

EXHIBIT “D”

EXHIBIT D

DataTreasury Corporation v. Wells Fargo & Company, et al.

PLAINTIFF’S 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.	The defendants argue that the 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”	This language is in the preamble and does not need to be construed. Alternatively, if construed, this term should be construed as: Site where remittance processing or deposit processing functions of the payee occur.	<u>Intrinsic Evidence</u> '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

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			check and send the check on for further processing.”)
4.	“at a location” “at the location” “said location”	“At a location” is in the preamble, which does not need to be construed. "At the location" - plain meaning. <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).	
5.	“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”	This term should be construed under 35 U.S.C. § 112(6). <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. <u>Corresponding Structure:</u> the accounting system and personnel [Fig. 2, 5].	<u>Intrinsic Evidence:</u> '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 processors, or other large commercial

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			<p>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>
6.	“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 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</p>

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			<p>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>
7.	“imager for creating a second record translatable into a visually perceptible image of each of said financial instruments”	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 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</p>

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			<p>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 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>

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Claim 2			
8.	<p>“means for adding to the record of each instrument an indorsement indicia on behalf of each of payee and the bank”</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 the sorting process, a mechanical sorter assembles the sorted instruments into...”)</p> <p>Fig. 2</p>
Claim 5			
9.	<p>The defendants argue that the preamble should be construed as</p>	<p>Preamble is not limiting and the language in preamble does not need to be construed.</p>	

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	limiting.	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).	
10.	"means for associating said information with the payee's records of accounts corresponding to the payment form"	<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 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>

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			<p><u>Extrinsic Evidence</u></p> <p>Testimony from persons of ordinary skill in the art and/or individuals who manage such persons</p>
11.	<p>“means at said facility for preparing at least one cash letter for association with each bundled group of instruments”</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 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</p>

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			<p>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>
12.	<p>“Applying to each of said instruments a separate indorsement on behalf of each of said payee and said depository bank”</p>	<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</p>

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			<p>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, 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 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>
13.	"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</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</p>

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		<p>bank.</p> <p><i>“Depository bank”</i>: The bank of first deposit where the payee has an account.</p>	<p>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 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,</p>

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			<p>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 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>
14.	"means at said facility for preparing at least one cash letter for association with each bundled group of instruments"	<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 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</p>

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			<p>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>
15.	<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”</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 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</p>

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			<p>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>
16.	“transport means for delivering said bundled groups of sorted instruments with associated cash letters from the facility into said payment system”	<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>Corresponding Structure</u>: Air or ground transportation.</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 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>

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	Claim 11		
17.	"An item capture facility at a first location convenient to the payee for receiving said check and payment associated with the check"	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><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>