



**LICENSING:**

**Generating Income from  
Intellectual Property and IP  
Valuation**

**22 June 2016**

Patents | Trade Marks | Copyright | Commercial | Property | Litigation

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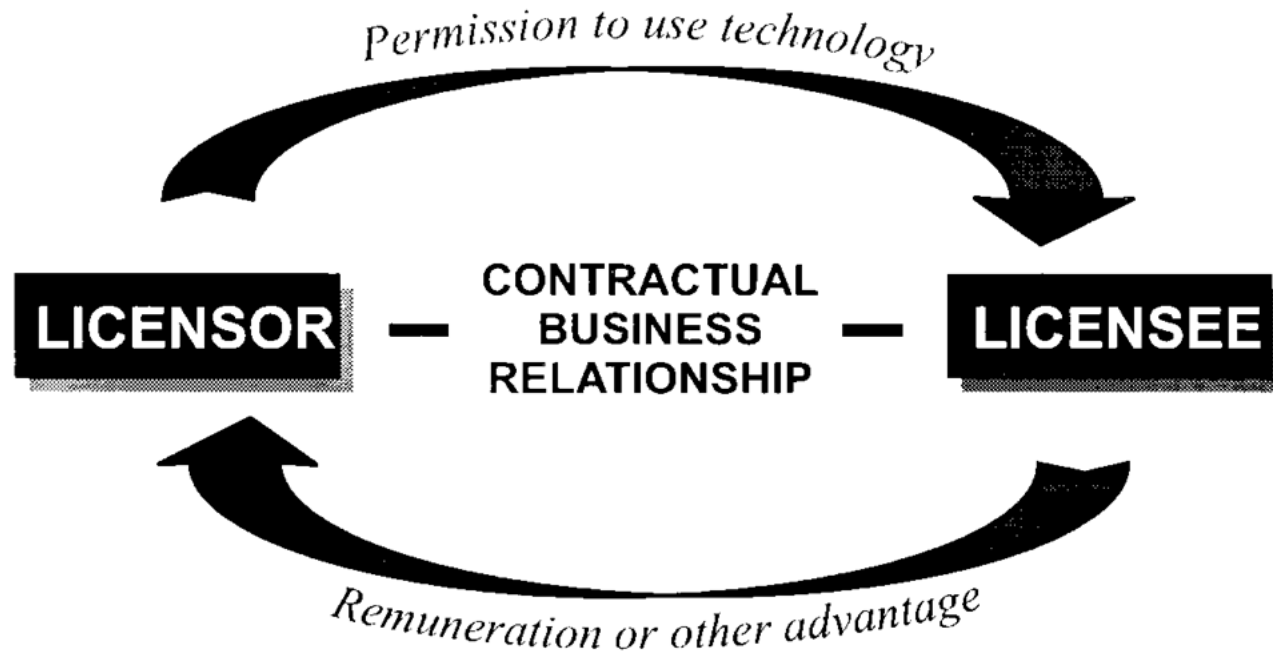
The logo for Adams & Adams is located in the bottom right corner. It consists of the text "Adams & Adams" in a white serif font, centered within a black rectangular box with a white border. A thin teal brushstroke is positioned below the text.



*“ Intellectual Property has been transferred from a sleepy area of law and business to one of the driving engines of a high-technology economy”*

New York Times, April 5.

# What is a Licensor



# Types of IP



- **STATUTORY IP**
  - Trade marks
  - Copyright
  - Patents
  - Registered designs
  - Plant Breeders' rights
  - Domain names
- **NON-STATUTORY IP**
  - Know How
  - Confidential information
  - Trade secrets



