

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

**DataTreasury Corporation** §  
*Plaintiff* §

v. §

**CIVIL ACTION NO: 2:13-cv-432  
JURY DEMANDED**

**Fidelity National Information Services, Inc.;** §  
**Beal Financial Corporation;** §  
**Beal Bank , S.S.B.; Premier Bancshares, Inc.** §  
**Synergy Bank, S.S.B.; First Bells** §  
**Bankshares, Inc.; The First National Bank** §  
**Of Bells/Savoy; AccessBank Texas;** §  
**Colonial Holding Company; Colonial** §  
**Savings, F.A.; Texas Independent** §  
**Bancshares, Inc.; Texas First Bank; First** §  
**Community Bancshares, Inc.; First National** §  
**Bank Texas d/b/a First Convenience Bank;** §  
**Industry Banchares, Inc.; Citizens State** §  
**Bank; The First National Bank of Bellville;** §  
**The First National Bank of Shiner;** §  
**Fayetteville Bank; Industry State Bank;** §  
**First Command Financial Services, Inc.;** §  
**First Command Bank; Texas Security** §  
**Bankshares, Inc.; Texas Security Bank;** §  
**Commerce National Financial Services, Inc.;** §  
**Lubbock National Bank; Pioneer** §  
**Bank, S.S.B.; Bankers Bancorp of Oklahoma,** §  
**Inc.; The Bankers Bank; Southwest** §  
**Bancorp, Inc.; The Stillwater National** §  
**Bank and Trust Company;** §  
**Community Trust Financial Corporation;** §  
**Community Trust Bank; Sabine** §  
**Bancshares, Inc.; and Sabine State Bank** §  
**And Trust Company** §  
*Defendants* §

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**FIRST AMENDED ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

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## I. BACKGROUND

1. The patents in suit – U.S. Patent No. 5,910,988 (“the ’988 Patent”) and 6,032,137 (“the ’137 Patent”) (collectively the “Ballard Patents”) – are among the most thoroughly validated and valuable patents in the United States. The Ballard Patents have been credited as being foundational to modern day, image-based check processing, enabling technological improvements that save the banking industry billions of dollars annually.

2. A vast majority of the top twenty-five banking institutions in America – including Bank of America, Citibank, J.P. Morgan Chase Bank, Wells Fargo Bank, and many others – have licensed the Ballard Patents in recognition of the significant contribution of the Ballard Patents to modern image-based check processing, including prime pass image capture, branch capture, and remote deposit capture processes. It has been publicly reported that these banks have collectively paid more than \$350 million to license the Ballard Patents.

3. Industry leading J.P. Morgan Chase Bank has agreed to a Consent Judgment, confessing in Federal Court that the Ballard Patents are valid, enforceable, and infringed. Other large financial institutions such as PNC Bank have made similar confessions of validity in open court.

4. Dozens of prior litigants have spent hundreds of millions of dollars attempting to invalidate the Ballard Patents or to prove them unenforceable. Despite this concerted joint effort by the banking industry, not a single bank has ever prevailed against the Ballard Patents.

5. The only bank in the nation that has been sued for infringing the Ballard Patents and then refused to pay for a license to use the patents all the way through a jury trial was U.S. Bank. In March 2010, U.S. Bank was found guilty of willfully infringing the Ballard Patents by a federal jury, and subsequently ordered to pay over \$50 million dollars for its willful

infringement of the patents. The same federal jury also unanimously found that the Ballard Patents were not invalid.

6. The Ballard Patents have been re-examined by the United States Patent and Trademark Office (“USPTO”), to determine their validity. Ultimately, each and every claim of the Ballard Patents was upheld in full, and issued as valid for a second time by the USPTO.

7. The Ballard Patents have had press coverage ranging from *The Wall Street Journal* and *The Washington Post* to industry publications such as *The American Banker*. Claudio Ballard, inventor of the Ballard Patents was recognized as the 2010 Inventor of the Year by the United States Business and Industry Council in Washington, D.C.

8. The United States Congressional Budget Office has independently determined the value of the Ballard Patents to be more than \$1 billion.

9. Despite this unimpeachable validity, significant financial value, and widespread recognition as the cornerstone intellectual property underlying modern image-based check processing, the Ballard Patents are being willfully infringed by one or more of the Defendants in this case. DataTreasury files this lawsuit to continue to protect its intellectual property and prevent these Defendants from continuing to willfully violate DataTreasury’s intellectual property rights and the U.S. patent laws.

10. Defendant Fidelity National Information Services, Inc. (“Defendant FIS”) is in the business of providing banking systems and services to entities such as the other defendants in this lawsuit. As part of those and similar banking service offerings, Defendant FIS provides check capture and processing systems and services. Defendant FIS advertises itself as “one of the nations largest check imaging solution providers.” These services are offered as part of Defendant FIS’ Suite of Distributed Capture solutions.

