

EXHIBIT A

DataTreasury Corporation v. Wells Fargo & Company, et al.
PLAINTIFFS’ CONSTRUCTIONS FOR U.S. PATENT NO. 5,265,007

	Claim 1 '007		
1.	Preamble should be construed as limiting	Preamble is not limiting and the language in preamble does not need to be construed. See, e.g., Catalina Mktg. Int'l Inc. v. Coolsavings.com Inc., 289 F.3d 801 (Fed. Cir. 2002); DeGeorge v. Bernier, 768 F.2d 1318 (Fed. Cir. 1985).	
2.	<p>“pre-selected financial institutions”</p> <p>“pre-selected institutions”</p>	Financial institutions which have previously been selected to be members of or participants in the central check clearing system or a local clearinghouse as to clearing the financial instrument.	<p><u>Intrinsic Evidence</u></p> <p>‘007 Patent at Col.1:44-52; (“ It is an object of the invention to provide means whereby an association composed of participating banks in major cities is formed, and a national clearinghouse system is maintained. At lease one institutional participant in each city would have access to the local clearing house. Participating member banks would each agree to receive items drawn on the individual participant and on other members of its local clearinghouse in that city.”)</p> <p>2:30-37 (“this invention comprises a centralized clearinghouse system including an association of selected member financial institutions. A clearing system is maintained by a central control means in which debits and credits from one member to another are calculated on a predetermined periodic basis without regard to Federal Reserve System district settlements,”)</p> <p>2:66-3:7 (“In the association , all participants must be members of the national clearinghouse association, and all member banks must agree to</p>

			<p>accept and process items drawn on themselves and on banks within the local clearinghouse of which they are also a member. The local clearinghouse rule, means of exchange and procedures are entirely separate from that of the system. All member banks of the national must agree to use the central settlement system,")</p> <p>3:24-28 (" Selection criteria for members may consider geographic locations, time zones, commercial standing, and membership in other banking associations, as well as other criteria appropriate for a coordinated clearinghouse system.")</p> <p>5:13-18 ("Inter-city settlements by an association member participant banks situated in different time zones and Federal Reserve Districts are conveniently effected by the control means and the system of the invention.")</p> <p>7-34-38 ("The present system may be devised such that no separate fees are charged among members, and association membership is a shared cost. Each participant agrees to receive all items submitted by each other participant.")</p> <p>10:25 (" (1) Instruments drawn on that participant...")</p> <p><u>Extrinsic Evidence:</u></p> <p>Webster's Encyclopedic Unabridged Dictionary of the English Language, Random House, Inc., p. 1138 (1994) (defining "preselect" as "to select in advance; choose beforehand.")</p>
3.	"preselected site"	<p>This language is in the preamble and does not need to be construed.</p> <p>Alternatively, Plaintiff's construction is:</p> <p>The instrument processing location of a participating institution.</p>	

4.	<p>"means within each of the pre-selected institutions...for sending and receiving the instruments, said means for sending including means for physically transporting the instruments from an institution at one site to each other of the institutions at the other sites, said means for receiving including means for physically accepting the instruments transported from the other institutions" is in means-plus-function format subject to 35 U.S.C. § 112(6)</p>	<p>This term should be construed under 35 U.S.C. § 112(6).</p> <p><u>Function:</u> Sending and receiving the instruments.</p> <p><u>Corresponding Structure:</u> Air or ground transportation and a pre-selected institution's physical facility.</p>	<p><u>Intrinsic Evidence</u></p> <p>'007 Patent, at Fig. 1</p> <p>Col. 6:22-24 ("Communications to and from the switch may occur through conventional telephone links by modem connections and the like.")</p> <p>Prosecution History, Amendment after Final Office Action, p. 8</p> <p><u>Extrinsic Evidence</u></p> <p>Testimony from persons of ordinary skill in the art and/or individuals who manage such persons</p>
5.	<p>The "means for receiving" includes a further means-plus-function limitation of "means for receiving including means for physically accepting the instruments transported from the other institutions" subject to 35 U.S.C. § 112(6)</p>	<p>This term should be construed under 35 U.S.C. § 112(6).</p> <p><u>Function:</u> Physically accepting the instruments transported from other institutions.</p> <p><u>Corresponding Structure:</u> A pre-selected institution's physical facility and its relationship with air or ground transportation.</p>	<p><u>Intrinsic Evidence</u></p> <p>'007 Patent, at Fig. 1 (solid directional lines); Col. 1:66-2:1; ("Physical transport of the checks may be by any means provided that scheduling requirements of the system are maintained.")</p> <p>4:15-20 ("FIG. 1 shows an illustrative linkage of participants in the clearinghouse as presentation and payment functions are connected by physical transfer by air or ground transportation of the actual checks or drafts that are to be cleared and by electronic communications between the participants,...")</p> <p>5:61-63 ("Physical transport of the checks may be by any means provided that scheduling requirements of the system are maintained.")</p> <p><u>Extrinsic Evidence</u></p> <p>Testimony from persons of ordinary skill in the art and/or individuals who manage such persons</p>
6.	<p>"means within each of the pre-selected</p>	<p>This term should be construed under 35</p>	<p><u>Intrinsic Evidence</u></p>

