist an SME to decide the type of IP rights to acquire and how best to manage same.

Auditing will also help SMEs when it comes to mergers and acquisition.[14] An IP audit can identify the company's IP portfolio and help to find strength and weaknesses of IP assets. It allows the company to obtain potential area and targets to acquire specific technology.

In recent years, there is growing awareness that IP can be monetized.[15] IP can be sold, licensed, used as collateral or security for debt finance. As an SME proprietor, it is important to look after IP of your SME not only as a legal asset but also as a financial instrument. An IP asset helps to strengthen an SMEs case when obtaining business finance from investors.[16] The investor will access the innovative product service offered by the SME, if it is protected by a patent, a

[13] Ibid, p.10
[14] Garcia, J.M. Op.cit, p.2
[15] Jaiya, G.S. Op.cit p.6
[16] Intellectual Property: A tool for Economic Growth. http://www.mondaq.com accessed on 12th March, 2014.

utility model, a trademark, an industrial design or copyright, such protection is a good indication of the potential of an SME doing well in the market place.[17]

Different investors may value an SMEs IP assets differently and may attach different degree of importance to IP rights. However, as an SME owner¸ proprietors must take steps to understand the commercial value of the IP assets of their SMEs, ensure their proper valuation and understand the requirements, if any for their proper accounting.

3.5 ENHANCING COMPETITIVENESS THROUGH IP

In the new knowledge economy, competitiveness is increasingly based on firms ability to provide high-value-added products and services at a competitive price[18]. Globalization has made it crucial for SMEs to become internationally competitive even when competing in domestic market.

In order to survive in a highly competitive market such as Nigeria's, SMEs need to constantly improve in efficiency, reduce production cost and enhance their reputation by acquiring new technology, develop new designs which are appealing, improve their marketing strategies and invest in research and development.

It is of paramount importance that SMEs make significant investment in IP in order to sustain it's business and without IP protection, there is a strong risk that investment will be wasteful. IP enables SMEs to have exclusive use over the exploitation of their innovative

[17] Intellectual Property: Source of Innovation, Creativity, Growth and Progress. www.ICCWbo.org accessed on 19th June, 2014
[18] Salviati, F.G.C. op.cit

product, their creative designs and their brands, thus creating an appropriate incentive for investing in improving their international competitiveness[19].

Companies that dedicate time and resources to protecting their IP can increase their competitiveness in a variety of areas. IP protection will help prevent competitors from copying or closely imitating a company's product or services, avoid wasteful investment in research and development and marketing, create a corporate identify through Trademark and branding strategy negotiating licensing, franchising or other IP-based contractual agreement, increase market value of the company, acquiring venture capital and enhance access to finance and obtain access to new markets.

3.6 EFFECTIVE IP MANAGEMENT

SMEs are extremely heterogeneous group. Their innovative capacity varies significantly in terms of size, focus, resources and business environment.

SMEs that want to survive in any business environment must take important steps to maintain its IP assets to wit[20];

(a) Integrating IP in it business plan formulation

(b) Monitoring the market to ensure its IP assets are not infringed on.

(c) Keep strict confidentiality in trade secrets.

(d) Identify patentable subject matters and protect IP in all potential export markets.

[19] Ibid

[20] Jimoh M.S. Establishing SMEs: Problems and Propects. A Paper Presented At the Institute of Chartered Accountants of Nigeria Zonal Conference Held in Jalingo, March, 8-11-2011

In order to effectively and efficiently manage their IP assets, SMEs should invest significantly in research and development to improve its technology. Constant market research, consumer survey and aggressive market campaigns gives SMEs an edge over its competitors.

The strategic use of IPRs by SMEs will depend on the company's overall business strategy SMEs should secure IP assets which will make it easier for the market to accept their products and also add a touch to the business that takes the needs and idiosyncrasies of the consumers into consideration.

To effectively manage an IP asset, SME proprietors should at inception first identify and have a strategy for managing, maximizing and protecting its IP assets. Effective management of IPRs may provide new business opportunities for companies with the appropriate skills, innovative capacity and resources to benefit from the range of options offered by the IP system.[21]

[21] Nwokocha, U op cit, p.105

3.7 INTELLECTUAL PROPERTY IN ACTION: TOWARDS NATIONAL DEVELOPMENT, ECONOMIC GROWTH AND TRANSFORMATION IN NIGERIA

Technology and knowledge have played an important role in economic growth of major world economies like the UK, USA and emerging economies like the BRIC countries i.e. Brazil, Russia, India and China[22].

