Patent Law in Games

A Guide for Indie Developers

TL;DR

In games, patents are often used to protect hardware, but in some places can be used to protect game mechanics. These patents have clear effects on how creative industries work together.

Patents are an important part of business, and they're here to stay. What can game developers do to deal with them before they become a problem?

1 - Have a basic understanding of IP, from what it is to how it can work for (and against) you and your studio. Know the rules and play to win.

2 - Utilize sources of openly available information, like open-source software and patent pledges

3 - Consult with lawyers about your own IP strategy

Palatable Resources

GDC Talk by Vincent Scheurer (2006):
https://gdcvault.com/play/1013210/IP-Jiu-jitsu-A-Self

Game Developer Article by Matthew Moersfelder (2007):
https://www.gamedeveloper.com/business/patent-strategy-in-the-game-industry

Film Stories Article by Ryan Lambie (2023):
https://filmstories.co.uk/features/the-strange-and-complex-world-of-patented-game-mechanics/

Further Resources

Links to student portfolio, research sources, and an online version of the guide

Disclaimer

This guide is informational and not intended to be taken as legal advice. Please seek professional legal counsel for any concerns.

What is a patent?

Patents are a type of intellectual property protection that grant an inventor exclusive rights to produce, use, or sell qualifying innovations, as well as the methods required to do so, for a limited period of time. After this time, the invention is placed in the public domain for anyone to use and profit from.

What does this have to do with game development?

Intellectual property protection is an important concept in game development, and some aspects can only be protected by patents. Hardware patents are more common than software patents, but it's increasingly common for studios in certain jurisdictions to seek patent protection for game systems, from mechanics to tools.

Examples of game patents:

1 - Game Boy console (Nintendo, 1989)
2 - Moveable control pad on touch-enabled devices (Electronic Arts, 2017)
3 - Method for building in-game paths based on asynchronous player use (Sony, 2021)

Effects on industry collaborative practice

Game developers build their skills by observing, emulating, and building upon practices from other games. By locking those practices away, patents have a notable effect on how businesses and individuals can work together.

Effect #1: Lack of Information

Patents prevent the sharing of information. In creative industries, like games, innovation doesn't have to be incentivized-- it just happens! Hiding those innovations keeps the entire industry from further improving on them.

Effect #2: Wasting Development Time

Patents in creative industries perpetuate a cycle of conservative fear about infringing upon any potential IP, resulting in game developers wasting time and resources to solve problems that already have solutions.

Effect #3: The Prisoner's Dilemma

Mutual risk of litigation from patent holders can result in a climate more conducive to cooperation between businesses, ensuring the greatest overall reward for cooperative parties.

Recommendations for Game Developers

Get Professional Legal Help

The single most valuable piece of advice when dealing with complex legal issues is to seek professional legal assistance. Lawyers are expensive, but they know what they're doing!

Understand Your IP Strategy

A foundational understanding of IP and how you and your studio approach it is crucial.

If you have a patent, let it work to protect your ideas. Litigation is expensive for everyone involved.

If you're looking to develop a similar system as a patent, be careful. It can be done, but it is risky in the current climate. Ensure your methods are distinct, and that the differences are clear.

If you want to use a patent made available to the public in a patent pledge, also be careful! Always remember who you're borrowing from-- pledges are voluntary and non-binding. But they also provide access to valuable technology that can allow small businesses to compete.

For Studios with Patents

Consider starting a patent pledge! There are a lot of benefits, both for the studio and the wider industry. Work to ensure the transparency, inclusivity, and enforceability of your pledge, so it can improve the whole creative ecosystem.

For a games industry example, see Electronic Arts' Accessibility Patent Pledge!