	institutions...for sending to and receiving from a central processing unit connected to each institution information reporting in real time in correspondence with the occurrence of an event (a) the value of the instruments transported; and (b) the transport status of the instruments with respect to their having been (i) sent and (ii) received” is in means-plus-function format subject to 35 U.S.C. § 112(6)	U.S.C. § 112(6). <u>Function:</u> Sending to and receiving from a central processing unit connected to each institution information reporting in real time in correspondence with the occurrence of an event (a) the value of the instruments transported; and (b) the transport status of the instruments with respect to their having been (i) sent and (ii) received <u>Corresponding Structure:</u> Electronic communications links, which may include conventional telephone links by modem connections and the like, and software.	‘007 Patent, at Fig. 1 Col. 6:22-24 (“Communications to and from the switch may occur through conventional telephone links by modem connections and the like.”) Prosecution History, Amendment after Final Office Action, p. 8 <u>Extrinsic Evidence</u> Testimony from persons of ordinary skill in the art and/or individuals who manage such persons
7.	“central processing unit”	A conventional programmable computer.	<u>Intrinsic Evidence</u> ‘007 Patent, at Claim 4; 9:1-2 (“to a programmed central processing unit”) 9:10 (“a programmed central processing unit”) 1:62-66 (Objects of the Invention “In its function, the association would provide a central accounting means such as a conventional programmable computer or other central processing unit for the computation of the settlements among participating banks.”) 6:11-16 (“The switch may be an appropriately programmed digital computer having means for receipt and transmission of data as well as further arithmetic and algorithmic means, to reconcile or calculate debits and credits anticipated in an essentially “real time” basis among participating members.”)
8.	“real time”	The actual time during which something takes place.	<u>Intrinsic Evidence</u>

	<p>"in real time"</p>		<p>'007 Patent, at Col. 2:40 ("monitors on a real time basis the actual sending and...")</p> <p>6:60-64 ("A number of significant advantages are achieved through the system control means by which shipment and receipt schedules are fixed and "real time" reports of shipments and receipts are made to and accessible from the control means.")</p> <p>7:14-34 ("The control means monitors information about shipments and receipts from each participant, through the means each participant sends and received information from the others. Each participant can address the system to determine, at any point in time, anticipated (shipped and in transit) and received checks and the accompanying "cash letter" that is included in each shipment. (A "cash letter" is a banking industry term referring to a listing and a total, of all checks within a shipment.)</p> <p>Such information is of considerable importance to a participant's investment department, which requires such information to insure effective use of cash on hand and cash anticipated to be received, or to ensure sufficient cash is available to make settlements. Thus, the control means provides a real time indication of cash needs anticipated for purposes of Federal Reserve settlement.</p> <p>In contrast, the Federal Reserve system, typically is not as quick, and alternative correspondent systems are subject to higher fees."</p> <p><u>Extrinsic Evidence:</u></p> <p>Merriam Webster Online Dictionary at http://www.mw.com/dictionary/realtime (defining "<i>real time</i>" as "the actual time during which something takes place").</p>
<p>9.</p>	<p>"real time in correspondence with the occurrence of an event"</p>	<p>The actual time during which something takes place.</p>	<p><u>Intrinsic Evidence</u></p> <p>'007 Patent, at Col. 2:40 ("monitors on a real time basis the actual sending and...")</p>

			<p>6:60-64 (“A number of significant advantages are achieved through the system control means by which shipment and receipt schedules are fixed and “real time” reports of shipments and receipts are made to and accessible from the control means.”)</p> <p>7:14-34 (“The control means monitors information about shipments and receipts from each participant, through the means each participant sends and received information from the others. Each participant can address the system to determine, at any point in time, anticipated (shipped and in transit) and received checks and the accompanying “cash letter” that is included in each shipment. (A “cash letter” is a banking industry term referring to a listing and a total, of all checks within a shipment.)</p> <p>Such information is of considerable importance to a participant’s investment department, which requires such information to insure effective use of cash on hand and cash anticipated to be received, or to ensure sufficient cash is available to make settlements. Thus, the control means provides a real time indication of cash needs anticipated for purposes of Federal Reserve settlement.</p> <p>In contrast, the Federal Reserve system, typically is not as quick, and alternative correspondent systems are subject to higher fees.”</p> <p><u>Extrinsic Evidence:</u></p> <p>Merriam Webster Online Dictionary at http://www.mw.com/dictionary/realtime (defining “<i>real time</i>” as “the actual time during which something takes place”).</p>
10.	<p>“value of the instruments transported”</p> <p>“the value of the instruments sent and received”</p>	<p>The construed phrase should be just “<i>value of the instruments</i>” as that appears several times in Claim 1. The construction should be “the total dollar amount of the financial instruments being delivered.”</p>	<p><u>Intrinsic Evidence</u></p> <p>’007 Patent, at Col. 2:32-50 (“A clearing system is maintained by a central control means in which debits and credits owing from one member to another are calculated on a predetermined periodic basis without regard to Federal Reserve System district settlements in which the participates report</p>

			<p>the value and transit status of items to be cleared to the central control means; and in which the central control means monitors on a real time basis the actual sending and receipt of, and the dollar amount of items being cleared, as reported by the participants, and records the sending and receipt of the aggregate amount of the actual financial instruments transported, as reported by the participants, (subject to timely reporting of adjustments, returns and the like) and thereafter calculates the net settlements among the participants and initiates the corresponding debits and credits necessary to effect settlement among members in the Federal Reserve settlement systems.”)</p>
<p>11.</p>	<p>“means within each of the pre-selected institutions... for receiving from the central processing unit a calculated value (a) on a real time basis and (b) on a regular periodic settlement basis, information regarding the debits and credits owing to or payable by an institution with respect to each other of the institutions with regard to instruments sent and received” is in means-plus-function format subject to 35 U.S.C. § 112(6)</p>	<p>This term should be construed under 35 U.S.C. § 112(6).</p> <p><u>Function</u>: Receiving from the central processing unit a calculated value (a) on a real time basis and (b) on a regular periodic settlement basis, information regarding the debits and credits owing to or payable by an institution with respect to each other of the institutions with regard to instruments sent and received.</p> <p><u>Corresponding Structure</u>: Accounting system; related software; electronic communications links.</p>	<p><u>Intrinsic Evidence</u></p> <p>’007 Patent, at Col. 3:35-39 (“By means of the central accounting system, each member will be able electronically to inquire into the accounting system throughout the day, on a real time basis, to manage and reconcile funds in anticipation of settlement.”)</p> <p>5:25 (“At a predetermined time,”)</p> <p>4:50; (“Each participant in the proposed association...”)</p> <p>6:20-22; (“Software adapted to the system described herein may be devised by persons of skill in the financial programming computer arts.”) 1</p> <p>’007 Patent, at Fig. 1</p> <p>Col. 6:22-24 (“Communications to and from the switch may occur through conventional telephone links by modem connections and the like.”)</p> <p>Prosecution History, Amendment after Final Office Action, p. 8</p> <p><u>Extrinsic Evidence</u></p>

