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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SMARTMETRIC INC., a Nevada
corporation,

Plaintiff,

vs.

AMERICAN EXPRESS COMPANY,
a New York Corporation,

Defendant.

CASE NO. CV-10-9371
JHN(MANx)_____

**[Proposed] Order Setting Joint Claim
Construction Briefing**

Order

**PURSUANT TO THE PARTIES' STIPULATION, IT IS HEREBY ORDERED AS
FOLLOWS:**

1. Defendant American Express Company will join with Defendants VISA, Inc. and MasterCard, Inc. in briefing and arguing the issue of claim construction of U.S. Patent No. 6,792,464 ("the '464 patent") on the same briefing schedule set by this Court in the co-pending patent infringement case entitled, *SmartMetric, Inc. v. MasterCard International Incorporated and VISA, Inc.*, Case No. CV 10-01864-JHN (FMOx) (C.D. Cal.).

2. Any *Markman* order issued by this Court in Case No. CV 10-01864-JHN (FMOx) in response to the scheduled briefing and *Markman* Hearing will also determine claim construction of the '464 patent for any further proceedings in this Action.

DATED: January __, 2011

Hon. Jacqueline H. Nguyen
United States District Judge

1 Patrick F. Bright (State Bar #68709)
2 WAGNER, ANDERSON & BRIGHT PC
3 3541 Ocean View Boulevard
4 Glendale, California 91208
(818) 249-9300
(818) 249-9335 (fax)
E-Mail: pbright@patentattorney.us

5 Attorneys for Plaintiff SmartMetric Inc.,
6 a Nevada corporation

7 QUINN EMANUEL URQUHART &
8 SULLIVAN, LLP

Christopher Tayback (Bar No. 145532)
christayback@quinnemanuel.com
9 865 South Figueroa Street, 10th Floor
10 Los Angeles, California 90017-2543
Telephone: (213) 443 3000
Facsimile: (213) 443 3100

11 Attorneys for Defendant American Express Company
12 a New York Corporation

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15

16 SMARTMETRIC INC., a Nevada
17 corporation,

18 Plaintiff,

19 vs.

20 AMERICAN EXPRESS COMPANY,
a New York Corporation,

21 Defendant.
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CASE NO. CV-10-9371
JHN(MANx)

Stipulation and [Proposed] Order
Setting Joint Claim Construction
Briefing

Hon. Jacqueline H. Nguyen

[Proposed] Order Filed
Concurrently Herewith

2 WHEREAS on December 22, 2010, Plaintiff SmartMetric Inc.
3 (“SmartMetric”) served a Complaint for patent infringement of U.S. Patent No.
4 6,792,464 (“the ‘464 patent”) on Defendant American Express Company
5 (“American Express”), commencing this Action.

6 WHEREAS also pending before this Court is *SmartMetric, Inc. v.*
7 *MasterCard International Incorporated and VISA, Inc.*, Case No. 2:10-CV-01864-
8 JHN-FMO (“the 1864 Action”), in which SmartMetric filed a Second Amended
9 Complaint for patent infringement of the ‘464 patent against MasterCard
10 International Incorporated and VISA, Inc. on July 27, 2010.

11 WHEREAS on December 21, 2010, this Court held a Scheduling Conference
12 in the 1864 Action and set the claim construction briefing schedule and *Markman*
13 hearing as follows: Opening briefs due February 4, 2011; Responsive briefs due
14 February 18, 2011; and a *Markman* Hearing set for March 11, 2011 before Judge
15 Jacqueline H. Nguyen.

16 WHEREAS in the two separate actions pending before this Court,
17 SmartMetric has asserted the same patent – the ‘464 patent – and both cases are in a
18 similar stage of the litigation. It would therefore be of judicial economy to have the
19 claim construction briefing schedule and *Markman* hearing for each of the pending
20 cases to proceed together. American Express and Defendants VISA, Inc. and
21 MasterCard, Inc. intend to file consolidated omnibus briefs on claim construction.

22 THEREFORE, IT IS HEREBY STIPULATED by SmartMetric and
23 American Express through their attorneys of record, subject to this Court’s
24 approval, as follows:

25 1. American Express Company will join with Defendants VISA, Inc. and
26 MasterCard, Inc. in briefing and arguing the issue of claim construction of U.S.
27 Patent No. 6,792,464 (“the ‘464 patent”) on the same briefing schedule set by this
28 Court in 1864 Action.

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3 2. Any *Markman* order issued by this Court in the 1864 Action in response
4 to the scheduled briefing and *Markman* Hearing will also determine claim
5 construction of the '464 patent for any further proceedings in this Action.

6
7 Dated: January 18, 2011

8 WAGNER, ANDERSON & BRIGHT LLP

9 Patrick F. Bright

10 by: Patrick F. Bright

11 Patrick F. Bright

12
13 QUINN EMANUEL URQUHART & SULLIVAN, LLP

14 by: /s/ (with permission) Christopher Tayback

15 Christopher Tayback

16 Attorney for Defendant American Express Company
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