

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

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

**MOTION OF DEFENDANTS COMPASS BANK, COMPASS BANCSHARES, INC.,  
FIRST HORIZON NATIONAL CORPORATION, AND FIRST TENNESSEE BANK,  
NATIONAL ASSOCIATION TO SEVER AND STAY THE CLAIMS RELATING TO  
THE BALLARD PATENTS PENDING REEXAMINATION**

Defendants Compass Bank, Compass Bancshares, Inc. (the “Compass Defendants”), First Horizon National Corporation (“First Horizon”), and First Tennessee Bank, National Association (“First Tennessee”) move to sever and stay the claims asserted in Counts 1 and 2 of DataTreasury Corporation’s (“DTC”) First Amended Complaint for Patent Infringement until reexamination of the patents-in-issue in those claims is complete. Counts 1 and 2 are the *only* claims asserted against these movants and twelve other defendants. In support of this motion, the Compass Defendants, First Horizon, and First Tennessee rely on and incorporate the arguments and authorities presented in the previously filed motion, Docket No. 260.<sup>1</sup>

Further, as the Court is aware, U.S. Patent No. 5,910,988 and U.S. Patent No. 6,032,137 (jointly “the Ballard patents”) are currently undergoing reexamination by the United States Patent and Trademark Office (“USPTO”). The reexamination addresses all claims of the two

<sup>1</sup> See Motion of Defendants EDS, Harris, Key, PNC, and Suntrust to Sever and Stay the Claims Relating to the Ballard Patents Pending Reexamination of the Ballard Patents, filed on June 21, 2006, and incorporated herein by reference.

patents.<sup>2</sup> Any action by the USPTO during the reexamination could render moot or at least narrow the adjudication requested of this Court. A reexamination by the USPTO simplifies the issues in litigation and “provide[s] the court with insight and expertise on the issue before it,” thus, simplifying discovery and trial as well. *ScriptPro LLC v. Wal-Mart Stores, Inc.*, Civil Action No. 05-2244-CM, 2006 WL 2294859, \*1 (D. Kan. Aug. 8, 2006) (granting stay pending reexamination).

The Compass Defendants, First Horizon, and First Tennessee are four of the 16 defendants who have allegedly infringed *only* the Ballard patents.<sup>3</sup> Severing Counts 1 and 2 and staying the severed action pending reexamination would effectively remove 16 defendants from this matter, also eliminating the need for them to incur potentially unnecessary defense costs. *See Gould v. Control Laser Corp.*, 705 F.2d 1340, 1342 (Fed. Cir. 1983) (recognizing one purpose of reexamination is to test validity of patent in an “efficient and relatively inexpensive manner.”) Severance would also make this case more manageable and judicially efficient by reducing the number of overall parties and by directing the focus of the litigation to solely the Huntington patents.

For the foregoing reasons and for those asserted in the EDS motion, the Compass Defendants, First Horizon, and First Tennessee respectfully request that the Court sever Counts 1 and 2 of DTC’s Complaint, stay the severed cause pending reexamination of the Ballard patents, and for such other and further relief to which they may be entitled.

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<sup>2</sup> See Exhibits 3 and 4 to EDS Motion.

<sup>3</sup> See Complaint, ¶¶ 73, 77.

Dated: September 29, 2006

Respectfully submitted,

**ANDREWS KURTH LLP**

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**ATTORNEYS FOR DEFENDANTS  
COMPASS BANCSHARES, INC AND  
COMPASS BANK AND  
ATTORNEYS FOR DEFENDANTS  
FIRST HORIZON NATIONAL  
CORPORATION AND FIRST TENNESSEE  
BANK, NATIONAL ASSOCIATION**

**CERTIFICATE OF CONFERENCE**

On September 29, 2006, counsel for movants attempted, but was unable, to confer with Plaintiff's counsel to resolve the issues presented herein. Nonetheless, as reflected in the certificate of conference to the EDS Motion, Docket # 260, Plaintiff opposes this motion.

                                /S/ Tonya M. Gray                                  
Tonya M. Gray

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of this document has been served on all counsel of record via electronic mail through Local Rule CV-5(a) on this the 29th day of September, 2006.

                                /S/ Tonya M. Gray                                  
Tonya M. Gray

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