AN APPRAISAL OF COMMERCIALISATION OF INTELLECTUAL PROPERTY RIGHTS AS A PATHWAY TO SUSTAINABLE ECONOMIC GROWTH AND DEVELOPMENT.

Abstract

*Intellectual property Rights ("**IPRs**") are now being widely recognised as valuable, as IPRs continue to make positive and increased financial impact on the performances of companies and businesses. Consequently, the crucial questions arise: how can IPRs be tangibly applied and converted to hard, raw cash or some other kind of recompense? While answering this, other questions arise such as the determination of the value of the asset, as it is intangible, unlike other typical assets like land. It has been long argued that aside from the economic rewards to the owners of the IPRs, IPR commercialisation adds value to social welfare activities, creating long-term research partnerships and generating economic benefits to industries. However, this paper finds that the successful commercialisation of an IPR involves not only innovative ideas but also strategic risk management and valuation, focused on the factors influencing market appeal. Through a doctrinal methodology, this paper provides an overview of the growing field of intellectual property commercialisation, with particular focus on developing economies such as Nigeria. It explores the different types of IPRs, their significance, methods for valuing IPRs, strategies for commercialising them, and the conditions necessary for successful commercialisation. As part of its recommendations, the paper concludes that successful IPR commercialisation, collaboration between policymakers, researchers, and industry stakeholders is necessary to create a legal framework that supports and protects innovative ideas and products.*

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Keywords: Intellectual Property, Intellectual Property Rights, Intellectual Property Valuation, Intellectual Property Commercialisation.

1. Introduction

Intellectual Property Rights, abbreviated as IPRs, are legal privileges that provide the authority to own and manage intellectual creations and innovations. Intellectual Property (IP) represents the atomic unit of human ingenuity, encompassing scientific breakthroughs like penicillin and transistors, iconic brands like Nike and Coca-Còla, cultural phenomena such as Disney, and even individual identity, as seen with Messi or Michael Jackson.[1] As of 2023, global intangible assets, which include IP, were valued $61.9 trillion[2] with some 2024 valuations estimating this figure to have reached $79.4 trillion.[3] This makes IP, one of the largest and most critical asset classes, essential not only for economic growth but also for the advancement of human civilisation.[4] Under the general notion of Intellectual Property, there are different types of exclusive rights, which are suitable for different types of creations. These rights include copyright, patent, trademark, industrial design, geographical indication, and trade secrets.

Copyright also known as author's right, has been defined by the World Intellectual Property Organisation (WIPO) as a legal term used to describe creators' rights over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to

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[1] The Future of Intellectual Property in an AI-Driven World – Insights4.vc Newsletter, January 23, 2025. Available at https://insights4vc.substack.com/p/the-future-of-intellectual-property . (Accessed on January 23, 2025).

[2] A. Brown, A. Garnham, *et al*, 'Corporate Intangible Assets Grew to USD 61.9 Trillion in 2023', *WIPO Blogpost*, February 28, 2024. Available at https://www.wipo.int/en/web/global-innovation-index/w/blogs/2024/corporate-intangible-assets#:~:text=Global%20corporate%20intangible%20value%20increased,rank%20among%20the%20top%2020. (Accessed on January 24, 2025).

[3] Value of Global Intangible Assets reaches all-time $79.4 Trillion High – Brand Finance Website Post, October 30, 2024. Available at https://brandfinance.com/press-releases/value-of-global-intangible-assets-reaches-all-time-79-4-trillion-high#:~:text=LONDON%2C%2030%20October%202024%20%E2%80%93%20In,world's%20leading%20brand%20valuation%20consultancy. (Accessed on January 24, 2025).

[4] See supra note 1.

computer programs, databases, advertisements, maps, and technical drawings. There are two types of rights under copyright; (i) economic rights, which allow the rights owner to derive financial reward from the use of their works by others and; (ii) moral rights, which protect the non-economic interests of the author.[5]
As for Trademark, it is a symbol, word, or design that identifies and differentiates the goods or services of one business from those of others. It serves as a way for customers to recognise your brand in the marketplace and distinguish it from competitors. Trademarks are safeguarded by intellectual property laws. Industrial design on the other hand, is an aspect of IP which focuses on the appearance of a product, resulting from features such as the lines or colours of the product or its ornamentation. An industrial design may consist of 3-dimensional features such as the shape of a product (a Coca-Cola bottle) or two-dimensional features such as patterns (a design on a clothing), lines or colour of a product. It may even consist of a combination of features.[6]

A patent is an exclusive right granted for an invention. Patents benefit inventors by providing legal protection for their inventions. They also benefit society by providing public access to technical information about these inventions and thus accelerating innovation.[7] Trade secrets are simply IPRs on confidential information that may be sold or licensed.[8] To qualify as a trade secret, the information must be commercially viable, known to a limited group of persons, and subject to steps taken by the right holder to keep it secret, including the use of confidentiality agreements for business partners and employees.

