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IP in financial services

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Many companies are looking deep into their businesses to identify areas that could serve as value drivers, and intellectual property (IP) is one of the first things they turn to. The financial services industry is one of the fastest-growing sectors in IP registration and commercialisation across the globe. Banks, credit card companies, credit unions, consumer finance companies, insurance companies stock brokerages and investment funds are catching up with what are considered more traditional IP-generating industries such as pharmaceuticals, IT and electronics. The fact is, there are numerous aspects of financial services businesses that are worth protecting.

Trademarks: Given the increases in offerings available in the market today, financial institutions are striving to differentiate their products from those of their competitors by strategic branding and trademarking. A wide variety of product names, slogans and brands, such as HSBC Premier and Chase Mobile (the mobile phone banking services of JP Morgan Chase & Co), are commonplace. Credit and debit cards may be co-branded with airlines or construction companies. While the use of such trademarks helps customers associate certain financial products with a specific provider, they can also be used to prevent competitors _ both legitimate and illegitimate _ who may try to drive business their way by using trademarks similar to yours.

Patents: With recent developments in the US and the UK on business method patents, protection could possibly be extended to a range of financial services in many jurisdictions such as the US, Canada, Europe, Japan, Australia and China, to name a few. These include hardware, software, data manipulation and output processes for credit risk and credit management, fraud prevention, identity and personal data security technologies, and of course mobile and online banking. Financial transactions are increasingly electronic and global in nature, so industry players are looking to those jurisdictions where patents might be available in order to exploit their inventions in those countries _ or to avoid countries where they might infringe or be subject to an injunction order.

For business methods, the argument against patentability is that the method itself does not produce any protectable product nor any process that results in such. It is therefore little more than a theory or an abstract idea, neither of which is actually patentable. Computer programs are also protectable under copyright law, and so if the program is nothing more than a source code, there is an argument against patentability. A recent US judgement popularly referred to as the Bilski case states that, while it is not the only test, to be patentable business methods should transform an article to a different state or thing and have a useful, tangible and concrete result.

Last year the UK courts (In re Halliburton) decided that the question of patentability "is decided by considering what task it is that the program (or the programmed computer) actually performs. A computer programmed to perform a task that makes a contribution to the art [here, to make a better drill bit] which is technical in nature, is a patentable invention and may be claimed as such."

The UK Intellectual Property Office has since given further guidance: "In future, claims which specify that the invention is implemented using a computer will not be considered to be excluded from patentability as a mental act."

In Thailand, the patentability of computer programs remains ambiguous. While the Thai Patent Act specifically precludes "computer programs", software-related inventions can be protected as patents only if they are embodied in a patentable subject matter, such as a device, and that device has to be new, inventive and capable of industrial application. It will be interesting to see if the recent decisions in the US, the UK and Canada (where Amazon's "one-click" ordering has been accepted as patentable) influence the Thai patent examiners.

Copyright: To prevent unauthorised use and maximise earning potential, intellectual property relating to corporate technology, computer software and internet content should be safeguarded by recording copyright ownership in the appropriate jurisdictions. For financial services, this may mean protecting the software code of a lending evaluation assessment program, a mobile device personal banking application, or the proprietary customer interface experience at an ATM.

The widespread availability of business information continues to grow as technology promotes greater access to knowledge formats through the Internet and software. The opportunity to exploit the use of another's material is equally evident, so the protection of this material via copyright should be high on the agenda of financial institutions for defensive as well as for monetising purposes.

Trade Secrets: Some financial services businesses enjoy such commercial advantage from their IP that they choose to maintain it as a trade secret rather than as a patent, as patents are open to the public to see and are definite in terms of how long they last. Trade secrets are maintained by the strength of the secrecy mechanisms owners build around them and the strength of the contracts under which others are allowed to use them. International and domestic trade secret licences must contain effective critically important terms, such as confidentiality, control and non-competition clauses in order to maintain this commercial advantage.

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