Any nation concerned with its economic growth must pay attention to protection and enforcement of Intellectual Property Rights (IPRs). Conversely, non-protection of IPRs will force investors to take their businesses to other jurisdictions resulting in loss of jobs and government revenue through non-payment of taxes[23].

IP has helped the living conditions of people with major emphasis on patent which deals mainly with inventions. It has helped in technological advancement and promoted trade. This in turn leads to wealth generation.

In 2007, the federal government of Nigeria approved the registration of service marks by the then Minister of Commerce acting under powers in section 42(1) of the Trade Marks Act[24] to extend classifications of goods to include services. Although the legality of this has been challenged i.e. whether regulations made by the Minister can amend the Act[25] which in itself is still awaiting revision.

[22] Salviati, F.G.C., op cit
[23] Ibid
[24] Cap T 13, L.F.N. 2004
[25] Ibid

Considering recent developments particularly in the entertainment industry, copyright on the other hand has witnessed considerable activity in Nigeria. The Nigerian Movie Industry (Nollywood) is third only to Hollywood and Bollywood with the production of over 200 movies per month[26]. Sadly, Nollywood has continued to suffer some technical and quality issues. Nollywood attracts multi-million dollar investment locally and internationally[27], still some of these works are not protected.

The National Agency for Food and Drugs Administration and Control (NAFDAC) was established to regulate and control foods, drugs, related products imported or manufactured locally and distributed in Nigeria. The Standard Organization of Nigeria (SON) collaborates with NAFDAC to ensure substandard products are not brought into the country.

The National Office for Technology Acquisition and Promotion (NOTAP) is charged with the registration of agreements involving the transfer of technology. The NOTAP Act[28] makes it mandatory for parties to subject the agreement to Nigerian Law. Parties use skills available in Nigeria and only offer jobs to foreigners in specialized skills not found in Nigeria.

The Nigerian Copyright Commission[29], a creation of the Federal Legislature, is empowered to regulate the music, artistic and library creations. The Nigerian Broadcasting Commission[30] regulates the broadcasting sector. The Registry of Trademarks, Patents and Design regulate the fillings of trademarks, industrial designs as well as grant of patents in Nigeria.

[26] http://en.wikipedia.org/wiki/cinema-of-nigeria accessed on 23rd July, 2014
[27] Ibid
[28] NOTAP Act. Cap N. 62, L.F.N. 2004
[29] Established by the Nigerian copyright Act cap N97 L.F.N. 2004
[30] Established by Nigeria Broadcasting Commission Act, Cap N. 11, L.F.N. 2004

3.8 SUMMARY

From the above discussion, it is note worthy to say that growth, advancement and development of any country depends on it's SMEs and IP protection. Enforcement of IP right and effective IP management by SME owners is the first step toward economic advancement.

CHAPTER FOUR

EVALUATION OF SMALL AND MEDIUM ENTERPRISES (SMEs) AS IT AFFECTS INTELLECTUAL PROPERTY (IP) IN NIGERIA

4.1 INTRODUCTION

In Nigeria, perhaps, no development strategy has enjoyed much prominence as SMEs. A business whether big or small is created to provide competitive price. Business in Nigeria has been classified as small, medium and large. In both developed and developing economies, the government is turning to SMEs as a means of economic development and a means of solving problems. It is also a seedbed of innovations, inventions and employment.

Along with human creativity and inventiveness, IP is all around us. Regardless of what product SMEs make or services they provide, it is likely that it is regularly using and creating a great deal of IP. This being the case, it is important that SMEs should consider how best to use the IP system to it own benefit.

4.2 CHARACTERISTICS OF SMALL AND MEDIUM ENTERPRISES (SMEs) IN NIGERIA

Small business, as the name implies is usually small in market size as it services mostly the needs of local communities, its general scope of operation is not wide and uses few employees.

A common feature of Nigeria's SMEs is that majority of them are family owned or sole proprietorship. However, in the past two (2) decades, this orientation has been changing, partly as a result of the indigenisation decree of the seventies (70's) and partly as a consequence to

better exposure and enlightenment.[1] As a result, many SMEs are now in form of partnership or the other.

