

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

DataTreasury Corporation
Plaintiff

v.

U.S. Bancorp and U.S. Bank, N.A.
Defendants

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**CIVIL ACTION NO:
JURY DEMAND**

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

I. BACKGROUND

1. The patents in suit – U.S. Patent No. 5,910,988 and 6,032,137 (collectively the “Ballard patents,” attached as Exhibits A and B, respectively) – 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, a technological improvement that saves the banking industry billions of dollars annually.

2. Plaintiff DataTreasury Corporation (“DataTreasury”) filed suit against Defendants U.S. Bancorp and U.S. Bank, N.A. (collectively, “U.S. Bank”) in 2006 for willfully infringing the Ballard patents.¹ Dozens of other financial institutions were also sued for infringing these patents, but those entities all paid for a license to use DataTreasury’s patents; only U.S. Bank chose to litigate its defenses all the way to a jury verdict. In March 2010, a federal jury in this District found that U.S. Bank was willfully infringing the Ballard

¹ See Complaint in *DataTreasury Corp. v. U.S. Bank, N.A., et al.*, Case No. 2:06-CV-00072-DF-CMC (Doc. 1).

patents and unanimously found that the Ballard patents were valid.² Based on the jury's findings, this Court ordered U.S. Bank to pay over \$53 million dollars for its willful infringement of the Ballard patents.³ A final judgment will soon be entered in that prior litigation after a hearing on post-verdict royalties scheduled on June 16, 2011.⁴

3. On March 14, 2011, U.S. Bank announced the release of a new product called DepositPoint™ Mobile that infringes the Ballard patents. Even as the prior litigation between the parties approaches final judgment, U.S. Bank is showing further disregard for DataTreasury's intellectual property by continuing to release infringing products. As described below, U.S. Bank's new product involves remote deposit capture using a mobile device; however, this new product was not at issue in the prior litigation, as it was not released until nearly a year after the jury verdict. DataTreasury brings this present suit to once again enforce its patent rights.

II. THE PARTIES

4. 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.

5. Defendant **U.S. Bancorp** is a Delaware Corporation that maintains its principal place of business at 800 Nicollet Mall, Minneapolis, Minnesota 55402-7014. This Defendant does significant business in Texas and can be served with process through its Registered

² See Jury Verdict form in *DataTreasury Corp. v. U.S. Bank, N.A., et al.*, Case No. 2:06-CV-00072-DF-CMC (Doc. 2089).

³ See Order dated September 27, 2010, in *DataTreasury Corp. v. U.S. Bank, N.A., et al.*, Case No. 2:06-CV-00072-DF-CMC (Doc. 2365).

⁴ See Order dated March 25, 2011, in *DataTreasury Corp. v. U.S. Bank, N.A., et al.*, Case No. 2:06-CV-00072-DF-CMC (Doc. 2476).

Agent for Service, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

6. Defendant **U.S. Bank, National Association** is a banking subsidiary of Defendant U.S. Bancorp and maintains its principal place of business at 425 Walnut Street, Cincinnati, Ohio 45202. This Defendant does significant business in Texas and can be served with process through its Registered Agent for Service, CT Corporation System, at 350 N. St. Paul St., Ste. 2900, Dallas, Texas 75201-4234.

III. JURISDICTION AND VENUE

7. 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. §§ 1331, 1332, and 1338.

8. 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 products and services within the State of Texas and within this district. In particular, Defendants have provided, marketed, and sold infringing services and products in this District separately and independently, and/or in conjunction with other infringing entities.

9. 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. At least a portion of U.S.

Bank's infringement has occurred within this judicial district. Each act of Defendants' directly or indirectly infringing conduct in this district gives rise to proper venue. Furthermore, this Court has particular experience in adjudicating disputes arising from the patents-in-suit and the parties in suit, having already conducted a full *Markman* hearing and jury trial between these same parties and on these same patents.

IV. PATENT INFRINGEMENT

10. DataTreasury is the owner as assignee of all rights, title and interest in and under United States Patent No. 5,910,988 ("the '988 patent"), 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 United States Patent No. 5,910,988 C1 ("the '988 patent") on October 23, 2007. DataTreasury is the owner as assignee of all rights, title and interest in and under United States Patent No. 5,910,988 C1 (attached as Exhibit A).

11. DataTreasury is the owner as assignee of all rights, title, and interest in and under United States Patent No. 6,032,137 ("the '137 patent"), which duly and legally issued on February 29, 2000, with Claudio Ballard as the named inventor, for an invention in a remote image capture with centralized processing and storage. This patent went through re-examination with the USPTO and was duly and legally reissued under United States Patent No. 6,032,137 C1 ("the '137 patent") on December 25, 2007. DataTreasury is the owner as assignee of all rights, title and interest in and under United States Patent No. 6,032,137 C1 (attached as Exhibit B).

12. This is an exceptional case within the meaning of 35 U.S.C. § 285, at least because U.S. Bank has willfully initiated further infringement of the Ballard patents in spite of its familiarity with the patents and knowledge of their validity and despite a jury verdict for willful infringement of the same patents just over a year ago.

