

## IMPACT OF PATENT LAW ON INNOVATION IN FINTECH SECTOR

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### ABSTRACT

This research paper explores the impact of patent law on innovation in the fintech sector, analyzing both the benefits and challenges associated with intellectual property protection. Patents can incentivize the investment in research and development by providing legal protection for new technologies. However, they can also create barriers to entry, stifle competition, and lead to patent thickets and litigation. The paper also examines the case studies and policy considerations to suggest balanced approaches that foster the innovation while ensuring fair competition. It highlights the need for refined patentability standards, flexible licensing models and collaborative practices to promote a dynamic and competitive fintech ecosystem.

*Keywords: Patent Law, Fintech, Innovation, Intellectual Property, Patentability Standards.*

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### I. Introduction

THE FINTECH sector, a portmanteau of “financial technology”, has emerged as one of the most dynamic and rapidly evolving industries in recent years. Characterized by the convergence of technology and finance, fintech encompasses a broad range of services and innovations, including mobile banking, digital payments, block chain technology, peer-to-peer lending and robot-advisory services. The sector’s growth has been fueled by advancements in digital technology, changing consumer preferences and a global push towards digitalization. According to a report by Statista, the global fintech market is projected to reach a value of approximately \$305 billion by 2025, growing at a compound annual growth rate (CAGR) of 20.3% from 2020.<sup>1</sup> In India, the fintech market is expected to

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<sup>1</sup> Statista, *Global Fintech Market Size from 2018 to 2025* (2021), available at: <https://www.statista.com/statistics/1195012/global-fintech-market-size/> (last visited on July 18, 2024).

achieve a valuation of \$150 billion by 2025, driven by a young and tech-savvy population, increasing smart phone penetration and supportive government policies.<sup>2</sup>

The rapid growth of the fintech sector has brought to the forefront the vital role of intellectual property (IP), particularly patent law, in fostering innovation and protecting technological advancements. Patents, as a form of IP protection, grant the inventors exclusive rights to their inventions for a limited period, typically 20 years.<sup>3</sup> This exclusivity serves as an incentive for innovation, encouraging the companies to invest in research and development (R&D) by providing them with the legal means to protect their technological innovations from imitation and unauthorized use. In the fintech sector, patents are often sought for a wide range of technologies, including algorithms, software applications, block chain protocols and digital payment systems.<sup>4</sup>

However, the application of patent law to the fintech sector presents several challenges and raises important questions about its impact on innovation. Financial technologies are often built upon pre-existing systems and processes, making it difficult to establish the novelty and non-obviousness required for patentability.<sup>5</sup> Moreover, the fast-paced nature of technological development in fintech means those inventions can quickly become outdated, calling into question the value and relevance of long-term patent protection. According to a study by the U.S. Patent and Trademark Office (USPTO), the median lifespan of software patents is less than five years, significantly shorter than the typical 20-year patent term.<sup>6</sup> This discrepancy highlights the need for a re-evaluation of how patent law applies to rapidly evolving sectors like fintech.

The fintech sector also faces issues related to the appropriateness of patenting abstract ideas and business methods, which are commonly found in financial innovations.<sup>7</sup> The debate over the patentability of such inventions was brought to the forefront in the landmark U.S.

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<sup>2</sup> India Brand Equity Foundation, *India home to 26 fintech unicorns with a combined market value of US\$ 90 billion*, September 04, 2024, available at: <https://www.ibef.org/news/india-home-to-26-fintech-unicorns-with-a-combined-market-value-of-us-90-billion>(last visited on October17, 2024).

<sup>3</sup>The Patents Act, 1970 (Act 39 of 1970), s. 53.

<sup>4</sup>K Satish Kumar, “Importance of Intellectual Property Rights in FinTech Industry” *ET Legal World*, January 03, 2024, available at: <https://legal.economicstimes.indiatimes.com/news/opinions/importance-of-intellectual-property-rights-in-fintech-industry/106521912> (last visited on July 22, 2024).

<sup>5</sup>Mirjana Stankovic, “Patentability of Fintech Inventions” *Edward Elgar Publishing, Cheltenham* 420 (2021), available at: <https://doi.org/10.4337/9781800375956.00029> (last visited on July 29, 2024).

<sup>6</sup> U.S. Patent and Trademark Office, *Patent Examination Data System: Software Patents*, (2020), available at: <https://www.uspto.gov/patents>(last visited on August 04, 2024).

<sup>7</sup>Abhimanyu Ghosh, “Business Method Patents: The Road Ahead” 11 *Journal of Intellectual Property Rights* 175 (2006).

