

Getting into the Game: Q&A with the Experts

Toys and games have long been an active and popular subject area for independent inventors, and there's no bigger month for toys and games than December. Coming up with the next must-have toy or the hottest new board game can be potentially lucrative. But even if you have a great idea, there are still a few key points to keep in mind if you plan to make a run at a finished and marketable product.

In many industries, manufacturers and marketing agencies encourage inventors to approach them with ideas and products. The toy and game industry, however, is an anomaly in the inventing world. Many manufacturers in the industry today rely on a system of using agents, or "brokers," to go between them and inventors. Toy and game brokers evaluate products and make decisions on which to prototype and present to industry representatives. They also receive a percentage of sales if a contract is signed. While not all toy and game manufacturers use this approach today, the largest manufacturers still refuse to deal with inventors directly.

Despite the idiosyncrasies of the toy and game industry, the universal truths about intellectual property still apply. Namely, it is vital for inventors to protect their intellectual property with patents and trademarks.

Inventors Eye connected with two expert sources, one inside the United States Patent and Trademark Office (USPTO) and one in the independent inventor community, to produce a brief but useful collection of questions and answers (Q&As) regarding toy and game inventing.

Q&A with Gene Kim, Supervisory Patent Examiner

Gene Kim is a supervisory patent examiner (SPE) in Group Art Unit (GAU) 3711, which is the main examining unit for toys and games. As a SPE, Kim keeps his finger on the pulse of applications and technology passing through his art unit. Incidentally, GAU 3711 receives the highest percentage of applications filed pro se (without an attorney) in the entire USPTO. We asked Kim about trends he is seeing in toy and game applications and tips for inventors planning to file application in the toy and game subject matter, especially pro se filers.

1. What trends in toy and game technology is GAU 3711 seeing?

We seem to be getting a lot of filings for the toy art and golf art. We have seen a decrease in the number of filings for certain technologies, such as card games and board games.

2. What percentage of applications are allowed in your art unit?

I would say roughly half of our cases are "allowed," meaning the subject in the application has been determined by the examiner to be patentable.

3. What common issues do you see with independent inventor and pro se applications?

I think the biggest issue is claim interpretation. Pro se applicants tend to focus on how their inventions are different than the examiner's applied prior art in a general sense. However, they don't always look at the differences in light of the claimed invention. Claims make up the legal language that defines the protection sought for the invention. Examiners read claims in the broadest, reasonable manner.

4. How can inventors help make examiners' jobs easier and patent prosecution more efficient?

Inventors should try to do research regarding patent prosecution on their own. Some pro se applicants are very knowledgeable and have obviously done their homework. On the other hand, some tend to just rely on the examiner to provide all the information regarding prosecution. This is not fair to examiners because they work on many cases and have strict deadlines. Additionally, I think inventors focus too much on functional limitations and not enough on structural limitations for apparatus claims. This means they put an emphasis on what the device

does, rather than how it is constructed and the physical components that make up its composition. A lot of pro se applicants can advance prosecution by adding structure to their claims.

5. Do you recommend interviews?

Yes, I think interviews can be very productive for both examiners and inventors. The examiner can help explain legal concepts that inventors do not fully understand, but more importantly, the examiner can go over claim interpretation, which tends to be the biggest issue. From my experience with pro se applicants, they usually really appreciate this.

6. What final piece of advice can you offer for independent inventors and pro se applicants?

Have an open mind during prosecution. There is a lot of subjectivity in the process when it comes to claim interpretation, interpretation of prior art, and whether or not a clear case of obviousness can be established. Examiners are very good at what they do and they try to do the best job possible. Applicants should try to not take anything personally if their application is not allowed.

Q&A with Mark Reyland, United Inventors Association of America

Mark Reyland is the executive director of the United Inventors Association of America (UIA). The UIA is the largest and oldest nonprofit organization in the inventing industry and has a longstanding positive relationship with the USPTO. Their mission is to educate and support inventors throughout the United States. We asked Reyland for his insight on toy and game inventing and making use of the tradeshows associated with them.

1. What tradeshows do you recommend for toy and game inventors to attend?

Most tradeshows are not open to the public, but the Chicago Toy and Game Fair is the largest in the country that is. It has lots of seminars, educational programs, and discussion groups, and it can be a great way for inventors to network. Inventors that are interested in visiting or exhibiting at a tradeshow should visit the UIA website for more in-depth information regarding these events and for information regarding toy and game inventing in general.

2. What is a good strategy for getting the most out of tradeshows?

Break your tradeshow experience into three components: pre-show, show, and post show. If you are exhibiting, be organized and have all your materials ready to go before the show. During the show, be active. Get the most out of it by interacting with people, handing out your business cards, and networking. Just attending a tradeshow is not going to make you successful. You get out of it what you put in. After the show, go straight home and start digesting the information. Pull out business cards, review materials, make notes, and organize. Mine everything for new information and start following leads.

3. What costs are associated with attending tradeshows?

It can cost anywhere from one to three thousand dollars to have a booth at a tradeshow and up to \$1500 to just attend. This is why it is vital to have a strategy ahead of time and get the most out of the event.

4. What should inventors keep in mind when dealing with toy and game brokers?

Toy and game brokers are not invention promotion companies. They work in different ways than promotion firms, and they charge different fees for different services. It can be quite costly to go through a toy agent, but in some cases, that's the only option. Educate yourself about the process and anticipate the disadvantages and advantages ahead of time.

5. What final piece of advice can you offer inventors interested in the toy and game field?

Take personal responsibility for your endeavors. This means going out and learning as much as you can about the industry, the market, the patent process, and anything else related to your invention. There is a lot of information out there. Start with places like our website, the USPTO website, and local inventor groups.