



Are Patent Wars Inevitable for Banks & Financial Service Companies?

With billions of investment capital at stake in the increasingly crowded field of Fintech, many speculate patent wars could be on the horizon.

Open Source and its Impact on Fintech

Digital payments, card less transactions, mobile deposits and other self-service options in both Business-to-Business (B2B) and Business-to-Consumer (B2C) markets are forcing Banks & Financial Service organizations to transition to a technological focus, and they are increasingly leveraging Open Source technologies. Consumers' demands are requiring the Fintech industry to be more strategic, efficient and comprehensive to compete in an aggressive, global, 24/7/365 marketplace, manage increasing data storage and comply with mandated regulations that require transparency. For example, Banks are implementing standardized Application Programming Interfaces (APIs) to power even their most basic services with Open Source running ATMs, mobile banking apps, Bitcoin, blockchain and an array of additional digital services.

As Open Source technology solutions become the norm, Banks and Financial companies are shifting to "as a Service" industries. Banks are introducing more digital products. Financial firms are leveraging Open Source Software (OSS) to develop customer-centric tools and discovering it is significantly easier to do today than compared to the past. As a result of the Open Source Movement, just about any company has the capability to offer Financial Services.

Fintech Patent Litigation Rises

Fintech litigation is also on the rise. Since USAA sued Wells Fargo in 2018 — which resulted in a \$300 million settlement — they have sued PNC Bank and its subsidiary BBVA USA, and more recently Truist, for infringement of mobile check deposit technology, also known as Remote Deposit Capture (RDC). Reportedly, in 2017, USAA sent letters to 100 banks offering a "licensing program" to USAA's patents. Therefore, further patent suits in this area may be on the horizon.

Open Invention Network's (OIN) "The Recent Rise in Financial Services & Open Source Litigation Report" demonstrates the following:

- ◆ There is an unprecedented wave of patent actions related to the Financial Services industry.
- ◆ Financial Services industry patent litigation by Non-Practicing Entities (NPEs) — from 2020 to 2021 — grew more than 100%, almost 3 times more than the next closest sector, which was Mobile Communications & Devices at 35%.
- ◆ As of June 2022, the annualized rate of litigation is pointed towards a 200% increase in Open Source Software (OSS) patent litigation by NPEs.
- ◆ Authentication and token authentication was the most active technology area targeted by Patent Assertion Entities (PAEs).



Download OIN's report

"The Recent Rise in Financial Services & Open Source Litigation"

▶ Fintech Intellectual Property & Patents

Fintech attracted \$34B in Venture Capital (VC) funding in Q2 2022 with these firms receiving \$1 for every \$5 dollars invested, according to *The Economist*. The Cipher Intellectual Property (IP) Strategy Report shares that among the “Top 20 Banks,” 5 own 91% of the industry’s Financial Services patents. In other words, most Fintech businesses own few, if any, patents.

Bank of America (BOA) leads the industry with 5,858 U.S. patent assets. Capital One holds the 2nd position with 4,257 assets. Another contender is United Services Automobile Association (USAA) with 1,841 active global patents. Of the “Top 10 Largest Global IPOs” to date, 3 are in Fintech, according to Investopedia, and include Visa (United States), AIA Group (China) and the Industrial and Commercial Bank of China (ICBC).

▶ Patent Strategies in Fintech

Stripe has taken a different approach to leap ahead of their Fintech peers, many of which are not patent holders. In 2021, Stripe — an OIN member — proactively purchased patents to strengthen their strategic position. This increased their portfolio almost 10x in size — from 26 patent assets to 200, according to Proactive Patents.

OIN is seeing a trend to address patent risks as Fintech companies realize they are technologically driven and may have the same risk profile from patent aggression as entities that are active in high technology. Today, nearly 100 Banks and Financial Service companies are OIN members. And, it is not a coincidence, 5 of the “Top 10 Global Companies” — based on market value — are OIN members, so Fintech companies are following their lead by joining OIN.

Among the success formulas is Open Source which is driving a new wave of global Banks and Financial Service firms from startups to Fortune 500 companies — including **Ant Financial Services, Barclays, China Union Pay, Ethereum Foundation, Royal Bank of Canada, Sumitomo Mitsui Financial Group (SMFG), the Toronto-Dominion Bank (TD Bank), Tencent Holdings, Truist, US Bank** and others — to join OIN. Among the [Top 5 Reasons Businesses Join OIN](#) are (1) OIN reduces patent risks; (2) OIN offers customer and partner protection; and (3) OIN provides free support and assistance to members under attack from patent aggressors in Open Source. Furthermore, OIN collects and shares prior art when needed; and acquires defensive patents and reduces claim scope for overly-broad patent applications. Membership is free with nearly 3,700 members worldwide.



Download OIN's Whitepaper

“Digital Transformation is Disrupting Banking & Financial Services, Demanding a Cultural Shift.”

▶ Conclusion

Experts say other Fintech technologies could experience patent wars in the future. Specific segments to watch include crypto currency, online payments, mobile banking, blockchain and Artificial Intelligence (AI).

The Fintech industry — like the top tech companies with whom they are now competing — must understand the patent landscape, join, or form patent alliances and strengthen patent portfolios through M&A, or internally developed IP plans. In other words, Fintech companies are negligent to not include patents as part of their current and forward-thinking business strategies.



"The most sophisticated and compelling global Banking and Fintech companies have essentially become technology companies that employ Open Source Software (OSS) to deliver their services at scale. Patent Assertion Entities (PAEs) appear to be targeting them for this reason, along with the fact that Financial Service companies have historically not been active patent filers. Open Invention Network has — and will — continue investing in programs and activities to hinder PAE actions associated with core OSS that FinTech and Banking companies rely upon."Open Source community to foster innovation and reduce IP risks."

– Keith Bergelt, CEO
Open Invention Network

(Sources: Cipher Intellectual Property, The Economist, Pitchbook, Proactive Patents, Renaissance Capital)