

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

DATATREASURY CORPORATION,

Plaintiff,

v.

WELLS FARGO & COMPANY, et al.

Defendants.

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CIVIL ACTION NO. 2:06-CV-72-DF

JURY TRIAL DEMANDED

**MOTION OF DEFENDANT FIRST CITIZENS BANK & TRUST COMPANY
TO SEVER AND STAY THE CLAIMS RELATING TO THE BALLARD PATENTS
PENDING REEXAMINATION OF THE BALLARD PATENTS**

Defendant First Citizens Bank & Trust Company ("First Citizens") moves for a severance and stay of the claims related to the two Ballard patents, U.S. Patent Nos. 5,910,988 and 6,032,137, until the reexamination of those two patents is complete.

Defendants EDS, Harris, Key, PNC, and Sun Trust 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). First Citizens adopts the arguments and authorities advanced by that Motion to Sever and Stay, as if set out fully herein. Specifically, First Citizens asserts that it, like EDS and the other defendants who filed the September 19 Motion to Sever and Stay, seeks to avoid substantial time and expense in defending DataTreasury Corporation's claims of patent infringement related to the Ballard patents and instead focus on the claims asserted under the Huntington Patents, U.S. Patent Nos. 5,717,868 and 5,265,007.

In the interest of justice and of judicial economy, this Court should sever and stay the claims related to the Ballard patents pending the completion of their reexamination.

Respectfully submitted,

/s/ Larry D. Carlson
Larry D. Carlson, Attorney-in-Charge
Texas State Bar No. 03814500
E-Mail: larry.carlson@bakerbotts.com
David O. Taylor
Texas State Bar No. 24042010
E-Mail: david.taylor@bakerbotts.com
BAKER BOTTS L.L.P.
2001 Ross Avenue
Dallas, Texas 75201
Telephone: (214) 953-6500
Facsimile: (214) 953-6503

Donalt J. Eglinton
E-Mail: dje@wardandsmith.com
WARD AND SMITH, P.A.
Post Office Box 867
New Bern, North Carolina 28563
Telephone: (252) 672-5456
Facsimile: (252) 672-5477

ATTORNEYS FOR DEFENDANT FIRST
CITIZENS BANK & TRUST COMPANY

CERTIFICATE OF CONFERENCE

I certify that on October 10, 2006, I conferred with Eric M. Albritton, counsel for plaintiff DataTreasury Corporation, in a good faith attempt to resolve this matter without Court intervention. Mr. Albritton stated that plaintiff opposes this motion.

/s/ Larry D. Carlson
Larry D. Carlson

CERTIFICATE OF SERVICE

I certify that on the 10th day of October, 2006, all counsel who are deemed to have consented to electronic service are being served with a copy of this document by the Court's Electronic Filing System, pursuant to Local Rule CV-5(a)(3)(A).

/s/ Larry D. Carlson
Larry D. Carlson