

# Game Roundtable: Focus on IP

April 24, 2008

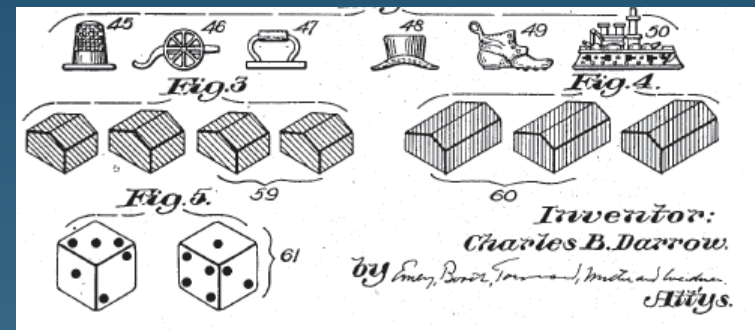
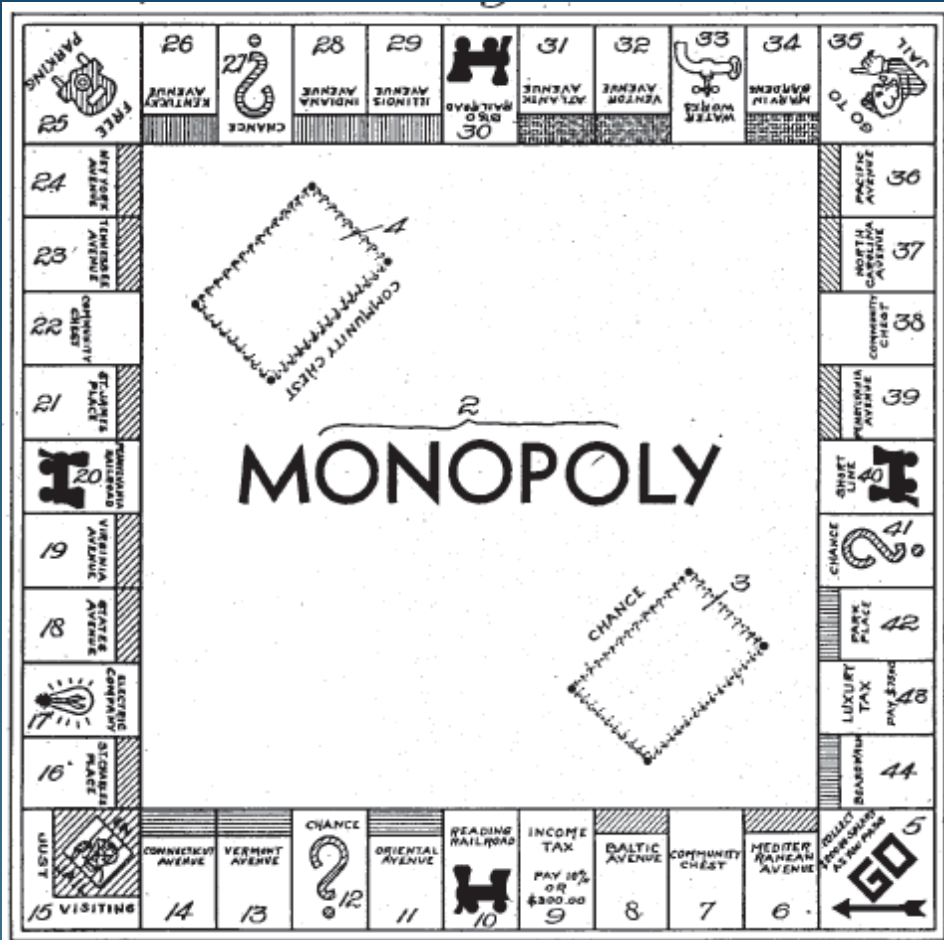
# Agenda

- Industry update
- Patent presentation
- Patent legislation update
- Pending patent cases
- Q&A

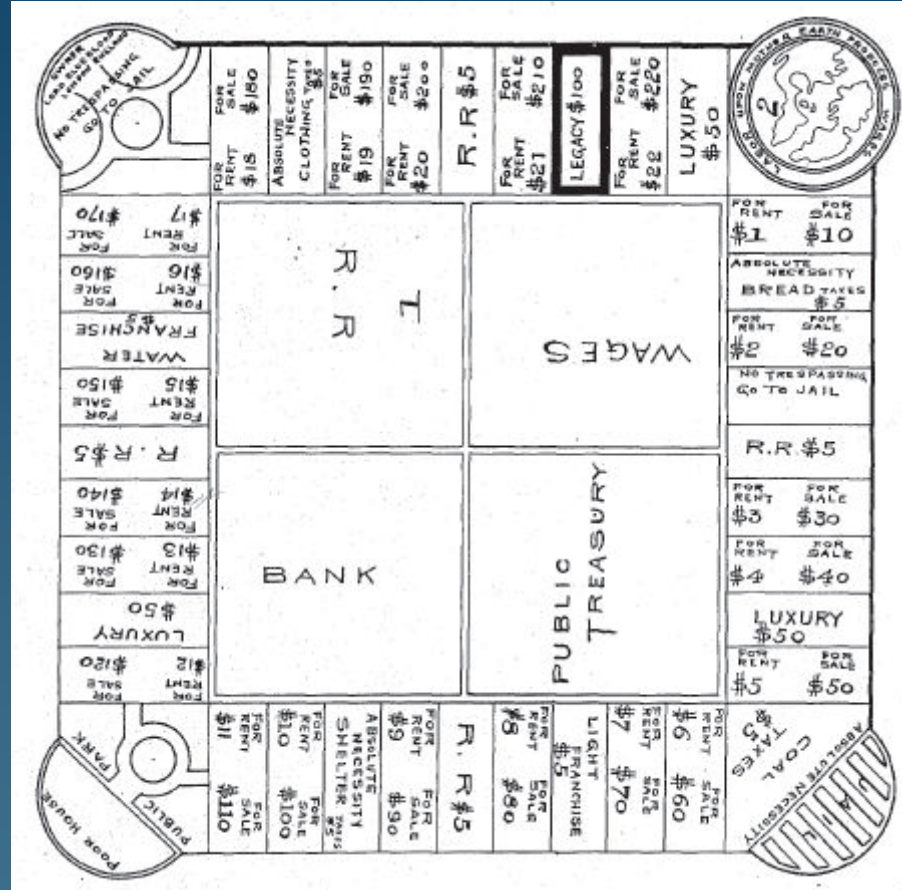
# What is a Patent?

