

**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.	§	

**MOTION OF DEFENDANTS BANCORPSOUTH, INC. AND
BANCORPSOUTH BANK TO DISMISS, OR IN THE ALTERNATIVE,
FOR MORE DEFINITE STATEMENT**

Defendants BancorpSouth, Inc. and BancorpSouth Bank (“the BancorpSouth Defendants”) move pursuant to Fed. R. Civ. P 12(b)(6) to dismiss Counts 1 and 2 of DataTreasury Corporation’s (“DTC”) First Amended Complaint for Patent Infringement for failure to state a claim upon which relief may be granted. Alternatively, the BancorpSouth Defendants move pursuant to Fed. R. Civ. P. 12(e) for a more definite statement. In support of this Motion and in the interest of brevity, the BancorpSouth Defendants rely on and incorporate the arguments and authorities presented in the Joint Motion of Defendants to Dismiss, or in the Alternative, for More Definite Statement, filed on June 1, 2006, to the extent related to Counts 1 and 2 of DTC’s First Amended Complaint.

I. FACTS APPLICABLE TO THE BANCORPSOUTH DEFENDANTS

In Count 1 and 2 of the Amended Complaint, DTC alleges that the BancorpSouth Defendants infringe U.S. Patent No. 5,910,988 (“the ’988 patent”) and U.S. Patent No. 6,032,137 (“the ’137 patent”). Compl. ¶¶ 73-80. What the BancorpSouth Defendants have done or are doing that infringes these two patents is a mystery. DTC’s Amended Complaint identifies no **MOTION OF DEFENDANTS BANCORPSOUTH, INC. AND BANCORPSOUTH BANK TO DISMISS, OR IN THE ALTERNATIVE, FOR MORE DEFINITE STATEMENT -- Page 1**

accused product or system allegedly made, used, sold, offered for sale or imported into the United States by the BancorpSouth Defendants that infringes the claims of the '988 and '137 patents. Moreover, BancorpSouth Bank is simply a holding company that conducts no operations in Texas.¹ Nevertheless, DTC made BancorpSouth Bank a party to its complaint.

II. ARGUMENT

As set forth in the Joint Motion of Defendants to Dismiss, DTC's allegations are insufficient to place the BancorpSouth Defendants on notice of infringement. DTC points to no specific product, method or system that allegedly infringes the '988 and 137 patents. Instead, DTC makes a vague and passing reference to "transactions", "services" and "products". Similarly, DTC alleges that the BancorpSouth Defendants are among more than a dozen defendants that are "owners or current users of Viewpointe Archive Services, L.L.C." but fails to specify adequately under Rule 8 any allegedly infringing conduct. Compl. ¶¶ 62, 63. This paucity of allegations makes it impossible for the BancorpSouth Defendants to muster a response. *See Gen-Probe, Inc. v. Amoco Corp., Inc.*, 926 F. Supp. 948, 962 (S.D. Cal. 1996).

Alternatively, should the Court determine that DTC has stated claims for patent infringement, the BancorpSouth Defendants request a more definite statement under Fed. R. Civ. P. 12(e) setting forth sufficient allegations of infringement. As detailed above, the Amended Complaint is so vague that the BancorpSouth Defendants cannot make a responsive pleading or alter their conduct, if necessary, to avoid a charge of willful infringement. *See Gen-Probe.*, 926 F. Supp. at 962.

III. CONCLUSION

Based on the foregoing arguments and authorities, the BancorpSouth Defendants respectfully request the Court to dismiss DTC's Complaint against them or, in the alternative, to

¹ BancorpSouth Bank denies it is subject to jurisdiction in Texas.