Supreme Court case, *Alice Corp. v. CLS Bank International*<sup>8</sup>, in which the Court ruled that abstract ideas implemented on a computer are not eligible for patent protection. This decision has had a significant impact on the fintech sector, leading to increased scrutiny of patents related to financial methods and software and a decline in the number of fintech patents granted. In India, the Patent Office has similarly restricted the patentability of business methods and algorithms, following the principles laid down in the Patents Act, 1970.<sup>9</sup>

Despite these challenges, patents remain a valuable tool for fintech companies seeking to protect their innovations and maintain a competitive edge. Patents can serve as a significant asset for attracting investment, as they signal to investors that a company possesses unique, proprietary technology that can be monetized and defended against the competitors.<sup>10</sup> A strong patent portfolio can enhance a company's reputation, provide leverage in negotiations and create the opportunities for technology transfer and licensing agreements.<sup>11</sup>

## **II. Positive Impact of Patent Law on Fintech Innovation**

Patent law plays a significant role in promoting innovation within the fintech sector by providing a legal framework that protects technological advancements and incentivizes research and development (R&D). Patents grant the inventors exclusive rights to their inventions for a limited period, typically 20 years, allowing them to prevent others from making, using or selling the patented technology without permission.<sup>12</sup> This exclusivity is essential in the fintech industry, where technological innovations can be rapidly copied and deployed by the competitors, potentially eroding the competitive advantage of the original inventors. By offering a temporary monopoly on the use of patented technologies, patent law encourages the companies to invest in developing new and innovative financial technologies.

One of the primary positive impacts of patent law on fintech innovation is its role in attracting investment. Patents serve as valuable assets for fintech companies, enhancing their attractiveness to venture capitalists and investors.<sup>13</sup> A strong patent portfolio signals to investors that a company possesses unique, proprietary technology that can be protected from

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<sup>8</sup> 573 U.S. 208 (2014).

<sup>9</sup>The Patents Act, 1970 (Act 39 of 1970), s. 3(k).

<sup>10</sup>David Cain, "Strategic Patenting: The Role of Patents in Securing Venture Capital" *Linkedin.com*, June 19, 2024, available at: <https://www.linkedin.com/pulse/strategic-patenting-role-patents-securing-venture-capital-david-cain-gi5ic> (last visited on August 10, 2024).

<sup>11</sup>World Intellectual Property Organization, *WIPO Guide on the Licensing of Copyright and Related Rights* (2004), available at: <https://doi.org/10.34667/tind.28719> (last visited on August 14, 2024).

<sup>12</sup>Supra note 3.

<sup>13</sup>Supra note 10.

the competitors. This assurance of legal protection can reduce investment risks and increase the likelihood of securing funding. According to a report by the European Patent Office, companies with robust patent portfolios are more likely to receive higher valuations and attract more investment, as patents provide a safeguard against market competition and potential infringement.<sup>14</sup>

Additionally, patents can facilitate strategic partnerships and collaborations in the fintech sector. By securing exclusive rights to their technological innovations, fintech companies can enter into licensing agreements with other firms, allowing them to monetize their patents and generate revenue.<sup>15</sup> Licensing agreements can also foster collaboration between the companies, enabling them to combine their technologies and expertise to develop new products and services. For instance, a fintech company with a patented digital payment system may license its technology to a bank, allowing the bank to integrate the system into its existing services while providing the fintech company with a new revenue stream. Such collaborations can drive innovation and accelerate the development and deployment of new financial technologies.<sup>16</sup>

Moreover, patents promote knowledge dissemination and technological progress. When a patent is granted, the inventor is required to publicly disclose the details of the invention, enabling others to learn from and build upon it.<sup>17</sup> This disclosure fosters an environment of open innovation, where companies can develop the complementary technologies and contribute to the overall advancement of the fintech industry. The sharing of knowledge and technological advancements can lead to the creation of new products and services, enhancing the efficiency and effectiveness of financial systems. A study by the World Intellectual Property Organization (WIPO) found that the fintech sector has benefited significantly from the knowledge-sharing enabled by patents, with many companies developing innovative solutions by building on existing patented technologies.<sup>18</sup>

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<sup>14</sup> European Patent Office, Patents, *Technology and Investment* (2020), available at: <https://www.epo.org/news-events/news/2020/20200430.html> (last visited on August 22, 2024).

<sup>15</sup> Suchi Rai, "Transferring Technology and Licensing" *Mondaq.com*, June 21, 2024, available at: <https://www.mondaq.com/india/patent/1481930/transferring-technology-and-licensing> (last visited on August 28, 2024).

<sup>16</sup> Erik Feyen, Jon Frost, *et .al*, "Fintech and the digital transformation of financial services: implications for market structure and public policy", *Bank for International Settlements* 117 (2021), available at: <https://www.bis.org/publ/bppdf/bispap117.pdf> (last visited on August 31, 2024).

<sup>17</sup> The Patents Act, 1970 (Act 39 of 1970), s. 10(4).

