

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

DATATREASURY CORPORTION	§	
<i>Plaintiff/Counter-Defendant</i>	§	
	§	
vs.	§	No. 2:06cv72 (DF)
	§	Jury Trial Demanded
WELLS FARGO & COMPANY;	§	
WELLS FARGO BANK, NATIONAL	§	
ASSOCIATION	§	
<i>Defendants/Counter-Plaintiff</i>	§	

**DATATREASURY’S ANSWER TO BB&T CORPORATION’S AND BRANCH
BANKING AND TRUST COMPANY’S COUNTERCLAIMS**

Plaintiff/Counter-Defendant DataTreasury Corporation hereby files its Answer to BB&T Corporation and Branch Banking and Trust Company’s (collectively “Branch Banking”), Counterclaims to Plaintiff’s First Amended Complaint for Patent Infringement and in support thereof, states as follows:

COUNTERCLAIM

1. Plaintiff/Counter-Defendant denies that Branch Banking is entitled to a declaration of non-infringement as to the ‘007 and ‘868 Patents as alleged in paragraph 1 of Branch Banking’s Counterclaim.
2. Plaintiff/Counter-Defendant denies that Branch Banking is entitled to a declaration of invalidity as to the ‘007 and ‘868 Patents as alleged in paragraph 2 of Branch Banking’s Counterclaim.

JURISDICTION AND VENUE

3. Plaintiff/Counter-Defendant admits the allegations contained in paragraph 3 of Branch Banking’s Counterclaim.

4. Plaintiff/Counter-Defendant admits the allegations contained in paragraph 4 of Branch Banking.'s Counterclaim.

THE PARTIES

5. Plaintiff/Counter-Defendant can neither admit or deny that Branch Banking is a national banking association authorized to do business under the laws of the United States as alleged in paragraph 5 of Branch Banking's Counterclaim. Plaintiff/Counter-Defendant admits that DataTreasury is a Delaware corporation with its principal place of business at 101 East Park Boulevard, #600, Plano, Texas 75074, as alleged in paragraph 5 of Branch Banking's Counterclaim.

COUNT 1

(Declaratory Judgment of Non-Infringement, 28 U.S.C. §§ 2201-2202)

6. Plaintiff/Counter-Defendant admits the allegations contained in paragraphs 6 thru 7 of Branch Banking's Counterclaim.

7. Plaintiff/Counter-Defendant denies that Branch Banking is entitled to a Declaratory Judgment of Non-Infringement, as to the '007 Patent as alleged in paragraphs 8 thru 9 of the first counterclaim of Branch Banking's Counterclaim.

COUNT II

(Declaratory Judgment of Non-Infringement, 28. U.S.C. §§ 2201-2202)

8. Plaintiff/Counter-Defendant admits the allegations contained in paragraphs 10 thru 11 of Branch Banking's Counterclaim.

9. Plaintiff/Counter-Defendant denies that Branch Banking is entitled to a Declaratory Judgment of Non-Infringement, as to the '868 Patent as alleged in paragraphs 12 thru 13 of the second counterclaim of Branch Banking's Counterclaim.

COUNT III

(Declaratory Judgment of Invalidity, 28 U.S.C. §§ 2201-2202)

10. Plaintiff/Counter-Defendant admits that it has alleged that Branch Banking has infringed, contributed to the infringement of, or induced others to infringe the '007 Patent as alleged in paragraph 14 of the third counterclaim of Branch Banking's Counterclaim. Plaintiff/Counter-Defendant denies that some or all of the claims of the '007 Patent are invalid as alleged in paragraph 14 of the third counterclaim of Branch Banking's Counterclaim.

11. Plaintiff/Counter-Defendant admits the allegations contained in paragraph 15 of the third counterclaim of Branch Banking's Counterclaim.

12. Plaintiff/Counter-Defendant denies that Branch Banking is entitled to a Declaratory Judgment of Invalidity, as to the '007 Patent as alleged in paragraphs 16 thru 17 of the third counterclaim of Branch Banking's Counterclaim.

COUNT IV

(Declaratory Judgment of Invalidity, 28 U.S.C. §§ 2201-2202)

13. Plaintiff/Counter-Defendant admits that it has alleged that Branch Banking has infringed, contributed to the infringement of, or induced others to infringe the '868 Patent as alleged in paragraph 18 of the fourth counterclaim of Branch Banking's Counterclaim. Plaintiff/Counter-Defendant denies that some or all of the claims of the '868 Patent are

invalid as alleged in paragraph 18 of the fourth counterclaim of Branch Banking's Counterclaim.

14. Plaintiff/Counter-Defendant admits the allegations contained in paragraph 19 of the fourth counterclaim of Branch Banking's Counterclaim.

15. Plaintiff/Counter-Defendant denies that Branch Banking is entitled to a Declaratory Judgment of Invalidity, as to the '868 Patent as alleged in paragraphs 20 thru 21 of the fourth counterclaim of Branch Banking's Counterclaim.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff/Counter-Defendant prays for judgment against Defendants/Counter-Plaintiffs as follows:

- A. For judgment dismissing the counterclaims with prejudice;
- B. For a declaration that this is an exceptional case, and an award to Plaintiff/Counter-Defendant of its costs and attorneys' fees incurred herein;
- C. An award of the costs of this action; and
- D. That Plaintiff/Counter-Defendant be awarded such other and further relief as the Court may deem just and proper, including all relief requested in Plaintiff's Complaint.

Respectfully submitted,

/S/

EDWARD L. VON HOHN, Attorney in Charge

State Bar No. 09813240

ROD COOPER

State Bar No. 90001628

EDWARD CHIN

STATE BAR NO. 50511688

NIX PATTERSON & ROACH LLP

5215 N. O'Connor Blvd. Ste. 1900

Irving, Texas 75039

972.831.1188 (telephone)

972.692.5445 (facsimile)

edhohn@nixlawfirm.com

rodcooper@nixlawfirm.com

edchin@nixlawfirm.com

C. CARY PATTERSON

State Bar No. 15587000

BRADY PADDOCK

State Bar No. 00791394

ANTHONY BRUSTER

State Bar No. 24036280

R. BENJAMIN KING

State Bar No. 24048592

NIX PATTERSON & ROACH L.L.P.

2900 St. Michael Drive, Suite 500

Texarkana, Texas 75503

903.223.3999 (telephone)

903.223.8520 (facsimile)

akbruster@nixlawfirm.com

bpaddock@nixlawfirm.com

benking@nixlawfirm.com

JOE KENDALL

State Bar No. 11260700

KARL RUPP

State Bar No. 24035243

PROVOST * UMPHREY, L.L.P.

3232 McKinney Avenue, Ste. 700

Dallas, Texas 75204

214.744.3000 (telephone)

214.744.3015 (facsimile)

jkendall@provostumphrey.com

krupp@provostumphrey.com

ERIC M. ALBRITTON

State Bar ;No. 00790215

ALBRITTON LAW FIRM

P.O. Box 2649

Longview, Texas 75606

903.757.8449 (telephone)

903.758.7397 (facsimile)

ema@emafirm.com

T. JOHN WARD, JR.
State Bar No. 00794818
LAW OFFICE OF T. JOHN WARD, JR.
P.O. Box 1231
Longview, Texas 75601
903.757.6400 (telephone)
903.757.2323 (facsimile)
jw@jwfirm.com

**ATTORNEYS FOR PLAINTIFF/COUNTER-
DEFENDANT, DATA TREASURY
CORPORATION**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record, via CM/ECF, on the 1st day of March, 2007.

_____/S/_____
Edward Lewis von Hohn