

USAA Patent Infringement Litigation¹

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Banks suing banks to protect and enforce their technology patents! Are the USAA lawsuits against Wells Fargo just the beginning?

On two occasions United States Automobile Association (USAA) has sued Wells Fargo Bank and received jury awards totaling \$302.8 million dollars (\$200 million for the first suit and \$102.8 million for the second). Suits by patent trolls against banks have been fairly common but this may be the first time that a bank has sued another bank for infringing its technology patents. This carries implications for remote deposit capture (RDC) and much broader implications for banking in general.

USAA is well known as an insurance company whose primary customer base is U.S. military personnel but USAA is also a very large savings bank located in San Antonio, Texas. In 2006 USAA was awarded patents for using desktop scanners to capture images of checks. USAA customers, referred to as members, could use this technology to scan checks wherever in the world they were stationed and electronically deposit them into their accounts with USAA. Wells Fargo had developed similar technology used in its Desktop Deposit[®] product, which launched in late 2004.

Following the introduction of the iPhone in 2007, Mitek, a technology company, launched a mobile deposit capture service in February 2008. USAA launched a similar mobile remote deposit capture service in August 2009. Al Hecht, SVP with Wells Fargo, testified during the trial in January of 2020 that Wells Fargo has been first in the industry in many areas and identified the following start dates:

- Internet banking in 1995,
- Remote deposit capture via desktop scanner in 2004,
- Mobile banking via a web browser in 2007,
- Mobile banking via an app in 2009, and
- Mobile deposit in 2012

In 2018 USAA was awarded two patents that it argued extended its 2006 patents to include mobile remote deposit capture and argued that Wells Fargo's mobile deposit service infringed the 2018 patents. In response, Wells Fargo argued that USAA's 2018 patents were invalid, because they were not entitled to the 2006 filing date of the earlier patents, and therefore were trying to claim technology which predated the filing of the 2018 patents.

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Wells Fargo, through its expert witness William Saffici,² argued that the 2006 USAA patents did not envision nor include claim descriptions involving the use of mobile devices. The 2006 patents therefore did not apply to mobile deposit services, and thus USAA's 2018 patents, which claimed mobile deposit services, were not entitled to the 2006 date. Accordingly, Wells Fargo argued that it could not have infringed the 2018 patents through its mobile deposit service launched in 2012. The jury, however, delivered a verdict in favor of USAA finding willful infringement, namely that Wells Fargo's mobile deposit service infringed the 2018 patents despite predating the patents by 6 years. The jury awarded USAA damages of \$102.8 million. As of the time of this writing (March 2020), the parties are filing post-trial briefing, Wells Fargo's *inter partes* review proceedings are underway and Wells Fargo has not announced whether it will appeal.

Remote deposit capture has become a staple service of the industry with more than 80 million consumer users. Should USAA continue to prevail through the appellate process, there could be industry-wide implications. In 2017, USAA sent letters to numerous banks of various sizes and service providers stating that they were in violation of all of USAA's patents. Should USAA use the jury verdicts against Wells Fargo to extract licenses from other institutions, the costs of providing RDC services could increase. Potentially, banks could offset this cost by beginning to charge customers for RDC services. While consumers are writing fewer checks, businesses continue to issue large numbers of checks to consumers so the need for RDC services is likely to continue for years into the future.

In the past, USAA has had limited participation in industry activities. As the industry moves to real time payments, USAA may find that it needs the cooperation of its competitors more than it did in the past. But those competitors, after being sued by USAA, may be reticent to share any information about developments, best practices, risks, etc. which could place USAA at a disadvantage.

Beyond the impact to RDC services, USAA's venture into patent enforcement lawsuits against other banks could be the first in a cascade of such litigations. Banks already hold many patents and some are aggressively adding more. Consider the potential impact to USAA in an escalating litigation war with multiple banks, each with 10 times more assets than USAA. Further consider the implications of the largest banks in the U.S. deciding that they should sue each other over patents that they each hold in different areas of banking and payments. This potential development would not be positive for the industry, would increase the overall cost of doing business and could position the industry at a disadvantage relative to fintech competitors.

"All My Papers is an underlying technology provider to many of these banking entities and we are watching and supporting the key players as this unfolds", says Dana Parker with All My Papers.

² William Saffici is the owner of Saffici Payments Consulting and has fifty-three years in check processing.