

USAA SUES PNC FOR IP INFRINGEMENT OVER MOBILE DEPOSIT TECHNOLOGY: IS YOUR ORGANIZATION PROTECTED IN ITS USE OF THIRD PARTY TECHNOLOGY?

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Your company gets an intimidating letter from a courier. It has to be signed for. It is stamped with terms like **“legal,” “confidential,” “urgent,”** and **“time sensitive.”** It is a legal notice informing your company that it has infringed another party’s intellectual property by using a product you have licensed from a vendor and that you must cease using it immediately. BUT WAIT! You don’t even own this product, this product was licensed to you by a third party!

End users of technology are often vulnerable when disputes arise regarding intellectual property ownership. Even though the end user is not claiming any ownership right, a party claiming that their intellectual property has been infringed will often bring the dispute directly to the end user. This was evident when a dispute between USAA and Mitek over ownership of certain mobile deposit technology resulted in a judgement against Wells Fargo for infringement of USAA’s patent requiring Wells Fargo to pay \$302.8 million in restitution. Now, on the wings of that judgement, USAA has turned its attention to PNC Financial Services Group and filed a similar suit. So, how can you protect yourself?

To begin with, it is vital to ensure that you are putting contracts in place with your providers that include adequate protections against

these types of claims, most importantly, robust indemnification and defense provisions. It is also important to ensure that there are no inappropriate conditions or limitations with respect to these indemnification and defense obligations.

Once a legal notice is received, you should immediately contact your legal representative to evaluate the claim and ensure compliance with any procedures set forth in your agreement in order to benefit from the protections you have negotiated.

However, contracts are not the only way to protect yourself – it is always a good practice when purchasing a product to do some due diligence upfront and see if there are any claims already out there. For example, customers of Mitek have essentially been put on notice that they may be next as USAA continues to enforce its patents.

Please contact EPG if you currently license mobile deposit technology from Mitek and would like assistance in evaluating your current contractual protections, or with any questions regarding drafting meaningful provisions in your contracts. We cannot ensure there will not be a claim in the future, but we can help you be prepared!

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