

# Active in Africa

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## 1. Our litigation teams

Adams & Adams has built up an outstanding litigation corps over the years, with specialised units for patents, trade marks, maritime law and general litigation.

In line with the functional organisation of the firm into separate departments dealing with patents, trade marks and general law (including maritime law) - an arrangement which permits and in fact promotes specialisation - our litigation corps is structured into different teams. In what follows, an outline is given of the capacity and skills of the different A&A litigation teams.

### 1.1 General Law

From its inception about 20 years ago, the High Court litigation team of the General Law Department has grown from strength to strength. Eugene Eybers, chairman of the General Law Department and leader of the team, who joined Adams & Adams in 1973, is assisted by partners Grégor Wolter and David Scheepers, professional assistants Liesl Kruger, Leander Opperman, Elandré Brandt and Lance Joel, all at the Pretoria office, and a line-up of 12 candidate attorneys, all law graduates. A secretarial and support staff of 21 secretaries and assistants and 5 paralegals complete the complement.

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High Court litigation in a variety of fields is handled from the Pretoria office, including

- ⓪ personal injury claims
- ⓪ contractual and the other commercial matters
- ⓪ building and construction disputes
- ⓪ banking and financial disputes
- ⓪ matrimonial and family law
- ⓪ foreclosures and repossessions
- ⓪ professional negligence claims.

The professional staff capacity, a total of 24 partners, professional assistants, candidate attorneys and paralegals, makes the litigation team one of the most formidable in South Africa. Close to 2000 cases were handled last year, many of which were prosecuted in other jurisdictions in South and

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Southern Africa. The team has the experience and expertise to deal with a wide spectrum of civil litigation matters as outlined above, in those provinces where the court with jurisdiction is located.



The leaders of the litigation teams working from the Pretoria office, from left: David Sheppard, Patents; Alan Smith, Trade Marks; and Eugene Eybers, General Law

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## 1.2 Patent Law

The litigation team of the Patent Department is led by David Sheppard, who qualified as a patent agent in England before joining Adams & Adams in 1969. The team is made up of four partners who are all qualified South African patent attorneys, with David, Dario Tanziani and Russell Bagnall practising from the Pretoria office and Alan Lewis based in Johannesburg. The team includes professional assistants and support staff.

The team members between them have academic qualifications in a diversity of scientific and technical disciplines, which enable them to handle patent litigation in many different fields, including chemistry, genetic engineering, chemical, mechanical and electrical engineering and electronics. The nature of the cases span the entire spectrum of litigation issues, including infringement of patents and enforcement of rights, interdicts and damages, issues of validity, sufficiency of disclosure, revocation proceedings, allowability of amendments, jurisdictional disputes, misappropriation of confidential information etc.

In the light of the divided bar system of South Africa, the patent litigation team has established a long-standing working relationship with senior and junior counsel with experience in IP law. The A&A patent litigation team was rated the top team in South Africa in the 1999 and 2000 surveys by the international IP magazine *Managing Intellectual Property*.

In terms of the SA Patents Act, the court of first instance is the Court of the Commissioner of Patents, a specialist court on the level of a High Court. The A&A team is experienced in conducting matters from this court through all possible stages of appeal up to the Supreme Court of Appeal.

## 1.3 Trade Mark Law

The Trade Mark Department has a litigation team comprising eight partners, seven professional assistants and 11 professional support staff members (including candidate



**Members of the IP litigation team of A&A, with Chris Job, A&A chairman, seated in the centre; David Sheppard, Patents, seated far left; and Alan Smith, Trade Marks, seated far right**

attorneys and paralegals), exceeding in numbers and capacity the size of many law firms in South Africa. The team is led by Alan Smith who, with Chris Job, chairman of Adams & Adams and a member of the team, are not only trade mark practitioners but qualified patent attorneys. The litigation team also includes partners Jan Stander, Mariëtte Viljoen, Charné le Roux, Gérard du Plessis and Marilyn Krige, all of the Pretoria office, and Suzaan Laing of the Cape Town office. These partners are assisted by professional assistants (all qualified attorneys) Lucy Signorelli, Ilse Lock, Vanessa Lawrance, Shanaaz Tiry, Kelly Thompson and Jenny Pienaar, five candidate attorneys (all law graduates), six paralegals, and a complement of administrative and support staff.