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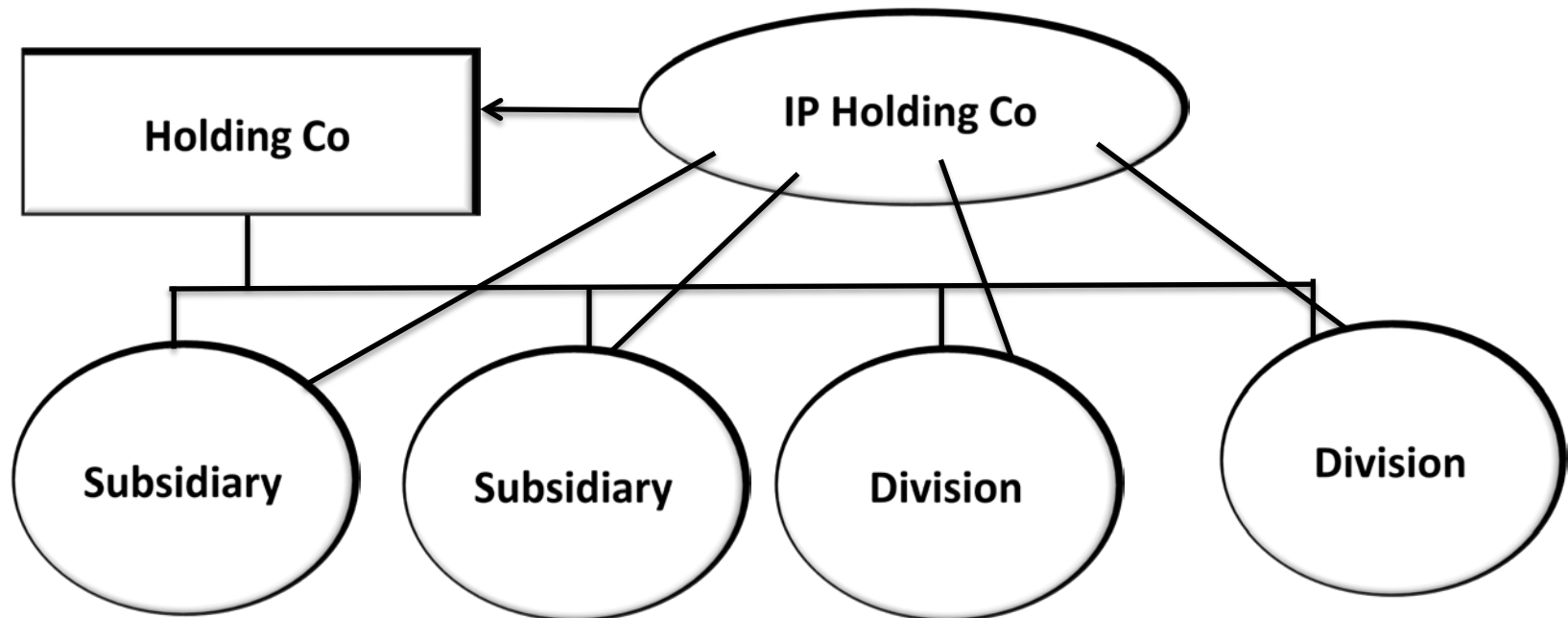
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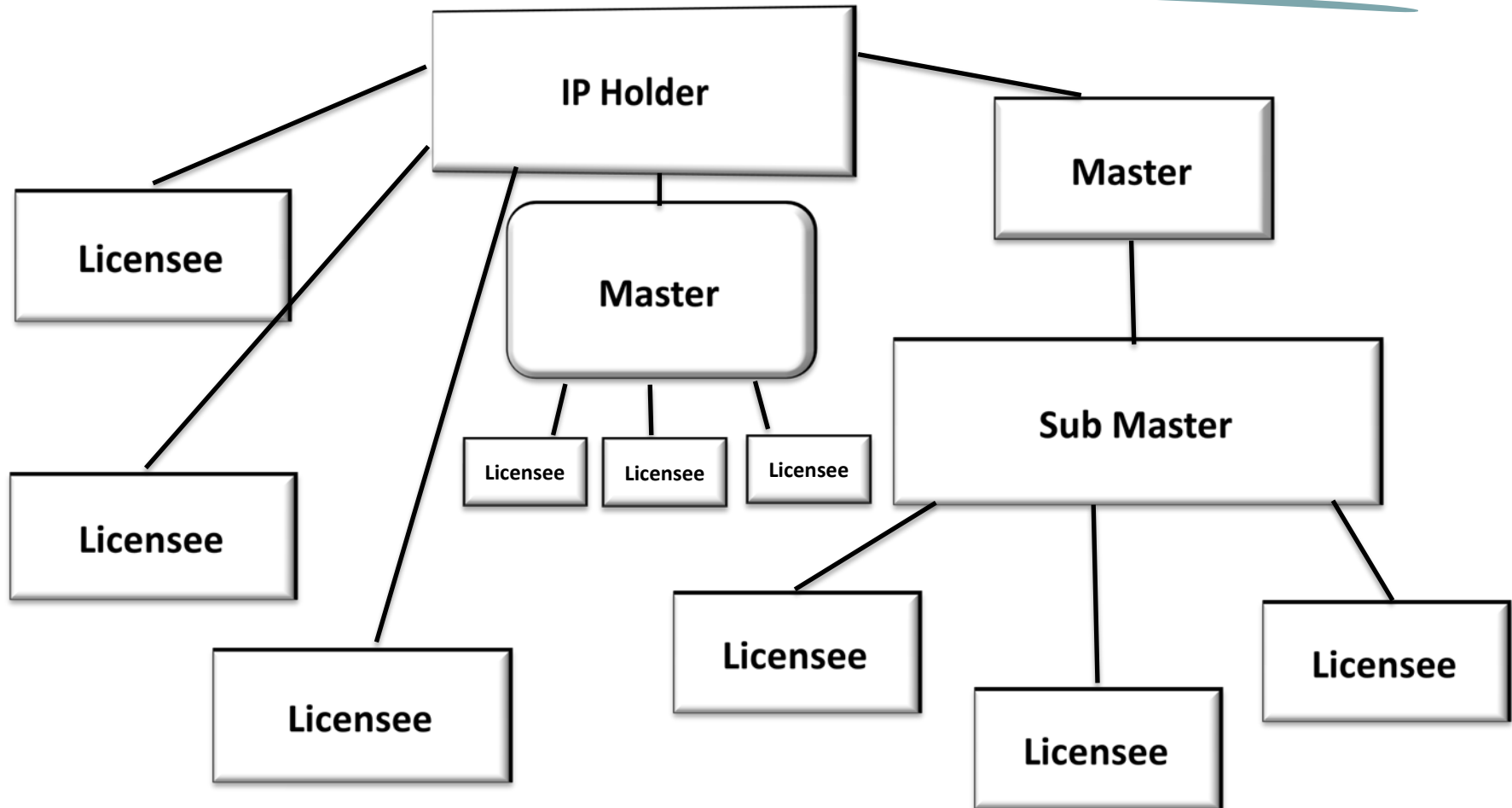
# IP Structure

