

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

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DATATREASURY CORP.,	:
	:
Plaintiff,	:
v.	: Civil Action No. 2-06-CV-72(DF)
	:
WELLS FARGO and COMPANY, et al.,	:
	:
Defendants.	:
	:
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**STATEMENT OF MATERIAL FACTS IN SUPPORT OF THE MOTION OF THE
CLEARING HOUSE PAYMENTS COMPANY L.L.C. FOR SUMMARY JUDGMENT
OF NON-INFRINGEMENT OF THE '007 PATENT**

Defendant The Clearing House Payments Company L.L.C. (“The Clearing House” or “TCH”), in accordance with Local Rule CV-56(a), submits the following Statement of Material Facts in support of its Motion for Summary Judgment of Noninfringement of U.S. Patent No. 5,265,007 (“the ’007 Patent”).

1. The application that led to the ’007 Patent (the “Application”) was filed on August 7, 1989.
2. On February 14, 1992, the United States Patent & Trademark Office (the “USPTO”) issued a Final Office Action rejecting then-pending claims 1 through 6 in the Application.
3. On June 2, 1992, the Patent Examiner reviewing the Application and counsel for the Applicants conducted a telephonic interview at which the USPTO agreed to withdraw the finality of the rejection it issued on February 14, 1992.

4. In an Office Action dated August 10, 1992, the USPTO rejected then-pending claims 1 through 6 of the Application. In response, the Applicants submitted an Amendment on December 8, 1992, to the USPTO, which canceled claims 1 through 6 and substituted claims 7 through 12. Included in the Applicants' December 8, 1992 Amendment were three figures illustrating the clearinghouse mechanism set forth in the Application.
5. On February 25, 1993, the USPTO issued a Final Office Action rejecting then-pending claims 7 through 12 in the Application. In response, on May 5, 1993, the Applicants submitted an Amendment After Final Action to the USPTO.
6. On May 20, 1993, the USPTO rejected then-pending claims 7 through 12 of the Application. In its Office Action, the USPTO indicated that it was maintaining its rejection of the pending claims pursuant to 35 U.S.C. § 103.
7. On June 29, 1993, the Applicants submitted a Second Amendment After Final Action. Then-pending claim 7 in the Application ultimately issued as claim 1 of the '007 Patent, and then-pending claim 10 ultimately issued as claim 4. In their Second Amendment After Final Action, the Applicants added the phrase "in real time in correspondence with the occurrence of an event" to proposed claim 7. The Applicants also added the phrase "in real time" to proposed claim 10.
8. On November 23, 1993, the USPTO issued the '007 Patent. The '007 Patent names John L. Barnhard, Jr., Thomas K. Brown, Terry L. Geer and John W. Liebersbach as inventors. From the face of the '007 Patent, the original assignee was Huntington Bancshares Incorporated. The '007 Patent issued with two independent claims.
9. On March 2, 2004, DataTreasury filed a Complaint against Small Value Payments Company L.L.C. ("SVPCo") asserting patent infringement. In responding to

DataTreasury's Complaint, The Clearing House, as the successor-in-interest to SVPCo, submitted a Corporate Disclosure Statement that stated that SVPCo did not exist, having been merged into TCH as of July 1, 2004.

10. On February 24, 2006, DataTreasury filed an Amended Complaint in Case No. 05-CV-00294, against defendants Citigroup, Inc. and Citibank, National Association (the "Citigroup Litigation") alleging infringement of, *inter alia*, the '007 Patent.

11. On March 28, 2006, DataTreasury filed an Amended Complaint against The Clearing House and fifty-six other defendants for patent infringement. In its Amended Complaint, DataTreasury has asserted six patents which collectively contain 224 claims.

12. On December 15, 2006, the parties in the Citigroup Litigation submitted their Joint Claim Construction and Prehearing Statement, in which the parties submitted their proposed construction of, *inter alia*, terms in the '007 Patent.

Dated: February 21, 2007

Respectfully submitted,

P.W.M. _____

Preston W. McGee
Flowers Davis, P.L.L.C.
815 Rice Road
Tyler, Texas 75703
(903) 534-8063

Of Counsel:

James H. Carter
James T. Williams
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
(212) 558-4000

Lawrence F. Scinto
Ronald A. Clayton
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
(212) 218-2254

*Attorneys for Defendant The Clearing House
Payments Company L.L.C.*