

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

DATA TREASURY CORPORATION	§	
Plaintiff	§	
	§	
vs.	§	Civil Action No. 2-06CV72-DF
	§	ECF
WELLS FARGO & COMPANY, et al.	§	
Defendants.	§	

**DEFENDANTS BANCORPSOUTH, INC. AND
BANCORPSOUTH BANK'S REPLY TO PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION TO DISMISS, OR IN THE ALTERNATIVE,
FOR MORE DEFINITE STATEMENT**

Defendants BancorpSouth, Inc. and BancorpSouth Bank (“the BancorpSouth Defendants”)¹ hereby reply to DataTreasury Corporation’s (“Plaintiff’s”) Response to the BancorpSouth Defendants Fed. R. Civ. P 12(b)(6) motion to dismiss, in the alternative for more definite statement. In support of this reply and in the interest of brevity, the BancorpSouth Defendants rely on and incorporate the arguments and authorities presented in the Reply to Defendants’ Motion to Dismiss or in the Alternative for More Definite Statement filed on June 21, 2006, to the extent related to Counts 1 and 2 of Plaintiff’s First Amended Complaint.

REPLY APPLICABLE TO THE BANCORPSOUTH DEFENDANTS

1. Plaintiff attempts to overcome the inadequacy of its complaint by shoehorning its allegations into Form 16 of the Federal Rules of Civil Procedure. In cases such as this where

¹ In the BancorpSouth Defendants’ motion, BancorpSouth, Inc. and BancorpSouth Bank were erroneously identified as bank and bank holding company, respectively. BancorpSouth, Inc. is the bank holding company and BancorpSouth Bank is the operating bank. Accordingly, it is BancorpSouth, Inc. that conducts no operations in Texas and is not subject to jurisdiction here.

there are a multitude of defendants, patents, and products, Plaintiff's bare-bones pleading is not enough. See *Hewlett-Packard Co. v. Intergraph Corp.*, No. C 03-2517 MJJ, 2003 WL 23884794, at *1 (N.D. Cal. Sept. 6, 2003)(allegation of "making, using, offering to sell and/or selling infringing software and hardware products" inadequate where defendant produced at least 150 products with more than 4000 end-user applications).

2. Plaintiff groups twenty-seven defendants together and characterizes the group as the "Viewpointe Defendant Group". The BancorpSouth Defendants are sued on only two out of the six patents in suit. In addition, Viewpointe offers a wide array of products and services but Plaintiff gives no clue as to which Viewpointe product any particular defendant 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 too many defendants, using too many products for the BancorpSouth Defendants to frame a responsive pleading.

3. With respect to the alternative motion for more definite statement, the BancorpSouth Defendants are not, as Plaintiff contends, asking the Court for help in making their case. Instead, the BancorpSouth Defendants wish to frame a responsive pleading, seek expert advice, alter their conduct, if warranted, and avoid a charge of willful infringement. See *Gen-Probe, Inc. v. Amoco Corp., Inc.*, 926 F. Supp. 948, 962 (S.D. Cal. 1996). Any attempt to do so based on Plaintiff's amended complaint would amount to nothing more than guesswork.

4. Based on the foregoing arguments and authorities, the BancorpSouth Defendants respectfully request the Court to dismiss Plaintiff's Complaint against them or, in the alternative, to order Plaintiff to provide a more definite statement describing the allegations against the BancorpSouth Defendants.

Dated: June 21, 2006

Respectfully submitted,

HUGHES & LUCE, L.L.P.

By: /S/ John H. McDowell, Jr.

John H. McDowell, Jr.
Texas Bar No. 13570825
LEAD ATTORNEY

Gregory Perrone
Texas Bar No. 24048053

1717 Main Street, Suite 2800
Dallas, Texas 75201
Telephone: (214) 939-5500
Facsimile: (214) 939-5849

**ATTORNEYS FOR DEFENDANTS
BANCORPSOUTH, INC. AND
BANCORPSOUTH BANK**

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) and served via the Court's electronic filing system on all counsel who have consented to electronic service on this the 21st day of June 2006.

 /S/ John H. McDowell, Jr.
John H. McDowell, Jr.

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