

## **Intellectual Property and Small and Medium-Sized Enterprises (SMEs) in Kenya**

The Kenyan Government, aware of the role Small and Medium Sized Enterprises (SMEs) play in the economy, has taken steps to develop a legal and regulatory framework aimed at guiding and accelerating the growth of this sector. Due to Kenya's per capita income structure, most businesses would fall into the SME strata and as such any attempts by the Government to grow the economy would logically include development and sustenance of the SME sector. An SME operating in Kenya may be registered as a sole proprietorship, partnership or limited liability company. In this context, most SMEs thrive on innovative ideas to build goodwill and grow their market share and as such they invariably generate valuable intellectual property (IP). Looking outward, we note that countries that have made great strides in achieving their national development goals recognize the value of IP to SMEs and as such have clear policies relating to SMEs and IP.

The official policy framework of SMEs in Kenya is contained in the ***Sessional Paper No 2 of 2005: Development of Micro and Small Enterprises for Wealth and Employment Creation for Poverty Reduction*** (Hereinafter "Sessional Paper No. 2 of 2005"). This policy paper was intended to form the basis for enacting the SME Act to institutionalise SME Policy in Kenya. The new SME Act would give direction to among others, key issues such as: the legal and regulatory environment, markets and marketing, business linkages, the tax regime, skills and technology and financial services. Indeed the ***Micro and Small Enterprises Bill 2011*** (MSME Bill 2011) that is currently pending before the Kenyan Parliament was developed upon this Policy framework.

While Sessional Paper No. 2 of 2005 defines a SME as an enterprise with between 1 to 50 employees, the World Bank defines an SME as one that fits to either of the following criteria that is to say: (1) A formally registered business (2) with an annual turnover of between Kenya Shillings 8 to 100 million (3) an Asset base of at least Kenya Shillings 4 million and (5) employing Between 5 to 150 employees. The MSME Bill 2011 has used 2 criteria to define SMEs in general that is: (a) the number of people/employees and (b) the company's annual turnover. For enterprises in the manufacturing sector, the definition takes into account the investment in plant and machinery as well as the registered capital.

According to Kenya's blue print and strategy for development known as **Vision 2030** that aims towards making Kenya a newly-industrializing middle-income country capable of providing a high quality of life for all its citizens by the year 2030; Kenya's competitive advantage lies in agro-industrial exports. For superior performance of the manufacturing sector, one strategy includes strengthening SMEs to become the key industries of tomorrow. This, according to Kenya's Vision 2030, can be accomplished by improving their (SME) productivity and innovation. Vision 2030 therefore recommends a need to boost science, technology and innovation in the sector by increasing investment in research and development. Vision 2030 sees one key strategy to development of SMEs as being the development of SME Parks in Kenya. In this regard, the government needs to establish at least five (5) SME Industrial parks.

Owing to the paucity of comprehensive data on IP and SMEs in Kenya, it is difficult to accurately gauge the extent and spread of SMEs in Kenya. In a study done in the United Kingdom titled "***A Comparison of the Use and Value of Patents and Trade Marks in Large and Small Firms***" by scholars of Oxford University and the Oxford Intellectual

Property Research Centre; there is a policy concern over whether SMEs are missing out on protecting and exploiting their IP in some way. This is because studies have shown that well known IP is used and generated by large firms. A hypothesis is put forward that SMEs undertake less innovation than larger corporations due to their budgets and so generate less IP assets. They (SMEs) also have a lower propensity to protect their innovation and so acquire less IP and receive fewer gains.

Having said that, our view is that as new products, brands and creative designs appear almost daily on the market, owing to continuous human innovation and creativity, SMEs are often the driving force behind such innovations. Innovation is not a preserve of large wealthy corporations. The innovative and creative capacity of SMEs, however, is not always fully exploited. This is because many SMEs are not aware of the intellectual property system or the protection it can provide for their inventions, brands, and designs.

