

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

DataTreasury Corporation §
Plaintiff §

v. §

**CIVIL ACTION NO:
JURY DEMANDED**

Capital One Financial Corporation; §
Capital One, N.A.; §
Capital One Bank (USA), N.A.; §
Regions Financial Corporation; §
Regions Bank; §
North American Bancshares, Inc.; §
American Bank of Texas; §
American Bank of Texas, N.A.; §
LegacyTexas Group, Inc.; §
Legacy Texas Bank; §
Patriot Bancshares, Inc.; §
Patriot Bank; §
Prosperity Bancshares, Inc.; and §
Prosperity Bank §
Defendants §

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”) – 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. 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 up 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. The

inventor of the Ballard patents was recently 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 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.

II. THE PARTIES

10. 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.

11. Defendant **Capital One Financial Corporation** is a Delaware corporation that maintains its principal place of business at 1680 Capital One Drive, McLean, VA 22102. This Defendant does business in Texas and can be served with process through its Registered Agent for Service, Corporation Service Company, at 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

12. Defendant **Capital One, N.A.** is a wholly-owned banking subsidiary of Capital One Financial Corporation. This Defendant does business in Texas and can be served with process through its Registered Agent for Service, Corporation Service Company, d/b/a CSC –

Lawyers Incorporating Service Company, at 701 Brazos Street, Suite 1050, Austin, Texas 78701-3232.

13. Defendant **Capital One Bank (USA), N.A.** is a wholly-owned subsidiary of Capital One Financial Corporation. Capital One Bank (USA), N.A. is a federal bank headquartered at 4851 Cox Road, Glen Allen, Virginia 23060. This Defendant does business in Texas and can be served with process through its Registered Agent for Service, Corporation Service Company, at 11 S. 12th Street, P.O. Box 1463, Richmond, Virginia 23218-0000.

14. Defendant **Regions Financial Corporation** is a Delaware Corporation that maintains its principal place of business at 1900 Fifth Avenue North, Birmingham, Alabama 35203. This Defendant does business in Texas and can be served with process through its Registered Agent for Service, Corporation Service Company, d/b/a CSC – Lawyers Incorporating Service Company, at 701 Brazos Street, Suite 1050, Austin, Texas 78701-3232.

15. Defendant **Regions Bank** is a wholly-owned banking subsidiary of Regions Financial Corporation. This Defendant does business in Texas and can be served with process through its Registered Agent for Service, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, at 701 Brazos Street, Suite 1050, Austin, Texas 78701-3232.

16. Defendant **North American Bancshares, Inc.** is a Texas Corporation with its principal place of business located at 2011 Texoma Parkway, Sherman, Texas 75090. This Defendant does business in Texas and can be served with process through its Registered Agent for Service, James F. Parker, at 2011 Texoma Parkway, Sherman, Texas 75090.

17. Defendant **American Bank of Texas** is a wholly-owned banking subsidiary of North American Bancshares, Inc., with its principal place of business located at 2011 Texoma

Parkway, P.O. Box 1234, Sherman, Texas 75090-2688. This Defendant does business in Texas and can be served with process through its Registered Agent for Service, Wes Shelton, at 2011 Texoma Parkway, Sherman, Texas 75090.

18. Defendant **American Bank of Texas, N.A.** is a wholly-owned banking subsidiary of North American Bancshares, Inc., with its principal place of business located at 418 N. Hwy. 281, Marble Falls, Texas 78654. This Defendant can be served with process through its Registered Agent for Service, Susan T. Pierce, 418 N. Hwy. 281, Marble Falls, Texas 78654.

19. Defendant **LegacyTexas Group, Inc.** is a Texas Corporation with its principal place of business located at 5000 Legacy Drive, Plano, Texas 75024. This Defendant does business in Texas and can be served with process through its Registered Agent for Service, Rewaz R. Chowdhury, at 5000 Legacy Drive, Plano, Texas 75024.

20. Defendant **Legacy Texas Bank** is a wholly-owned banking subsidiary of LegacyTexas Group, Inc., with its principal place of business located at 5000 Legacy Drive, Plano, Texas 75024. This Defendant does business in Texas and can be served with process through its Registered Agent for Service, Rewaz R. Chowdhury, at 5000 Legacy Drive, Suite 260, Plano, Texas 75024.