			Testimony from persons of ordinary skill in the art and/or individuals who manage such persons
12.	"settlement"	Settlement of credit and debit balances between institutions.	<p><u>Intrinsic Evidence</u></p> <p>Abstract; Col. 2:9-16 ("The detailed accounting entries required to accomplish a net settlement among participants on a periodic basis (typically daily) would be prepared by the central accounting means of the association. In the United States banking system, national settlement would be completed by debit and credit of the participant's accounts, or wire advice to the participant's accounts through the Federal Reserve settlement system.")</p> <p>2:32-39 ("A clearing system is maintained by a central control means in which debits and credits owing from one member to another are calculated on a predetermined periodic basis without regard to Federal Reserve System district settlements, in which the participants report the value and transit status of items to be cleared to the central control means; and in which the central control means monitors on a real time basis the actual sending and...")</p> <p>2:47-49 ("...settlements among the participants and initiates the corresponding debits and credits necessary to effect settlement among members in the Federal Reserve settlement systems.")</p> <p>3:5-9 ("All member banks of the national association must agree to use the central settlement system, and all settlements would either be same day settlements or based on some other acceptable or periodic or predetermined time schedule.")</p>
13.	"regular periodic settlement"	Settlement of credit and debit balances between	<u>Intrinsic Evidence</u>

	(This term has been shortened from previously identified “regular periodic settlement basis”)	institutions at predetermined time intervals.	<p>‘007 Patent, at Abstract</p> <p>Col. 2:9-16 (“The detailed accounting entries required to accomplish a net settlement among participants on a periodic basis (typically daily) would be prepared by the central accounting means of the association. In the United States banking system, national settlement would be completed by debit and credit of the participant’s accounts, or wire advice to the participant’s accounts through the Federal Reserve settlement system.”)</p> <p>2:32-39 (“A clearing system is maintained by a central control means in which debits and credits owing from one member to another are calculated on a predetermined periodic basis without regard to Federal Reserve System district settlements, in which the participants report the value and transit status of items to be cleared to the central control means; and in which the central control means monitors on a real time basis the actual sending and...”)</p> <p>2:47-49 (“...settlements among the participants and initiates the corresponding debits and credits necessary to effect settlement among members in the Federal Reserve settlement systems.”)</p>
14.	“means for continuous monitoring on a real time basis, as reported by each institution by the means for sending information within each institution (a) (i) the sending and receipt status of the instruments and (ii) the value of the instruments sent and received, as reported by each of the institutions, and (b) the status in transit of the instruments with respect to their having been (i) sent and (ii) received, as reported by each of the institutions, according to the reporting of an institution’s sending and receiving of	<p>This term should be construed under 35 U.S.C. § 112(6).</p> <p><u>Function</u>: Continuously monitoring on a real time basis, as reported by each institution by the means for sending information within each institution (a) (i) the sending and receipt status of the instruments and (ii) the value of the instruments sent and received, as reported by each of the institutions, and (b) the status in transit of the instruments with respect to their having been (i) sent and (ii) received, as reported by each of the institutions, according to the reporting of an</p>	<p><u>Intrinsic Evidence</u></p> <p>‘007 Patent, at Fig. 1</p> <p>Col. 1:62-65 (“In its function, the association would provide a central accounting means such as a conventional programmable computer or other central processing unit for the computation of the settlements among participating banks. “)</p> <p>2:39-45 (“central control means monitors on a real time basis the actual sending and receipt of, and the dollar amount of items being cleared, as reported by</p>

	instruments,” is in means-plus-function format subject to 35 U.S.C. § 112(6)	<p>institution’s sending and receiving of instruments.</p> <p><u>Corresponding Structure:</u> A conventional programmable computer or central processing unit [1:62-65; Fig. 1 (CPU)], electronic communications links [Fig. 1], which may include conventional telephone links by modem connections and the like [6:22-24], and related software</p>	<p>the participants, and records the sending and receipt of the aggregate amount of the actual financial instruments transported, as reported by the participants, . . . ”)</p> <p>6:9-14 (A “central control means” or “switch” that may be “an appropriately programmed digital computer having means for receipt and transmission of data.”)</p> <p>6:22-24; (“Communications to and from the switch may occur through conventional telephone links by modem connections and the like.”)</p> <p>6:61-64 (““real time” reports of shipment and receipt are made to and accessible from the control means”)</p> <p>7:14-20 (“The control means monitors information about shipment and receipts from each participant . . . Each participant can address the system to determine, at any point in time, anticipated (shipped and in transit) and received checks and the accompanying “cash letter” . . .”)</p> <p><u>Extrinsic Evidence</u></p> <p>Testimony from persons of ordinary skill in the art and/or individuals who manage such persons</p>
15.	“the sending and receipt status of the instruments”	<p>Information about the sending and receipt status of the instruments.</p> <p>Or, alternatively,</p> <p>Information about whether the instruments have been sent or received.</p>	<p><u>Intrinsic Evidence</u></p> <p>’007 Patent, at Col. 7:61-63 (“the transport status of the instruments with respect to their having been (i) sent and (ii) received”</p> <p>’Col. 2:37-39 (“...in which the participants report the value and transit status of items to be cleared to the central control means; ...”)</p> <p>4:15-22; (“FIG. 1 shows an illustrative linkage of participants in the clearinghouse as presentation and payment functions are connected by physical</p>