The cases handled cover the entire spectrum of trade mark and related litigation. In the six months' period from January to June 2001 about 650 new litigation matters were commenced, including infringement cases, oppositions to trade mark applications, counterfeit actions involving seizure of counterfeit and pirated goods, copyright infringement cases, with the balance involving company names, domain names and other matters.

The team does not handle litigation matters only in South Africa; to the contrary, about half of the cases running at present are in respect of litigation conducted outside South Africa. The team is experienced and geared to handle trade mark-related matters in those territories where our clients require assistance.

## 1.4 Maritime Law

All maritime litigation is handled in Durban by the Maritime, Labour and International Trade section of the General Law Department, which deals with the legal and commercial aspects of shipping and international trade including commercial agreements, transportation and insurance as well as aspects of labour law.

This involves litigating on all matters maritime including both 'wet' and 'dry' shipping; the carriage of goods by sea and land; the building, sale and purchase of pleasure craft; insurance and in particular marine insurance; as well as labour law relating to the shipping industry.

The focus is on High Court litigation, which includes pre-litigation negotiation of the settlement of claims, mediations, arbitrations, the

preparation of claims, the handling of cases and the running of trials.

South Africa has the reputation for being the 'ship arrest capital of the world'. The A&A maritime litigation team has the expertise and human resources to deal with the arrest, or release from arrest, of ships and related applications, anywhere in South Africa, as a matter of urgency and at any time, day or night.

A need among the department's shipping and corporate clients for labour law expertise prompted the department to have three of the team specialise in this contentious area of law to supplement their existing specialist knowledge.

The litigation team consists of a professional staff of nine led by Mike Posemann, including partners Patrick Holloway and Andrew Clark, three qualified attorneys (professional assistants) David Richter, Bianca Bernardis-Larratt and Theano Panayou, three candidate attorneys and five support staff. This spread of experience and seniority enables the team to allocate more than one professional to a matter and, depending on the level of expertise or experience required, to ensure that the various aspects of each matter are dealt with at the correct level and, to the client's benefit, at the appropriate charge out level.



**Mike Posemann, leader of the Maritime Law litigation team**

Situated in Durban, the busiest port and major maritime gateway to Africa, the section has an international clientele including solicitors, marine and non-marine underwriters, brokers, shipowners, charterers, P&I Clubs, shipyards, trade associations, transport intermediaries, banks, trading companies, commodity traders, ship agents, clearing and forwarding agents, storage companies, boat builders, yacht sail makers, sailing schools and others.

The Durban office of A&A is one of the largest shipping practises in South Africa and has developed the same reputation for excellence and focused professionalism as has become associated with the other departments in the firm.

### 3. A&A expands its Johannesburg office

The Johannesburg office of Adams & Adams is expanding and will in future offer Trade Mark as well as Patent services.

In the **area of patents**, Adrian Schweizer, a senior A&A partner and former chairman of its Patent Department, has joined Alan Lewis at the Johannesburg office. Adrian, a chemical engineer, and Alan, an electrical engineer, between them have a wealth of experience in the field of patents, both in regard to local and foreign filings and prosecution. Alan also runs an extensive litigation practice. Both Adrian and Alan are well-known to colleagues in other countries: Adrian is a former President of the South African chapter of FICPI, while Alan was President of the South African Group of LES. Both are still involved with these organisations on international level.

They are assisted in Johannesburg by Jacques Looock and Tony Neiva, both candidate attorneys soon to be admitted as attorneys, and trainee patent agents.

In the **trade mark area**, Jens Triebel, an admitted attorney and experienced professional assistant, has moved to Johannesburg to start a trade mark section there from 1 August 2001.