21. Defendant **Patriot Bancshares, Inc.** is a Texas Corporation with its principal place of business located at 7500 San Felipe, Houston, Texas 77063. This Defendant does business in Texas and can be served with process through its Registered Agent for Service, Leonard E. Parise, at 7500 San Felipe, Suite 1035, Houston, Texas 77063.

22. Defendant **Patriot Bank** is a wholly-owned banking subsidiary of Patriot Bancshares, Inc., with its principal place of business at 7500 San Felipe, Houston, Texas

77063. This Defendant does business in Texas and can be served with process through its Registered Agent for Service, Leonard E. Parise, Jr., at 7500 San Felipe, Suite 1035, Houston, Texas 77063.

23. Defendant **Prosperity Bancshares, Inc.** is a Texas corporation with its principal place of business located at 4295 San Felipe, Houston, Texas 77027. This Defendant does business in Texas and can be served with process through its Registered Agent for Service, David Zalman, at 4295 San Felipe, Houston, Texas 77027.

24. Defendant **Prosperity Bank** is a wholly-owned banking subsidiary of Prosperity Bancshares, Inc., with its principal place of business located at 1301 North Mechanic, El Campo, Texas 77437. This Defendant does business in Texas and can be served with process through its Registered Agent for Service, David Zalman, at 1301 North Mechanic, El Campo, Texas 77437.

III. JURISDICTION AND VENUE

25. 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.

26. 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 services and sold products in this District separately and independently, and with or for other infringing companies that are or were Defendants in related pending litigation in the United States District Court for the Eastern District of Texas.

27. 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.

IV. PATENT INFRINGEMENT

28. 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).

29. 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).

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

V. COUNT ONE – THE ‘988 DEFENDANTS

31. The Defendants 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.

32. Specifically, Defendants make, use, sell and offer to sell systems and methods for image-based check processing. These systems and methods involve Defendants capturing images of paper checks and processing those checks by electronic image.

33. Defendants Capital One Financial Corporation, Capital One, N.A., and Capital One Bank (USA), N.A. (the “Capital One Defendants”) infringe the '988 patent by making, using, selling, offering to sell, and/or importing, systems and methods for image-based check processing. Specifically, the Capital One Defendants infringe, literally and/or under the doctrine of equivalents, at least through their prime pass image capture and archive and remote deposit capture systems and processes. Image capture is performed on checks and other financial documents by and through Capital One’s prime pass image capture and remote deposit capture systems and processes. The check images are transmitted electronically, processed, archived and/or exchanged with other financial institutions by and/or within these image-based systems and processes. Customers of Capital One can view the check images through online banking services.

34. Defendants Regions Financial Corporation and Regions Bank (the “Regions Bank Defendants”) infringe the ‘988 patent by making, using, selling, offering to sell, and/or importing, systems and methods for image-based check processing. Specifically, the Regions Bank Defendants infringe, literally and/or under the doctrine of equivalents, at least through their prime pass image capture and archive and remote deposit capture (e.g. Regions Quick Deposit) systems and processes. Image capture is performed on checks and other financial documents by and through Regions Bank’s prime pass image capture and remote deposit capture systems and processes. The check images are transmitted electronically, processed, archived, and/or exchanged with other financial institutions by and/or within these image-based systems and processes. Customers of Regions Bank can view the check images through their online banking services.

35. Defendants American Bank of Texas, American Bank of Texas, N.A., and North American Bancshares, Inc. (the “American Bank of Texas Defendants”) infringe the ‘988 patent by making, using, selling, offering to sell, and/or importing, systems and methods for image-based check processing. Specifically, the American Bank of Texas Defendants infringe, literally and/or under the doctrine of equivalents, at least through their prime pass image capture and archive and remote deposit capture (e.g. ABT Remote Deposit) systems and processes. Image capture is performed on checks and other financial documents by and through American Bank of Texas’s prime pass image capture and remote deposit capture systems and processes. The check images are transmitted electronically, processed, archived, and/or exchanged with other financial institutions by and/or within these image-based systems and processes. Customers of the American Bank of Texas Defendants can view the check images through their online banking services.