			<p>transfer by air or ground transportation of the actual checks or drafts that are to be cleared and by electronic communications between the participants, concerning information about the value and status of transport of the items sent by member banks.”)</p> <p>5:61-66; (“Physical transport of the checks may be by any means provided that scheduling requirements of the system are maintained. When the checks are dispatched to New York, the fact of transmittal, information about the transmittal of the checks and the total value transmitted are entered into the master association "switch".”)</p> <p>6:25-27; (“Immediately upon physical receipt of the checks, the New York participant enters information about the receipt of \$1,000,000.00 in checks into the switch.”)</p> <p>8:9-15 (“(a) (i) the sending and receipt status of the instruments and (ii) the value of the instruments sent and received, as reported by each of the institutions, and</p> <p>(b) the status in transit of the instruments with respect to their having been (i) sent and (ii) received,...”)</p>
16.	“the status in transit of the instruments”	Information about transport of financial instruments sent and received by the pre-selected financial institutions.	<p><u>Intrinsic Evidence</u></p> <p>‘007 Patent, at Col. 7:61-63 (“the transport status of the instruments with respect to their having been (i) sent and (ii) received”</p> <p>‘Col. 2:37-39 (“...in which the participants report the value and transit status of items to be cleared to the central control means; ...”)</p> <p>4:15-22; (“FIG. 1 shows an illustrative linkage of participants in the clearinghouse as presentation and payment functions are connected by physical transfer by air or ground transportation of the actual checks or drafts that are to be cleared and by</p>

			<p>electronic communications between the participants, concerning information about the value and status of transport of the items sent by member banks.”)</p> <p>5:61-66; (“Physical transport of the checks may be by any means provided that scheduling requirements of the system are maintained. When the checks are dispatched to New York, the fact of transmittal, information about the transmittal of the checks and the total value transmitted are entered into the master association "switch".”)</p> <p>6:25-27; (“Immediately upon physical receipt of the checks, the New York participant enters information about the receipt of \$1,000,000.00 in checks into the switch.”)</p> <p>8:9-15 (“(a) (i) the sending and receipt status of the instruments and (ii) the value of the instruments sent and received, as reported by each of the institutions, and</p> <p>(b) the status in transit of the instruments with respect to their having been (i) sent and (ii) received,...”)</p>
17.	<p>“means for calculating debits and credits, based on the value of the instruments sent and received by the institutions, as monitored on a real time basis from information reported by the institutions, of (a) the amount owing from or payable to each one of the pre-selected institutions with respect to each of the other institutions and (b) an aggregate amount owing from or payable to each one of the pre-selected institutions with respect to all of the other institutions” is in means-plus-function format subject to 35 U.S.C. § 112(6)</p>	<p>This term should be construed under 35 U.S.C. § 112(6).</p> <p><u>Function</u>: Calculating debits and credits among the participating members.</p> <p><u>Corresponding Structure</u>: Software on a conventional programmable computer or central processing unit (CPU).</p>	<p><u>Intrinsic Evidence</u></p> <p>‘007 Patent, Fig. 1</p> <p>Col. 1:62-65 (“In its function, the association would provide a central accounting means such as a conventional programmable computer or other central processing unit for the computation of the settlements among participating banks. ”)</p> <p>2:39-49 (“central control means monitors on a real time basis the actual sending and receipt of, and the dollar amount of items being cleared, as reported by the participants, and records the sending and receipt of the aggregate amount of the actual financial instruments transported, as reported by the participants, . . . and thereafter calculates the net</p>

			<p>settlements among the participants and initiates the corresponding debits and credits necessary to effect settlement among members . . .”)</p> <p>6:20-22 (“Software adapted to the system described herein may be devised by persons of skill in the financial programming computer arts.”)</p> <p>6:11-16 (“The switch may be an appropriately programmed digital computer having means for receipt and transmission of data as well as further arithmetic and algorithmic means, to reconcile or calculate debits and credits anticipated in an essentially ‘real time’ basis among the participating members.”)</p> <p><u>Extrinsic Evidence</u></p> <p>Testimony from persons of ordinary skill in the art and/or individuals who manage such persons</p>
18.	<p>“means for sending to each institution the information monitored with respect to instruments sent to an institution and the value of such instruments” is in means-plus-function format subject to 35 U.S.C. § 112(6)</p>	<p>This term should be construed under 35 U.S.C. § 112(6).</p> <p><u>Function:</u> Sending to each institution the information monitored with respect to the instruments sent to an institution and the value of such instruments.</p> <p><u>Corresponding Structure:</u> Electronic communications links, which may include conventional telephone links by modem connections and the like.</p>	<p><u>Intrinsic Evidence</u></p> <p>‘007 Patent, at Fig. 1</p> <p>Col. 6:22-24 (“Communications to and from the switch may occur through conventional telephone links by modem connections and the like.”)</p> <p>Prosecution History, Amendment after Final Office Action, p. 8</p> <p><u>Extrinsic Evidence</u></p> <p>Testimony from persons of ordinary skill in the art and/or individuals who manage such persons</p>
19.	<p>“a cycling means interrelated with the central processing unit (a) for controlling the physical transport of the financial instruments among the institutions and (b) for controlling the means for calculating such that a final calculation of the debits</p>	<p>This term should be construed under 35 U.S.C. § 112(6).</p> <p>Function: Cycling interrelated with the central processing unit (a) for controlling the physical transport of the financial instruments among the</p>	<p><u>Intrinsic Evidence</u></p> <p>‘007 Patent, at Col. 3:10-25 (“settlements accomplished by the national association described herein would preferably occur after the daily scheduled local clearinghouse settlements are</p>

