



EQUITY NOTE
September 21, 2010

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Symbol (OTCBB)	SMME
Industry	Services
Sub-Industry:	Security
Risk Level:	Speculative
Share Price (9/21/10)	\$0.12
52 Week High	\$0.17
52 Week Low	\$0.03
Market Capitalization	\$9.90M
Shares Outstanding (5/10/10)	81.84M
Approximate Float (approx)	31.61M



Recent Ruling Dismisses Visa and MasterCard’s Motion to Dismiss SmartMetric’s Second Amended Complaint. Moves Case Towards Discovery and Potential Settlement.

This equity note serves to update investors on the status of the lawsuit between SmartMetric and Visa and MasterCard. For background, in our Analytical Profile on SmartMetric, published on May 18th, 2010, we disclosed that the Company had filed a complaint against Visa and MasterCard in the United States Federal Court for infringing on SmartMetric’s patent dealing with the use of a data card and an automatic connection to a network. In the complaint, the Company sought (1) an injunction against both companies prohibiting them from further infringement on the issued patent, (2) a financial award of damages suffered because of the infringement, and (3) a recoupment of legal costs from the lawsuit incurred by SmartMetric. With the assistance of an attorney experienced with patent law litigation, we have made the following observations and expectations.

On September 17th, Judge Jacqueline H. Nguyen issued an order to SmartMetric as well as MasterCard and Visa. According to the order, the judge dismissed the defendants’ motion to dismiss the second amended complaint and ordered that the defendants issue a response to the complaint within three days. According to Rule 11 of the Federal Rules of Civil Procedure, the defendants are limited in the nature of their response. To summarize Rule 11, when presenting a pleading to the court, an attorney certifies that to the best of the person’s knowledge, the information is not being presented for any improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation) and that the factual contentions have evidentiary support. If the court finds that Rule 11 has not been followed, several sanctions may be applied to the attorney that filed the pleading, including disbarment. For this reason, (in our opinion) the defendants will likely state either that they are not in violation of the patent or that there was “Prior Art”, which basically means that there exists a reference or some type of knowledge or event that demonstrates that the invention in question is not new..

The judge also issued a discovery order to both companies. This order, as it applies to Rule 26(a), mandates that both parties disclose everything with respect to its case by October 15th, 2010. If the court deems that either side has not fully disclosed material case-related information as expected, the party at fault may be issued discovery sanctions, which are severely damaging in court. The bottom line is that we believe that the defendants will avoid having to go through discovery, as it could unveil damaging

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information that would negatively affect its case. For this reason, we believe that the defendant(s) will be highly motivated to reach a settlement before this deadline arrives.

It is challenging to estimate the potential settlement figures between SmartMetric and the two defendants. However, one can compare SmartMetric's claims with another patent infringement case involving Research in Motion. In 2006, after a five year legal battle, BlackBerry maker Research in Motion agreed to pay \$612.5 million to patent holding company NTP to settle a long-running dispute that had threatened to shut down the popular wireless e-mail service for its 3 million users. There are positive and negatives between the two comparisons. The positive is that SmartMetric has two defendants, whereas RIM had only one. This is important because SmartMetric has announced its intention to work with the first company that agrees to settle the litigation under the framework of a licensee arrangement. SmartMetric will continue to vigorously pursue legal action against the second company that is late to the table, putting intense pressure on both parties to make the sweetheart deal. The negative is that whereas RIM's entire business was based on the use of the patent, VISA and MasterCard have other lines of business that they can continue to pursue outside of this specific smartcard business. However, given the increasing popularity of smartcards around the world and the potential billions of dollars in fees, it is highly unlikely that these two companies will simply walk away from the future of this niche of electronic commerce.

Collectively, we believe SmartMetric's case against Visa and MasterCard has tilted further in SmartMetric's direction. The next major milestone is whether it can be proven if "Prior Art" exists. Based on existing evidence and the lack of any prior disclosures by opposing counsel, it certainly appears that no "Prior Art" exists, although no guarantees can be made. In our opinion, much of the risk in this story has been reduced based on this recent Court Order, and the stock should react positively to the potential for a settlement with either Visa or MasterCard. The timeline for litigation conclusion has shrunk, and it appears that news of a settlement could be announced sooner than we initially expected. We continue to monitor the situation very closely, and will update investors as the story continues to unfold.

For more information visit Smart Metric's website at www.smartmetric.com

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