11. By way of example and without limitation, based on information and belief, in addition to operating its own image-enabled processing centers, Defendant FIS offers Distributed Capture Solutions, including but not limited to the following products and/or services: Merchant Capture, Consumer Capture, Mobile Capture, Branch Capture, Teller Capture, and ATM Deposit Automation (individually and collectively referred to hereafter as the “Accused Instrumentalities”). Merchant Capture allows commercial and merchant entities the ability to capture check images onsite for electronic deposit and processing of those checks. Consumer Capture leverages the same technology used in the FIS Merchant Capture solution to allow consumers to capture check images for electronic deposit and processing. Mobile Capture allows consumers to capture check images using their mobile device(s) for electronic deposit and processing. Branch Capture allows a bank to capture check images deposited at the branch or multiple branches to be captured in the branch back office and submitted for electronic deposit and processing. Teller Capture allows a banking institution to capture check images at a single teller station or enterprise wide for electronic deposit and processing. ATM Deposit Automation provides image capture of check deposits at image-enabled ATM locations.

12. The Accused Instrumentalities are provided as examples of products and/or services that DataTreasury contends infringe the Ballard Patents based on its current understanding and belief and are in no way meant to be a limitation on the scope of infringing products or services offered by Defendant FIS.

13. Each of the Accused Instrumentalities can be deployed individually or in combination and are listed here as examples of the systems and services offered by Defendant FIS to the Banking Defendants, who in turn offer some or all of them to their banking customers. The following allegations apply equally, however, to any and all similar systems and services

now offered or ever offered by Defendants regardless of the specific brand names applied to the systems and services.

## II. THE PARTIES

14. The allegations of paragraphs 1-13 above are incorporated by reference as if fully set forth herein.

15. Plaintiff **DataTreasury Corporation** ("DataTreasury") is a Delaware corporation that maintains its principal place of business at 2301 W. Plano Parkway, Ste. 106, Plano, Texas 75074.

16. Defendant **Fidelity National Information Services, Inc.** ("Defendant FIS") is a Georgia corporation that maintains its principal place of business at 601 Riverside Avenue, Jacksonville, Florida 32204. This Defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

17. Defendant **Beal Financial Corporation** is a Texas corporation with its principal place of business at 6000 Legacy Drive, Plano, Texas 75024. This Defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

18. Defendant **Beal Bank, S.S.B** is a subsidiary of Beal Financial Corporation with its principal place of business located at 6000 Legacy Drive, Plano, Texas 75024. This Defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

19. Defendant **Premier Bancshares, Inc.** is a Texas Corporation with its principal place of business located at 8951 Synergy Drive, Suite 200, McKinney, Texas 75070. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

20. Defendant **Synergy Bank, S.S.B.** is a subsidiary of Premier Bancshares, Inc. with its principal place of business located at 8951 Synergy Drive, Suite 100, McKinney, Texas 75070. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

21. Defendant **First Bells Bankshares, Inc.** is a Texas Corporation with its principal place of business located at 615 E. Bells Blvd, Bells, Texas 75414. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

22. Defendant **The First National Bank of Bells/Savoy** is a subsidiary of First Bells Bankshares, Inc. with its principal place of business located at 615 East Bells Boulevard, Bells, Texas 75414. This defendant does business in Texas and this District has been served and will file responsive pleadings in due course.

23. Defendant **AccessBank Texas** is a Texas state-chartered bank with its principal place of business located at 320 West Eagle Drive, Suite 100, Denton, Texas 76102. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

24. Defendant **Colonial Holding Company** is a Nevada Corporation with its principal place of business located at 2624 West Freeway, Fort Worth, Texas 76201. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

25. Defendant **Colonial Savings, F.A.** is a subsidiary of Colonial Holding Company with its principal place of business located at 2600 West Freeway, Fort Worth, Texas 76102. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

26. Defendant **Texas Independent Bancshares, Inc.** is a Texas Corporation with its principal place of business located at 3232 Palmer Hwy, Texas City, Texas 77592. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

27. Defendant **Texas First Bank** is a subsidiary of Texas Independent Bancshares, Inc. with its principal place of business located at 3232 Palmer Highway, Texas City, Texas 77590. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

28. Defendant **First Community Bancshares, Inc.** is a Texas Corporation with its principal place of business located at 507 N. Gray, Killeen, Texas 76541. This defendant does business in Texas and this District, and has been served and will file responsive pleadings in due course.

29. Defendant **First National Bank Texas d/b/a First Convenience Bank** is a subsidiary of First Community Bancshares, Inc. with its principal place of business located at 507 Gray, Killeen, Texas 76541. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

30. Defendant **Industry Bancshares, Inc.** is a Texas Corporation with its principal place of business located at 16886 Fordtran Blvd., Industry, Texas 78944. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

31. Defendant **Citizens State Bank** is a subsidiary of Industry Bancshares, Inc. with its principal place of business located at 1330 West Commerce Street, Buffalo, Texas 75831.