Most SMEs are characterized by these three distinguishing features[2]:-

(a) The management of the SME is generally coordinated by the owner who is in the position to make decision and doubles as an investor/employer.

(b) The amount of capital required is relatively small compared to that of bigger firms. Although most large business started on small scale, the writer is of the opinion that the choice of starting small is associated with insufficient funds.

(c) They operate mostly from their local communities away from social amenities.

Other features of SMEs in Nigeria include high cost of production, use of inefficient technology, poor managerial skills (most SMEs are usually managed by owners who may not have the necessary managerial training hence, there will be no separation between ownership and control), easy to form, labour intensive production processes, limited or no access to resources, lack of expertise, lack of access to international market, poor management of financial resources (inability to distinguish between personal and business finance), poor product quality output, high mortality rate (which is attributed poor management, death of owner, disagreement amongst partners etc).[3]

In most SMEs, proprietors usually know their customers and employees. The cordial relationship between the owner and employees can enhance the productivity of

[1] Odeyemi, J.A. *An Overview of the Current State of SMEs in Nigeria and the need for Intervention,* A paper presented at the National Summit on SMIEIS organised by the Bankers' Committee and Lagos Chamber of Commerce and Industry (LCCI) Lagos, 10th June, 2003.

[2] Olokoyo, S. *Managing your Small-Scale Enterprises Successfully: A guide to entrepreneurs, Managers and Students,* Ola-Jawon printers and Publishers, Kaduna 1999, p.17

[3] Enugu, B.A., *Small and Medium Enterprises in Nigeria: Problems and Prospects,* Ph.D Thesis (Unpublished), St. Clements University Ontario (2005) p.21

employees and in the case of the customers, proprietors will be able to efficiently satisfy the needs of the customers and be able to gather information on how best to improve on it's products.

4.3 ROLE OF SMALL AND MEDIUM ENTERPRISES (SMES) VIS-À-VIS INTELLECTUAL PROPERTY (IP) IN NIGERIA

The importance of SMEs in both developed and developing countries is without doubt of great relevance. They play a vital role especially in developing countries with major employment and income distribution challenges.

In the increasingly knowledge-driven economy, IP is a key consideration to day-to-day business decisions. New products, brands and creative designs appear almost daily on the market and are the result of continuous human innovation and creativity. SMEs are often the driving force behind such innovations.[4]

SMEs employ the greater percentage of the working population in any country.[5] With the generation of employment, social vices such as armed robbery, begging, businesses, prostitution are reduced.

All levels of government benefit from the existence of small businesses. This is one of the reasons governments of all countries encourage the establishment of small business through various means. The most important benefits of small businesses to any government include;

[4] Jaiya, G.S., Intellectual Property and Small and Medium Enterprises. www.wipo.ent/sme. Accessed on 7th July, 2014.
[5] UNESCO – Nigeria project for revitalization of TVE in Nigeria. http://unesco-nigeriatve.org accessed on 14th June, 2014.

revenue generation, economic growth and development through the creation of employment, payment of taxes to government and production of goods and services.

Nigeria is a country blessed with abundant Natural resources. Most SMEs use natural resources as raw materials for the production of their goods and services. This has helped in the preservation of these resources.

SMEs contribute to improve living standards, bring about substantial local capital formation and achieve high level of productivity and capability. According to the United Nations Industrial Development Organisation (UNIDO), SMEs have a significant role to play in economic development. They form the backbone of the private sector; they make up over ninety percent (90%) of enterprises in the world and account for fifty to sixty percent (50-60%) of employment.[6]

The National Bureau of Statistics (NBS) put the total number of SMEs in Nigeria at over seventeen (17) million[7]. However, in Nigeria, because of some challenges in the economy, a lot of SMEs operators in the country find it difficult to effectively play their expected role. These constraints include unfair competition, taxes, accounting management amongst others.

The growth of IP cannot be sidelined as a result of the importance derived from this aspect of law. The importance of IP in Nigeria is growing fast especially in terms of local inventions which have become recognized internationally.[8]

[6] Chima, O., *Small and Medium Enterprises in Nigeria,* www.hisdaylive.com/articles. 11th December, 2013, accessed on 10th August, 2014.
[7] Chima, O. Ibid.
[8] Intellectual property: A Tool for Economic Growth www.mandaq.com accessed on 12th March, 2014.

