

EXHIBIT D

DataTreasury Corporation v. Wells Fargo & Company, et al.
PLAINTIFFS' CONSTRUCTIONS FOR U.S. PATENT NO. 5,930,778

No.	'778 Claim Terms for Construction	DTC Proposed Construction	Intrinsic and Extrinsic Evidence
	Claim 1		
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.	"received . . . by a payee at a location convenient to a payee's item capture facility and remote from the payee's depository bank"	This language is in the preamble and does not need to be construed.	
3.	"payee's item capture facility"	<p>This language is in the preamble and does not need to be construed.</p> <p>Alternatively, if construed, this term should be construed as:</p> <p>Site where remittance processing or deposit processing functions of the payee occur.</p>	<p><u>Intrinsic Evidence</u></p> <p>'778 Patent, at Col. 7:5-15 ("...through a functional component of the receiving organization known as remittance processing in retail organizations, or deposit processing when received by a bank. Item capture 4 in FIG. 1 represents these functions. Item capture 4 will typically occur at a location convenient to the payee's accounting functions 5. Check receiving and item capture functions may be located at strategic bill collection points within the payee's service region. Most typically, the check receiving and item capture function of the payee will compare a payment stub with the enclosed check and send the check on for further processing.")</p>

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4.	"payee's depository bank"	The bank of first deposit where payee has an account, and where the physical instruments would otherwise be delivered.	<p><u>Intrinsic Evidence</u></p> <p>'778 Patent, at Col. 9:10-15 ("The information from the electronic scanning 6 performed at the payee's location is transmitted via a suitable communication link 11 to the depository bank 10. At the depository bank, the appropriate adjustments of the payee's account balances by the depository bank are carried out 13.")</p> <p>6:24-37 ("The present invention is a system for processing checks and other financial instruments. A check payee, as an agent of the depository bank processes the checks at their point of receipt as an adjunct of the payee's internal invoice accounting system. The payee performs according to criteria and procedures mandated by the payee's depository bank, at a location remote from the bank's conventional collection and deposit processing facilities. The processes of the present invention expedite the processing of checks by the payee and the payee's depository bank; the submission of the checks for payment into the payment system; and the deposit and availability of funds represented by the checks into a depositor's account.")</p>
5.	<p>"at a location"</p> <p>"at the location"</p> <p>"said location"</p>	<p>"At a location" is in the preamble, which does not need to be construed.</p> <p>"At the location" - plain meaning.</p>	

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		<p><u>See, e.g.</u> 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).</p>	
6.	"scanner"	An electronic reader that reads at least MICR data	<p><u>Intrinsic Evidence</u></p> <p>'778 Patent, at 7:40-47 ("In this step, the check is scanned by a suitable reader. (This processing step may also include verification of the data collected electronically by human operator comparison of the electronic data with the physical check and the payment stub.) The data thus collected will typically include the MICR (Magnetic Ink Character Recognition) data from the MICR lines of the checks.")</p>
7.	"means for associating said financial information with the payee's records of accounts based upon information derived from the payment stub accompanying the instrument for further processing by the payee" 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> Associating said financial information with the payee's records of accounts based upon information derived from the payment stub accompanying the instrument for further processing by the payee.</p> <p><u>Corresponding Structure:</u> the accounting system and personnel [Fig. 2, 5].</p>	<p><u>Intrinsic Evidence:</u></p> <p>'778 Patent, at Col. 1:28-41("This invention expedites the processing of a deposit by the payee of an instrument or payment order into a collecting and clearing bank (referred to generally as the payee bank, bank of first deposit, or depository bank). Such instruments and payment orders are prepared, processed, and submitted into the check payment system and are typically paper checks and other cash items. The deposit and collection of the funds represented by these instruments are expedited according to the system of the present invention. Benefits of the present invention are realized by banking customers that receive as</p>