This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

32. Defendant **The First National Bank of Bellville** is a subsidiary of Industry Bancshares, Inc. with its principal place of business located at 100 East Main, Bellville, Texas 77418. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

33. Defendant **The First National Bank of Shiner** is a subsidiary of Industry Bancshares, Inc. with its principal place of business located at 103 West 7<sup>th</sup> Street, Shiner, Texas 77984. This defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Jonathan Kalich, 103 West 7<sup>th</sup> Street, Shiner, Texas 77984.

34. Defendant **Fayetteville Bank** is a subsidiary of Industry Bancshares, Inc. with its principal place of business located at 123 N. Washington St., Fayetteville, Texas 78940. This defendant does business in Texas and this District and can be served with process by serving any officer, member, or managing agent at 123 N. Washington St., Fayetteville, Texas 78940.

35. Defendant **Industry State Bank** is a subsidiary of Industry Bancshares, Inc. with its principal place of business located at 16886 Fordtran Blvd., Industry, Texas 78944. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

36. Defendant **First Command Financial Services, Inc.** is a Texas Corporation with its principal place of business located at 1 FirstComm Plaza, Ft. Worth, Texas 76109. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.



37. Defendant **First Command Bank** is a subsidiary of First Command Financial Services, Inc. with its principal place of business located at 1 FirstComm Plaza, Ft. Worth, Texas 76109. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

38. Defendant **Texas Security Bankshares, Inc.** is a Texas Corporation with its principal place of business located at 1212 Turtle Creek Blvd., Dallas, Texas 75207. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

39. Defendant **Texas Security Bank** is a subsidiary of Texas Security Bankshares, Inc. with its principal place of business located at 1212 Turtle Creek Blvd., Dallas, Texas 75207. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

40. Defendant **Commerce National Financial Services, Inc.** is a Texas Corporation with its principal place of business located at 1001 Main St. Lubbock, Texas 79401. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

41. Defendant **Lubbock National Bank** is a subsidiary of Commerce National Financial Services, Inc. with its principal place of business located at 4825 50<sup>th</sup> St., Ste. H, Lubbock, Texas 79414. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

42. Defendant **Pioneer Bank, S.S.B.** is a Texas state-chartered bank with its principal place of business located at 100 Creek Road, Dripping Springs, Texas 78620. This defendant

does business in Texas and this District and has been served and will file responsive pleadings in due course.

43. Defendant **Bankers Bancorp of Oklahoma, Inc.** is an Oklahoma corporation with its principal place of business located at 9020 North May Avenue, Ste. 200, Oklahoma City, Oklahoma 73120. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

44. Defendant **The Bankers Bank** is a subsidiary of Bankers Bancorp of Oklahoma with its principal place of business located at 9020 North May Avenue, Ste. 200, Oklahoma City, Oklahoma 73120. This defendant does business in Texas and this District and has been served and will responsive pleadings in due course.

45. Defendant **Southwest Bancorp, Inc.** is an Oklahoma corporation with its principal place of business located at 608 South Main Street, Stillwater, Oklahoma 74074. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

46. Defendant **The Stillwater National Bank and Trust Company** is a subsidiary of Southwest Bancorp, Inc. with its principal place of business located at 608 South Main Street, Stillwater, Oklahoma 74074. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

47. Defendant **Community Trust Financial Corporation** is a Louisiana corporation with its principal place of business located at 1511 North Trenton Street, Ruston, Louisiana 71270. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

48. Defendant **Community Trust Bank** is a subsidiary of Community Trust Financial Corporation with its principal place of business located at 3921 Elm Street, Choudrant, Louisiana 71227. This defendant does business in Texas and this District and has been served and will responsive pleadings in due course.

49. Defendant **Sabine Bancshares, Inc.** is a Louisiana corporation with its principal place of business located at 297 Elizabeth Street, Many, Louisiana 71449. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course

50. Defendant **Sabine State Bank and Trust Company** is a subsidiary of Sabine Bancshares, Inc. with its principal place of business located at 297 Elizabeth Street, Many, Louisiana 71449. This defendant does business in Texas and this District and has been served and will file responsive pleadings in due course.

51. Defendant **Henderson Citizens Bancshares, Inc.** is a Texas corporation with its principal place of business at 201 West Main Street, Henderson, Texas 75652. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Kenneth Black, 201 West Main Street, Henderson, Texas 75652.

52. Defendant **Citizens National Bank** is a subsidiary of Henderson Citizens Bancshares, Inc. with its principal place of business located at 201 West Main Street, Henderson, Texas 75652. This Defendant does business in Texas and this District and can be served with process through its Registered Agent for Service of Process, Kenneth Black, 201 West Main Street, Henderson, Texas 75652.