IP protection has been on the forefront of developments in most developed as well as developing countries. Foreign Direct Investment (FDI) is attracted into a country when an investor knows there is return on investment and this can be achieved mostly with protection of IP rights and effective enforcement.[9] Nigeria can derive huge investment opportunities in the development and protection of IP rights. This will bring about increase in revenue.

Indeed, there is a dire need to create the necessary enabling environment for the nurturing, development and protection of SMEs alongside IP rights in order to play the desired role for the continuous growth, development and transformation of Nigeria.

4.4 GOVERNMENT POLICIES ON DEVELOPMENT OF SMALL AND MEDIUM ENTERPRISES (SMEs) IN NIGERIA

Prior to Nigerian Independence, the business climate was almost totally dominated by the colonial and other European multinational companies like United African Company (UAC), GB Olivant, Lever Brothers Company (now Unilever), Patterson Zechonics, Leventis and many others.[10]

These companies were engaged in bringing into Nigeria finished goods from their parent companies abroad. These companies dominated the Nigerian economy and the government of those days encouraged them by giving incentives as favourable tariffs and tax concession.[11]

[9] Nwokocha, U., Nigeria-Intellectual Property: Overview of Development and Practice, NIALS *Journal of Intellectual Property* (NJIP) (2012), Vol. 1 p.101
[10] Ogechukwu, A.D., Obereh, J.S., et al, Small and Medium Enterprises in Nigerian: The Marketing Interface, *Global Journal of Management and Business Research Marketing* (2013), Vol.13, Issue 9, Version 1.0, p.2
[11] Ibid

Towards the end of 1960's, the Nigerian Industrial Development Bank (NIDB) was established to assist potential entrepreneurs to get involved in agriculture, exploitation of natural resources, commerce and industrial production.[12]

In recognition of the roles played by SMEs in terms of economic growth and development, succeeding Nigerian governments had various initiatives aimed at promoting the welfare of the SMEs in the country. They include;

(a) Nigeria Industrial Development Bank Ltd (NIDB) 1962

(b) Nigeria Bank for Commerce and Industry (NBCI) 1973

(c) Rural Banking Scheme (1977)

(d) Agricultural Credit Guarantee Scheme Fund (1978)

(e) World Bank Assistant SME loan project (1987)

(f) Peoples Bank of Nigeria (1989)

(g) The National Economic Reconstruction Fund (NERFUND) 1990

(h) Community Bank (1991)

(i) Bank of Industry (2000) (merged NIDB, NBCI, NERFUND)

(j) Nigeria Agricultural, Corporative and Rural Development Bank (NACRDB) 2000

(k) The Small and Medium Industries Equity Investment Scheme (SMIEIS) 2001

(l) Refining and Rediscounting Facilities (2002)

(m) Small and Medium Enterprises Developing Agency (SMEDAN) (2004)

(n) Microfinance Banks (2005)

(o) Small and Medium Enterprise Credit guarantee scheme (SMECGs) (2010)

[12] Ibid p. 3

For the purpose of this research, we will be discussing SMEDAN, SMECGs, the Bank of Industry and Microfinance Banks.

4.4.1 THE SMALL AND MEDIUM ENTERPRISES DEVELOPMENT AGENCY (SMEDAN)

SMEDAN was established by the SMEDAN Act[13] to promote the development of the micro, small and medium enterprises (MSME) sector of the Nigerian economy. Micro enterprises are included in the clientele of the agency, since they form the bedrock of SMEs.[14] The need arose from realisation that poverty is a social malaise that threatens global prosperity in general and national economic growth and development in particular.

The functions of SMEDAN contained in the Act[15] includes; stimulating, monitoring and coordinating the development of MSMEs sector, initiating and articulating ideas for micro, small and medium enterprises' growth, promoting and facilitating development programmes instruments and support service to accelerate the development and modernisation of MSME operation, linking SMEs to internal and external sources of finance, promoting information and providing access to industrial infrastructure, working in concert with other institutions in the public and private sectors to create a good enabling environment of businesses in general and MSME activities in particular.

The establishment of SMEDAN will help to trigger the development of Nigeria's SMEs in a structure and efficient way.