<p>and credits owing from or payable to, with respect to each of the institutions with regard to each other of the institutions, comprising the occurrence of the regular periodic settlement among the institutions, does not occur until pre-determined local settlements by the institutions in the pre-selected sites with institutions that are not among the number of pre-selected financial institutions, are completed” is in means-plus-function format subject to 35 U.S.C. § 112(6)</p>	<p>institutions and (b) for controlling the means for calculating such that a final calculation . . . does not occur until predetermined local settlements . . . are completed.</p> <p><u>Corresponding Structure</u>: Rules and parameters regarding time scheduling where such rules and schedules are interrelated with the central processing unit (CPU).</p>	<p>accomplished.”)</p> <p>6:60-64; (“A number of significant advantages are achieved through the system control means by which shipment and receipt schedules are fixed and "real time" reports of shipment and receipt are made to and accessible from the control means.”)</p> <p>10:7-16; (“C. a time control for determining the time of physical transport of financial instruments between and among the participants according to a predetermined time cycle, and for determining the occurrence of a final settlement by the clearinghouse participants at a pre-determined time until after a time that certain pre-determined local settlements in the localities, by the participants in the localities, are completed. “)</p> <p>2:55-66 (“In the system of the invention, physical transport of financial instruments between and among the members is controlled by a predetermined time schedule, and the national settlement of the individual members of the association is achieved at a time not later than local settlements by members of the national association are completed. “)</p> <p>3:9-16 (“In the United States Federal Reserve System, settlements accomplished by the national association described herein would preferably occur after the daily scheduled local clearinghouse settlements are accomplished. Strict adherence to a time schedule prescribed by the association for providing debit and credit advice and the physical exchange of items is required. “)</p> <p>3:39-42 (“In accordance with a strictly defined time schedule, all activity must be confirmed by the receiving bank prior to final settlement.”)</p> <p>5:35-39 (“Thus, if membership in a check clearing association controlled by the means of the invention included 40 participants, each participant would usually send out in accordance with a fixed and predetermined processing time schedule, checks</p>
---	---	--

			<p>and accompanying cash letters to up to potentially 39 other participants.”)</p> <p>6:9-23 (“The "switch" is the central control means in which information about the Los Angeles transmittal is immediately entered. The switch may be an appropriately programmed digital computer having means for receipt and transmission of data as well as further arithmetic or algorithmic means, to reconcile or calculate debits and credits anticipated in an essentially "real time" basis among the participating members. Net settlement occurs at a single predetermined time each day when final debits and credits among the members are calculated and effected through Federal Reserve accounts. Software adapted to the system described herein may be devised by persons of skill in the financial programming computer arts.”)</p> <p><u>Extrinsic Evidence</u></p> <p>Testimony from persons of ordinary skill in the art and/or individuals who manage such persons</p>
20.	<p>“a final calculation of the debits and credits . . . , comprising the occurrence of the regular periodic settlement among the institutions, does not occur until pre-determined local settlements by the institutions in the pre-selected sites with institutions that are not among the number of pre-selected financial institutions, are completed”</p>	<p><i>“Final Calculation”</i>--No construction is necessary.</p> <p><i>“Debits and credits”</i>--Credits are the amounts owed by an institution; debits are the amounts payable to an institution.</p> <p><i>“Occurrence of the regular periodic settlement among the institutions”</i>--No construction is necessary.</p> <p><i>“Predetermined local settlements by the institutions in the preselected sites with institutions that are not among the number of preselected financial institutions”</i>--settlements between a user and non-user of the clearinghouse that occurs at a regular interval.</p>	<p><u>Intrinsic Evidence</u></p> <p>‘007 Patent, at 3:29-54 (“In a central accounting means, all national settlements among participants in the national association will be posted from the association’s account system to the accounts of the participants at the Federal Reserve System (or a pass through bank). The net of the day’s activity for each institution will reflect the bank’s position in the system with respect to other members. By means of the central accounting system, each member will be able electronically to inquire into the accounting system throughout the day, on a real time basis to manage and reconcile funds in anticipation of settlement. In accordance with a strictly defined time schedule, all activity must be confirmed by the receiving bank prior to final settlement. If a member or members can not settle, and unwinding mechanism is provided by a control means in the accounting system ; and the system would</p>