A geographical indication (GI) is a sign used on products with a specific geographical origin and possessing qualities or a reputation due to that origin. In order to function as a GI, a sign must identify a product as originating from a given place.[9] These rights refer to the compensation and reward for innovative endeavours that almost systematically involve not only creativity but also significant costs. The rights are also designed to encourage individuals and organisations to invest in the development of new ideas, products, and artistic works by providing them with a temporary monopoly on excessive utilisation, reproduction, and sharing of their creative works.
Commercialising IPRs plays a pivotal role in incentivising inventiveness and originality across industries by offering creators and inventors protection in addition to the potential for financial gain.[10] IPRs help reconcile the need to promote innovation with the need to make sure that society benefits from the dissemination of knowledge and cultural works.

In an era characterised by widening economic disparities and rapid technological advancement, understanding the dynamics of intellectual property commercialisation and its consequences on third-world countries such as Nigeria is paramount.[11]This paper therefore explores the different types of IPRs), their significance, methods for valuing IPRs, strategies for commercialising them, and the conditions necessary for successful commercialisation. It appraised how Intellectual Property Rights can be sustained as a valuable tool in making positive and increased financial impact on the performances of companies and businesses for economic growth.

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[5] WIPO, 'What is Copyright?' Available at https://www.wipo.int/en/web/copyright . (Accessed on January 24, 2025).
[6] A. Olusoga, 'Industrial Design: Benefit of Registration'. Available at https://www.mondaq.com/nigeria/trademark/912624/industrial-designs-benefits-of-registration. (Accessed on January 24, 2025).
[7] WIPO, What is Patent? Available at https://www.wipo.int/en/web/patents (Accessed on January 24, 2025).
[8] WIPO, What is a Trade Secret? Available at https://www.wipo.int/en/web/trade-secrets (Accessed on January 24, 2025).
[9] WIPO, Geographical Indications? Available at https://www.wipo.int/en/web/geographical-indications (Accessed on January 24, 2025).
[10] WIPO, what is Intellectual Property? (WIPO, 2020). Available at https://www.wipo.int/edocs/pubdocs/en/wipo_pub_450_2020.pdf (Accessed on January 28, 2025).
[11] B. Jagdish. "The case of free trade ", 1993. In The American Economic Review, vol. 82, no.2, pp 117-125, 1992; Available at https://library-collections-search.westminster.ac.uk/discovery/openurl?institution=44WST_INST&rfr_id=info:sid%252Fprimo.exlibrisgroup.com-bX-Bx&rfr_id=info:sid%2Fprimo.exlibrisgroup.com-717091-Bx&rft_val_fmt=info:ofi%2Ffmt:kev:mtx:&rft.epage=47&rft.volume=269&rft_id=info:doi%2F&resource_type=article&rft.isbn_list=&rft.jtitle=Scientific%20American&rft.genre=article&rft.issue=5&rft.auinit1=J&rft.aulast=Bhagwati&rft.auinit=J&rft.date=1993-11 01&rft.eisbn_list=&rft.spage=42&rft.au=Bhagwati,%20Jagdish&rft.atitle=The%20case%20for%20free%20trade.&rft.issn=0036-8733&rft.eissn=1946-7087&svc_dat=CTO&vid=44WST_INST:WST_VUA (Accessed on January 23, 2025).