[13] SMEDAN (AMENDMENT) ACT, No. 3(2004)
[14] Ekwem, I., *Small and Medium Enterprises Development in Nigeria: Constraint and Policy Options,* M.Sc. Thesis (Unpublished), University of Stellenbosch (2011) p.14
[15] S. 8, SMEDAN (AMENDMENT) Act, op cit

4.4.2 SMALL AND MEDIUM ENTERPRISE CREDIT GUARANTEE SCHEME (SMECGS)

The scheme was established in May 2010, to provide guarantee cover for loans advanced to the SMEs by bank. The guarantee cover (provided by the CBN) shall be eighty percent (80%) of principal and interest and shall be valid up to the maturity date of the loan with a maximum tenure of seven (7) years inclusive of a two (2) year moratorium.[16]

The scheme aims at fast-tracking development of the manufacturing SME sector of the Nigerian economy by providing guarantee for credits from banks to SMEs and manufacturers, set the pace for industrialisation of the Nigerian economy and increase the access to credit by promoters of SMEs and manufacturers.

The Central Bank of Nigeria (CBN) has recently approved the establishment of a Two Hundred Billion (₦200 billion) Small and Medium Enterprise Credit Guarantee Scheme (SMECGS) to promote access to credit by manufacturers and SMEs in Nigeria.[17]

4.4.3 THE BANK OF INDUSTRY

The defunct Nigerian Industrial Development Bank (NIDB), the Nigerian Bank for Commerce and Industry (NBCI) and the National Economic Reconstruction Fund (NERFUND) was merged together to form the Bank of Industry in 2001 whose mission is to transform Nigeria's industrial sector and integrate it into the global economy by providing financial and business support services to attain modern capabilities for the production of goods are competitive in both domestic and external markets. It's primary objective is to provide financial

[16] Ekwem, I.op cit.
[17] Ibid.

assistance for the establishment of large, medium and small projects as well as expansion, diversification and modernisation of existing enterprises.

4.4.4 MICROFINANCE BANKS

Microfinance bank is any company licensed by the Central Bank of Nigeria (CBN) to carry on business of providing microfinance services such as savings, loans, Domestic Funds Transfers and other Financial Services that are needed by the economically active poor, micro, small and medium enterprises to conduct or expand their businesses as defined in the guideline for microfinance banks in Nigeria.[18] Microfinance Banks basically perform financial intermediation, that is servicing or financing the deficit economic unit through the resources derived from the surplus economic unit and at reduced interest rate. Unlike commercial banks, they are expected to provide financial services such as credits and financial advisory to small businesses that ordinarily would not have access to such services.

4.5 CHALLENGES OF SMALL AND MEDIUM ENTERPRISES (SMEs) AND INTELLECTUAL PROPERTY (IP) IN NIGERIA

Generally, SMEs and IP alike face unique challenges which affect their growth and profitability and hence, diminish their ability to contribute effectively to sustainable development.

SMEs are weak in African because of small local markets, undeveloped regional integration and very difficult business conditions which include cumbersome official procedures,

[18] Ibid

poor infrastructure, ineffective legal systems inadequate financial systems and unattractive tax regimes.[19]

The incidence of inadequate working capital, which constrains productive capacities of the SMEs as well as absence of a succession plan in the event of the death of the proprietor, leads in many cases to frequent early damage of SMEs. The persistence of an unstable macroeconomic environment, arising mainly from fiscal policy excuses, has often deprived the growth of many SMEs.[20]

Findings have shown that most SMEs particularly in Nigeria die within their first five (5) years of existence.[21] Another smaller percentage goes into extinction between the sixth (6^{th}) and tenth (10) year, thus only about five to ten percent (5-10%) of young companies survive, and grow to maturity. A lot of factors contribute to the premature deaths which include; dearth of infrastructure, lack of business strategy, inability to employ professionals, poor access to credit facilities, unstable and unconducive macroeconomic environment heavily beclouded by uncertainties in the politics and policies of government, lack of appreciation of the role of IP asset management in the competitiveness of SMEs by SMEs themselves etc.

Poor or absence of regular power supply has been the bane of SMEs in Nigeria. Consequently, production is done by improvising which is very expensive. This in turn raises cost of production which makes the SMEs to sell at a very exorbitant price. The result is the price at which they sell makes it difficult to compete with other goods.