**Jens Triebel of the Trade Marks Department**

Jens, who has BComm and LLB degrees, was attached to the Department of Trade and Industry for many years where he worked in the area of international trade relations and trade negotiations. He represented South Africa at WIPO, GATT and the WTO from 1989-1996. He also served for a brief spell as the Deputy Registrar of Patents and Trade Marks. Jens has extensive experience in all areas of trade mark law and practice.

### 4. African connection

The year 2001 is proving to be an eventful year for South Africa and Africa, with South Africa emerging as a leader on the continent.

During July the summit meeting of heads of African states took place, signalling the end of the 38-year old Organisation for African Unity and the beginning of the year-long transition period leading up to the formation of the African Union. During July 2001 the G8-group of world leaders also accepted the Millennium Africa Recovery Programme (MAP) driven by South Africa's President Thabo Mbeki.

It is also in South Africa where an agreement was forged between the pharmaceutical industry and government to cooperate in the efforts of providing more affordable medicines, inter alia to use in the fight against the pandemic diseases threatening the population. Adams & Adams was involved in resolving the pending litigation and negotiating the memorandum of understanding between the parties.

If the future vision is realised, namely to build a united continent characterised by peace, cooperation, economic progress and the rule of law, it can be expected that African countries will become an attractive destination for foreign direct investment, for business and industrial activity and for the protection of intellectual property rights. Businesses will want to be ready to maximise the opportunities offered by the expected upswing in the economies of African countries as infrastructure is being put

in place, technology imported and developed, and trade promoted.

South Africa, being one of Sub-Saharan Africa's most powerful nations, is expected to take a leadership role in the new African Union and in promoting and implementing MAP.

African countries are already undertaking various projects to improve their infrastructure to promote technology deployment, and many are already liberalising their economies to become more investor-friendly. Many African governments also realise that they need to encourage foreign investment and technology involvement, not only by creating political stability but also by creating the right macro-economic environment. Certain largely untapped yet vital areas, such as information technology and telecommunications, present valuable opportunities for intellectual property investment.

Adams & Adams has, over the more than 90 years of its practice, built up a depth of knowledge, experience and expertise in the filing and prosecution of patent, trade mark and design applications in countries on the African continent, and in managing and prosecuting litigation before the IP courts in these countries. We have also been involved in various high court litigation proceedings in other areas of law in the neighbouring countries of South Africa.

Apart from our own expertise, we are well connected through a network of correspondents and associates in African countries to place us in a prime position to attend speedily and effectively on behalf of our clients to any legal work in Africa where this may be required.

In a separate Africa Update Supplement we set out updated information on intellectual property protection available in some of the 53 independent states forming part of Africa.

## 5. A&A online

Adams & Adams has launched an Internet-based online searching facility to allow clients to search our web database for information relating to their trade marks.

Adams & Adams is believed to be one of the first Intellectual Property law firms to offer a facility of this nature covering local and foreign registrations.

Rather than using off-the-shelf software, we employed the skills of our in-house programmers to develop a program customised to the perceived needs of our clients, ie. to have quick access to up to date information to permit effective intellectual property portfolio management. By doing this, we ensured that the end-product in fact satisfies the needs of the end-users and complies with all the requirements of a functional online trade mark search facility.



**Discussing the A&A Online service (from left to right) Brett Oldridge, chairman of the Trade Marks Department, Rob Oosthuizen, manager of the online service, and Chris Job, chairman of A&A.**

The system operates on the basis that clients are assigned unique user names and passwords enabling access to their own trade mark information. The password system relies on the most modern security system used by banks for Internet banking.

Adams & Adams maintains, and has for many years maintained, a comprehensive database of its clients' trade marks worldwide. The database is continuously being improved and upgraded and currently contains some 31 000 client and proprietor records, involving nearly a quarter of a million trade mark entries.

The information on the database is used for daily updates of the web database which services the online search facility. An advantage of the online service is that clients can receive electronic information regarding their trade marks, peruse all the information at leisure and extract only relevant records which can be printed in the client's own office.

Separate modules are in the process of development on analogous lines for patent information, domain names, company names and other subjects.