36. Defendants Legacy Texas Bank and Legacy Texas Group, Inc. (the “Legacy Texas Bank Defendants”) infringe the ‘988 patent by making, using, selling, offering to sell, and/or importing, systems and methods for image-based check processing. Specifically, the Legacy Texas Bank Defendants infringe, literally and/or under the doctrine of equivalents, at least through their prime pass image capture and archive and remote deposit capture systems and processes. Image capture is performed on checks and other financial documents by and through Legacy Texas Bank’s prime pass image capture and remote deposit capture systems and processes. The check images are transmitted electronically, processed, archived, and/or exchanged with other financial institutions by and/or within these image-based systems and processes. Customers of Legacy Texas Bank can view the check images through their online banking services.

37. Defendants Patriot Bank and Patriot Bancshares, Inc. (the “Patriot Bank Defendants”) infringe the ‘988 patent by making, using, selling, offering to sell, and/or importing, systems and methods for image-based check processing. Specifically, the Patriot Bank Defendants infringe, literally and/or under the doctrine of equivalents, at least through their prime pass image capture and archive and remote deposit capture (e.g., FreedomLink™) systems and processes. Image capture is performed on checks and other financial documents by and through Patriot Bank’s prime pass image capture and remote deposit capture systems and processes. The check images are transmitted electronically, processed, archived, and/or exchanged with other financial institutions by and/or within these image-based systems and processes. Customers of Patriot Bank can view the check images through their online banking services.

38. Defendants Prosperity Bank and Prosperity Bancshares, Inc. (the “Prosperity Bank Defendants”) infringe the ‘988 patent by making, using, selling, offering to sell, and/or importing, systems and methods for image-based check processing. Specifically, the Prosperity Bank Defendants infringe, literally and/or under the doctrine of equivalents, at least through their prime pass image capture and archive and remote deposit capture systems and processes. Image capture is performed on checks and other financial documents by and through Prosperity Bank’s prime pass image capture and remote deposit capture systems and processes. The check images are transmitted electronically, processed, archived, and/or exchanged with other financial institutions by and/or within these image-based systems and processes. Customers of Prosperity Bank can view the check images through their online banking services.

39. In addition to the direct infringement identified, each Defendant is liable for contributory infringement and/or inducement of infringement, as well as joint infringement, because these Defendants direct their customers to infringe directly and participate with their customers in directly infringing when using the bank’s products and services identified herein. In addition, the Defendants have been and are actively inducing and/or contributing to the infringement of the '988 patent among themselves.

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

41. The Defendants’ infringement of the '988 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. 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.

VI. COUNT TWO – THE ‘137 DEFENDANTS

42. The Defendants 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.

43. Specifically, Defendants make, use, sell and offer to sell systems and methods for image-based check processing. These systems and methods involve Defendants capturing images of paper checks and processing those checks by electronic image.

44. Defendants Capital One Financial Corporation, Capital One, N.A., and Capital One Bank (USA), N.A. (the “Capital One Defendants”) infringe the ‘137 patent by making, using, selling, offering to sell, and/or importing, systems and methods for image-based check processing. Specifically, the Capital One Defendants infringe, literally and/or under the doctrine of equivalents, at least through their prime pass image capture and archive and remote deposit capture systems and processes. Image capture is performed on checks by and through Capital One’s prime pass image capture and remote deposit capture systems and processes. The check images are transmitted electronically, processed, archived and/or exchanged with other financial institutions by and/or within these image-based systems and processes. Customers of Capital One can view the check images through online banking services.

45. Defendants Regions Financial Corporation and Regions Bank (the “Regions Bank Defendants”) infringe the ‘137 patent by making, using, selling, offering to sell, and/or importing, systems and methods for image-based check processing. Specifically, the Regions Bank Defendants infringe, literally and/or under the doctrine of equivalents, at least through their prime pass image capture and archive and remote deposit capture (e.g. Regions Quick Deposit) systems and processes. Image capture is performed on checks by and through Regions Bank’s prime pass image capture and remote deposit capture systems and processes. The check images are transmitted electronically, processed, archived, and/or exchanged with other financial institutions by and/or within these image-based systems and processes. Customers of Regions Bank can view the check images through their online banking services.