			recomputed the settlement without the inclusion of the items sent to the non-settling member or members. The national clearinghouse association does not itself effect settlement among the members; settlement occurs through the Federal Reserve System based on computations made by the control means...”)
	Claim 2 '007		
21.	<p>“means at an institution by which instruments are sorted by the site locality of each other of the pre-selected institutions and in which the instruments sorted by site are sent by site sort category to institutions at sites within the site sort categories” is in means-plus-function format subject to 35 U.S.C. § 112(6)</p>	<p>This term should be construed under 35 U.S.C. § 112(6).</p> <p><u>Functions:</u></p> <ol style="list-style-type: none"> 1) Sorting by the site locality of each other of the pre-selected institutions, 2) sending the instruments sorted by site category to institutions at sites within the site sort categories <p><u>Corresponding Structure:</u></p> <ol style="list-style-type: none"> 1) For the first function, sorters [7:3] or sort machines [4:46-7] 2) For the second function, a pre-selected institution’s physical facility (i.e., bank, member bank, receiving bank, Participating Bank B), and its relationship with air or ground transportation. [Fig. 1 (solid directional lines); 1:66-2:1; 4:15-22] 	<p><u>Intrinsic Evidence</u></p> <p>‘007 Patent, at 4:46-47 (“...permits the receiving bank thereafter to sort its local checks when its sort machines would otherwise not be in peak use.”)</p> <p>Fig. 1 (solid directional lines)</p> <p>Col. 1:66-2:1 (“Physical transport of the checks may be by any means provided that scheduling requirements of the system are maintained.”)</p> <p>4:15-20 (“FIG. 1 shows an illustrative linkage of participants in the clearinghouse as presentation and payment functions are connected by physical transfer by air or ground transportation of the actual checks or drafts that are to be cleared and by electronic communications between the participants,...”)</p> <p>5:61-63 (“Physical transport of the checks may be by any means provided that scheduling requirements of the system are maintained.”)</p> <p>6:25 (“immediately upon physical receipt of the checks”)</p> <p>4:41-48 (“In the preferred embodiment, sorting of checks between member and non-member local clearinghouse banks is done by the receiving bank. This permits the sending bank to assemble checks for sending without sorting, except for a first sort by</p>

			<p>member locality, and permits the receiving bank thereafter to sort is local checks when its sort machines would otherwise not be in peak use.”)</p> <p><u>Extrinsic Evidence</u></p> <p>Testimony from persons of ordinary skill in the art and/or individuals who manage such persons</p>
	Claim 4 '007		
22.	Preamble should be construed as limiting	<p>Preamble is not limiting and the language in preamble does not need to be construed. See, e.g., <i>Catalina Mktg. Int'l Inc. v. Coolsavings.com Inc.</i>, 289 F.3d 801 (Fed. Cir. 2002); <i>DeGeorge v. Bernier</i>, 768 F.2d 1318 (Fed. Cir. 1985).</p>	
23.	<p>“means at each of the participants (1) for sending and receiving financial instruments to be cleared and (2) for sending and receiving in real time information reporting the value and transit status of the financial instruments to be cleared, to a programmed central processing unit, and (3) for addressing the central processing unit by which a participant may determine in real time the information received by the processing unit with respect to that participant's relative credit and debit obligations with respect to other institutions arising from the instruments that are reported to be sent and received” is in means-plus-function format subject to 35 U.S.C. § 112(6)</p>	<p>This term should be construed under 35 U.S.C. § 112(6).</p> <p><u>(1) Function:</u> Sending and receiving financial instruments to be cleared. <u>Corresponding Structure:</u> Air or ground transportation and a pre-selected institution's physical facility (<i>i.e.</i>, bank, member bank, Participating Bank A/B, sending/receiving bank).</p> <p><u>(2) Function:</u> Sending and receiving in real time information reporting the value and transit status of the financial instruments to be cleared to a programmed central processing unit. <u>Corresponding Structure:</u> Electronic communications links, which may include conventional telephone links by modem connections and the like.</p> <p><u>(3) Function:</u> Addressing the central processing unit by which a participant may determine in real time the information received by the processing unit. <u>Corresponding Structure:</u> Electronic communications links, which may include</p>	<p><u>Intrinsic Evidence</u></p> <p>'007 Patent, at Col. 6:22-24 (“Communications to and from the switch may occur through conventional telephone links by modem connections and the like.”)</p> <p>6:11-13 (the “switch,” is described in the specification as being “an appropriately programmed digital computer having means for receipt and transmission of data . . .”)</p> <p>7:17-21 (“each participant can address the system to determine, at any point in time, anticipated (shipped and in transit) and received checks and the accompanying ‘cash letter’ that is included in each shipment.”)</p> <p>Prosecution History, Amendment after Final Office Action, p. 8</p> <p><u>Extrinsic Evidence</u></p> <p>Testimony from persons of ordinary skill in the art and/or individuals who manage such persons</p>

		conventional telephone links by modem connections and the like.	
24.	“transit status of the financial instruments to be cleared”	Information about the status in transit of the instruments, namely, whether the instrument has been sent and/or whether the instrument has been received.	<p><u>Intrinsic Evidence</u></p> <p>‘007 Patent, at Col. 7:61-63 (“the transport status of the instruments with respect to their having been (i) sent and (ii) received”</p> <p>‘Col. 2:37-39 (“...in which the participants report the value and transit status of items to be cleared to the central control means; ...”)</p> <p>4:15-22; (“FIG. 1 shows an illustrative linkage of participants in the clearinghouse as presentation and payment functions are connected by physical transfer by air or ground transportation of the actual checks or drafts that are to be cleared and by electronic communications between the participants, concerning information about the value and status of transport of the items sent by member banks.”)</p> <p>5:61-66; (“Physical transport of the checks may be by any means provided that scheduling requirements of the system are maintained. When the checks are dispatched to New York, the fact of transmittal, information about the transmittal of the checks and the total value transmitted are entered into the master association "switch".”)</p> <p>6:25-27; (“Immediately upon physical receipt of the checks, the New York participant enters information about the receipt of \$1,000,000.00 in checks into the switch.”)</p> <p>8:9-15 (“(a) (i) the sending and receipt status of the instruments and (ii) the value of the instruments sent and received, as reported by each of the institutions, and</p>