<sup>18</sup> World Intellectual Property Organization, *WIPO Technology Trends - Artificial Intelligence* (2020), available at: [https://www.wipo.int/tech\\_trends/en/artificial\\_intelligence/](https://www.wipo.int/tech_trends/en/artificial_intelligence/) (last visited on September 04, 2024).

Patents also play a vital role in building a company's reputation and establishing its position in the market. A strong patent portfolio can enhance a company's credibility and legitimacy, signaling to customers, partners and competitors that it is a leader in technological innovation.<sup>19</sup> In the highly competitive fintech sector, where companies must constantly innovate to stay ahead, having a strong patent portfolio can provide a significant competitive advantage. For example, fintech companies like PayPal and Square have invested heavily in building extensive patent portfolios to protect their technologies and maintain their market positions.<sup>20</sup> This strategy has allowed them to deter the competitors, defend against potential infringement and leverage their patents to negotiate favorable business deals.

Furthermore, patents can encourage the fintech companies to pursue innovative R&D by providing them with a means to protect and capitalize on their inventions. The exclusive rights granted by patents allow the companies to recover their R&D investments and earn profits from their innovations.<sup>21</sup> In an industry where technological advancements are key to success, the ability to protect and monetize the innovations can incentivize the companies to invest in developing new technologies and solutions. According to a study by the National Bureau of Economic Research (NBER), the fintech sector has seen significant growth in R&D investment, driven in part by the availability of patent protection.<sup>22</sup>

### **III. Negative Impact of Patent Law on Fintech Innovation**

While patent law offers several benefits to the fintech sector, it also poses significant challenges that can hinder innovation and competition. One of the most notable negative impacts of patent law on fintech innovation is the creation of barriers to entry. Patents, by their very nature, grant exclusive rights to inventors, which can limit the ability of other companies to enter the market or develop similar technologies. In the fast-paced fintech sector, where rapid technological advancements and iterative improvements are common, patents can prevent new entrants from offering competitive products or services, thereby stifling innovation.<sup>23</sup>

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<sup>19</sup>*Supra* note 11.

<sup>20</sup>*Supra* note 4.

<sup>21</sup>*Supra* note 7 at 177.

<sup>22</sup> Josh Lerner, Amit Seru, *et.al.*, "Financial Innovation in the 21<sup>st</sup> Century: Evidence from U.S. Patents", *National Bureau of Economic Research* (2021), available at: [https://www.nber.org/system/files/working\\_papers/w28980/revisions/w28980.rev0.pdf](https://www.nber.org/system/files/working_papers/w28980/revisions/w28980.rev0.pdf) (last visited on September 08, 2024).

<sup>23</sup> John R. Thomas, "Noticing Patents", 24 *The Columbia Science & Technology Law Review* 301 (2023).

The issue of patent thickets-dense webs of overlapping patents that companies must navigate to develop new products, is particularly problematic in the fintech sector.<sup>24</sup> A patent thicket can arise when multiple patents cover similar technologies or incremental improvements, making it difficult for companies to innovate without infringing an existing patent. This situation can lead to increased costs for companies, as they may need to obtain multiple licenses to develop their products, or face the risk of costly litigation. For smaller fintech startups with limited resources, navigating a patent thicket can be especially challenging, potentially discouraging them from pursuing new ideas or entering the market altogether.<sup>25</sup>

Patent law can also lead to the phenomenon of patent trolling, where entities known as non-practicing entities (NPEs) or patent trolls acquire patents not to develop or market new technologies, but to extract licensing fees or settlements from other companies.<sup>26</sup> In the fintech sector, patent trolls can target the companies that use innovative technologies, threatening them with litigation unless they pay for a license to use the patented technology. This practice can divert valuable resources away from innovation and towards legal defense, hindering the growth and development of fintech startups. Moreover, the fear of patent litigation can create a chilling effect, where companies are deterred from pursuing new ideas due to the potential legal risks involved.<sup>27</sup>

Another significant challenge posed by the patent law in the fintech sector is the quality of patents granted. Given the abstract nature of many fintech innovations, there is a risk that patents may be granted for vague or overly broad claims, leading to uncertainty and disputes over the scope of patent rights.<sup>28</sup> For example, patents related to business methods, software algorithms, and block chain technologies can often contain broad claims that are difficult to interpret or enforce. This uncertainty can create a hostile environment for innovation, where companies are unsure of their freedom to operate and may be reluctant to invest in new technologies. According to a study by the U.S. Patent and Trademark Office (USPTO), a

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<sup>24</sup> Gavin Clarkson and David DeKorte, “The Problem of Patent Thickets in Convergent Technologies”, 1093 *Annals of the New York Academy of Sciences* 180 (2006).

<sup>25</sup> James Bessen, “Patent Thickets: Strategic Patenting of Complex Technologies”, *Boston University School of Law* 01 (2003), available at: [https://scholarship.law.bu.edu/faculty\\_scholarship/3169](https://scholarship.law.bu.edu/faculty_scholarship/3169) (last visited on September 13, 2024).