46. Defendants American Bank of Texas, American Bank of Texas, N.A., and North American Bancshares, Inc. (the “American Bank of Texas Defendants”) infringe the ‘137 patent by making, using, selling, offering to sell, and/or importing, systems and methods for image-based check processing. Specifically, the American Bank of Texas Defendants infringe, literally and/or under the doctrine of equivalents, at least through their prime pass image capture and archive and remote deposit capture (e.g. ABT Remote Deposit) systems and processes. Image capture is performed on checks by and through American Bank of Texas’s prime pass image capture and remote deposit capture systems and processes. The check images are transmitted electronically, processed, archived, and/or exchanged with other financial institutions by and/or within these image-based systems and processes. Customers of the American Bank of Texas Defendants can view the check images through their online banking services.

47. Defendants Legacy Texas Bank and Legacy Texas Group, Inc. (the “Legacy Texas Bank Defendants”) infringe the ‘137 patent by making, using, selling, offering to sell, and/or importing, systems and methods for image-based check processing. Specifically, the Legacy Texas Bank Defendants infringe, literally and/or under the doctrine of equivalents, at least through their prime pass image capture and archive and remote deposit capture systems and processes. Image capture is performed on checks by and through Legacy Texas Bank’s prime pass image capture and remote deposit capture systems and processes. The check images are transmitted electronically, processed, archived, and/or exchanged with other financial institutions by and/or within these image-based systems and processes. Customers of Legacy Texas Bank can view the check images through their online banking services.

48. Defendants Patriot Bank and Patriot Bancshares, Inc. (the “Patriot Bank Defendants”) infringe the ‘137 patent by making, using, selling, offering to sell, and/or importing, systems and methods for image-based check processing. Specifically, the Patriot Bank Defendants infringe, literally and/or under the doctrine of equivalents, at least through their prime pass image capture and archive and remote deposit capture (e.g., FreedomLink™) systems and processes. Image capture is performed on checks by and through Patriot Bank’s prime pass image capture and remote deposit capture systems and processes. The check images are transmitted electronically, processed, archived, and/or exchanged with other financial institutions by and/or within these image-based systems and processes. Customers of Patriot Bank can view the check images through their online banking services.

49. Defendants Prosperity Bank and Prosperity Bancshares, Inc. (the “Prosperity Bank Defendants”) infringe the ‘137 patent by making, using, selling, offering to sell, and/or importing, systems and methods for image-based check processing. Specifically, the

Prosperity Bank Defendants infringe, literally and/or under the doctrine of equivalents, at least through their prime pass image capture and archive and remote deposit capture systems and processes. Image capture is performed on checks by and through Prosperity Bank's prime pass image capture and remote deposit capture systems and processes. The check images are transmitted electronically, processed, archived, and/or exchanged with other financial institutions by and/or within these image-based systems and processes. Customers of Prosperity Bank can view the check images through their online banking services.

50. In addition to the direct infringement identified, each Defendant is liable for contributory infringement and/or inducement of infringement, as well as joint infringement, because these Defendants direct their customers to infringe directly and participate with their customers in directly infringing when using the bank's products and services identified herein. In addition, the Defendants have been and are actively inducing and/or contributing to the infringement of the '137 patent among themselves.

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

52. The Defendants' infringement of 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. 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.

VII. VICARIOUS LIABILITY

53. 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 (most of these operating subsidiaries are wholly owned), directors and officers, 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.

VIII. DAMAGES

54. For the above-described infringement, Plaintiff 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.

55. DataTreasury contends that Defendants willfully infringed the Ballard patents. 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 found by the trier of fact.

56. 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 attorneys' fees and expenses.

IX. JURY DEMAND

57. 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 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 all damages to DataTreasury to which it is entitled for patent infringement;

E. That the Court award 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 attorney's fees incurred in this action; and

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

Dated: February 23, 2011

Respectfully submitted,



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