## CORPORATE

Holding Co / IP Holding Co



# IP Licensing Structure



# Payments

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- **INITIAL / UPFRONT FEE**

- ✓ Set up Costs
- ✓ To acquire the license
- ✓ Plus Goodwill

- **ROYALTY**

- ✓ Fixed amount (monthly, quarterly, annually)
- ✓ Percentage of Turnover (eg 6%)
- ✓ Minimum amount.



# Payments



- **MARKETING**
  - ✓ Fixed or Percentage of Turnover (eg 2%)
  - ✓ Must spend or be paid to IP Holder
- **ACCOUNTING**
- **ADMINISTRATION**
- **MANAGEMENT**
- **PROCUREMENT**
- **REBATES**
- **RENEWAL / REFURBISHMENT**
- **RESALE**

# Licenses



- **TYPE OF LICENSES:**

- ✓ Exclusive
- ✓ Sole
- ✓ Ordinary

- **LICENSE OPTIONS:**

- ✓ Partial license
- ✓ Cross License
- ✓ Licensing in
- ✓ Licensing out

# Protection

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- **IP LAW PROTECTION:**

1. Ensure the IP enjoys competent protection

- ✓ Trade Marks: competently registered
- ✓ Know How Owned
- ✓ Copyright: owned

2. Contractual IP Protection

- ✓ NDA/ Confidentiality Agreement
- ✓ Competent licensing / Franchising / Distribution provisions and contracts

# Income Opportunities

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- **DO THE IP AUDIT AND IDENTIFY KEY / VALUABLE IP:**
  1. Patents / technology
  2. Designs
  3. Trade Marks: Brands
  4. Copyright: Software, Intranet, Data bases, Manuals, Data, Corporate Materials
  5. Know How: Systems; Processes, expertise, manufacturing capabilities, confidential information, trade secrets.

# IP Audit



- Once the key and valuable IP is identified check whether there are any opportunities in the market for your Brand, Copyright, Know How, and if relevant Patents and Designs.
- There are also a lot of potential opportunities in Africa, crying out for competent business systems, Copyright, know How and Brands, as well as, products and services.
- There are challenges, but also many companies posting good and steady growth, where they have the done their homework properly.