<sup>26</sup> Bronwyn H. Hall, “Innovation and Market Value”, 6984 *National Bureau of Economic Research* 02 (1999), available at: <https://www.nber.org/papers/w6984> (last visited on September 19, 2024).

<sup>27</sup> *Ibid.*

<sup>28</sup> *Supra* note 7 at 178.

significant number of fintech-related patents have been invalidated or narrowed upon reexamination, highlighting the challenges associated with patent quality in this sector.

Furthermore, the fast-paced nature of the fintech industry means that technological advancements can quickly render the patented inventions obsolete. The typical 20-year patent term may be too long for fintech innovations, which often have shorter lifecycles compared to other industries.<sup>29</sup> As a result, patents may become irrelevant or provide little value over time, while still preventing others from building on the patented technology. This can hinder the iterative process of innovation that is essential to the fintech sector, where companies must continuously adapt and improve their technologies to stay competitive.<sup>30</sup>

The impact of patent law on fintech innovation is further complicated by the global nature of the fintech industry. Fintech companies often operate across multiple jurisdictions, each with its own patent laws and regulations. This can create additional complexities and costs for the companies seeking to protect their innovations globally. For example, a fintech company may need to file separate patent applications in multiple countries, each with different requirements and examination processes, leading to delays and increased expenses.<sup>31</sup> Moreover, differences in patent laws and standards between jurisdictions can lead to inconsistencies in the protection and enforcement of patents, creating legal uncertainties for the companies operating internationally.<sup>32</sup>

In addition to these challenges, the use of patents in the fintech sector can also create anticompetitive practices, where dominant companies use their patent portfolios to block or delay the competitors from entering the market. By securing broad or strategic patents, these companies can create barriers to entry, limit competition, and maintain their market dominance.<sup>33</sup> This can reduce the overall level of innovation in the sector, as smaller companies and startups may be unable to compete effectively or bring new technologies to market. A report by the European Commission highlighted concerns about the anticompetitive use of patents in the fintech sector, calling for increased scrutiny of patent filings and enforcement practices.

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<sup>29</sup>*Supra* note 5 at 422.

<sup>30</sup>*Supra* note 11.

<sup>31</sup>*Supra* note 4.

<sup>32</sup>*Supra* note 15.

<sup>33</sup>*Supra* note 4.

## IV. Case Analysis

Examining specific case studies can provide valuable insights into how patent law affects innovation in the fintech sector. These examples highlight both the protective role of patents and the challenges they pose in fostering a dynamic and competitive fintech ecosystem.

### **Impact of *Alice Corp. v. CLS Bank International* on Fintech Patents**

One of the most influential cases in the realm of fintech patents is *Alice Corp. v. CLS Bank International*<sup>34</sup>, the U.S. Supreme Court decision. This case revolved around a patent for a computerized trading platform designed to mitigate settlement risk, which is a common issue in financial transactions. The Court held that the patent claims were directed to an abstract idea and were therefore not eligible for patent protection under Section 101 of the U.S. Patent Act.<sup>35</sup> This decision had far-reaching implications for the fintech sector, particularly for patents related to financial methods and software.

Following the *Alice* decision, there was a significant increase in the rejection rate of software and business method patents, especially those related to fintech innovations. According to a study by the Berkman Klein Center for Internet & Society at Harvard University, the ruling led to a 30% decrease in the number of patents granted for financial technologies over the subsequent two years.<sup>36</sup> This decline was largely due to the heightened scrutiny of patent applications that involved abstract ideas or algorithms implemented on a computer. The decision underscored the challenges of securing patent protection for fintech innovations that are closely tied to business methods or software, as many of these inventions may not meet the revised patentability standards set forth in *Alice*.

### **Blockchain Patents: Innovation or Monopoly?**

Blockchain technology, a decentralized ledger system that underpins crypto currencies like Bitcoin, has been a focal point of innovation in the fintech sector. Numerous companies have sought patents for various blockchain applications, including secure transactions, identity verification and smart contracts. Firms like IBM, Mastercard and Bank of America have filed

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<sup>34</sup>*Supra* note 8.

<sup>35</sup>*Ibid.*

<sup>36</sup>Berkman Klein Center for Internet & Society, *Fintech Patents After Alice: A New Landscape* (2016), available at: <https://cyber.harvard.edu>(last visited on September 26, 2024).

extensive patents in this area, seeking to establish themselves as leaders in blockchain technology.<sup>37</sup>

While blockchain patents can protect proprietary innovations and encourage investment in R&D, they also raise concerns about the potential for creating patent monopolies. Critics argue that patenting fundamental blockchain technologies could stifle innovation by limiting access to essential tools needed for developing new applications.<sup>38</sup> For instance, a report by the Electronic Frontier Foundation highlighted cases where broad blockchain patents were used to threaten smaller startups and developers, potentially hindering the growth of an open-source ecosystem that is vital for blockchain innovation.<sup>39</sup> The patenting of blockchain technologies exemplifies the tension between protecting proprietary innovations and maintaining an open, competitive market in the fintech sector.