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			<p>payees large numbers of paper checks to process on a continuing basis, such as utilities, bill payment companies, credit card companies, mail order processors, or other large commercial entities.”)</p> <p>Fig. 1</p> <p>7:22-24 (“Payment stub processing and internal accounting procedures for the reporting and allocation of payments, are an adjunct of the funds collection system of the invention herein.”)</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>
8.	“imager”	A device for creating an electronic representation of an instrument.	<p><u>Intrinsic Evidence</u></p> <p>'778 Patent, at Fig. 2, Col. 8:10-27 (“In FIG. 1, box 7 indicates the creation of an image of the check for archival storage 8 prior to possible disposition of the paper instrument 9. An image of the physical check is created. This image is preserved and may be reproduced as a copy of the check for purposes of signature comparison, amount verification, etc. if needed. The image may be an optical or electronic gray-scale or color image of the check maintained in archival storage in pixel-by-pixel digital, optical, magnetic, electronic, fully optical or other storage technology from which information can</p>

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			<p>be derived. Alternative storage mechanisms include microfilm, video tape, laser disc or other tape or direct image storage technology. This functional block 8 of FIG. 1 is not limited to any particular technical embodiment; a form of image of the actual physical check is stored, capable of later retrieval, from which detailed information related to the check and its visual appearance may be displayed. Following the storage of the check, disposal of the paper instrument 9 may occur.”)</p> <p>8:59-67 (“The image function 7 is depicted in FIG. 1 separately from the electronic scanning function 6 for clarity in graphical depiction. The electronic scanning for extraction of the data from the MICR line, etc., may be combined with the imaging of the check to reduce check stacking, feeding, positioning and other mechanical manipulation steps for the proper items. Whether scanning 6 and imaging 7, in FIGS. 1 and 2, are combined in one piece of equipment, or more than one, is a matter of convenience.”)</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>
9.	“imager for creating a second record translatable into a visually perceptible image of each of said financial instruments” is in	A device that creates an electronic representation of an instrument.	<p><u>Intrinsic Evidence</u></p> <p>Col. 8:10-27 (“In FIG. 1, box 7 indicates</p>

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	means-plus-function format subject to 35 U.S.C. § 112(6).		<p>the creation of an image of the check for archival storage 8 prior to possible disposition of the paper instrument 9. An image of the physical check is created. This image is preserved and may be reproduced as a copy of the check for purposes of signature comparison, amount verification, etc. if needed. The image may be an optical or electronic gray-scale or color image of the check maintained in archival storage in pixel-by-pixel digital, optical, magnetic, electronic, fully optical or other storage technology from which information can be derived. Alternative storage mechanisms include microfilm, video tape, laser disc or other tape or direct image storage technology. This functional block 8 of FIG. 1 is not limited to any particular technical embodiment; a form of image of the actual physical check is stored, capable of later retrieval, from which detailed information related to the check and its visual appearance may be displayed. Following the storage of the check, disposal of the paper instrument 9 may occur.”)</p> <p>8:59-67 (“The image function 7 is depicted in FIG. 1 separately from the electronic scanning function 6 for clarity in graphical depiction. The electronic scanning for extraction of the data from the MICR line, etc., may be combined with the imaging of the check to reduce check stacking, feeding, positioning and other mechanical manipulation steps for the proper items. Whether scanning 6 and imaging 7, in FIGS. 1 and 2, are</p>

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			<p>combined in one piece of equipment, or more than one, is a matter of convenience.”)</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 2		
10.	<p>“means for adding to the record of each instrument an indorsement indicia on behalf of each of payee and the bank” 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>: Adding to the record of each instrument an indorsement indicia.</p> <p><u>Corresponding Structure</u>: A sorter.</p>	<p><u>Intrinsic Evidence</u></p> <p>’778 Patent, at Col. 11:36-41 (“The various categories into which the checks are thus sorted are denoted schematically by pockets 19 in the sorter of FIG. 2. In this embodiment, processing 18 will typically include indorsing the checks, both for the payee and for the depository bank at the payee's location.”)</p> <p>5:13-21 (“Mechanical sorting of the paper checks is performed at a first (the payee's) location according to predetermined sort pattern categories specified by the payee's depository bank. Indorsements on behalf of the payee and the depository bank with respect to each instrument received are applied to each instrument. Other information such as the amount and/or a document identification number may also be imprinted on the instrument. In</p>

