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3MFuture In Patent Court Win Against Giants MTN, Standard Bank

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VENTURES AFRICA – **3MFuture**, a South-Africa based small technology company, has won its legal claim for patent infringement by sector giants MTN and **Standard Bank**. 3MFuture claimed that the respondents had infringed the company’s intellectual property rights by their use of 3MFuture-developed payment card security technology in joint-venture application **MTN Mobile Money**.

The invention under dispute provides credit-card holders with the ability to turn credit-cards on and off (for example, at the point of sale), through use of a mobile phone or via the internet thus allowing for secure credit-card transactions and precluding the possibility of credit card theft and/or fraud.

MTN and Standard Bank entered into a venture partnership with a view to releasing the product that came to be known as MTN Mobile Money. The Court heard that during the product development phase in 2001-2002, MTN and Standard Bank had were involved in multiple meetings with inventors 3MFuture; 3MFuture hoping to interest the partnership in its payment-security innovation. The claimant stated that it was told the technology would not be required for the product under development, at which point meetings ceased. However, when the MTN Mobile Money product launched in 2005, it became clear to the smaller technology firm that its invention had been misappropriated, thus leading the company to file a legal claim in April 2010.

The product saw a quick and extensive uptake, its initial strongest market being in Ghana. The Court of the Commissioner of Patents found that in this Mobile Money venture, the partnership had been using the innovative security technology developed by 3MFuture, and as such the respondents were in infringement of the patent rights of the smaller firm.

A written ruling is to be handed down on September 11th, however the respondents have already been ordered to pay the claimant’s legal costs. 3MFuture estimates these costs to total between 15 million and 20 million rand (\$1.8 - \$2.3 million). Explaining the high costs, Wolfram Reiners, executive director of 3MFuture Africa, blames the long process of bringing the claim: “We were forced to find guarantees running into millions of rands before we could even consider going to court, there was a long and expensive discovery process, and the trial ran well over the original two weeks set aside due to delays at the hands of the respondents.”

The Court will also be asked to reach a conclusion as to how much to order in damages to be paid to 3MFuture. While some media reports have suggested that damages may rise to the value of 1 billion rand (\$119 million), Reiners was unwilling to comment as to what figure the company might expect in compensation, but explained: “We do not have access to the bank’s books...The major damage to us is that we could not sell the technology to any other bank.”

It is to be noted however, that the court win was not an un-impinged victory, as of the 25 claims that were filed under the patent suit; only three were held to be valid. Indeed, Judge Tati Makgoka granted the respondents the possibility of counterclaim, meaning that the patent is temporarily revoked. As such, should 3MFuture not amend its patent within one month, deleting all of the claims that have been held invalid by the court, the company will lose its patent altogether as the entire patent will be declared invalid. A Standard Bank statement said: “We are pleased with the finding that the plaintiff’s

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patent has been provisionally revoked... We are, however, disappointed by the finding that some of the claims of the plaintiff's patent have been infringed."

Nonetheless, Reiners declared that the company is "absolutely ecstatic" about the outcome of the case, and stated: "We have proved that South African patent law does work to protect companies' intellectual property rights, albeit at great financial cost."

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Gabriella Mulligan is a journalist with a special interest in business and legal issues, having come to journalism following a successful career in consultancy. After completing her legal education at the esteemed law school at Cambridge University, and prior to that at the University of Kent, Gabriella went on to work for a "Big Four" financial and business services firm. She now enjoys writing on topical issues that affect businesses and the economy today. Gabriella is British and Hungarian. She has travelled widely, but harbours a passion for Africa and has made Nairobi, Kenya her home.

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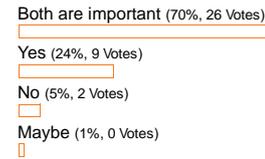
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