V. COUNT ONE – INFRINGEMENT OF THE '988 PATENT

13. Defendants U.S. Bancorp and U.S. Bank, N.A. (“U.S. Bank”) have been and are infringing the '988 patent by making, using, selling, offering for sale, and/or importing in or into the United States, directly, contributorily, and/or by inducement, without authority, products and services that fall within the scope of the claims of the '988 patent.

14. Specifically, U.S. Bank makes, uses, sells and offers to sell systems and methods for image-based check processing. These systems and methods involve capturing images of paper checks with mobile devices and sending those images to a central location for electronic processing and storage. U.S. Bank infringes the '988 patent, literally and/or under the doctrine of equivalents, and/or indirectly through inducement or contributory infringement, in its use and offering of mobile remote deposit capture and associated processing systems and methods.

15. U.S. Bank's infringing mobile remote deposit capture service or product, which U.S. Bank calls DepositPoint™ Mobile, involves capturing an image of the front and back of a check using a mobile device such as an iPhone. U.S. Bank provides customers with an application for their mobile devices called U.S. Bank Mobile Wallet. Mobile banking customers who have this application and enroll in DepositPoint™ are provided with “easy,” “step-by-step instructions to endorse, scan and deposit” their checks to U.S. Bank. The

images are transmitted to U.S. Bank over a communication network and are secured using SSL encryption technology. U.S. Bank electronically processes the check images, and customers can destroy the original checks. Customers can later access and view the check images through U.S. Bank's online or mobile banking services. U.S. Bank archives the check images and/or exchanges them with other financial institutions.

16. In addition to the direct infringement identified above, U.S. Bancorp and U.S. Bank, N.A. are liable for contributory infringement and/or inducement of infringement, as well as joint infringement, with each other and/or with third parties involved in providing or using these products and services.

17. Unless U.S. Bank is enjoined by this Court, DataTreasury is without an adequate remedy at law.

18. U.S. Bank's infringement of the '988 patent has been and is willful. U.S. Bank has had notice and knowledge of the DTC patents for years, from at least the time of the 2006 complaint in the prior litigation. A federal jury has already found U.S. Bank to be a willful infringer of the Ballard patents. U.S. Bank has had sufficient familiarity with the Ballard patents through the prior litigation to know that its new product also infringes these patents, yet U.S. Bank still refuses to acknowledge DataTreasury's intellectual property rights.

VI. COUNT TWO – INFRINGEMENT OF THE '137 PATENT

19. Defendants U.S. Bancorp and U.S. Bank, N.A. ("U.S. Bank") have been and are infringing the '137 patent by making, using, selling, offering for sale, and/or importing in or into the United States, directly, contributorily, and/or by inducement, without authority, products and services that fall within the scope of the claims of the '137 patent.

20. Specifically, U.S. Bank makes, uses, sells and offers to sell systems and methods for image-based check processing. These systems and methods involve capturing images of paper checks with mobile devices and sending those images to a central location for electronic processing and storage. DataTreasury further fully incorporates its allegations in paragraphs 14, 15, 16 17, and 18 above without restating them here as equally applicable to U.S. Bank's infringement of the '137 patent by U.S. Bank's DepositPoint™ Mobile platform.

VII. VICARIOUS LIABILITY

21. In addition to liability for their own independent conduct, U.S. Bancorp and U.S. Bank, N.A. 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, U.S. Bancorp is the alter ego of its operating entity U.S. Bank, N.A., and directs and controls its actions. For example, they have common stock ownership (U.S. Bank, N.A. is U.S. Bancorp's wholly owned subsidiary), directors and officers, business departments and headquarters; U.S. Bancorp finances and pays the expenses of U.S. Bank, N.A.; and the daily operations, board meetings, books and/or records of the two companies are not kept separate.

VIII. DAMAGES

22. For the above-described infringement, Plaintiff has been injured and seeks damages to adequately compensate it for U.S. Bank's further infringement of the Ballard patents. Such damages should be no less than the amount of a reasonable royalty under 35 U.S.C. § 284.

23. DataTreasury contends that U.S. Bank's further infringement of the Ballard patents is willful. Plaintiff 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 of damages found by the trier of fact.

24. Plaintiff 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 Plaintiff seeks recovery of its reasonable attorney fees. The present litigation is particularly rendered exceptional because U.S. Bank is already an adjudged willful infringer of the patents-in-suit, rendering any further legal proceedings by DataTreasury to enforce its patent rights against U.S. Bank unduly onerous and meritorious of full reimbursement therefore by U.S. Bank.

IX. JURY DEMAND

25. Plaintiff requests a jury trial for all issues triable to a jury.

X. PRAYER FOR RELIEF

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 U.S. Bank's direct infringement of the '988 and '137 patents;

C. That the Court enter a permanent injunction against U.S. Bank's 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 to DataTreasury to which it is entitled for patent infringement;

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

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

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

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

Dated: June 2, 2011

Respectfully submitted,



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