

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DATA TREASURY CORPORATION	§	
Plaintiff	§	
	§	
vs.	§	Civil Action No. 2-06CV-72-DF
	§	
WELLS FARGO & COMPANY, et al.	§	
Defendants.	§	

**DEFENDANTS FIRST HORIZON NATIONAL CORPORATION AND FIRST
TENNESSEE BANK NATIONAL ASSOCIATION'S REPLY IN SUPPORT OF
MOTION TO DISMISS, OR IN THE ALTERNATIVE, FOR MORE DEFINITE
STATEMENT**

Defendants First Horizon National Corporation (“First Horizon”) and First Tennessee Bank, National Association (“First Tennessee”) file this reply in support of their motion to dismiss Counts 1 and 2 of DataTreasury Corporation’s (“DTC”) First Amended Complaint for Patent Infringement (“Complaint”) for failure to state a claim upon which relief may be granted pursuant to Rule 12(b), or in the alternative, motion for more definite statement pursuant to Rule 12(e). In support of this reply and in the interest of brevity, First Horizon and First Tennessee rely on and incorporate the arguments and authorities presented in the Reply in Support of Defendants’ Motion to Dismiss or in the Alternative for More Definite Statement, Docket No. 186, filed on June 21, 2006, to the extent related to Counts 1 and 2. First Horizon and First Tennessee further state as follows:

DTC’s misplaced reliance on Form 16 of the Federal Rules of Civil Procedure cannot overcome the inadequacy of DTC’s Complaint. In cases such as this where there are a multitude of defendants, patents, and products, DTC’s skeletal pleading is not enough. *See Hewlett-Packard Co. v. Intergraph Corp.*, No. C 03-2517 MJJ, 2003 WL 23884794, at *1 (N.D. Cal.

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Sept. 6, 2003). Further, DTC appears to recognize that, at a minimum, it must plead “the means by the which the defendants infringe the patents in issue.”¹ But that is precisely what DTC fails to do.

First Horizon and First Tennessee are thrown into a group with twenty-five other Defendants characterized as the “Viewpointe Defendant Group.”² Viewpointe offers a wide array of products and services, but DTC’s allegations say nothing as to which Viewpointe product any defendant, let alone First Horizon and First Tennessee, is using in a manner that allegedly infringes U.S. Patent No. 5,910,988 and U.S. Patent No. 6,032,137. Like the complaint held insufficient in *Hewlett-Packard*, this case involves many defendants using many products and DTC’s Complaint does not satisfy the pleading standards.

First Horizon and First Tennessee respectfully request the Court to dismiss DTC’s Complaint against them or, in the alternative, to order DTC to provide a more definite statement describing the allegations against First Horizon and First Tennessee in reasonable detail sufficient to allow them to form a responsive pleading.

¹ See Plaintiff DataTreasury Corporation’s Response to Defendants’ Various Motions to Dismiss, or in the Alternative for More Definite Statement, Docket No. 167, filed June 14, 2006.

² See Complaint, ¶ 62.