53. Defendants Beal Financial Corporation, Beal Bank, S.S.B, Premier Bancshares, Inc., Synergy Bank, S.S.B., First Bells Bankshares, Inc., The First National Bank of

Bells/Savoy, AccessBank Texas, Colonial Holding Company, Colonial Savings, F.A., Texas Independent Bancshares, Inc., Texas First Bank, First Community Bancshares, Inc., First National Bank Texas d/b/a First Convenience Bank, First Community Bancshares, Inc., Industry Bancshares, Inc., Citizens State Bank, The First National Bank of Bellville, The First National Bank of Shiner, Fayetteville Bank, Industry State Bank, First Command Financial Services, Inc., First Command Bank, Texas Security Bankshares, Inc., Texas Security Bank, Commerce National Financial Services, Inc., Lubbock National Bank, Pioneer Bank, S.S.B., Bankers Bancorp of Oklahoma, Inc., The Bankers Bank, Southwest Bancorp, Inc., The Stillwater National Bank and Trust Company, Community Trust Financial Corporation, Community Trust Bank, Sabine Bancshares, Inc., Sabine State Bank and Trust Company, Henderson Citizens Bancshares, Inc. and Citizens national Bank are hereinafter referred to collectively as the “Banking Defendants.”

### **III. JURISDICTION AND VENUE**

54. The allegations of paragraphs 1-53 above are incorporated by reference as if fully set forth herein.

55. This action for patent infringement arises under the patent laws of the United States, Title 35 of the United States Code. The Court's jurisdiction over this action is proper under the above statutes, including 35 U.S.C. § 271 *et seq.*, 28 U.S.C. § 1332, and 28 U.S.C. § 1338.

56. Personal jurisdiction exists generally over Defendants pursuant to 28 U.S.C. § 1391 because they have sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and within this District. Personal jurisdiction also exists specifically over Defendants because of Defendants' conduct in making, using, selling, offering

to sell, and/or importing, directly, contributorily, and/or by inducement, infringing systems, products, and services within the State of Texas and within this district. At least one of each of those products and/or services sold in this District in an infringing manner is set forth in this Complaint. In addition, upon information and belief Defendants have provided systems and services in this District separately and independently, and with or for other infringing companies that were Defendants in related litigation in the United States District Court for the Eastern District of Texas.

57. Venue is proper in this Court under 28 U.S.C. §§ 1391(b), (c), and (d), as well as 28 U.S.C., § 1400(b) for the reasons set forth above and below.

58. Each of the Defendants identified in paragraphs 16-53 are current users of Defendant FIS' check processing systems and services including by way of example only and without limitation at least one or more of the Accused Instrumentalities.

59. Each of the Banking Defendants are subject to personal jurisdiction, in addition to the reasons set forth above and below, because each Banking Defendant engages in infringing activities by using within this district at least one of the Accused Instrumentalities provided by Defendant FIS. Each Defendant has authorized, participated in, or facilitated transactions occurring in whole or in part within this District that, in whole or in part, infringe the '988 and '137 Patents asserted herein.

#### **IV. JOINDER PUSUANT TO 35 U.S.C. § 299**

60. Joinder is proper under 35 U.S.C. § 299

61. Joinder is proper under and in accordance with 35 U.S.C. § 299(a) because (1) DataTreasury is asserting its right to relief from Defendants for patent infringement jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence,

or series of transactions or occurrences relating to the using, importing into the United States, offering for sale, or selling the same accused product or process, and (2) questions of fact common to all defendants will arise in this action.

62. Upon information and belief, each of the Banking Defendants identified in paragraphs 16-53 are current or former users of the Accused Instrumentalities, which are made, used, sold, or offered for sale by Defendant FIS. Upon information and belief, the Defendants' use of the Accused Instrumentalities infringe one or more claims of the '988 Patent and '137 Patent jointly, severally, or in the alternative. Because Defendants use the Accused Instrumentalities, which upon information and belief rely on the same underlying platform, systems, and services, questions of fact common to all Defendants will arise in this action.

#### V. PATENT INFRINGEMENT

63. The allegations of paragraphs 1-62 above are incorporated by reference as if fully set forth herein.

64. This is an exceptional case within the meaning of 35 U.S.C. §285.

65. DataTreasury is the owner as assignee of all rights, title and interest in and under the '988 Patent (attached as **Exhibit A**), which duly and legally issued on June 8, 1999, with Claudio Ballard as the named inventor, for an invention in remote image capture with centralized processing and storage. This patent went through re-examination with the United States Patent and Trademark Office ("USPTO") and was duly and legally reissued under the '988 Patent on October 23, 2007. Despite surviving a previous reexamination and a previous jury trial, an unidentified party has requested another reexamination of some of the claims of the '988 Patent. That reexamination is currently ongoing.