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[19] Kauffman, C., Financing SMEs in Africa: Policy Insights, African Economic Outlook, (2004/2005) No.7, www.oecd.org/dev.

[20] Chibundu, C., Strategies for Nigerian SMEs to grow economy. Thompson Dialog New Edge (2006) www.tdnew.org. accessed on1 5th August, 2014.

[21] Ayanda, A.M., Laraba, A.S. SMEs as a survival strategy for Employment Generation in Nigeria, *Journal of Sustainable Development,* Vol. 4 No.1 (2011) p.201

Efforts by the CBN at making low interest rate financing available to SME hasn't yielded any result. Most SMEs find it difficult to access loans and finance facilities. This is because of the stringent regulations that has to be met thereby defeating the purpose.

Their characteristics and the attendant challenges notwithstanding, it is the consensus that SMEs which globally are regarded as the strategic and essential fulcrum for any nation's economic development and growth have performed rather poorly in Nigeria.[22] While many attribute the relatively poor performance of SMEs in Nigeria when compared with the significant roles which SMEs have played in developing economies such as UK, Germany and the USA and even developing countries like India to the above outlined challenges, some others hinge the reasons on the fair share of neglect on the sector by the government.[23] The latter group argues that government's appreciation of the SMEs in capacity building has always been restricted the pages of the budget presentations and submissions at various fora.

As Nigeria advances industrially, there is indeed great need for the protection of IP rights. In this country, we now see so many fake products with marks imitating or closely resembling the trademarks and names of genuine manufacturers. The Administration of IP right in Nigeria is incapacitated by inadequate skills and competence. Persons involved in its administration are usually not experts. Infrastructure for operation of IP right in Nigeria is still largely undeveloped.[24] Information has not been fully developed and applied towards encouraging proper research by IP experts, students and scholars alike.

[22] Onugu, B.A., op. cit p.22
[23] Ibid, p.23
[24] Nwokocha, U. op. cit p.102

Piracy and counterfeiting is a major problem in Africa. They have become an important factor frustrating business development in Nigeria. Counterfeit products and fake goods are constantly being offered alongside genuine goods to unsuspecting and undiscerning consumers.

The IP laws in Nigeria do not provide for adequate enforcement of the rights of an owner of IP.[25] The penalty for infringement is not sufficient to deter would be offenders. The only remedy for an owner is civil action in court;[26] there is no provision in the law for in the law for criminal prosecution except in the area of copyright where the owner can institute a criminal action through the Nigeria Copyright Commission.

Most applications for IP rights protection in the country are not filed by the nationals or residents of Nigeria. Statistics show that about ninety-nine percent (99%) of patents applications lodged with the patents and designs Registry are made on behalf of foreign brand owners in Europe, USA and Asia.[27]

IP law is developing in Nigeria though it is not where it ought to be. Nigeria's IP law should be aligned with international best practices. The government must also seriously address the numerous factors that undermine effective enforcement of existing IP laws.

[25] Lauretta, I., A Brief Analysis of Intellectual Law in Nigeria. http:thelawyershchronicle.com/abrief-analysis-of-intellectual-property. Accessed on 1st September, 2014.
[26] "Court" here means the Federal High Court
[27] Nwokocha, U. op cit p.3

4.6 SUMMARY

Having evaluated the SMEs sector and how it affects IP in Nigeria with their attendant roles and challenges, it is worthy of note to mention that indeed if necessary steps are taken to preserve our SMEs and protect IP rights, Nigeria would be a safe haven for SME proprietors and investors alike.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 SUMMARY

Our discussion has been the role intellectual property (IP) law plays in the growth of Small and Medium Enterprise (SMEs) in Nigeria. Having recognized the fact that IP is one of the prime keys to National Development, the next step is to strengthen the machinery for it's protection.

It has become clear that for any country, region, or continent to be actively involved in the global economy, it must be competitive. Competition flows from the protection of IP laws. It is also clear that majority of employed populations are engaged in SMEs in Nigeria. Therefore, there has to be sustainable funding for the SMEs if meaningful development is to be attained.

Managing an SME IP asset is more than acquiring the formal IP rights. Obtaining an IP protection is crucial to the growth and development of an SME. Managing an IP right involves an SMEs ability to commercialize it's inventions, market it's brands, licence it's technological know-how and effectively monitor and enforce it's IP rights.