2. Conceptual Clarification of Terms

2.1. Intellectual Property Rights Commercialisation (IPRs)

IPRs although intangible, are still property. They may be sold, leased, licensed, assigned, or tendered as security for a loan. In simple terms, intellectual property rights commercialisation is the process of turning IPRs into a source of revenue. Here, IPRs are made profitable to the benefit of the owner or a third party. Commercialisation of IPRs is thus how market value is added to IPRs. This process connects innovation with entrepreneurship.[12]

Commercialisation can be done through self-exploitation and where a party has no financial or industrial capacity to convert the research into a product or service, they can transfer the IP through assignment or licensing to a party that has capacity.[13]The main motive of commercialising IPR is to encourage people to bring new ideas and creations to the market and make them marketable and profitable.[14]In order to be able to sell, license or enter into any commercialisation arrangement of an IPR, there is a need to put value on the IPR. The process of doing this is called IPR valuation. This will be addressed in the next subheading.

2.2. Intellectual Property Rights Valuation

IPR valuation is the process of determining the financial value of an intellectual property asset. It evaluates the IPR's arm's length or fair market value. The value of an IP asset derives, in essence, from its ability to exclude competitors from a particular market. Whilst the legal right grants exclusivity or the right to exclude, the economic right is based on exclusivity of use, that is, the ability to control the use of the IP asset. For an IP asset to have a quantifiable value, it should generate measurable amount of economic benefit to its owner/user and enhance the value of other assets with which it is associated.[15]

Various factors influence IPR valuation. These include the context in which the IPR is being valued. For example, whether the IPR being valued during a forced liquidation process or a disposition of assets. Access to and reliability of relevant data and information also influences IPR valuation, especially with respect to the valuation method to be adopted and the assumptions to be made while applying such a valuation method. More importantly, in IPR valuation, the nature, scope and strength of the underlying IP asset is taken into account. There are three principal methods for IPR valuation. They are the (i) Income method, (ii) Market method, and (iii) Cost Method.

2.2.1. Market Method

The market approach valuation determines the value of an IPR by looking at the value allocated to comparable IPRs in transactions between unrelated parties.[16] Under this method, it is important to find data on IPRs that are sufficiently comparable to the IPR being analysed – in particular, ensuring that the economically relevant characteristics of the transactions are comparable.[17]

To do a valuation with this method, the following information must be considered: an active market (price information, arm's length), an exchange of an identical IP asset, or a group of comparable or similar IP assets. If the IP assets are not perfectly comparable, variables to control for the differences.[18]While this method is straightforward and direct, based on real data and not dependent on

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[12]D. Dilanchian, 'Commercialisation Defined' *Law library: Commercialisation and Knowledge Management*. (2012)

[13]United Nations Economic Commission for Europe, (2013). *Intellectual Property Commercialisation: Policy Options and Practical instruments*, 17. <https://unece.org/sites/default/files/2022-01/ip.pdf> (Assessed on January 23, 2025).

[14]R.M.K. Alam and M.N. Newaz, "Intellectual Property Rights Commercialization: Impact on Strategic Competition", 8(3) *Business and Management Review* 22 (2016). Available at https://www.researchgate.net/publication/323868235_Intellectual_property_rights_commercialization_impact_on_strategic_competition (Accessed on January 23, 2025).

[15]WIPO Panorama Learning Points, Module 11 – IP Valuation. Available at https://www.wipo.int/export/sites/www/sme/en/documents/pdf/ip_panorama_11_learning_points.pdf . (Accessed on January 26, 2025).

[16]K. Rudzika, IP Valuation Method, Royalty Range Blogpost, November 11, 2020. Available at https://royaltyrange.com/resources/ip-valuation-methods/ (Accessed on January 23, 2025)

[17]Ibid.

[18]See supra note 15

estimates or forecasts, it is difficult to find reliable comparable data and the data used for comparison must meet strict comparability criteria. By definition, an IP asset is unique. It is not possible to find an exactly alike or even a similar or comparable IP asset. Even if that were possible, it is generally not possible to have readily available information, which could be used for valuing the subject IP asset. Market method ends up comparing the general information available in the market.[19] Further, due to the depth of the required information to ensure comparability, often the only good transactional data is from a transaction where there is complete access to the legal agreement. Generally, however, such IP transactional data is highly confidential.[20]

2.2.2. Cost Method

The cost approach to valuation bases the IP's value on the cost of creating and developing it. The cost method is based on the intention of establishing the value of an IP asset by calculating the cost of developing a similar (or exact) IP asset either internally or externally. It seeks to determine the value of an IP asset at a particular point in time by aggregating the direct expenditures and opportunity costs involved in its development and considering the obsolescence of an IP asset[21]. Cost-based methods involve calculating the costs of creating and developing an IP asset, including machinery, equipment, labour, legal protection, testing and trials, and overheads.[22] An important requirement for both of these methods is that the costs are determined as of the valuation date (whether that be today's date or another date) and not the historical expenditures that actually took place. [23]