66. DataTreasury is the owner as assignee of all rights, title, and interest in and under the '137 Patent (attached as **Exhibit B**), which duly and legally issued on February 29, 2000, with Claudio Ballard as the named inventor, for an invention in remote image capture with centralized processing and storage. Similar to the '988 Patent, the '137 Patent went through re-examination with the USPTO and was duly and legally reissued under the '137 Patent on December 25, 2007.

## **VI. COUNT ONE – THE '988 PATENT**

67. The allegations of paragraphs 1-66 above are incorporated by reference as if fully set forth herein.

68. The Defendants have been and are infringing the '988 Patent by making, using, selling, and/or offering for sale in the United States products and services that fall within the scope of the claims of the '988 Patent, including the Accused Instrumentalities. Such infringement is direct, contributory, and/or by inducement.

### **A. Direct Infringement of the '988 Patent**

69. Defendants directly infringe the '988 Patent by making, using, selling, and/or offering to sale infringing systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. Defendants make these systems and methods to capture images of paper checks and process those checks using the electronic images.

70. Specifically Defendant FIS directly infringes the '988 Patent by making, using, selling, and/or offering to sell systems and methods for image-based check processing such as the Accused Instrumentalities. By way of example only, and without limitation, Defendant FIS infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the '988 Patent by

making, selling, and/or offering to sell systems and methods such as the Accused Instrumentalities.

71. Further and in the alternative, the Banking Defendants directly infringe the '988 Patent by making, using, selling, and/or offering to sell infringing systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. By way of example only, and without limitation, the Banking Defendants infringe, literally and/or under the doctrine of equivalents, at least claim 1 of the '988 Patent by using and/or offering to sell systems and methods such as the Accused Instrumentalities.

**B. Contributory Infringement of the '988 Patent**

72. Further and in the alternative and in addition to the direct infringement described above, each Defendant is liable for contributory infringement of the '988 Patent. Defendants knowingly contribute to infringement of the '988 Patent by making, selling, or offering for sale components of systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities.

73. DataTreasury contends that Defendant FIS is liable for contributory infringement of the '988 Patent. Defendant FIS sells and/or offers for sale components of systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. These components have no substantial non-infringing uses, and they constitute a material part of the invention. Defendant FIS was aware of the '988 Patent because of its involvement in prior litigation with DataTreasury during which customers of Defendant FIS sought indemnity for infringement claims being asserted by DataTreasury. Defendant FIS was also aware of the '988 Patent because of general and industry-specific media coverage and industry meetings and seminars. Defendant FIS is also aware that the components of the systems



and methods for image-based check processing satisfy at least one element of one claim, such as by way of example claim 1, of the '988 Patent. Defendant FIS further knows that use of the components as part of the systems and methods directly infringe at least one claim, such as by way of example claim 1, of the '988 Patent.

74. Further and in the alternative, DataTreasury contends that the Banking Defendants are liable for contributory infringement of the '988 Patent. The Banking Defendants sell and/or offer for sale components of systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. These components have no substantial non-infringing uses, and they constitute a material part of the invention. Upon information and belief, DataTreasury contends that the Banking Defendants were aware of the '988 Patent because of general media coverage, banking industry publications that followed DataTreasury and its prior litigation, communications with prior defendants involved in DataTreasury litigation, communications with Defendant FIS prior to commencement of the current litigation, publicly available documents such as those available at the United States Patent Office and/or in the public records of DataTreasury's prior litigation, and/or information discussed at industry meetings, seminars, and/or conventions. The Banking Defendants are also aware that the components of the systems and methods for image-based check processing satisfy at least one element of one claim, such as by way of example claim 1, of the '988 Patent. The Banking Defendants further know that use of the components as part of the systems and methods directly infringe at least one claim, such as by way of example claim 1, of the '988 Patent.

### **C. Inducement of Infringement of the '988 Patent**

75. Further and in the alternative, Defendants have knowingly induced infringement of the '988 Patent. Defendants induced such infringement through their making, using, selling,

and/or offering to sell systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities.

76. DataTreasury contends that Defendant FIS is liable for inducement infringement of the '988 Patent. Defendant FIS has intentionally caused, urged, encouraged, or aided action that induced infringement, including direct infringement, of the '988 Patent by others, namely the Banking Defendants. Such intentional action was and is the selling and/or offering for sale systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. As a result of its conduct, Defendant FIS induced its customers such as the Banking Defendants and the Banking Defendants' customers to use systems and methods such as the Accused Instrumentalities to infringe the claims of the '988 Patent, by way of example at least claim 1. Additionally and in the alternative, Defendant FIS induced the Banking Defendants and the Banking Defendants' customers to perform additional steps using systems and methods such as the Accused Instrumentalities to infringe the method claims of the '988 Patent such as by way of example at least claim 26. Defendant FIS engaged in this conduct while it was aware of the '988 Patent as discussed in this Complaint. Because of its knowledge of the '988 Patent and its prior involvement in litigation with DataTreasury, Defendant FIS knew the acts it was inducing would infringe the '988 Patent.

