

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

DataTreasury Corporation

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Plaintiff

§

v.

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Civil Action No. 2:06-CV-72 DF

Wells Fargo & Company, et al.

§

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Defendants

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**MOTION BY DEFENDANTS CULLEN/FROST BANKERS, INC. AND THE FROST
NATIONAL BANK TO SEVER AND STAY THE CLAIMS RELATING TO THE
BALLARD PATENTS PENDING REEXAMINATION OF THE BALLARD PATENTS**

Defendants Cullen/Frost Bankers, Inc. and The Frost National Bank (collectively “Frost”) 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. Because Frost is only accused of infringing the Ballard patents, this will effectively stay the entire proceeding as to Frost and eliminate the need for Frost to undertake potentially unnecessary discovery.

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. (Docket Entry #260). Frost hereby adopts 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, Frost respectfully requests the Court sever and stay all

claims of this lawsuit related to the Ballard patents, pending completion of the reexamination of those patents.

Dated: October 5, 2006

Respectfully submitted,

By: /s/ Kurt M. Sauer
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**ATTORNEY FOR DEFENDANTS
CULLEN/FROST BANKERS, INC. AND
THE FROST NATIONAL BANK**

CERTIFICATE OF CONFERENCE

I hereby certify that on October 4, 2006 I conferred with Plaintiff's counsel, Karl Rupp, in a good faith attempt to resolve this matter without court intervention. Plaintiff's counsel stated that Plaintiff opposes the motion.

/s/ Kurt M. Sauer
Kurt M. Sauer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5 (a)(3)(A) on October 5, 2006.

/s/ Kurt M. Sauer
Kurt M. Sauer