

# Intellectual property risk



## FINANCIAL INSTITUTIONS CASE STUDY

Today, intellectual property (IP) rights are as important to financial institutions as they are to traditional creators of IP, such as high-tech companies.

The value in protecting those rights has been highlighted in an ongoing multiparty patent dispute in which the bank who licensed a third-party's technology for use in its consumer products was the target of significant litigation and ultimately had to pay out to settle the claims.

### FACTS

In 2018, USAA, a financial services company that provides insurance and banking products filed a suit against Wells Fargo, an American multinational financial institution, alleging patent infringement. The alleged infringements were of four patents relating to the use of a mobile banking app via which customers could remotely deposit their cheques. Two months later, USAA filed another action against Wells Fargo alleging infringement of three further patents, again relating to the cheque deposit technology. USAA went on to allege that Wells Fargo's alleged infringements were wilful and intentional, opening the door to enhanced damages.

Notably, Wells Fargo had in fact licensed the cheque deposit system from software company, Mitek Systems. In 2019 Mitek issued an application for declaratory judgement that its technology did not infringe USAA's patents, however that case was not put before the Court prior to the hearings against the bank.

Both claims against Wells Fargo went to trial and in both cases the jury found against the bank, awarding USAA over \$303m. The parties eventually settled the matter in 2021.

### COMMENTARY

This is a big price to pay for licencing another party's software. It highlights the risk that a party can be taking in even agreeing to licence another's IP. In this case, Mitek and USAA had been involved in earlier lawsuits alleging trade secret misappropriation and patent infringement over the cheque technology. While that case had been resolved, the settlement clearly did not include protection for licensees of Mitek's technology.

**This highlights the need for licensees to ensure they are the beneficiary of robust indemnities in their licencing agreements and, more importantly, that they have a robust IP policy in cover which will provide protection not just in relation to their own IP but also to IP that they are licencing from third parties.**

### Contacts

To find out more about IP cover, contact a member of the team



**Stuart Chamberlain,**  
BSc (Hons), Dip CII

FINPRO Intellectual Property  
Practice Leader

+44 (0)7795 685602

[stuart.chamberlain@marsh.com](mailto:stuart.chamberlain@marsh.com)



**Sarah Coutts**

FINPRO Intellectual Property  
and Professional Indemnity  
Product Leader

+44 (0)7392 122459

[sarah.coutts@marsh.com](mailto:sarah.coutts@marsh.com)

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