### **PayPal v. Google: A Battle Over Mobile Payments**

Another notable case study involves the patent litigation between PayPal and Google over mobile payment technologies. In 2011, PayPal filed a suit against Google, alleging that Google Wallet, a mobile payment service, infringed on multiple PayPal patents related to secure online transactions and mobile payments.<sup>40</sup> The suit claimed that Google had hired former PayPal employees who had access to proprietary technologies and trade secrets, which were then allegedly used to develop Google Wallet.<sup>41</sup>

This legal battle underscores the strategic use of patents in protecting market share and technological advancements in the fintech sector. PayPal's aggressive patent enforcement illustrates how companies can use their patent portfolios to defend against the competitors and secure their technological edge.<sup>42</sup> However, such litigation can also have a deterrent effect on innovation, as the companies may become more cautious about developing new technologies that could potentially infringe an existing patent. In this case, the lawsuit was settled out of court, with both companies agreeing to dismiss the claims.<sup>43</sup> This outcome

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<sup>37</sup>United States Cyber Security Magazine, *Blockchain: The Good, The Bad and The Ugly* (2018), available at: <https://www.uscybersecurity.net/csmag/blockchain-good-bad-ugly/> (last visited on September 28, 2024).

<sup>38</sup>*Ibid.*

<sup>39</sup>*Ibid.*

<sup>40</sup>*Supra* note 4.

<sup>41</sup>Charles Arthur, "PayPal Sues Google Over Electronic Wallet", *The Guardian*, May 27, 2011, available at: <https://www.theguardian.com/technology/2011/may/27/paypal-sues-google-over-electronic-wallet> (last visited on October 01, 2024).

<sup>42</sup>*Ibid.*

<sup>43</sup>*Ibid.*

reflects the complex interplay between competition and collaboration in the fintech industry, where patent disputes can be both a tool for protection and a barrier to innovation.

### **Fintech Patent Pools: A Collaborative Approach**

In response to the challenges posed by patent thickets and litigation, some fintech companies have explored collaborative approaches to patent management, such as forming patent pools. A patent pool is an agreement between multiple patent holders to license their patents to one another or to third parties on standardized terms.<sup>44</sup> This approach can help reduce the risk of litigation and create a more collaborative environment for innovation.

A notable example of a fintech patent pool is the Blockchain Patent Sharing Alliance, formed by several leading blockchain and fintech companies.<sup>45</sup> This alliance allows members to cross-license their blockchain-related patents, reducing the risk of patent infringement cases and promoting the development of interoperable technologies.<sup>46</sup> By pooling their patents, these companies aim to foster an open and innovative ecosystem that benefits all the participants while protecting their intellectual property rights. According to a report by the World Intellectual Property Organization (WIPO), such collaborative efforts can significantly reduce the costs associated with patent litigation and encourage more companies to invest in new technologies.<sup>47</sup>

### **Antitrust Implications: The European Commission's Investigation**

In 2021, the European Commission launched an investigation into potential antitrust violations involving the use of fintech patents by dominant firms to suppress competition. The investigation focused on whether certain companies were using their patent portfolios strategically to block new entrants and maintain market dominance. The Commission's inquiry highlighted concerns about the misuse of patents to create barriers to entry and limit the consumer choice, which could stifle innovation and competition in the fintech sector. The findings of this investigation underscore the need for careful oversight of patent practices to ensure they do not harm the dynamic and competitive nature of the fintech industry.

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<sup>44</sup>Victor Rodriguez, "Patent Pools: Intellectual Property Rights and Competition" 4 *The Open AIDS Journal* 62 (2010).

<sup>45</sup> World Intellectual Property Organization, *Patent Pools and Innovation: The Case of the Blockchain Patent Sharing Alliance*(2021), available at: <https://www.wipo.int>(last visited on October03, 2024).

<sup>46</sup>*Ibid.*

<sup>47</sup>*Ibid.*

## V. Policy Considerations and Future Directions

As the fintech sector continues to evolve, it is important to address the challenges and leverage the opportunities presented by patent law to foster innovation and maintain a competitive market. Policymakers, industry stakeholders and legal experts must work together to develop a balanced approach that protects the intellectual property rights while promoting technological advancement and ensuring fair competition. This section explores several policy considerations and future directions that can help to achieve these objectives.

