

By LEE GOMES

Patenting Good Ideas Could Hurt Companies Rather Than Aid Them

HERE'S THE SORT of exercise they might throw at you in business school: What would a bank branch look like if reinvented for today's newer, more casual, world of Starbucks, SUVs and fleece-clad soccer moms?

With a few minutes of brainstorming, you could probably come up with a list of good ideas. You might, for instance, have someone sitting by the door greeting people as they walked in—stores like Banana Republic have used a similar ploy for ages. You could also, say, dispense with the traditional formal row of teller windows, and arrange tellers at individual work stations in a circle, the way some new hip

hotels are doing with their reception desks.

These tellers, of course, would need some place to put their cash; they also would need to connect to the bank's main computer. You'd, of course, put posters on the wall advertising other bank products and services; there might even be a children's area, like at McDonald's.

Do all that, and you may or may not have a successful bank branch.



Tim Robinson

YOU WOULD, though, run the severe risk of violating another bank's patent. Earlier this summer, Washington Mutual, the nation's sixth-largest bank, received patent number 6,681,985, entitled "System for providing enhanced systems management, such as in branch banking."

The patent lists everything mentioned above as the "claims," or features, of its "invention." For a lot of people, it's as good an example as any of what's wrong with the U.S. patent system.

Lay people usually think you get a patent for an "invention," something you can hold in your hand that does something no one was ever able to do before: a lightbulb, or the proverbial better mousetrap.

The legal standard for a patent isn't that far off: A patentable idea is one that is not only "novel" but also "non-obvious" to a skilled practitioner in the field.

But that legal standard has proven to be a slippery slope. One result is a new breed of "business process" patents, like Washington Mutual's. The most famous, or maybe infamous, of these is the patent Amazon.com received for allowing customers to make online purchases with a single mouse click.

Even worse is the emerging legal black art of patent blackmail. There are millions of patents out there, any of which can be bought or sold like used cars. (There are even patents listed for sale on eBay.)

Some law firms have found a great money-making scheme: buy a general and vague patent, then mail boilerplate notices of infringement to a few hundred companies. If only a small percentage agree to pay a license fee, rather than risk expensive litigation, you've made a lot of money for little work. (Of course, if someone accuses you of "patent extortion," simply drape yourself in the flag of innovation and claim you are protecting small inventors from greedy big corporations.)

Especially in the world of technology, complaints about patents have been around for years. The new news isn't that the patent system is messed up; rather, it's that help may be on the way.

TWO HIGH-PROFILE groups—the Federal Trade Commission and the National Academy of Sciences—have in recent months come out with lengthy critiques of the patent system.

Among the common themes in both reports: The patent system has become a drain on innovation and productivity, rather than the protector of them. The Patent Office needs more resources to do its job better. Challenging patents shouldn't be the expensive and lengthy process it is today.

In addition, the Patent Office itself is supposed to soon suggest changes of its own. Patent experts expect next year's Congress to engage on the issue, and attempt to move the system back to doing what the framers of the Constitution intended it to do.

But besides an overhaul of patent laws, something else is needed. Companies need to rethink the conventional wisdom of arming themselves with as many patents as possible, for use as a competitive weapon.

Washington Mutual's branches are no doubt very nice to be in, and one certainly hopes that the marketplace rewards it for its innovations. That is a far cry, though, from saying the idea deserves a patent—a legally sanctioned monopoly that prohibits someone else from copying the idea without a license. What will be the next thing a bank might try to patent? Closing at 5:15 p.m. instead of 5?

Asked about its patent, Washington Mutual says it is simply defending its intellectual property. That is what all companies say when a patent is questioned. But one wonders about the devil's bargain these companies make when they start patenting what in another age would have been regarded as simply a "good idea."

Patent law gives, but it takes away, too. The company that gets a patent on some vague good idea is just feeding a system that sets up the inevitable challenge by some other patented good idea. Maybe everyone should go back to old-fashioned competition.

Send comments to lee.gomes@wsj.com. Selected letters run Friday at WSJ.com/Portals.