

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

DATATREASURY CORPORATION,

Plaintiff

v.

2:06-CV-72 DF

WELLS FARGO & COMPANY; WELLS FARGO BANK, NATIONAL ASSOCIATION; BANK OF AMERICA CORPORATION; BANK OF AMERICA, NATIONAL ASSOCIATION; U.S. BANCORP; U.S. BANK, NATIONAL ASSOCIATION; WACHOVIA CORPORATION; WACHOVIA BANK, NATIONAL ASSOCIATION; SUNTRUST BANKS, INC.; SUNTRUST BANK; BB&T CORPORATION; BRANCH BANKING AND TRUST COMPANY; BANCORPSOUTH, INC.; BANCORPSOUTH BANK; COMPASS BANCSHARES, INC.; COMPASS BANK; CULLEN/FROST BANKERS, INC.; THE FROST NATIONAL BANK; FIRST HORIZON NATIONAL CORPORATION; FIRST TENNESSEE BANK, NATIONAL ASSOCIATION; HSBC NORTH AMERICA HOLDINGS INC.; HSBC BANK USA, N.A.; HARRIS BANKCORP, INC.; HARRIS N.A.; NATIONAL CITY CORPORATION; NATIONAL CITY BANK; ZIONS BANCORPORATION; ZIONS FIRST NATIONAL BANK; BANK OF NEW YORK CO., INC.; THE BANK OF NEW YORK; UNIONBANCAL CORPORATION; UNION BANK OF CALIFORNIA, NATIONAL ASSOCIATION; BANK OF TOKYO-MITSUBISHI UFJ, LTD.; CITIZENS FINANCIAL GROUP, INC. CITY NATIONAL CORPORATION; CITY NATIONAL BANK; COMERICA

INCORPORATED; COMERICA BANK & TRUST, NATIONAL ASSOCIATION; DEUTSCHE BANK TRUST COMPANY AMERICAS; FIRST CITIZENS BANCSHARES, INC.; FIRST CITIZENS BANK & TRUST COMPANY; KEYCORP; KEYBANK NATIONAL ASSOCIATION; LASALLE BANK CORPORATION; LASALLE BANK NA; M&T BANK CORPORATION; M&T BANK; THE PNC FINANCIAL SERVICES GROUP, INC.; PNC BANK, NATIONAL ASSOCIATION UBS AMERICAS, INC.; SMALL VALUE PAYMENTS COMPANY, LLC; THE CLEARING HOUSE PAYMENTS COMPANY, LLC; MAGTEK, INC; FIRST DATA CORPORATION; TELECHECK SERVICES, INC., REMITCO, LLC; and ELECTRONIC DATA SYSTEMS CORP.,

Defendants

**MOTION BY DEFENDANTS U.S. BANK AND NATIONAL CITY BANK
TO SEVER AND STAY THE CLAIMS RELATING TO THE BALLARD PATENTS
PENDING REEXAMINATION OF THE BALLARD PATENTS**

Defendants U.S. Bancorp and U.S. Bank, N.A. (collectively “US Bank”) and National City Corporation and National City Bank (collectively “National City”) move for a severance and stay of the claims related to U.S. Patent Nos. 5,910,988 and 6,032,137 (collectively the “Ballard patents”) pending reexamination of those patents by the United States Patent and Trademark Office.

Defendants Harris Bankcorp, Inc., Harris N.A., KeyBank National Association, KeyCorp, PNC Bank, The PNC Financial Services Group, Inc., SunTrust Bank, SunTrust Banks, Inc., and Electronic Data Systems Corp. filed a Motion to Sever and Stay the Claims Relating to the Ballard Patents Pending Reexamination of the Ballard Patents on September 19, 2006. (Dkt.

260). US Bank and National City hereby adopt the arguments and authorities advanced by that Motion to Sever and Stay as if set forth fully herein. For the same reasons articulated in that Motion to Sever and Stay, and in particular to avoid the time and expense of litigating patent claims of uncertain continuing validity, US Bank and National City respectfully request that the Court sever and stay all claims of this lawsuit related to the Ballard patents, pending completion of the reexamination of those patents.

Dated: September 29, 2006

Respectfully submitted,

/s/ Jeremy M. Thompson

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Counsel for Defendants U.S. Bancorp, U.S. Bank National Association, National City Corporation and National City Bank, Zions Bancorporation, and Zions First National Bank

CERTIFICATE OF CONFERENCE

I hereby certify that on September 29, 2006 I conferred with Plaintiff's counsel, Mr. Eric Albritton, in a good faith attempt to resolve this matter without court intervention. Plaintiff's counsel stated that Plaintiff opposes the motion.

/s/ Jeremy M. Thompson
Jeremy M. Thompson

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2006, all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing instrument via the Court's CM/ECF filing system per Local Rule CV-5(a)(3).

/s/ Jeremy M. Thompson
Jeremy M. Thompson