

Patent Verdict Against US Bank Doubled To \$53M

By **Hilary Russ**

Law360, New York (September 28, 2010, 4:15 PM EDT) -- A federal judge has found that U.S. Bank NA should pay double a jury's award of nearly \$27 million in the first phase of a suit brought by DataTreasury Corp. alleging the bank infringed two patents related to digital check imaging and storage.

Judge David Folsom of the U.S. District Court for the Eastern District of Texas on Monday granted part of the plaintiffs' bid for enhanced damages, which are punitive, saying the bank's hefty \$54 billion size meant the larger payment would more effectively punish it in light of the jury's willful infringement finding.

The jury issued a \$26.6 million verdict in March against U.S. Bank and co-defendant Viewpointe Archive Services LLC, finding them jointly liable. Jurors also found the bank jointly liable with The Clearing House Payments Co. LLC. for about \$400,000.

U.S. Bank has a stake in both Viewpointe and Clearing House.

Because Viewpointe was directed and controlled by U.S. Bank, only the bank is on the hook for the additional \$26.6 million, Judge Folsom said.

In arguing against enhanced damages, U.S. Bank claimed it had a good faith belief that the patents at issue were either invalid or not infringed. The bank and Viewpointe also claimed that the plaintiff's joint theory of infringement didn't become manifest until 2008 after several years of litigation, according to the order.

In the same order Monday, the judge declined to declare the case exceptional and refused to grant attorneys' fees for the plaintiffs in Phase I of the litigation.

The order was one of at least nine that Judge Folsom issued Monday. Most of the other orders rejected the defendants' motions for judgment as a matter of law, leaving the jury's verdict largely intact.

But he did side with Viewpointe's argument that it couldn't be held liable for infringement because it was under the direction of the bank. The judge also granted Viewpointe's motion as it related to willful infringement and to joint and several liability.

He also ruled in favor of the defendants in their renewed motion for judgment of noninfringement as to one claim of U.S. Patent Number 5,910,988.

The March verdict came in the first of what were to be three trials to determine whether some of the nation's biggest banks infringed DataTreasury's patents. Other defendants in the 2006 suit include Wachovia Corp., Wells Fargo & Co. and Bank of America Corp.

DataTreasury alleges it has suffered about \$1.5 billion in total damages and that U.S. Bank is

liable for about \$200 million.

Viewpointe offers electronic payment and storage services to banks, while Clearing House processes checks and wire transfers.

DataTreasury has sued dozens of banks for patent infringement, and many have settled or taken out licenses, including JPMorgan Chase & Co.

Wells Fargo and Wachovia — which DataTreasury had claimed were liable for about \$100 million and \$30 million, respectively — settled the case in June, knocking out what would have been the second phase of trial.

Bank of America, SunTrust Banks Inc. and other banks are preparing for the Phase III trial in October.

U.S. Bank said it was "disappointed with the court's recent rulings" but that it remained confident that it didn't infringe the patents at issue and that the patents will ultimately be held invalid.

"U.S. Bank will pursue all avenues to protect its rights and will appeal," it said.

Representatives for DataTreasury did not reply to a request for comment, and a spokesman for Viewpointe declined to comment.

The patents-in-suit are U.S. Patent Numbers 5,910,988 and 6,032,137.

DataTreasury is represented by Nix Patterson & Roach LLP, Kendall Law Group LLP, Albritton Law Firm and Ostrow Kaufman LLP.

U.S. Bank is represented by Beck Redden & Secrest LLP and Foley & Lardner LLP. Viewpointe is represented by Haynes and Boone LLP and Skadden Arps Slate Meagher & Flom LLP. Clearing House is represented by Sullivan & Cromwell LLP and Fitzpatrick Cella Harper & Scinto.

The case is DataTreasury Corp. v. Wells Fargo & Co. et al., case number 06-072, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Ian Thoms and Mike Cherney