There are two variants of the cost method namely: the reproduction cost method and the replacement cost method. Reproduction cost contemplates the construction of an exact replica of the subject IPR. Replacement cost contemplates the cost to recreate the functionality or utility of the subject IPR but in a form or appearance that may be quite different from the subject IPR. While the relevant internal data can be easily accessed to carry out this valuation method, it does not take into account the IPR's market value, future value, or potential value.[24]

2.2.3. Income Method

Income-based valuation methods base value on the income the IPR is expected to generate in the future and the economic benefits it will bring a company over its useful economic life, adjusted to its present-day value. This method involves forecasting potential future revenues, risks, and costs of the IP.

In determining the income method, there is a need to project the revenue flow (or cost savings) generated by the IP asset over the remaining useful life of the asset, offset those revenues/savings by costs related directly to the IP asset, which are costs, labour, and materials, required capital investment, and any appropriate economic rents or capital charges and take account of the risk to discount the amount of income to a present-day value by using the discount rate or the capitalisation rate [25] The advantage of this method is that it is flexible to different types of IPR at different stages of development. However, this method relies on hypothetical future forecasts, rather than real data.[26]

Irrespective of the valuation method, to value an IPR, certain conditions must be prevalent: (i) the IPR must be separately identifiable, (ii) the IPR must have been created at an identifiable point in time, (iii) the IPR should be capable of being legally enforced and transferred; (iv) the IPR's income stream of the asset should be separately identifiable and isolated from those of other business assets; (v) the IPR should be sold independently of other business assets and; (vi) the IPR should be subject to destruction or termination at an identifiable point in time. There should also be tangible evidence of the existence of the IPR.

[19] Ibid.
[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] See supra note 16
[24] Ibid.
[25] See supra note 15
[26] See supra note 16

3. Means of Commercialisation of IPRs

There are five primary ways of commercialising IPRs. However, the valuation process necessitates gathering of much information about the IP assets and an in-depth understanding of the economy, industry, and specific businesses that directly affect the value of the IP. This will ultimately determine the means of commercialisation to be used. The five means of commercialising IPRs will be considered in depth below.

3.1. Licensing

Under licensing, the owner of an intellectual property asset transfers the IPR for a given period of time to a third party for a fee called royalty. The owner of the intellectual property asset who grants such permission is called the licensor, while the person with authorisation to use the intellectual property asset is known as the licensee. Before conducting licensing negotiations, a thorough understanding of the value of the IP assets ensures more informed negotiation and decision-making concerning the terms and conditions of the proposed license, especially in determining fair and robust royalty rates for optimal exploitation of the IP asset.

A vital element of a licence agreement relates to the scope and extent of the rights granted to the licensee, as well as any limitations on those rights. The scope of the licence is usually informed by the IPR licensed and it may also depend on the type of agreement. For example, in publishing agreements where the type of intellectual property in issue is copyright, typically, the writer would grant the publisher the right to "produce, copy, and publish the book in any format including electronic", while retaining the remainder of the copyright, which would include the right to make adaptations, serialise the book, reproduce the book in foreign language, convert the book into a movie or television series etc.[27] There are two major types of licence: (a) exclusive licences and; (b) non-exclusive licences.

3.1.1. Exclusive Licensing

By exclusive licensing, only the licensee is able to use the licensed IPR. The licensor cannot use it or further the IPR. The licensor grants the sole rights to use an IP asset for a specific purpose or in a specific field.

3.1.2. Non-Exclusive Licensing

Under the non-exclusive licensing, the licensee and licensor can both use the licensed IPR. The licensor is also allowed to negotiate further non-exclusive licenses with other companies. For example, stock photo websites often grant licenses to individuals to use a stock photo on their website for a small fee under a license.

A licensor may continually improve intellectual property even after the agreement's effective date. The right to any improvements should be negotiated as part of the overall license agreement. Similarly, the agreement should cover instances where the licensee works on the IP asset and, in the process, creates new intellectual property. The ownership of the new intellectual property or improvements should be adequately dealt with.[28]

Under a licensing agreement, the licensor takes responsibility for the prosecution and payment of annuity fees but may request to be reimbursed for the payment of annuity and maintenance costs for the intellectual property. Usually, the licensee must maintain a good record of accounts relating to all IP asset transactions.[29]

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[27]'Licensing Intellectual Property, Things to Consider', *Norton Rose Fulbright Publication*, September, 2015. Available at https://www.nortonrosefulbright.com/en/knowledge/publications/984ecd2b/licencing-intellectual-property-things-to-consider . (Accessed on January 27, 2025).