77. Further and in the alternative, DataTreasury contends that the Banking Defendants are liable for inducement of infringement of the '988 Patent. The Banking Defendants have intentionally caused, urged, encouraged, or aided action that induced infringement, including direct infringement, of the '988 Patent by others, namely the use of image-based check processing systems and methods such as the Accused Instrumentalities by the Banking Defendants' customers and/or the sale of image-based check processing system and

methods such as the Accused Instrumentalities by Defendant FIS. Such intentional action was and is causing, urging, encouraging, and/or aiding use of the Accused Instrumentalities by customers, and selling and/or offering for sale the Accused Instrumentalities to customers. Further and in the alternative, such intentional action was and is purchasing and/or offering to purchase from Defendant FIS the systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. As a result of its conduct, the Banking Defendants induced their customers to use systems and methods such as the Accused Instrumentalities to infringe the claims of the '988 Patent, by way of example at least claim 1. Additionally and in the alternative, the Banking Defendants induced Defendant FIS to sell systems and methods such as the Accused instrumentalities, which infringe the claims of the '988 Patent, by way of example at least claim 1. Additionally and in the alternative, the Banking Defendants induced their customers and/or induced Defendant FIS to carry out additional steps using systems and methods such as the Accused Instrumentalities to infringe the method claims of the '988 Patent, by way of example at least claim 26. The Banking Defendants engaged in this conduct while they were aware of the '988 Patent as discussed elsewhere in this Complaint. Because of its knowledge of the '988 Patent and/or as a result of this lawsuit, the Banking Defendants knew the acts they were inducing would infringe the '988 Patent.

78. Unless the Defendants are enjoined by this Court, DataTreasury is without an adequate remedy at law.

#### **D. Joint Infringement of the '988 Patent**

79. Further and in the alternative, DataTreasury contends that Defendants have committed the above-described acts of direct infringement, contributory infringement, and/or inducement of infringement jointly. DataTreasury contends that as a result of such joint

infringement, Defendants are jointly and severally liable for the infringing acts engaged in by each other.

80. DataTreasury contends that Defendant FIS is responsible for joint infringement because through its contractual obligations and instructions to the Banking Defendants, it directed and controlled the Banking Defendants infringing conduct.

81. Further and in the alternative, DataTreasury contends that the Banking Defendants are responsible for joint infringement because through their contractual obligations and instructions to Defendant FIS, the Banking Defendants directed and controlled Defendant FIS' infringing conduct.

## **VII. COUNT TWO – THE '137 PATENT**

82. The allegations of paragraphs 1-81 above are incorporated by reference as if fully set forth herein.

83. The Defendants have been and are infringing the '137 Patent by making, using, selling, and/or offering for sale in the United States products and services that fall within the scope of the claims of the '137 Patent, including the Accused Instrumentalities. Such infringement is direct, contributory, and/or by inducement.

### **A. Direct Infringement of the '137 Patent**

84. Defendants directly infringe the '137 Patent by making, using, selling, and/or offering to sale infringing systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. Defendants make these systems and methods to capture images of paper checks and process those checks using the electronic images.

85. Specifically Defendant FIS directly infringes the '137 Patent by making, using, selling, and/or offering to sell systems and methods for image-based check processing such as

the Accused Instrumentalities. By way of example only, and without limitation, Defendant FIS infringes, literally and/or under the doctrine of equivalents, at least claim 42 of the '137 Patent by making, selling, and/or offering to sell systems and methods such as the Accused Instrumentalities.

86. Further and in the alternative, the Banking Defendants directly infringe the '137 Patent by making, using, selling, and/or offering to sell infringing systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. By way of example only, and without limitation, the Banking Defendants infringe, literally and/or under the doctrine of equivalents, at least claim 42 of the '137 Patent by using and/or offering to sell systems and methods such as the Accused Instrumentalities.

**B. Contributory Infringement of the '137 Patent**

87. Further and in the alternative and in addition to the direct infringement described above, each Defendant is liable for contributory infringement of the '137 Patent. Defendants knowingly contribute to infringement of the '137 Patent by making, selling, or offering for sale components of systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities.

88. DataTreasury contends that Defendant FIS is liable for contributory infringement of the '137 Patent. Defendant FIS sells and/or offers for sale components of systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. These components have no substantial non-infringing uses, and they constitute a material part of the invention. Defendant FIS was aware of the '137 Patent because of its involvement in prior litigation with DataTreasury during which customers of Defendant FIS sought indemnity for infringement claims being asserted by DataTreasury. Defendant FIS was

also aware of the '137 Patent because of general and industry-specific media coverage and industry meetings and seminars. Defendant FIS is also aware that the components of the systems and methods for image-based check processing satisfy at least one element of one claim, such as by way of example claim 42, of the '137 Patent. Defendant FIS further knows that use of the components as part of the systems and methods directly infringe at least one claim, such as by way of example claim 42, of the '137 Patent.

