



## **Toy Industry Association White Paper**

# **Five Questions Novice Toy and Game Inventors Should ask themselves about Intellectual Property Protection**

Prepared for the Toy Industry Association by:

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# **Five Questions Novice Toy/Game Inventors Should ask themselves about Intellectual Property Protection**

**Following countless hours of thinking and re-thinking, designing and re-designing, building and re-building, only to go back to the drawing board, over and over again, you've just had that ah-ha moment, realizing you may have finally hit on something: creating an innovative toy or game for children/adults to enjoy for hours, days, weeks and/or years to come. But believe it or not, coming up with your idea was the easy part.**

Even though it may have taken a large amount of creativity, ingenuity and resourcefulness to think up a great new toy or game, it will take a good deal of additional hard work, dedication and commitment to transform that toy or game into a living, breathing viable commercial product.

Through asking yourself the right kinds of questions, and consulting with vetted resources and guides, you can improve the chances that your idea for a new toy or game will be on a better path to commercial success. In this regard, here are 5 Questions that you should ask yourself about Intellectual Property protection during the development process, hopefully early on in the process.

## **1. Do I Own My Idea?**

Many inventors may not realize that they do not own their idea for the innovative toy or game they have developed. The question becomes, who actually has ownership over the idea for the innovative toy or game.

While, in general, the originator of the idea originator is the owner, ownership rights can be assigned before or after the innovation through various legal contracts that may be in place prior to the innovation. It is important to note that certain industries, such as higher education, healthcare and perhaps the toy and game industry, may have their own policies relating to works or innovations created during a person's employment with them, which could result in the employer becoming the owner of your idea.

Accordingly, before thinking about seeking Intellectual Property protection for your idea, if applicable, make certain that your idea is actually your own through consulting your employment contract.

## **2. Should I File for Intellectual Property Protection?**

Intellectual Property protection encompasses three main types of protection, namely, Patent, Trademark, and Copyright protection, with each providing its own unique scope of protection. Depending on the kind of idea you are looking to protect, Patent, Trademark and/or Copyright protection may be options for you to consider.

Initially, a Patent is a grant by the U.S. Patent and Trademark Office that allows the owner of an innovative idea (which meets some basis criteria) to maintain a monopoly on that innovative idea for a limited period of time on the use and development of that innovative idea. Types of Patent protection include Utility, Design and Plant patents. However, Patent protection can be a time-consuming and costly proposition, sometimes taking years to secure, but in order to commercialize your product and to help keep competitors from entering the commercial space, Patent protection may be essential.

Then, there is Trademark protection, which generally protects logos, symbols, or names of products from others who are then unable to use its likeness to possibly mislead consumers as to the origin of the good.

Finally, there is Copyright protection, which stops others from copying, adapting, distributing, renting, or performing another's artistic work without permission.

While Patent protection will likely provide more peace of mind than that of Trademark or Copyright protection, it is important to understand all of your options before committing to the patent application process.

## **3. Does My Idea Qualify for Patent Protection?**

Intellectual Property protection, including Patent protection for your innovative idea can be an intimidating subject matter to virtually anyone, seasoned or novice. It is our recommendation that intellectual property attorneys, providing toy and game inventors, at various stages of innovation, with access to information and resources about the Patent Application process. Across the board, inventors most frequently ask about whether or not their idea is patentable. While the answer is not simple, there are key points that inventors should take under consideration before starting the long, expensive process of filing for Patent protection.

Generally speaking, in order for an invention to be patentable, an idea needs to have a practical purpose, or "utility," while still being a novel and inventive concept. That's the basic starting point.

If your idea for your toy or game meets this minimum criteria, it is now time to research your concept, making sure that nothing too similar to your idea has already been published or invented. To start, we recommend that you try searching for your idea in public databases that are provided by the U.S. Patent and Trademark Office and Google Patents, for example.

If you do not find your innovative idea in these databases or anywhere else, that is a positive sign, but it does not necessarily mean that your idea is certainly patentable. There are novelty loopholes, and there is the risk that another person may have filed for the same, or very similar, idea first.

#### **4. Have I Done Enough Research?**

Before further pursuing your innovative idea for your toy or game, it is important to make certain that no other same or similar product exists on the market today, or whether a pre-existing Patent or Patent Application exists for the same or similar idea. This research will not only help you obtain Patent protection more easily, but it will help you determine whether or not you actually have a market of people who will ultimately buy your product. This is the kind of research any inventor can and should undertake before putting any money toward their idea.

So what is the best way to conduct this research? First, search the Internet using a variety of keywords to see what you find. Then, speak directly to your target consumers, asking them what sorts of games or toys they are currently playing, have played or would like to play. If you find that your idea is similar to their answers, but not identical to existing games or toys, there may still be room in the marketplace for your innovative toy or game.

An important factor when conducting your research is knowing what alternative games or toys are currently available for purchase, all the while taking an honest look at all these games or toys, in order to decide if your innovative toy or game is different enough to justify further personal investment.

Finally, it may be advisable to discuss the results of your research with an attorney that specializes in Intellectual Property, or hire such an attorney to conduct some research on your behalf.

#### **5. Have I Shared My Idea(s) with Anyone?**

When you think you have the next big idea in the toy and game industry, it is only natural that you would want to share your idea or vision with your colleagues, friends, family, and pretty

much anyone in between. It is important to understand the potential consequences of over sharing your innovative idea, especially if you have not yet filed for Patent protection. By over sharing, the possibility increases that someone else can file for Patent protection on your innovative idea, you could unintentionally take on a “co-inventor” by incorporating a friend’s advice for a slight product improvement, and/or you can interfere with your ability to even file for Patent protection all together. So before filing for Patent protection and before sharing your innovative idea, consider your end goal and reflect on any conversations you may have had regarding your innovative idea, taking care that you have not said too much.

### The Non-Disclosure Agreement

However, when your innovative idea for your toy or game is being developed, tested and manufactured, the process may have to be somewhat visible or transparent to those that may be doing work on your behalf. Whether you are seeking business advice, shopping around for materials or securing a manufacturer, you will likely have to share your innovative idea with many different people. As a result, inventors should ensure their idea, whether patented or not, is protected throughout this process. This is where a Non-Disclosure (or Confidentiality) Agreement plays a vital role. When the Non-Disclosure (or Confidentiality) Agreement is signed by the multiple parties, no one can legally disclose details or benefit from your innovative idea unless you specifically say otherwise. The Non-Disclosure (or Confidentiality) Agreement can serve as a portable asset that can be used to enforce the privacy of your idea or to seek damages if needed.

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