[28]Ibid at 27

[29]See supra note 27

3.2. Assignment

Under assignment, ownership of an IPR is transferred by the owner (assignor) to a third party (assignee). This is different from licensing, where the owner keeps ownership but merely grants user rights to a third party. In simpler terms, this is the sale of an IP asset. The ownership of part of the IPR may be assigned to a third party. In assigning the IPR, it is important that parties sign a non-disclosure agreement and perform intellectual property due diligence. The relevant issues to be included in an assignment agreement include identification of the PR to be assigned, the terms of payment, warranties and representations, amongst others.

It is also very important that the parties to an assignment agreement ensure that the IPRs to be assigned are registered and protected. Unlike copyright, which confers on every work that is eligible without registration, patent, industrial design, and trademark require registration before such IPR can be recognised. In *Arewa Textile Plc & 3 Ors v Fintex Limited* (2003) 7 NWLR (Pt. 819)322, there was no evidence that patent was registered by the respondent, hence, its cause of action against the appellants was held to be inchoate and the said assignment had no effect on the appellants.[30]

Parties to an assignment agreement should determine the scope of the IP right that is to be assigned. The key consideration is whether the assignor intends to assign a part or the entirety of the IPR. For example, an assignor may in the case of assignment of copyright decide to assign only some of the acts, which the owner of the copyright has the exclusive right to control or to a part only of the period of the copyright, or to a specified country or other geographical area. As it pertains to patent, a patent may be assigned in respect of a product (the act of making, importing, selling or using the product, or stocking it for the purpose of sale or use) or assigned in respect of a process (the act of applying the process or doing, in respect of a product obtained directly by means of the process).[31] It is noteworthy that registration of the assignment or transfer of IP right constitutes notice to third parties.

3.3. Use of IP Asset by Owner

Regardless of industry, owners of IPRs may want to take up commercialisation activities on their own. Where owners of IPR do this, there are certain key considerations to be taken note of. IPR owners should maintain the confidentiality of their intellectual property, leveraging it in their business to sell products and services. Only inventions or designs that have not been publicly disclosed are eligible for protection as patents, utility models, or designs. An IPR owner should check IP databases to verify whether the idea is new, and worth being pursued. Besides, it also helps companies to avoid re-inventing and re-developing as well as applying for IPR for an already existing technology, design or brand. Keeping records of registration is very important as this helps in proving the date an ownership of IPRs. Lastly, IPR owners should monitor the market and competitors to be sure of identifying any infringing actions. An example of the utilisation of intellectual property rights by the owner is the use of famous trade secrets, such as the Coca-Cola recipe and the Krispy Kreme recipe, by their respective owners.

3.4. Joint Venture Arrangement

Joint ventures are business alliances between two or more independent organisations (venturers) formed to undertake a specific project or achieve a particular goal, typically focused on profit generation. More specifically, in the context of innovation, the parties to a joint venture share risks and pool their resources (including financial and intellectual capital) towards technology research and development, production, marketing and commercialisation.[32]

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[30] Assignment of Intellectual Property Rights – Essential Considerations, Esher and Makarios Legal Practitioners Website Publication. Available at https://www.esherandmakarioslaw.com/resources/assignment-of-intellectual-property-rights-essential-considerations . (Accessed on January 27, 2025)

[31] Ibid at 30

[32] 'Commercialising Intellectual Property', *European IP Helpdesk Fact Sheet*, November 11, 2024. Available at https://op.europa.eu/en/publication-detail/-/publication/36796314-94de-11ef-a130-01aa75ed71a1/language-en . (Accessed on January 27, 2025).

To participate in a joint venture, the parties bring their own intellectual assets into the project and may need to access the IP previously belonging to other venturers. This type of preexisting IP is usually called background. At the same time, it can be expected that the joint venture will generate new IP. This is referred to as foreground.