### Refining Patentability Standards for Fintech Innovations

One of the primary policy considerations is the need to refine patentability standards for fintech innovations, particularly concerning the patentability of software, algorithms and business methods. Given the abstract nature of many fintech inventions, there is a risk of granting patents for vague or overly broad claims, which can lead to uncertainty and disputes over the scope of patent rights.<sup>48</sup> To address this issue, patent offices should adopt strict standards for novelty and non-obviousness, ensuring that patents are granted only for genuine technological advancements.<sup>49</sup> For example, in India, the Patent Office has restricted the patentability of business methods and algorithms, following the principles laid down in the Patents Act, 1970.<sup>50</sup> By refining these standards, patent offices can reduce the risk of granting low-quality patents and ensure that only truly innovative fintech technologies are protected.

### Improving Patent Examination Processes

Another important consideration is the need to improve patent examination processes to enhance the quality and clarity of granted patents. Patent examiners must be equipped with the necessary tools, training and resources to thoroughly evaluate fintech patent applications and identify prior art.<sup>51</sup> This can involve incorporating advanced technologies such as artificial intelligence (AI) and machine learning to assist in prior art searches and patent examinations. For instance, AI-powered tools can help the examiners to analyze vast amounts of data, identify relevant prior art and assess the patentability of fintech inventions more accurately and efficiently. By improving the examination process, patent offices can reduce

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<sup>48</sup>*Supra* note 7 at 182.

<sup>49</sup>Rudi Bekkers, Arianna Martinelli, *et .al.*, “The impact of including standards-related documentation in Patent Prior Art: Evidence from an EPO Policy Change” 49(7) *Elsevier* 104007 (2020), available at: <https://doi.org/10.1016/j.respol.2020.104007> (last visited on *October 06, 2024*).

<sup>50</sup>*Supra* note 9.

<sup>51</sup>*Supra* note 4.

the number of frivolous or overly broad patents, thereby minimizing the risk of patent thickets and litigation.

### **Encouraging Open Innovation and Collaboration**

Policymakers should also encourage open innovation and collaboration in the fintech sector by promoting alternative intellectual property (IP) protection mechanisms. One approach is to support the use of open-source licenses, which allow the companies to share their technologies and collaborate on developing new solutions without the fear of patent infringement. Open-source licenses can foster a more inclusive and dynamic innovation ecosystem, where the companies can build upon each other's innovations and contribute to the overall advancement of the fintech industry. Another approach is to encourage the formation of patent pools and defensive patent aggregators, where companies collectively share their patents to reduce the risk of litigation and promote the development of interoperable technologies.<sup>52</sup> Such initiatives can help to create a more collaborative environment for innovation, benefiting the companies and consumers as well.

### **Addressing Patent Trolling and Anticompetitive Practices**

To prevent patent trolling and anticompetitive practices in the fintech sector, policymakers should consider implementing measures that discourage the abusive use of patents. One potential solution is to introduce fee-shifting provisions, where the losing party in a patent litigation case is required to pay the legal fees of the winning party.<sup>53</sup> This approach can deter non-practicing entities (NPEs) or patent trolls from filing frivolous suits, as they would face the risk of incurring significant legal costs if they lose. Additionally, policymakers should introduce strict requirements for patent ownership and transparency, ensuring that only entities with a genuine interest in developing or commercializing the patented technology are allowed to enforce their patents.<sup>54</sup> Such measures can help to reduce the incidence of patent trolling and promote a fair and competitive fintech market.

### **Supporting Fintech Startups and SMEs**

Given the significant role of startups and small and medium-sized enterprises (SMEs) in driving fintech innovation, it is essential to provide them with adequate support to navigate

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<sup>52</sup>*Supra* note 45.

<sup>53</sup>Eric Rogers, Young Jeon, "Inhibiting Patent Trolling: A New Approach for Applying Rule 11", 12(4) *Northwestern Journal of Technology and Intellectual Property* 291 (2014).

<sup>54</sup>*Ibid.*

the complex patent landscape. Governments can offer financial assistance, such as grants and subsidies, to help startups cover the costs of obtaining and enforcing patents.<sup>55</sup> Additionally, legal support programs, such as patent clinics and pro bono services, can provide startups with access to legal expertise and guidance in managing their patent portfolios.<sup>56</sup> By supporting fintech startups and SMEs, policymakers can help to build the level playing field and ensure that smaller companies have the resources to compete effectively and contribute to the sector's growth.

### **Promoting Global Harmonization of Patent Laws**

Given the global nature of the fintech industry, it is important to promote the harmonization of patent laws and standards across jurisdictions. Differences in patent laws and regulations can create legal uncertainties and increase costs for fintech companies operating internationally.<sup>57</sup> Policymakers should work towards aligning patentability standards, examination procedures and enforcement practices to facilitate cross-border innovation and collaboration. Initiatives such as the Patent Cooperation Treaty (PCT) and the World Intellectual Property Organization (WIPO) can play a vital role in promoting international cooperation and harmonization of patent laws.<sup>58</sup> By aligning patent laws globally, policymakers can create a more predictable and efficient patent system that supports the growth and development of the fintech sector.