			(b) the status in transit of the instruments with respect to their having been (i) sent and (ii) received,..."
25.	"means for calculating debits and credits owing from or payable (1) to one member to another member and (2) from or to one member to all other members, based upon the value of instruments reported by a participant as having been sent and received" is in means-plus-function format subject to 35 U.S.C. § 112(6)	<p>This term should be construed under 35 U.S.C. § 112(6).</p> <p><u>Function:</u> Calculating debits and credits among the participating members.</p> <p><u>Corresponding Structure:</u> Software on a conventional programmable computer or central processing unit (CPU).</p>	<p><u>Intrinsic Evidence</u></p> <p>'007 Patent, at Fig. 1</p> <p>Col. 6:20-22 ("Software adapted to the system described herein may be devised by persons of skill in the financial programming computer arts.")</p> <p>2:39-49 ("central control means monitors on a real time basis the actual sending and receipt of, and the dollar amount of items being cleared, as reported by the participants, and records the sending and receipt of the aggregate amount of the actual financial instruments transported, as reported by the participants, . . . and thereafter calculates the net settlements among the participants and initiates the corresponding debits and credits necessary to effect settlement among members . . .")</p> <p>1:62-65 ("The clearinghouse is independent of conventional geographical and institutional boundaries such as Federal Reserve districts, as well as time zones.")</p> <p>6:11-16 ("The switch may be an appropriately programmed digital computer having means for receipt and transmission of data as well as further arithmetic and algorithmic means, to reconcile or calculate debits and credits anticipated in an essentially 'real time' basis among the participating members.")</p> <p><u>Extrinsic Evidence</u></p> <p>Testimony from persons of ordinary skill in the art and/or individuals who manage such persons</p>
26.	"means for receiving and recording a	This term should be construed under 35 U.S.C. §	<u>Intrinsic Evidence</u>

	<p>participant's reports of the value and transit status of the instruments to be cleared as having been sent and received with respect to all participants in the system" is in means-plus-function format subject to 35 U.S.C. § 112(6)</p>	<p>112(6).</p> <p><u>Function</u>: receiving and recording a participant's reports of the value and transit status of the instruments to be cleared as having been sent and received with respect to all participants in the system</p> <p><u>Corresponding Structure</u>: Software associated with an accounting system running on the central processing unit (CPU).</p>	<p>'007 Patent, at Col. 6:20-24 ("Software adapted to the system described herein may be devised by persons of skill in the financial programming computer arts.")</p> <p>1:62-66 ("the association would provide a conventional programmable computer or other central processing unit")</p> <p>2:2-4 ("received electronically by the association's accounting means")</p> <p>2:11-12 ("prepared by the central accounting means of the association")</p> <p>3:31 ("the association's accounting system")</p> <p><u>Extrinsic Evidence</u></p> <p>Testimony from persons of ordinary skill in the art and/or individuals who manage such persons</p>
27.	<p>"means for monitoring on a real time as reported basis (1) the actual sending from and receipt by a participant of the value of instruments being cleared as reported by the participants, and (2) the sending from and receipt by a participant of the actual instruments being cleared, said means for monitoring being operatively interconnected to the means for calculating whereby debits and credits owing from one member to another may be determined and monitored on a continuous basis in real time as reports of the value and transit status of the instruments to be cleared are reported by the participants and received by the processing unit" is in means-plus-function format subject to 35 U.S.C. § 112(6)</p>	<p>This term should be construed under 35 U.S.C. § 112(6).</p> <p><u>Function</u>: Monitoring on a real time as reported basis.</p> <p><u>Corresponding Structure</u>: Software associated with a conventional programmable computer or central processing unit [Fig. 1 (CPU)] operably interconnected with software associated with the accounting system on the CPU.</p>	<p><u>Intrinsic Evidence</u></p> <p>'007 Patent, at Col. 6:20-22 ("Software adapted to the system described herein may be devised by persons of skill in the financial programming computer arts.")</p> <p>1:62-65; ("The clearinghouse is independent of conventional geographical and institutional boundaries such as Federal Reserve districts, as well as time zones.")</p> <p>Fig. 1</p> <p>6:9-14 (The specification discloses a "central control means" or "switch" that may be "an appropriately programmed digital computer having means for receipt and transmission of data.")</p> <p>2:39-45 (The "central control means monitors on a real time basis the actual sending and receipt of,</p>

			<p>and the dollar amount of items being cleared, as reported by the participants, and records the sending and receipt of the aggregate amount of the actual financial instruments transported, as reported by the participants, . . . ”)</p> <p>6:61-64 (“‘real time’ reports of shipment and receipt are made to and accessible from the control means”);</p> <p>7:14-20 (“The control means monitors information about shipment and receipts from each participant . . . Each participant can address the system to determine, at any point in time, anticipated (shipped and in transit) and received checks and the accompanying “cash letter” . . .”)</p> <p><u>Extrinsic Evidence</u></p> <p>Testimony from persons of ordinary skill in the art and/or individuals who manage such persons</p>
28.	<p>“a time control for determining the time of physical transport of financial instruments between and among the participants according to a predetermined time cycle, and for determining the occurrence of a final settlement by the clearinghouse participants at a pre-determined time until after a time that certain pre-determined local settlements in the localities, by the participants in the localities, are completed” is in means-plus-function format subject to 35 U.S.C. § 112(6)</p>	<p>Plaintiff contends that this term is not governed by 35 USC § 112(6).</p> <p>Predetermined time schedule.</p>	<p><u>Intrinsic Evidence</u></p> <p>‘007 Patent, at Col. 2:55-58 (“In the system of the invention, physical transport of financial instruments between and among the members is controlled by a predetermined time schedule . . .”)</p> <p>3:13-16 (“Strict adherence to a time schedule prescribed by the association for providing debit and credit advice and the physical exchange of items is required.”)</p> <p>5:37-39 (“each participant would usually send out in accordance with a fixed and predetermined processing time schedule”).</p> <p><u>Extrinsic Evidence</u></p> <p>Webster’s Encyclopedic Unabridged Dictionary of the English Language, Random House, Inc., p. 1132 (1994) (defining “predetermine” as “to settle or decide in advance”)</p>