5.2 FINDINGS

Findings of this research point to two main causative factors below:

1. Our attitude; which relates to our habits, way of doing things, way of thinking and approach to handling issues. SMEs in Nigeria are largely not properly structured, labour intensive, dependence on one key man, low level of capacity in management, technological know-how and marketing strategy. Moreso, as it relates to IP, when SMEs proprietors rights are infringe upon, they are reluctant to institute an action in court which has resulted in the dearth of case laws on the subject matter.
2. Our environment; SMEs in Nigeria are burdened with a multitude of problems such as lack of an enabling environment in terms of poor or non-existent infrastructure like accessible road networks, lack of water supply, epileptic power supply, and access to finance. It also relates to government's reluctant approach to policy enunciation, poor implementation of the policies and enforcement of IP laws.

5.3 RECOMMENDATIONS

To effectively curb the menace of IP theft and premature death of SMEs, it is recommended that:

1. There should be a proper review and amendments of IP laws in Nigeria by the enabling body.
2. The government should introduce regular training of IP personnel to be abreast with international best practices.
3. Domestication of WIPO treaties on IP rights.

4. Appointment of IP experts and professionals to key offices to implement IP policies.
5. Enforcement of IP laws and effective prosecution of counterfeiters
6. Cooperation amongst industry practitioners, public-private partnership and stakeholder alike.
7. Provision and maintenance of basic infrastructure
8. Investment and financing of Research and Development by government and SME owners
9. Government should take step to improve patent quality
10. Government should ensure that IPRs are available and enforceable at reasonable cost
11. The Trademarks and Patent Registries should facilitate patent and trademark filling and prosecutions by SMEs i.e. expediting review of applications from SMEs.
12. The government through the trademark and patent offices should institute outreach programs for SMEs proprietors in order to raise awareness about the importance of acquiring IP rights, improve SMEs IP asset management and increase opportunities for them to engage with IP officials
13. The government should assist SMEs by providing infrastructural facilities and social amenities like; accessible road networks, constant water supply, regular electricity and efficient communication.
14. Government should create awareness programmes to enable SMEs make informed decisions on how to exploit their innovative and creative potential using the IP system.
15. Government should improve the policy framework and business environment to make it conducive and easier for SMEs to use the IP system.
16. SMEs should also integrate IP in the company's business strategy.

17. SME proprietors should make sure trade secrets are kept within the enterprise and prepare, where necessary, confidentiality agreement.
18. SMEs who have acquired IP assets should make sure they pay maintenance fee on time.
19. SME proprietors shouldn't share their inventions with others or publish it before filing application for patent.
20. Government should create empowerment programmes for SMEs to access not just financial support but entrepreneurial education that gives an effective and enduring strategy for solving the capital problems of SMEs.
21. An IP strategy should be established systematically to identify, protect, monitor and exploit SMEs IP assets to ensure that they are reaping maximum benefit out of them.
22. Government should consider enacting policies that support the provision of insurance for SMEs to offset the cost of litigation associated with defending their IP rights.

5.4 CONCLUSION

IP is part of every aspect of life. It has become the most powerful tool that SMEs can use in order to survive and grow in today's highly competitive business environment.

SMEs are beginning to realize that intangible assets are becoming more valuable for competiveness of a business. Therefore, SMEs should take reasonable steps to legally protect their intangible assets by acquiring and maintaining IP rights.

The secret behind the success of self reliant strategy is mainly in peoples positive attitudes to enterprise and in the extent to which the right incentive is adequate enough to make

risks worth taking than in any particular political philosophy[1]. In the early stages of Japan's industrialization, her economy was dominated by a large number of small scale enterprises, who drew their strength not from an abundance of capital, but from her vast supply of labour, and the abundant advantages of small scale industries. Nigeria and Nigerians need to learn from the Japan's experience.

Nigeria should try and develop it's IP based industries in production and distribution of goods and services which are the commanding heights of the global economy.

[1] Ogechukwu, A.D., Obereh, S.J. et al Small and Medium Scale Enterprises (SMEs) in Nigeria the Marketing Interface, Global Journal of Management and Business Research (E) vol. xiii, Issue xi. version 1 (2013)

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