# Brand Valuation



- Intellectual Property including brand valuations are a fairly complex exercise.
- Reasons for valuations include:-
  - Management information, accounting and reporting;
  - Strategic planning;
  - Transactions including the sale of the IP;
  - Licensing;
  - Financing.

# Valuation Methods



- There are various methods of attending to valuations, which include:-
  - Cost of development;
  - Market value;
  - Royalty relief method;
  - Various methods including price premium, volume premium, income split.

# Royalty Relief Method



- This method essentially includes the net present value of the future royalties which could be earned, assuming that the brand was not owned and had to be licensed.
- This is a fairly common method used to value trade marks.



# Financial Variables to be Considered



- Financial Variables to be considered in the Royalty Relief Method include the following:-
  - Royalty Rate – 25% rule;
  - Useful economic life or period – 10 years for trade marks;
  - Tax rate;
  - Discount rate, which includes risks and inflation.

# Financial Variables to be Considered (Continued)

Annexure A  
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TRADE MARK VALUATION										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
<b>Turnover</b>	160 929 231	185 068 616	212 828 908	244 753 244	281 466 231	323 686 165	372 239 090	428 074 954	492 286 197	566 129 126
<b>Royalty @ 2.5%</b>	3 218 585	3 701 372	4 256 578	4 895 065	5 629 325	6 473 723	7 444 782	8 561 499	9 845 724	11 322 583
<b>Taxation @ 28%</b>	901 204	1 036 384	1 191 842	1 370 618	1 576 211	1 812 643	2 084 539	2 397 220	2 756 803	3 170 323
<b>Nett Income</b>	2 317 381	2 664 988	3 064 736	3 524 447	4 053 114	4 661 081	5 360 243	6 164 279	7 088 921	8 152 259
<b>Discount Factor 12.5%</b>	1.00	0.89	0.79	0.70	0.63	0.56	0.49	0.44	0.39	0.35
<b>TOTAL</b>	<b>2 317 381</b>	<b>2 369 174</b>	<b>2 424 206</b>	<b>2 477 686</b>	<b>2 533 196</b>	<b>2 586 900</b>	<b>2 647 960</b>	<b>2 706 119</b>	<b>2 764 679</b>	<b>2 828 834</b>
<b>GRAND TOTAL</b>										<b>25 656 136</b>
Royalty	Rate		2.0%							
Taxation	Rate		28.0%							
Discount	Factor		12.5%							
Growth	Rate		15.0%							

# Information necessary to attend to a brand valuation

Information necessary to attend to a brand valuation may include the following:-

- If there will be a sale of the trade mark or brand, a breakdown of the selling price and the Agreement of Sale including any annexures.
- Financial statements (or at least total turnover) and profitability figures (e.g. 20% net profit) of the brand or business for the past five years.
- A budget or business plan (or at least envisaged turnover and profitability) for the next five years including supporting information and reasons for the envisaged maintenance and/or growth and/or success of the business.

# Information necessary to attend to a brand valuation (continued)

- A detailed background and history of the business.
- The structure/divisions/parts of the business.
- Details of the business(es) including the position of the brand in the market and if possible information along the lines of a SWOT analysis (strengths, weaknesses, opportunities and threats).
- Details (and if possible examples) of the use, promotion, exposure and reputation of the brand.

# Information necessary to attend to a brand valuation (continued)

The valuation document must justify and give reasons for the envisaged success of the business or brand in its own unique circumstances and markets. Thus if an independent businessman were to read the valuation document he would, as a result of the aforementioned details, information and envisaged maintenance and/or growth and/or envisaged success of the business or brand, agree that the value or amount allocated to the trade mark/brand is quite justified and reasonable. In a sense, the justification should also be seen in the nature of a "prospectus" of the business and any information along those lines will be of assistance.

# Conclusion

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- IP are the most valuable assets in most corporate entities.
- These should be managed and reviewed regularly to ensure they are:
  - Properly protected
  - Effectively and efficiently used
  - Opportunities in the markets must be continually assessed and where appropriate exploited.
- If you have valuable IP, there is little doubt that there may be opportunities for you locally, in Africa and elsewhere.



**THANK YOU**

**EUGENE HONEY**

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