

Small Company Is Specializing in Suing Banks

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It is a company whose only business, other than one client, appears to be suing other companies.

The lawsuits contend patent infringement, yet the defendants are usually not electronic commerce companies, but a relatively new target: banks or others in financial services. The company, the DataTreasury Corporation of Melville, N.Y., has sued companies that it says have infringed on its two patents, which describe a way to store and retrieve transaction records electronically. Generally speaking, this is already the way that credit card transactions are processed and, increasingly, the way that paper checks are handled, too.

Among the dozen or so companies that DataTreasury has sued are [J. P. Morgan Chase](#) & company, one of the biggest banks; the [First Data Corporation](#), the biggest credit card processor; and the [Electronic Data Systems Corporation](#), another big processor.

DataTreasury declined to comment for this article, as did most of the companies it has sued.

The suits are wending their ways through courts in Texas that lawyers say are well known for upholding the rights of patent holders. They seek unspecified - but treble - damages, and to ban the companies from using the processing architecture that the patents describe.

This type of litigation is unusual for financial services, which has taken for granted that there are certain basic ways to process payments. Although banks did not bother to patent these systems, others did, especially after a 1998 court ruling broadened the definition of a patent to include business methods and processes. At the time, the United States Patent and Trademark Office was swamped with technology-related applications, and knew very little about the processing of payments.

"Obviously, no one has a patent that covers all checks or processing," said Michael D. Bednarek, an intellectual property lawyer who was once an examiner at the Patent and Trademark Office.

Companies like DataTreasury may have a patent on an aspect of the process, but "even that arcane feature may be something that has been done before," he said. "Patent officers aren't necessarily experts. Almost certainly, if they were aware of this, they wouldn't allow someone to get a patent on it."

A new check processing law, known as Check 21, raised the hopes of DataTreasury and other such patent holders because it gave banks broader permission to shred paper checks and keep electronic images of them. The law took effect in late October.

DataTreasury is clearly hoping for a bonanza. According to court documents, one of the two law firms originally hired to file the lawsuits is working for a contingency fee of 40 percent, with a cap that was raised from \$100 million to \$225 million.

So far, two companies have paid DataTreasury to settle: [Affiliated Computer Services](#), one of the nation's biggest information technology suppliers; and the [RDM Corporation](#), a small Canadian company that sells hardware and software for payment processing.

"It was a nuisance lawsuit to us, and it was the most efficient decision to settle it for a minimal amount," said Lesley Pool, a spokeswoman for Affiliated Computer. She would not say the amount, but an article in The Dallas Business Journal, which DataTreasury has linked to its Web site, said it was \$50,000.

As for RDM, DataTreasury issued a news release saying that the Canadian company would pay a fee for each check imaging terminal it deploys and "a per-click royalty for storage of electronic documents and check information, calculated at around a 50 percent royalty rate."

Before Affiliated Computer settled, it did answer the lawsuit in court, calling DataTreasury's patents invalid and unenforceable. In papers filed in the United States District Court for the Eastern District of Texas, Affiliated Computer accused DataTreasury of deceiving the Patent and Trademark Office by withholding background materials that would have shown that its ideas were not new.

DataTreasury, for its part, said in court filings that the two patents were the brainchild of its founder, an inventor named Claudio Ballard. The filings are silent on Mr. Ballard's professional credentials and background, but they do assert that he met at least once with people from J. P. Morgan Chase and that they appropriated his ideas.

The list of DataTreasury's defendants appears somewhat random, given that all major banks engage in check imaging and archiving, and that myriad companies handle credit card transactions. Among them are Viewpointe Archive Services, a company set up by some major banks and [I.B.M.](#) to store and retrieve digital images of checks for large banks; Ingenico, a French manufacturer of payment card terminals; and SVPCO, the check and electronic clearing service division of the Clearing House Payments Company.

To be sure, financial services companies routinely sue one another over patent infringement, and companies like I.B.M. and [Citigroup](#) hold multiple patents and collect huge licensing fees. The difference is that those companies run patent licensing operations as part of a business and sometimes waive fees if they think it will build a deeper relationship with a

customer, patent experts said. For a company like DataTreasury, these experts said, the point seems to be to walk away with as much money as possible.

(DataTreasury does have at least one processing client: Signature Bank, a New York subsidiary of Bank Hapoalim of Israel, said that it used DataTreasury on a limited basis to store check images and let clients retrieve them.)

The DataTreasury suits have cast an unusually wide net. [Zions Bancorporation](#), for example, whose NetDeposit subsidiary sells electronic check processing technology, has intervened on behalf of Electronic Data Systems, saying that it and not DataTreasury developed the system that E.D.S. uses.

"The idea of electronic check processing is quite old, and there's a great deal of prior art associated with the patent," said John J. Feldhaus, a lawyer representing Zions, referring to the background material that patent examiners use to determine if an idea is new.

But because juries are not sympathetic to big corporations, it is easy for a company like DataTreasury to come across as a David battling a Goliath, said Mr. Bednarek, the lawyer and former patent examiner. "Banks are inviting targets, because they have a lot of money and they can make settlements that are within their noise level that it would be impossible for other groups to do," he said. DataTreasury is represented by Nix, Patterson & Roach of Daingerfield, Tex., a plaintiff's law firm best known for the \$17 billion award it won for the state of Texas in tobacco litigation.

Several success stories may have inspired copycats. In banking, the most prominent example of a patent holder who made a business out of securing licensing fees is Ronald A. Katz, who is expected to have earned \$2 billion in fees by 2009, when some of his 52 patents expire. Among the companies that have paid him royalties are [Bank of America](#), [Microsoft](#), [Hewlett-Packard](#) and Wells Fargo.

Other patent holders are just starting to take to the courts. LML Payments Systems, a small check processor in Vancouver, British Columbia, announced in late October that it had secured a 2006 trial date for a patent infringement lawsuit against four companies, including the TeleCheck division of First Data and the Nova Information Systems division of [U.S. Bancorp](#).

The number of patent lawsuits related to payment processing is expected to grow rather than shrink, and industry executives say there will be a collective toll. As more patent holders step forward to exact fees, "it's like a death by a thousand cuts," said Octavio Marenzi, who leads a technology consulting firm that caters to banks. "Financial institutions are just going to get sued more and more."