89. Further and in the alternative, DataTreasury contends that the Banking Defendants are liable for contributory infringement of the '137 Patent. The Banking Defendants sell and/or offer for sale components of systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. These components have no substantial non-infringing uses, and they constitute a material part of the invention. Upon information and belief, DataTreasury contends that the Banking Defendants were aware of the '137 Patent because of general media coverage, banking industry publications that followed DataTreasury and its prior litigation, communications with prior defendants involved in DataTreasury litigation, communications with Defendant FIS prior to commencement of the current litigation, publicly available documents such as those available at the United States Patent Office and/or in the public records of DataTreasury's prior litigation, and/or information discussed at industry meetings, seminars, and/or conventions. The Banking Defendants are also aware that the components of the systems and methods for image-based check processing satisfy at least one element of one claim, such as by way of example claim 42, of the '137 Patent. The Banking Defendants further know that use of the components as part of the systems and methods directly infringe at least one claim, such as by way of example claim 42, of the '137 Patent.

**C. Inducement of Infringement of the '137 Patent**

90. Further and in the alternative, Defendants have knowingly induced infringement of the '137 Patent. Defendants induced such infringement through their making, using, selling, and/or offering to sell systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities.

91. DataTreasury contends that Defendant FIS is liable for inducement infringement of the '137 Patent. Defendant FIS has intentionally caused, urged, encouraged, or aided action that induced infringement, including direct infringement, of the '137 Patent by others, namely the Banking Defendants. Such intentional action was and is the selling and/or offering for sale systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. As a result of its conduct, Defendant FIS induced its customers such as the Banking Defendants and the Banking Defendants' customers to use systems and methods such as the Accused Instrumentalities to infringe the claims of the '137 Patent, by way of example at least claim 42. Additionally and in the alternative, Defendant FIS induced the Banking Defendants and the Banking Defendants' customers to perform additional steps using systems and methods such as the Accused Instrumentalities to infringe the method claims of the '137 Patent such as by way of example at least claim 43. Defendant FIS engaged in this conduct while it was aware of the '137 Patent as discussed in this Complaint. Because of its knowledge of the '137 Patent and its prior involvement in litigation with DataTreasury, Defendant FIS knew the acts it was inducing would infringe the '137 Patent.

92. Further and in the alternative, DataTreasury contends that the Banking Defendants are liable for inducement of infringement of the '137 Patent. The Banking Defendants have intentionally caused, urged, encouraged, or aided action that induced

infringement, including direct infringement, of the '137 Patent by others, namely the use of image-based check processing systems and methods such as the Accused Instrumentalities by the Banking Defendants' customers and/or the sale of image-based check processing system and methods such as the Accused Instrumentalities by Defendant FIS. Such intentional action was and is causing, urging, encouraging, and/or aiding use of the Accused Instrumentalities by customers, and selling and/or offering for sale the Accused Instrumentalities to customers. Further and in the alternative, such intentional action was and is purchasing and/or offering to purchase from Defendant FIS the systems and methods for image-based check processing, such as by way of example the Accused Instrumentalities. As a result of its conduct, the Banking Defendants induced their customers to use systems and methods such as the Accused Instrumentalities to infringe the claims of the '137 Patent, by way of example at least claim 42. Additionally and in the alternative, the Banking Defendants induced Defendant FIS to sell systems and methods such as the Accused instrumentalities, which infringe the claims of the '137 Patent, by way of example at least claim 42. Additionally and in the alternative, the Banking Defendants induced their customers and/or induced Defendant FIS to carry out additional steps using systems and methods such as the Accused Instrumentalities to infringe the method claims of the '137 Patent, by way of example at least claim 43. The Banking Defendants engaged in this conduct while they were aware of the '137 Patent as discussed elsewhere in this Complaint. Because of its knowledge of the '137 Patent and/or as a result of this lawsuit, the Banking Defendants knew the acts they were inducing would infringe the '137 Patent.

93. Unless the Defendants are enjoined by this Court, DataTreasury is without an adequate remedy at law.

#### **D. Joint Infringement of the '137 Patent**



94. Further and in the alternative, DataTreasury contends that Defendants have committed the above-described acts of direct infringement, contributory infringement, and/or inducement of infringement jointly. DataTreasury contends that as a result of such joint infringement, Defendants are jointly and severally liable for the infringing acts engaged in by each other.

95. DataTreasury contends that Defendant FIS is responsible for joint infringement because through its contractual obligations and instructions to the Banking Defendants, it directed and controlled the Banking Defendants infringing conduct.