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			<p>the sorting process, a mechanical sorter assembles the sorted instruments into...")</p> <p>Fig. 2</p>
	Claim 5		
11.	Preamble should be construed as limiting.	Preamble is not limiting and the language in preamble does not need to be construed. <i>See, e.g., 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).	
12.	"means for associating said information with the payee's records of accounts corresponding to the payment form" 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>: Associating said financial information with payees' record of accounts corresponding to the payment form.</p> <p><u>Corresponding Structure</u>: The accounting system and personnel [Fig. 2, 5].</p>	<p><u>Intrinsic Evidence</u></p> <p>'778 Patent, at Col. 1:28-41("This invention expedites the processing of a deposit by the payee of an instrument or payment order into a collecting and clearing bank (referred to generally as the payee bank, bank of first deposit, or depository bank). Such instruments and payment orders are prepared, processed, and submitted into the check payment system and are typically paper checks and other cash items. The deposit and collection of the funds represented by these instruments are expedited according to the system of the present invention. Benefits of the present invention are realized by banking customers that receive as payees large numbers of paper checks to process on a continuing basis, such as utilities, bill payment companies, credit card companies, mail order</p>

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			<p>processors, or other large commercial entities.”)</p> <p>Fig. 1</p> <p>7:22-24 (“Payment stub processing and internal accounting procedures for the reporting and allocation of payments, are an adjunct of the funds collection system of the invention herein.”)</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>
13.	<p>“means at said facility for applying to each of said instruments a separate indorsement on behalf of each of said payee and said depository bank” 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>: Applying to each of said instruments a separate indorsement.</p> <p><u>Corresponding Structure</u>: The mechanical sorter.</p>	<p><u>Intrinsic Evidence</u></p> <p>'778 Patent, at Claim 2 (“2. The system of claim 1 including means for adding to the record of each instrument an indorsement indicia on behalf of each of payee and the bank. “)</p> <p>12:52-57 (“The particular order of operations shown in FIG. 2 is not intended to exclude other equivalent sequences. For example, the electronic scanning of the checks 6 may be performed by the same physical equipment at substantially the same time as the mechanical sorting and indorsing 18 and 19, and the preparation of cash letters 20.”)</p> <p><u>Extrinsic Evidence</u></p>

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			Testimony from persons of ordinary skill in the art and/or individuals who manage such persons
14.	"Applying to each of said instruments a separate indorsement on behalf of each of said payee and said depository bank"	<p>This term does not need to be construed as a phrase.</p> <p>"Separate" should be construed as "one on behalf of the payee, and one on behalf of the collecting and clearing bank";</p> <p>"indorsement" should be construed as "payment instructions and the identity of the indorser applied to an instrument."</p> <p>"Depository bank" should be construed as "the bank of first deposit where the payee has an account."</p> <p>The rest of the phrase is plain meaning</p>	<p><u>Intrinsic Evidence</u></p> <p>'778 Patent, at Col. 6:24-37 ("The present invention is a system for processing checks and other financial instruments. A check payee, as an agent of the depository bank processes the checks at their point of receipt as an adjunct of the payee's internal invoice accounting system. The payee performs according to criteria and procedures mandated by the payee's depository bank, at a location remote from the bank's conventional collection and deposit processing facilities. The processes of the present invention expedited the processing of checks by the payee and the payee's depository bank; the submission of the checks for payment into the payment system; and the deposit and availability of funds represented by the checks into a depositor's account.")</p> <p>11:36-44 ("The various categories into which the checks are thus sorted are denoted schematically by pockets 19 in the sorter of FIG. 2. In this embodiment, processing 18 will typically include indorsing the checks, both for the payee and for the depository bank at the payee's location. An institutional indorsement is conventionally applied as a payment instruction and includes the identity of the indorser on the</p>