### **Monitoring and Evaluating Patent Policies**

Finally, it is important to continuously monitor and evaluate the impact of patent policies on fintech innovation. Policymakers should establish mechanisms for collecting data and analyzing trends in fintech patents, including the number of patents granted, the frequency of patent litigation and the impact of patents on competition and innovation. Regular assessments can help to identify the emerging issues and inform policy adjustments to address the challenges and promote a balanced and dynamic fintech ecosystem. By adopting a proactive approach to monitoring and evaluation, policymakers can ensure that patent

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<sup>55</sup> India Brand Equity Foundation, *Empowering MSMEs: Fintech Solutions for Small Businesses in India*, April 10, 2024, available at: <https://www.ibef.org/blogs/empowering-msmes-fintech-solutions-for-small-businesses-in-india> (last visited on October 10, 2024).

<sup>56</sup> Free Law, *Legal Challenges of Startups in India: Navigating the Ecosystem*, August 02, 2024, available at: <https://www.freelaw.in/legalarticles/Legal-Challenges-of-Startups-in-India-Navigating-the-Ecosystem-> (last visited on October 12, 2024).

<sup>57</sup> *Supra* note 15.

<sup>58</sup> World Intellectual Property Organization, *Promoting International Cooperation in Patent Law* (2021), available at: <https://www.wipo.int> (last visited on October 13, 2024).

policies remain effective in supporting innovation and fostering a competitive market environment.

## **VI. Balancing Innovation and Patent Protection in Fintech**

Balancing innovation and patent protection in the fintech sector is a delicate task that requires careful consideration of both the benefits and potential drawbacks of patent law. While patents can provide the incentives for innovation by granting the inventors exclusive rights to their inventions, they can also create the barriers to entry and stifle competition if not properly managed.

### **Encouraging Responsible Patent Practices**

One approach to balancing innovation and patent protection in fintech is to encourage responsible patent practices among the companies and inventors. This involves promoting ethical behavior in the filing, acquisition and enforcement of patents. Companies should be encouraged to seek patents only for genuine innovations that meet the criteria of novelty, non-obviousness and industrial applicability.<sup>59</sup> By focusing on high-quality patents, fintech companies can avoid contributing to patent thickets and reduce the risk of litigation over broad or vague claims.<sup>60</sup>

Moreover, companies should be encouraged to use their patent portfolios strategically, not as tools to block the competitors or engage in anti-competitive practices.<sup>61</sup> For example, companies should adopt patent pledges, committing not to enforce their patents against other companies that use the patented technology for socially beneficial purposes, such as improving financial inclusion or enhancing cybersecurity.<sup>62</sup> These pledges can promote a collaborative environment where the companies can innovate freely without fear of patent litigation.

### **Implementing Flexible Licensing Models**

Flexible licensing models can also help to balance the innovation and patent protection in the fintech sector. Traditional patent licensing often involves the exclusive agreements that can

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<sup>59</sup>*Supra* note 7 at 179.

<sup>60</sup>*Supra* note 23 at 305.

<sup>61</sup>*Supra* note 24 at 188.

<sup>62</sup>Ie Foundation, *Artificial Intelligence in Business: Opportunities and Ethical Challenges*, February 24, 2023, available at: <https://www.ie.edu/ie-elecnor-observatory-on-sustainable-compliance-cultures/en/actualidad/artificial-intelligence-in-business-opportunities-and-ethical-challenges/> (last visited on October 16, 2024).

limit the use of patented technologies to a single entity. However, more flexible licensing arrangements, such as non-exclusive licenses and cross-licensing agreements, can enable the multiple companies to access and use patented technologies, fostering innovation and competition.<sup>63</sup>

Non-exclusive licenses allow multiple entities to use the same patented technology, thereby promoting wider dissemination and application of the innovation.<sup>64</sup> Cross-licensing agreements, where two or more companies agree to share their patent portfolios, can reduce the risk of patent litigation and encourage collaborative innovation.<sup>65</sup> These flexible licensing models can help to ensure that patent protection does not become a barrier to entry or a tool for monopolistic behavior in the fintech sector.

### **Leveraging Patent Pools for Collaborative Innovation**

Patent pools, where multiple patent holders agree to license their patents to one another or to third parties on standardized terms, can be an effective tool for balancing innovation and patent protection in the fintech sector. By pooling their patents, companies can create a shared pool of technologies that can be freely accessed and used by all participants. This approach can reduce the risk of patent thickets and litigation, making it easier for companies to innovate and develop new products and services.<sup>66</sup>

In the fintech sector, patent pools can be particularly useful for emerging technologies such as blockchain and digital payments, where interoperability and collaboration are important for success.<sup>67</sup> For example, the Open Invention Network, a collaborative initiative that provides a shared patent pool for Linux-based technologies, has been instrumental in promoting open innovation and reducing patent-related barriers in the software industry. A similar model could be adopted for fintech, fostering a collaborative ecosystem that supports the innovation and growth.