The management structure of joint ventures should be clearly defined, and an IP management committee can be established to handle operational matters such as patent filing, licensing, and disputes. For example, from the beginning, it is necessary to define how ownership of the IP to be created by the joint venture will be distributed and each party's rights upon it.

It is also necessary to agree on the initial contribution of each venturer as well as on the respective responsibilities and obligations. All this can be set out either by a specific contractual arrangement corresponding to a non-incorporated joint venture (contractual model), or in a joint venture agreement setting up an independent legal entity which can take different forms such as a limited liability company, an operating company or an IP holding company – called a joint venture company (entity model). The difference between the two forms is that the contractual model is normally used for collaborations that are narrow in scope and with a short-term ending (e.g. for the setting up of a specific research and development project, with the contract setting out the rules governing the research collaboration), while the entity model is usually chosen for long-term partnerships with a broader scope and not limited in time.[33]

By pooling the parties' financial, material, and intellectual capital, joint ventures can be considered a convenient means for organisations to exploit and share intellectual assets with reduced financial investment. Hence, organisations with limited financial resources may be able to develop new technology or bring products to the market at costs that would be otherwise prohibitive, with potentially rapid business growth.[34]

3.5. Franchising

This unique form of licensing allows the replication of the owner's (franchisor) business model in a different location, providing ongoing support and training to the recipient (franchisee). In essence, a successful business is being replicated and run by entrepreneurs who are called franchisees under the supervision, control, and assistance of the franchisor, the owner of the business model. Since business models often involve using intellectual property to operate, franchising serves as another method for commercialising IPRs.[35]

A popular example is the business model run by Food Concept Limited (Chicken Republic) via its outlets nationwide. There are different types of franchising agreements including the following[36]:

3.5.1. Direct Franchise Agreement

A franchisor may enter franchise agreements with each territory or outlet. Here, the franchisor has direct control of his franchisees and a revenue flow that does not need to be shared with others. However, direct franchising may not be suitable when the outlets are in another country. Problems may include the issues of repatriating revenue, tax implications, and difficulties dealing with the uniqueness of different countries, including language, culture, laws, regulations, and business practices.

[33] Ibid at 32.
[34] Ibid.
[35] WIPO, IP Issues in Franchising. Available at https://www.wipo.int/export/sites/www/sme/en/documents/pdf/ip_panorama_13_learning_points.pdf . (Accessed on January 24, 2025).
[36] Ibid at 35

3.5.2. Master Franchise Agreement

A franchisor may enter into a master franchise agreement in which another entity is given the right to sub-franchise the franchisor's business concept within a given territory with a development timetable. These rights are usually secured by an initial development fee charged by the franchisor.

3.5.3. Development Agreement

A development agreement obliges a developer to open multiple outlets in accordance with a development timetable *vis-ā-vis* the developer and the outlets; it also involves franchising between the franchisor and the developer. It is essential that prospective franchisees undertake a thorough check of the franchisor and the franchise proposition. Before franchising, it is important to conduct a feasibility study and to test the proposed system for operation.

3.6. Spin-offs

Spin-offs are separate legal entities a parent organisation (PO) may create to bring its IPRs into the market. It is generally an efficient solution for parent organisations, who may not be fully capable of commercialising their own IPRs, such as universities and research institutions. Spin-offs are considered an important means of technology transfer since they act as an intermediary between the research environment and industries while putting research results into the commercial market with a marketable product. Creating a spin-off is a complex process entailing the development of a separate business with the subsequent allocation of IP rights, project and risk management and, in certain circumstances, fundraising to attract investors for financial contribution. As regards the scheme's complexity, it is important to note that very often, scientific researchers (spinning off from the academia or Research Organisations) lack significant management experience (in IP matters but also in general business management aspects), which is likely to undermine the commercial potential of a new product in case they do not receive the necessary support.[37]
Spin-offs can operate in two ways. These are;

3.6.1. Spin-off by separation

The spin-off company is formed through separation from the parent organisation's structure. The PO directly contributes to the spin-off with its financial, human, and intellectual capital, as the spin-off is literally "born" from the PO to exploit part of its IPRs. The IPRs are often transferred to the spin-off company by assignment, which means that all risks and obligations are also transferred to this new legal entity.

3.6.2. Spin-off formed by a person external to the parent organization

A spin-off company can be formed by a person external to the PO to exploit the IP asset created by the parent organisation. In this type of spin-off, as the new company is owned by an external professional, the IPRs to be exploited by the new company (spin-off) are generally transferred by licensing to allow the PO to keep control over them.