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			<p>reverse side of a check.”)</p> <p>9:10-15 (“The information from the electronic scanning 6 performed at the payee’s location is transmitted via suitable communication link 11 to the depository bank 10. At the depository bank, the appropriate adjustments of the payee’s account balances by the depository bank are carried out 13.”).</p> <p>11:38-44 (“In this embodiment, processing 18 will typically include indorsing the checks, both for the payee and for the depository bank at the payee’s location. An institutional indorsement is conventionally applied as a pyment instruction and included the identity of the indorser on the reverse side of a check.”).</p> <p>12:52-57 (“The particular order of operations shows in FIG. 2 is not intended to exclude other equivalent sequences. For example the electronic scanning of the checks 6 may be performed b the same physical equipment at substantially the same time as the mechanical sorting and indorsing 18 and 19, and the preparation of cash letters 20.”)</p>
15.	“separate indorsement on behalf of each of said payee and said depository bank”	<p>“<i>Indorsement</i>”: Payment instructions and the identity of the indorser applied to an instrument.</p> <p>“<i>Separate</i>”: One on behalf of the payee, and one on behalf of the collecting and clearing bank.</p>	<p><u>Intrinsic Evidence</u></p> <p>'778 Patent, at Claim 2;</p> <p>6:24-37 (“The present invention is a system for processing checks and other financial instruments. A check payee, as an agent of the depository bank</p>

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		<p><i>“Depository bank”</i>: The bank of first deposit where the payee has an account.</p>	<p>processes the checks at their point of receipt as an adjunct of the payee’s internal invoice accounting system. The payee performs according to criteria and procedures mandated by the payee’s depository bank, at a location remote from the bank’s conventional collection and deposit processing facilities. The processes of the present invention expedited the processing of checks by the payee and the payee’s depository bank; the submission of the checks for payment into the payment system; and the deposit and availability of funds represented by the checks into a depositor’s account.”)</p> <p>11:36-44 (“The various categories into which the checks are thus sorted are denoted schematically by pockets 19 in the sorter of FIG. 2. In this embodiment, processing 18 will typically include indorsing the checks, both for the payee and for the depository bank at the payee’s location. An institutional indorsement is conventionally applied as a payment instruction and includes the identity of the indorser on the reverse side of a check.”)</p> <p>9:10-15 (“The information from the electronic scanning 6 performed at the payee’s location is transmitted via suitable communication link 11 to the depository bank 10. At the depository bank, the appropriate adjustments of the payee’s account balances by the depository bank are carried out 13.”).</p> <p>11:38-44 (“In this embodiment,</p>

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			<p>processing 18 will typically include indorsing the checks, both for the payee and for the depository bank at the payee's location. An institutional indorsement is conventionally applied as a payment instruction and included the identity of the indorser on the reverse side of a check.").</p> <p>12:52-57 ("The particular order of operations shows in FIG. 2 is not intended to exclude other equivalent sequences. For example the electronic scanning of the checks 6 may be performed by the same physical equipment at substantially the same time as the mechanical sorting and indorsing 18 and 19, and the preparation of cash letters 20.")</p>
16.	<p>"means at said facility for preparing at least one cash letter for association with each bundled group of 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>: Preparing at least one cash letter at said facility.</p> <p><u>Corresponding Structure</u>: Sorter at the depository bank"</p>	<p><u>Intrinsic Evidence</u></p> <p>'778 Patent, at Col. 9:52-55 ("Modifications of the system of FIG. 1 are apparent to those with skill in the art. For example, electronic sorting, routing, grouping and preparation of electronic cash letters may be merged completely at the payee's location 6 with the depository bank's function 14 comprising the extracting of cash letter information as the electronic transmission passes...")</p> <p>11:22-24 ("The paper check in this embodiment is processed by indorsing, sorting, bundling, routing, and the generation of a physical cash letter to accompany the physical bundle (or bundles) of checks through the payment</p>

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			<p>system.”)</p> <p>11:44-45 (“The mechanical processing of checks at payee’s location 18 will also include the generation of physical cash letters 20 to accompany the bundles of sorted checks into the payment system 12.”)</p> <p>12:55-58 (“For example, the electronic scanning of the checks 6 may be performed by the same physical equipment at substantially the same time as the mechanical sorting and indorsing 18 and 19, and the preparation of cash letters 20. Other modifications will be obvious to those of skill in the art.”)</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>
17.	<p>“means for assembling information scanned from the instruments into a transmittable record with respect to each instrument in a correspondence with the bundled groups and cash letters for communication to the bank” 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>: Assembling information scanned from the instruments into a transmittable record.</p> <p><u>Corresponding Structure</u>: A sorter or processor.</p>	<p><u>Intrinsic Evidence</u></p> <p>’778 Patent, at Col. 7:38-61 (“Following receipt and item capture by the payee, the check will advance to scanning and processing in the electronic scanning block 6 of FIG. 1 . In this step, the check is scanned by a suitable reader. (This processing step may also include verification of the data collected electronically by human operator comparison of the electronic data with the physical check and the payment</p>

