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Kenya

From innovation to investment
- Using Intellectual Property (IP) rights to secure funding in Kenya



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In today's fast-paced innovation ecosystem, protecting ideas is just as important as creating them. For Kenyan innovators, registering intellectual property rights (IPRs) is no longer a procedural afterthought, but a vital step to unlock new opportunities for funding and growth.

This point was recently emphasised by Michiel Scheffer, President of the European Innovation Council (EIC), during a visit to Kenya last year, where he noted that many local innovators are being excluded from the EIC's EUR 1,4 billion grant pool because they lack properly registered IPRs. The EIC, which supports groundbreaking technologies and high-impact startups, has made the registration of IPRs a non-negotiable pre-requisite for funding.

This trend is not unique to the EIC. According to a study conducted by the European Patent Office and the EU Intellectual Property Office in October 2023 titled "*Patents, Trademarks and Startup Finance*", startups with registered trademarks are

4.3 times more likely to receive seed funding, while those with registered patents have a 6.4 times higher likelihood of attracting investment. This advantage is rooted in the exclusive rights conferred by IPRs. A patent granted in Kenya, for instance, offers a 20-year commercial use exclusivity window, making it a powerful tool for building a competitive edge and justifying investment. In the same vein, the registration of trademarks in Kenya confers exclusive commercial use rights for renewable periods of 10 years. Registration also provides the added advantage of a relatively easier enforcement process, as the evidentiary burden for proprietors of registered trademarks in infringement proceedings is lighter than the evidentiary burden in passing off proceedings for unregistered trademarks¹. Such protection enhances the commercial value of intangible assets and provides investors with the assurance that the innovation, whether a new product design, original software algorithm, or unique brand identity, can be deployed without facing legal and operational challenges that disrupt business.

¹ Where trademarks are not registered, they cannot form the basis of infringement proceedings. However, the trademark proprietors may sue for passing off where additional matters such as reputation and harm caused or likely to be caused must be demonstrated.



Beyond attracting investor interest and funding, registering IPRs offers innovators legal protection and commercial leverage by creating the groundwork for monetisation through royalties, licensing agreements, joint ventures or outright sale. Importantly, registered intellectual property (IP) assets can also provide access to credit under Kenya's own legal system.

Intellectual property as collateral

One of the most transformative recent developments within the Kenyan IP and innovation space was the enactment of the Moveable Property Security Rights Act, 2017 (MPSRA) which established the framework for the recognition of intangible assets as acceptable security for loans.

Traditionally, access to secured credit through mainstream finance channels in Kenya relied heavily on tangible assets like land or buildings as collateral. The MPSRA changed this through the creation of "*security rights*" in movable assets, including intellectual property. The MPSRA defines a security right as a property right in a movable asset that is created by an agreement to either secure payment or performance of an obligation. Under this law, security rights over registered IPRs can be perfected by registration with the Collateral Registry, allowing lenders to take a legal interest in the intellectual property assets and innovators to secure financing based on the potential commercial value of the intangible securities. This legal recognition of IPRs as valuable assets has opened up new frontiers to the way innovation is financed and is particularly empowering for startups and small and medium-sized enterprise (SMEs) that may lack physical assets but possess high-value intellectual property.

From a practical standpoint, however, the [uptake of IP-backed financing is still a work in progress](#) in Kenya. During the 2023/24 financial year, the Business Registration Service, which manages the Collateral Registry in Kenya, [reported that IP accounted for less than 1% of the movable collateral used to secure credit, highlighting its minimal use as a security instrument in lending transactions](#). This statistic paints a less than desirable picture and could be a function of several factors including:

- a lot of businesses have not conducted an audit of their intangible assets or mapped the IP that they hold and are therefore not able to identify and take advantage of it to obtain financing;
- where such audits or mapping exercises have been done, not much attention has been paid to the real potential for securitising these assets for various reasons such as questions around the attractiveness of IP securities due to uncertainty around the relative ease of realising such securities as compared to other more traditional forms of securities.

The low uptake of IP-backed financing in Kenya is also compounded by the traditionally conservative approach of banks, the largest providers of formal credit to Kenya's private sector, which overwhelmingly favour collateral such as land, buildings or inventories. SMEs have historically been most affected by this approach, with [past studies](#) mandated by the Kenya Bankers Association showing that 59% of small enterprises and 19% of medium/large enterprises in Kenya faced loan rejection from banks due to unacceptable collateral. These same businesses could benefit greatly from IP-backed financing, as their registered IPRs, if properly recognised and audited, could serve as alternative forms of security.





By way of comparison, China operates a similar system in which IP used as collateral must be registered with [specialised IP pledge registries](#). However, both the number of IP assets pledged, and the total value of IP-backed financing are, as one would expect, far higher in China. In 2022, Chinese banks issued approximately CNY 486.9 billion (around USD 68 billion) in loans secured by patents and trademarks, benefiting at least 18,000 businesses. By the first three quarters of 2023, this figure had risen to [CNY 495.0 billion \(around USD 70 billion\)](#), illustrating how IP-backed lending can become a significant component of secured credit.

While it is certainly relevant that China is a much bigger and more developed economy than Kenya, the success of Beijing's IP securitisation system is still useful for purposes of demonstrating the general financing potential of this framework. As such, it should, at the very least, inspire efforts for incentivising the promotion of IPRs as a form of security for finance in Kenya.

Building a culture of protection and commercialisation

Kenya's innovation landscape is full of potential, but unlocking it and turning ideas into sustainable ventures requires more than creativity, it demands the adoption of a mindset of strategic protection and commercialisation by innovators. By registering IPRs, companies can protect their creations, attract investors, open up new revenue streams and even gain access to credit, all of which are essential for scaling and sustaining innovation.

With international funding bodies like the EIC making the registration of IPRs a central criterion for support and local frameworks such as the MPSRA enabling IP-backed financing, there has never been a better time for Kenyan innovators to take registration, protection and securitisation of their IPRs seriously. The Government, stakeholder organisations and the private sector should also work together to facilitate the journey towards leveraging the existing legal framework, adopting IPR securities and unlocking the full value of their intangible assets as a driver for economic growth and productivity.

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