96. Further and in the alternative, DataTreasury contends that the Banking Defendants are responsible for joint infringement because through their contractual obligations and instructions to Defendant FIS, the Banking Defendants directed and controlled Defendant FIS' infringing conduct.

### **VIII. WILLFULNESS**

97. The Defendants' infringement of the '988 Patent and the '137 Patent has been and is willful. Each Defendant listed herein has had notice and knowledge of the DTC patents and their infringement of the patents for years, including by way of the public notice set forth in paragraphs 1-9. Upon information and belief, the Defendants have known for years about the Ballard Patents and their affirmation in re-examination, success in court, and multiple consent judgments and licenses through the widespread press coverage, industry organization meetings, and/or Congressional activities discussed herein.

98. Additionally, Defendant FIS has been involved in previous litigation with DataTreasury, in which the Ballard Patents were asserted. In prior litigation, Defendant FIS was aware of the Ballard Patents and DataTreasury's claims because of indemnity claims made by

FIS customers who were involved in prior litigation with DataTreasury. Defendant FIS was also aware of the '988 and '137 Patents because of general and industry-specific media coverage and industry meetings and seminars. Through those interactions, Defendant FIS became well-aware of how its systems and methods, such as the Accused Instrumentalities infringed the Ballard Patents, yet it continued to make, use, sell, and/or offer for sell those systems and methods.

99. Defendants engaged in the above described conduct despite a high likelihood that their actions infringed the '988 Patent and/or the '137 Patent. Further Defendants knew or should have known that their actions constituted a high risk of infringement of the '988 Patent and/or the '137 Patent.

#### **IX. VICARIOUS LIABILITY**

100. The allegations of paragraphs 1-99 above are incorporated by reference as if fully set forth herein.

101. In addition to liability for their own independent conduct, the Defendants are also liable for the conduct of their subsidiaries, affiliates, and related entities under the doctrines of alter ego and single business enterprise, and under applicable state and federal statutes and regulations. Specifically, each parent company or holding company entity identified herein is the alter ego of its operating entity Defendant identified herein. For example, they have common stock ownership (i.e., parent companies owning all stock of the operating subsidiaries), common directors and officers, common business departments and headquarters; the parent or holding company finances and pays the expenses of the subsidiary; and the daily operations, board meetings, books and/or records of the two companies are not kept separate.

102. Further and in the alternative, Defendants are liable for infringement committed by their subsidiaries, affiliates, and related entities under the doctrine of joint infringement. Specifically, each parent company or holding company entity identified herein directs and controls the conduct of its subsidiaries, affiliates, and related entities to the extent that they are jointly responsible for any infringement, whether infringement be direct infringement, contributory infringement, or inducement of infringement as alleged above.

#### **X. DAMAGES**

103. The allegations of paragraphs 1-102 above are incorporated by reference as if fully set forth herein.

104. For the above-described infringement, DataTreasury has been injured and seeks damages to adequately compensate it for Defendants' infringement of the Ballard Patents. Such damages should be no less than the amount of a reasonable royalty under 35 U.S.C. § 284.

105. DataTreasury contends that Defendants willfully infringed the Ballard Patents. DataTreasury requests that the Court enter a finding of willful infringement and enhanced damages under 35 U.S.C. § 284 up to three times the amount found by the trier of fact.

106. DataTreasury further requests that the Court enter an order finding that this is an exceptional case within the meaning of 35 U.S.C. §285. Pursuant to such an order DataTreasury seeks recovery of its reasonable attorneys' fees and expenses.

#### **XI. JURY DEMAND**

107. The allegations of paragraphs 1-106 above are incorporated by reference as if fully set forth herein.

108. DataTreasury requests a jury trial for all issues triable to a jury.

## XII. PRAYER FOR RELIEF

109. The allegations of paragraphs 1-108 above are incorporated by reference as if fully set forth herein.

110. DataTreasury respectfully requests the following relief:

A. That the Court declare that the '988 and '137 Patents are valid and enforceable and that they are infringed by Defendants as described herein;

B. That the Court enter a permanent injunction against Defendants' direct infringement of the '988 and '137 Patents;

C. That the Court enter a permanent injunction against Defendants' active inducement of infringement and/or contributory infringement of the '988 and '137 Patents among themselves and by others;

D. That the Court award damages of no less than a reasonable royalty to DataTreasury to which it is entitled for patent infringement;

E. That the Court award pre-judgment and post-judgment interest on the damages to DataTreasury;

F. That the Court treble all damages and interest for willful infringement;

G. That the Court award to DataTreasury its costs and attorneys' fees incurred in this action; and

H. Such other and further relief as the Court deems just and proper.

Respectfully submitted,



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**ATTORNEYS FOR PLAINTIFF**

**DATATREASURY CORPORATION**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document has been delivered to all counsel of record by electronic transmission via the Court's CM/ECF service on this 7th day of October, 2013.



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Nelson J. Roach