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			<p>stub.) The data thus collected will typically include the MICR (Magnetic Ink Character Recognition) data from the MICR lines of the checks. The amount of the check and a date will also be collected (optionally verified by a human operator) and included with the electronic record to be associated with each check. In the typical practice of the invention, electronic indorsements on behalf of the payee and the depository bank will be applied to the electronic record of the check; and a document identification number will also be generated and added to the electronic record of the check to aid in subsequent location and retrieval of the information concerning the particular check. This information typically collected from the MICR line and the check amount is referred to as bank information. The payment stub information comprises the information necessary to the payee derived from the payment stub to reconcile the payment with the check payor's account with the payee.”)</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>“transport means for delivering said bundled groups of sorted instruments with associated cash letters from the facility into said payment system” 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>: Delivering said bundled groups of sorted instruments.</p>	<p><u>Intrinsic Evidence</u></p> <p>'778 Patent, at Col. 5:30-35 (“(or cash letters) is transmitted from the payee to the collecting and clearing depository</p>

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		<p><u>Corresponding Structure</u>: Air or ground transportation.</p>	<p>bank. A transport means, usually air or land, delivers the groups of sorted instruments and the one or more cash letters from the payee's location into the check payment system on behalf of the payee's depository bank.”)</p>
19.	<p>“coordinating the delivery of the instruments and cash letters into the payment system”</p>	<p>Controlling the process of the introduction of instruments into the payment system.</p> <p>Intrinsic evidence:</p>	<p>'778 Patent, at Claim 5(i) (“; a controller for coordinating the transmissions of information among the capture facility, the depository bank and the payment system and for coordinating the delivery of the instruments and cash letters into the payment system according to criteria determined by the depository bank and for crediting the payee's account at the bank with regard to said instruments. “)</p> <p>Col. 10:19-27 (“FIGS. 1 and 2 show a single control unit 17 at the location of the depository bank 10. Alternatively, it may be convenient to have the control function at the payee's location 2 or to split the control function between processors located at the payee's location, the depository bank's location or elsewhere, provided, however, that the bank determines the control, coordination and transmission protocols and the submission and collection of funds over the payment system 12.”)</p> <p>13:66—14:16 (“The timing of communications and the scheduling and confirmation of check processing activities are coordinated by a central</p>

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			<p>processing unit and communication link between/among the parties involved in the check payment process. In this manner the timing of the physical transport of the instruments for submission into the check payment system is controlled by the depository bank and the delivery by the payee of the sorted checks into the check payment system is confirmed and verified to the bank by the payee and through the bank's link into the check payment system. The recording of the check deposit as withdrawable funds in the payee's account with the depository bank is thus coordinated with the timing of the issue of a credit to the bank when the checks are cleared through the check payment system and the bank's account in the payment system is credited with funds received. The transport of bundled instruments and the associated cash letters from the payee's item capture facility location to a payment system receiving point is effected by conventional ground or air delivery.")</p>
	Claim 11		
20.	<p>"An item capture facility at a first location convenient to the payee for receiving said check and payment associated with the check"</p>	<p>This term should be construed as a "site where remittance processing or deposit processing functions of the payee occur." This construction is supported by the intrinsic evidence.</p>	<p><u>Intrinsic Evidence</u></p> <p>'778 Patent, at Col. 7:5-15 ("...through a functional component of the receiving organization known as remittance processing in retail organizations, or deposit processing when received by a bank. Item capture 4 in FIG. 1 represents these functions. Item capture 4 will typically occur at a</p>

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			<p>location convenient to the payee's accounting functions 5. Check receiving and item capture functions may be located at strategic bill collection points within the payee's service region. Most typically, the check receiving and item capture function of the payee will compare a payment stub with the enclosed check and send the check on for further processing.")</p>