At the time of creating a spin-off, a strategic decision must be made on how the new company will acquire the IP belonging to the PO: as an assignment or through a licence. A hypothetical example of a spin-off is a situation where the University of Lagos Research and Development Department discovers a new way of pounding yam and then patents this process. A spin-off may be formed for the purpose of commercialisation.

[137]Commercialising Intellectual Property, European IP Helpdesk Fact Sheet, November 11, 2024. Available at https://op.europa.eu/en/publication-detail/-/publication/7478894e-94e6-11ef-a130-01aa75ed71a1/language-en# . (Accessed on January 27, 2025).

3.7. Conditions for Successful Commercialisation of IPRs

A number of key conditions must be met for the successful commercialisation of any intellectual property asset. First, the business must choose the appropriate commercialisation avenue and consider other risk assessment measures.

It is important that in IPR commercialisation, the strength of the IPRs being commercialised is assessed against potential infringement risks. This is done by ensuring that the IP or IP portfolio to be commercialised is well protected. Depending on the IPR, registration of the relevant IPR to be commercialised must be done. These technical risks can be mitigated through testing and quality assurance of the IPR to be commercialised. It is also important that the owner of the IPR identifies a clear market need for the IPR to be commercialised. Parties to an IPR commercialisation transaction are to analyse the relevant market fluctuations and adapt strategies accordingly. A step should be taken further in determining the readiness of the market to adopt the IPRs to be commercialised. Parties must assess the existing competitors in the market to develop strategies to maintain a competitive edge.

Lastly, while it is key that a party looking to commercialise its IPRs considers the optimal timing for entering the market to avoid being too early or too late, it is equally important that parties to an IPR commercialisation transaction develop contingency plans and exit strategies to manage uncertainties.

4. Conclusion and Recommendations

This paper has appraised the commercialization of intellectual property rights as a panacea for sustainable economic growth and development. It found that property contribution rewards through IPR provides protection and recognition to innovators and creators, giving them exclusive rights to control and value their inventions. This recognition and safeguard, incentivise innovators to continue creating and encouraging more innovation in various fields. As part of the paper's recommendations, fostering a robust environment that supports the creation, protection, administration, and enforcement of IPR can catapult African countries into the forefront of the global economy. In addition, the private sector can thrive, thereby enhancing competition and promoting innovation.[38]

The paper has also shown that scientific and technological research, development, and innovation are critical enablers of Africa's social and economic transformation, and IPR plays a crucial role in obtaining value from these innovations. In this wise, the recognition and protection of IPR create a conducive environment for innovation and enhance the private sector's competitiveness in promoting sustainable economic growth and development in Africa. In the same vein, stronger IPRs may positively affect the volume of foreign direct investment and exports, particularly in countries with strong technical absorptive capabilities where the risk of imitation is high, such as Nigeria.[39] In the presence of weak IPRs, multinationals in developed countries seem to prefer to retain control over their technologies through intra-firm trade with their foreign affiliates in developing countries or foreign direct investment.

Even in the health sector, IPRs in pharmaceuticals have two principal areas of impact which affect public health. First is the issue of access, where the discussion focuses on the links between IPRs, the exclusion of competitors, and the availability and pricing of new medicines. Second, there is the issue of incentivising innovation, where discussion focuses on the role of IPRs in motivating the discovery

[138] African Union Development Agency Website Blogpost, Strengthening Africa's Intellectual Property Capacity to Enhance Innovation and Commercialisation. Available at https://www.nepad.org/blog/strengthening-africas-intellectual-property-capacity-enhance-innovation-and-commercialisation (Accessed on January 24, 2025).

[39] Rand Corporation Website Publication, Intellectual Property and Developing Countries: A review of the literature. Available at https://www.rand.org/content/dam/rand/pubs/technical_reports/2010/RAND_TR804.sum.pdf (Accessed on January 30, 2025).

and development of new drugs and the effect of these rights on R&D expenditure and its allocation across diseases, countries and organisations.

Finally, IPR commercialisation breathes life into IP ownership, allowing for the profitability of IPRs that are constantly criticised for being intangible and impracticable. Consequently, for successful IPR commercialisation, collaboration between policymakers, researchers, and industry stakeholders is necessary to create a legal framework that supports and protects innovative ideas and products.