

3MFUTURE wins patent court case

■ Standard Bank, MTN 'did infringe rights'

Asha Speckman

3MFUTURE Africa has scored a famous victory in a marathon trial to bring MTN, Standard Bank and their joint venture MTN Mobile Money to book for infringing its patent rights after the three defendants were found guilty in a landmark ruling on Friday.

The North Gauteng High Court's ruling against the cellular and banking giants sets a precedent for future intellectual property disputes of a David-and-Goliath nature.

Wolfram Reiners, the executive director of 3MFUTURE Africa, told Business Report his company was "absolutely ecstatic" with the ruling, and it would apply within four weeks for an interdict preventing further abuse of the patent rights. He said the firm was aware of Standard Bank using its technology in other products.

3MFUTURE Africa would also ask the court to launch an inquiry forcing Standard Bank to open its books to reveal how much revenue it gained from the technology and how many customers had used the invention.

While some media reports have put the value of the damages at R1 billion, Reiners would not comment on the sum. "That is difficult to answer. We do not have access to the bank's books. That will be part of a second trial. The major damage to us is that we could not sell the technology to any other bank."

Judge Tati Makgoka found Standard Bank and MTN had contravened patent rights for the innovation that allows secure and fraud-proof credit card transactions to be made at merchants by telephone or the internet. The invention allows card holders to switch cards on and off using their cellphones.

A written judgment with reasons for the ruling will be presented on September 11.

Reiners said: "Our case was not as rare as one would think. Large corporates misappropriate the intellectual property of smaller companies on a regular

Technology was visionary in 2000s

WOLFRAM Reiners, a kitesurfing champion in his native Germany, has been an inventor and entrepreneur for nearly 20 years, largely in technology.

Reiners' patented inventions include a method for taking orders and handling the billing for mobile devices, a merchant system for digital devices and a method to model proximity of contact between members and articulation of emotions and gestures in social networks.

Some patents are pending.

He holds a PhD and has published in areas that include effective learning and memory, and conjoint analysis, utility analysis and mathematical statistics.

The patent for a secure

internet payment system PSOCA, which was involved in the dispute with MTN and Standard Bank, was granted in South Africa in 2006, but is pending in the US and in Europe.

He said the invention emerged from an exercise during the early 2000s involving himself and a team of four to six people to develop solutions for secure online transactions when the internet was born.

"When the internet came into being, one of the major problems was how do people pay for goods on the internet."

Reiners said to be able to switch the card functionality on and off using a cellphone was then considered "visionary".

- Asha Speckman

basis, comfortable in the knowledge that they have deeper pockets, and can stretch out any litigation until the smaller company either gives up the fight or goes under.

"And that was the tack this time. 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.

"We have proved that South African patent law does work to protect companies' intellectual property rights, albeit at great financial cost."

3MFUTURE Africa claimed it had more than 30 meetings in 2001 and 2002 with Standard Bank and MTN to interest them in its technology and the corporate giants later used the invention without permission.

Summons was served in April 2010. Following several delays, opening arguments were heard in August last year, at which the defendants claimed the invention was not new and the patent was invalid.

However, Judge Makgoka found certain claims in the patent were valid and that the defendants had used the technology in MTN Mobile Money until January 13 this year.

The patent suit had 25 claims. Of those, the judge found only three were valid.

However, the victory is conditional as Judge Makgoka granted the respondents a provisional counterclaim, which means that if 3MFUTURE Africa does not succeed in amending its patent by deleting invalid claims within one month, the patent will be declared invalid.

The defendants were ordered to pay the plaintiff's legal costs, which Reiners estimated at R15 million to R20m.

Standard Bank said: "We are pleased with the finding that the plaintiff's patent has been provisionally revoked, such revocation to become final unless the plaintiff applies to amend the patent within one month. We are, however, disappointed by the finding that some of the claims of the plaintiff's patent have been infringed."

MTN had not responded by the time of going to press.