It is generally believed that SMEs are to a large extent both creators and users of IP. It cannot be gainsaid that if left unprotected, a good invention or creation may be lost to larger competitors that are in a better position to commercialize the product or service at a more affordable price. This in turn leaves the original inventor or creator without any financial benefit or reward. It is therefore pertinent for SMEs to recognise that adequate protection of a company's intellectual property is a crucial step in deterring potential infringement and in turning ideas into business assets with a real market value. Taking full advantage of the IP system enables companies to profit from their innovative capacity and creativity, which encourages and helps fund further innovation.

Japan, is an example of a nation has a clear policy on SMEs as relates to IP. The policy aims at providing support to SME and venture companies. The policy is grounded on the basis that SMEs develop infrastructure and technology for Japanese industry and support the industrial foundation of Japan by processing materials and supporting parts. SMEs also provide a major role in promoting local economies through job creation.

For Kenya and many least developed countries, however, there is still a big challenge in so far as relates to uptake as well as enforcement of IP by SMEs. The World Intellectual Property Organization (WIPO) recognising this challenge, has established a program to assist entrepreneurs and help SMEs more fully utilize their IP assets in their business activities. The program targets the SME-support institutions and national governments in increasing awareness and use of the IP system among SMEs across the globe.

The WIPO program recognises that many new products or services embody different types of intellectual property. Forward-looking enterprises face the challenge of extracting the latent value of their IP and using it effectively in their business strategy. Companies that dedicate time and resources to protecting their intellectual property assets can increase their competitiveness in a variety of ways. Intellectual property protection helps in:

- preventing competitors from copying or closely imitating a company's products or services;
- avoiding wasteful investment in research and development (R&D) and marketing
- creating a corporate identity through a trademark and branding strategy

- negotiating licensing, franchising or other IP-based contractual agreements
- increasing the market value of the company and obtaining access to new markets
- acquiring venture capital and enhancing access to finance

It is critical that enterprises make an effort to search systematically for conflicting IP rights of others prior to seeking IP protection in order to avoid unnecessary litigation, thereby saving time and resources.

Effective IP management enables companies to use their intellectual property assets to improve their competitiveness and strategic advantage. Acquiring IP protection is a crucial initial step, but effective IP management means more than just protecting an enterprise's inventions, trademarks, designs, or copyright. It also involves a company's ability to commercialize such inventions, market its brands, license its know-how, conclude joint ventures and other contractual agreements involving IP, and effectively monitor and enforce its intellectual property rights. Indeed, a company's portfolio of IP must be viewed as a collection of key assets that add significant value to the enterprise.

SMEs can also benefit from the wealth of technological and commercial information available in patent and trademark databases to learn about recent technological breakthroughs, identify future partners, and find out about the innovative activities of competitors. Managing IP effectively and using it to devise business strategies is an increasingly critical task for entrepreneurs worldwide.

**In conclusion**, it is commendable that Kenya is moving toward institutionalising SMEs in its policy and statutory instruments. Vision 2030 is particularly commendable, in so far as it recommends more research and development in encouraging innovation by SMEs. Nevertheless, if Kenya is indeed to achieve its development objectives, as envisaged in Vision 2030, much will have to be done to not only provide the proper framework for establishment of SMEs but also to help them create, exploit and protect their IP. This can be achieved by formulating a comprehensive National IP Policy that addresses all sectors of national growth and development. There is also the need to strengthen all the necessary IP-related institutions in Kenya with a view to making them more amenable to accommodating SMEs even as they expand in the area of IP. Kenya can also benefit from the WIPO SME initiative discussed in this article.

**Sources:**

1. Sessional Paper No 2 of 2005: Development of Micro and Small Enterprises for Wealth and Employment Creation for Poverty Reduction
2. Kenya's Vision 2030
3. Micro and Small Enterprises Bill 2011
4. [www.wipo.int/sme](http://www.wipo.int/sme)

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