### **Promoting Open Standards and Interoperability**

Open standards and interoperability are essential for fostering innovation and competition in the fintech sector. Open standards refer to publicly available specifications that enable

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<sup>63</sup>*Supra* note 15.

<sup>64</sup>*Ibid.*

<sup>65</sup>*Supra* note 45.

<sup>66</sup>*Supra* note 4.

<sup>67</sup>*Supra* note 37.

different systems and technologies to work together seamlessly. By promoting the adoption of open standards, policymakers can ensure that fintech innovations are accessible to all market participants, preventing monopolistic practices and promoting a level playing field.

Interoperability, on the other hand, allows different technologies and platforms to communicate and work together effectively. In the fintech sector, interoperability is essential for ensuring that consumers and businesses can access and use financial services across different platforms and networks. For example, the introduction of the Unified Payments Interface (UPI) in India has significantly enhanced interoperability among banks and payment service providers, fostering a more competitive and inclusive financial ecosystem.<sup>68</sup> By promoting open standards and interoperability, policymakers can create an environment where innovation can thrive, benefiting the consumers as well as the businesses.

### **Enhancing Transparency and Accountability in Patent Practices**

Transparency and accountability in patent practices are essential for maintaining a balanced fintech ecosystem. Policymakers should require the companies to disclose detailed information about their patent holdings, licensing agreements and enforcement activities.<sup>69</sup> This transparency can help to prevent abusive practices, such as patent trolling and anti-competitive behavior, by enabling regulators and market participants to monitor and evaluate the use of patents in the fintech sector.

Moreover, enhancing transparency in patent practices can facilitate better decision-making by the companies and investors, helping them to assess the risks and opportunities associated with specific technologies and patents. For example, a public database of fintech patents, including information on ownership, licensing terms and litigation history, could provide valuable insights for the companies looking to innovate or enter new markets.<sup>70</sup> By promoting transparency and accountability, policymakers can ensure that patent protection supports innovation rather than hindering it.

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<sup>68</sup> India Brand Equity Foundation, *Unified Payments Interface (UPI): Transforming India's Payment Landscape*, February 27, 2023, available at: <https://www.ibef.org/blogs/unified-payments-interface-upi-transforming-india-s-payment-landscape> (last visited on *October 17, 2024*).

<sup>69</sup> *Supra* note 26.

<sup>70</sup> *Supra* note 25.

## **Developing Sector-Specific Guidelines for Patent Examination**

Given the unique characteristics of the fintech sector, there is a need for sector-specific guidelines for patent examination. These guidelines should provide clear criteria for assessing the patentability of fintech innovations, particularly concerning software, algorithms and business methods. By developing tailored examination guidelines, patent offices can ensure that patents are granted only for genuine technological advancements, reducing the risk of low-quality patents and ensuring that patent protection is aligned with the specific needs and challenges of the fintech sector.<sup>71</sup>

For example, the European Patent Office (EPO) has developed specific guidelines for examining computer-implemented inventions, providing detailed criteria for assessing the patentability of software-related innovations.<sup>72</sup> A similar approach should be adopted for fintech, helping patent examiners make informed decisions and ensuring that patent protection supports rather than hinders innovation.

## **VII. Conclusion**

The interplay between patent law and innovation in the fintech sector presents both opportunities and challenges. While patents serve as vital tools for protecting technological advancements and incentivizing investment in research and development, they can also create barriers to entry, stifle competition and lead to costly litigation. This duality necessitates a balanced approach to patent law that supports innovation while ensuring fair competition and accessibility.

To foster a dynamic and competitive fintech ecosystem, it is essential for the policymakers and industry stakeholders to refine patentability standards, improve patent examination processes and promote responsible patent practices. Encouraging flexible licensing models, leveraging patent pools and supporting open standards and interoperability can further enhance innovation while minimizing the negative impacts of patent thickets and anti-competitive behavior. Additionally, enhancing transparency and accountability in patent practices and developing sector-specific guidelines can help to align patent protection with the unique needs and challenges of the fintech sector.

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<sup>71</sup>*Ibid.*

<sup>72</sup>European Patent Office, *Guidelines for Examination of Computer-Implemented Inventions* (2021), available at: <https://www.epo.org> (last visited on October 20, 2024).

As fintech continues to evolve, it is essential to continuously monitor and evaluate the impact of patent policies on innovation. By adopting a proactive and collaborative approach, policymakers can create an environment that promotes technological advancement, supports economic growth and ensures that the benefits of fintech innovation are accessible to all. Balancing patent protection and innovation will be key to unlocking the full potential of the fintech sector and driving future progress in financial technology.