

Financial Services Institutions Be Ready: FinTech Patent Activity On The Rise

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Steps For Strengthening Your Financial Institution's Patent Position

Recent activity in the financial technology ("FinTech") space has prompted financial institutions to reconsider their patent protection strategies. Today, the world's largest technology companies, FinTech startups, and a number of financial institutions are pursuing patent protection aggressively to their advantage. Independent research suggests that many financial institutions have significantly underestimated the importance of patents, e.g., as tools of risk mitigation and currency in technology collaborations, among other benefits.[\[1\]](#) Our experience confirms that many financial institutions are underprepared to navigate the growing world of FinTech patent activity that we observe today.

Now is an ideal time to conduct a fresh patent audit, assess your financial institution's patent position including risk, and take action to strengthen it. Here are five near-term action items to consider:

1. **Patent clearance of financial products.** Review your financial institution's products or services in view of third party patent rights, prioritizing items that reflect the largest potential market risk. In appropriate cases, take corrective action, including securing opinions of counsel regarding non-infringement, investigating patent invalidity, or evaluating product redesign options.
2. **Defensive patent procurement.** One of the most powerful deterrents against patent lawsuits between competitors or other operating companies is the risk of countersuit, which is made possible by owning, or exclusively licensing, relevant patents. Invest in filing for and obtaining high quality patents covering inventive technologies your institution has created, and consider acquiring or exclusively licensing relevant patents created by others.

3. **Institution-wide survey of patentable inventions.** Many institutions do not always realize when their personnel have created inventions eligible for patenting, particularly in the software and business method spaces. Some overlooked areas include: financial software programs and algorithms; transaction and data processing methods; mobile banking solutions; IT infrastructure; call center and service support; automated chatbots; and cybersecurity protocols, to name a few. Taking stock of potentially patentable material can help drive an organized process of deciding what to protect.
4. **Vendor agreement review.** If your institution uses vendors or upstream suppliers in providing any of its products or services, review the vendor agreements to determine risk sharing provisions and indemnification rights.
5. **Actively monitor third party patents.** Track the patent landscape relevant to high-value market offerings, including by keeping abreast of financial services patent litigations and third party patent filings, particularly by competitors. Collect prior patents to support invalidity arguments, and actively design around or otherwise avoid potentially problematic patents in advance of disputes.

In this new world of financial patent activity, due diligence begins with a full patent audit conducted by qualified legal counsel. A variety of strategies may be helpful depending on your institution's offerings, market position and appetite for risk.

[1] See e.g., Aistemos Ltd., CIPHER IP Strategy Report (2018), <https://cipher.ai/wp-content/uploads/Cipher-IP-Strategy-Report-2018-.pdf>