29.	<p>“determining the time of physical transport of financial instruments between and among the participants according to a predetermined time cycle”</p>	<p>Predetermined time schedule.</p>	<p><u>Intrinsic Evidence</u></p> <p>’007 Patent, at Col. 2:55-58 (“In the system of the invention, physical transport of financial instruments between and among the members is controlled by a predetermined time schedule . . .”)</p> <p>3:13-16 (“Strict adherence to a time schedule prescribed by the association for providing debit and credit advice and the physical exchange of items is required.”)</p> <p>5:37-39 (“each participant would usually send out in accordance with a fixed and predetermined processing time schedule”).</p> <p><u>Extrinsic Evidence</u></p> <p>Webster’s Encyclopedic Unabridged Dictionary of the English Language, Random House, Inc., p. 1132 (1994) (defining “predetermine” as “to settle or decide in advance”)</p>
30.	<p>“[determining] the occurrence of a final settlement by the clearinghouse participants at a pre-determined time until after a time that certain predetermined local settlements in the localities, by the participants in the localities, are completed”</p>	<p>Establishing by participant rules settlement time, that accommodates processing, procedures, and transportation needs of all participants regardless of location and time zone. This final settlement occurs after certain predetermined local settlements.</p>	<p><u>Intrinsic evidence:</u></p> <p>’007 Patent, at Col. 4:15-40 (“FIG. 1 shows an illustrative linkage of participants in the clearinghouse as presentation and payment functions are connected by physical transfer by air or ground transportation of the actual checks or drafts that are to be cleared and by electronic communications between the participants, concerning information about the value and status of transport of the items sent by member banks. In the example of FIG. 1, the relative positions of participating banks A and B with respect to each other are monitored by the central control means of the National Clearing Association. Bank B may participate in a local clearinghouse association that includes a number of banks that are not members</p>

			<p>of the National Clearing Association. The “On us” reference in FIG. 1 denotes items drawn on bank B that are not exchanged in the local clearinghouse. After local settlement by bank B and the physical transfer of items in the local clearing association, the National Clearing Association will calculate the respective debit/credit balances of bank A and B (not only to each other but to all other participating banks) and transmit the same information to the Federal Reserve for the national banking system settlement. Settlement in the National Clearing Association is wholly independent of settlement or liability of settlement in the local clearinghouse.”)</p> <p>10:7-16 (“C. a time control for determining the time of physical transport of financial instruments between and among the participants according to a predetermined time cycle, and for determining the occurrence of a final settlement by the clearinghouse participants at a pre-determined time until after a time that certain pre-determined local settlements , in the locations, by the participants in the localities, are complete.”)</p>
31.	“participants”	“members of the clearinghouse association”	<p><u>Intrinsic Evidence</u></p> <p>‘007 Patent at Col.1:44-52;(“ It is an object of the invention to provide means whereby an association composed of participating banks in major cities is formed, and a national clearinghouse system is maintained. At lease one institutional participant in each city would have access to the local clearing house. Participating member banks would each agree to receive items drawn on the individual participant and on other members of its local clearinghouse in that city.”)</p> <p>2:30-37 (“this invention comprises a centralized clearinghouse system including an association of selected member financial institutions. A clearing system is maintained by a central control means in which debits and credits from one member to another are calculated on a predetermined periodic basis without regard to Federal Reserve System district settlements,”)</p>

			<p>2:66-3:7 (“In the association , all participants must be members of the national clearinghouse association, and all member banks must agree to accept and process items drawn on themselves and on banks within the local clearinghouse of which they are also a member. The local clearinghouse rule, means of exchange and procedures are entirely separate from that of the system. All member banks of the national must agree to use the central settlement system.”)</p> <p>3:24-28 (“ Selection criteria for members may consider geographic locations, time zones, commercial standing, and membership in other banking associations, as well as other criteria appropriate for a coordinated clearinghouse system.”)</p> <p>5:13-18 (“Inter-city settlements by an association member participant banks situated in different time zones and Federal Reserve Districts are conveniently effected by the control means and the system of the invention.”)</p> <p>7-34-38 (“The present system may be devised such that no separate fees are charged among members, and association membership is a shared cost. Each participant agrees to receive all items submitted by each other participant.”)</p> <p>10:25 (“ (1) Instruments drawn on that participant...”)</p>
32.	“final settlement”	“final settlement of credit and debit balances between institutions.”	<p><u>Intrinsic Evidence</u></p> <p>’007 Patent, at 3:29-54 (“In a central accounting means, all national settlements among participants in the national association will be posted from the association’s account system to the accounts of the participants at the Federal Reserve System (or a pass through bank). The net of the day’s activity for each institution will reflect the bank’s position in the system with respect to other members. By means</p>

			<p>of the central accounting system, each member will be able electronically to inquire into the accounting system throughout the day, on a real time basis to manage and reconcile funds in anticipation of settlement. In accordance with a strictly defined time schedule, all activity must be confirmed by the receiving bank prior to final settlement. If a member or members can not settle, and unwinding mechanism is provided by a control means in the accounting system ; and the system would recomputed the settlement without the inclusion of the items sent to the non-settling member or members. The national clearinghouse association does not itself effect settlement among the members; settlement occurs through the Federal Reserve System based on computations made by the control means..”)</p>
--	--	--	---