- History of the patent process
- Invention defined by the claims of the patent
  - Broadest claim?
  - Earliest filing date?
- Claims are "negotiated" with the Patent Office Examiner
- Claims must define the invention in a manner to distinguish it over the "prior art"
  - Useful
  - Novel
  - Nonobvious

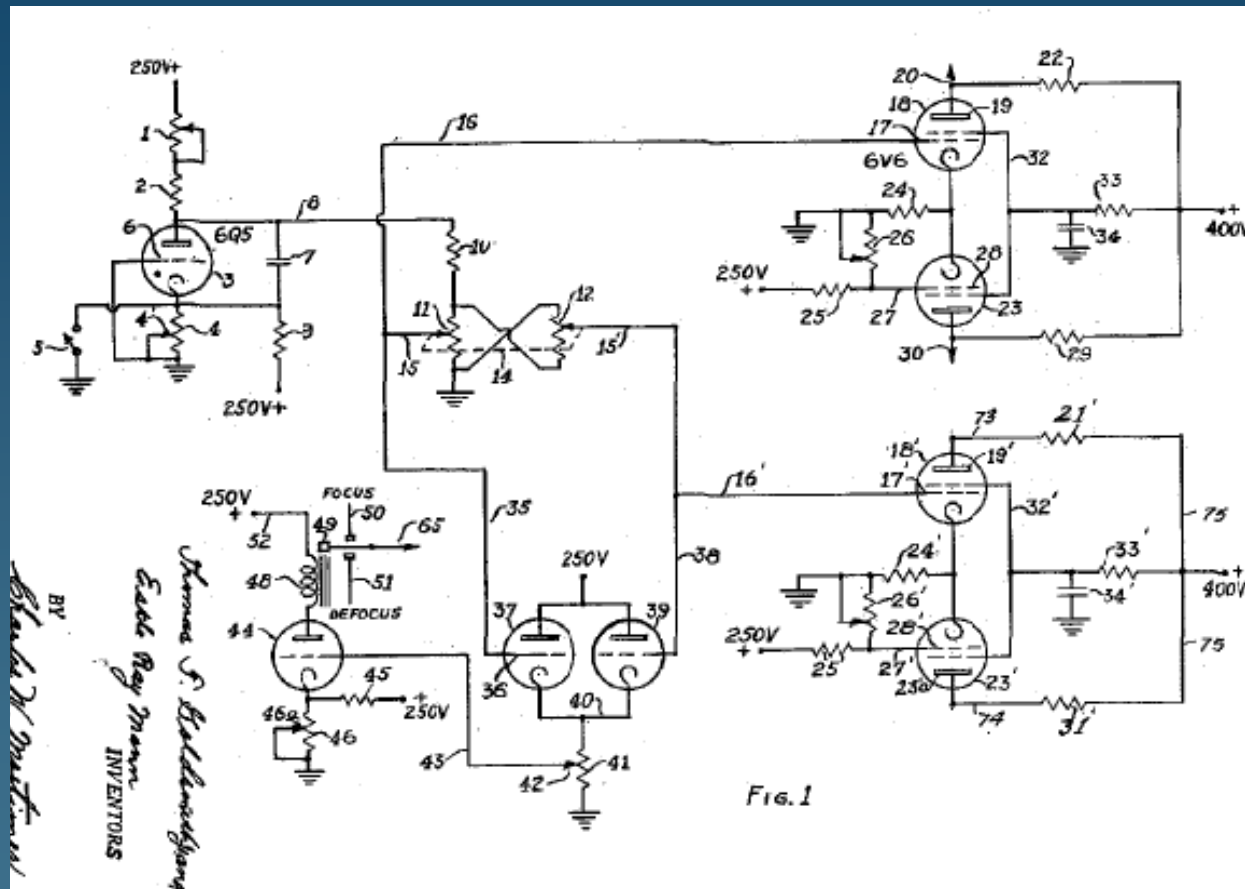
# Monopoly



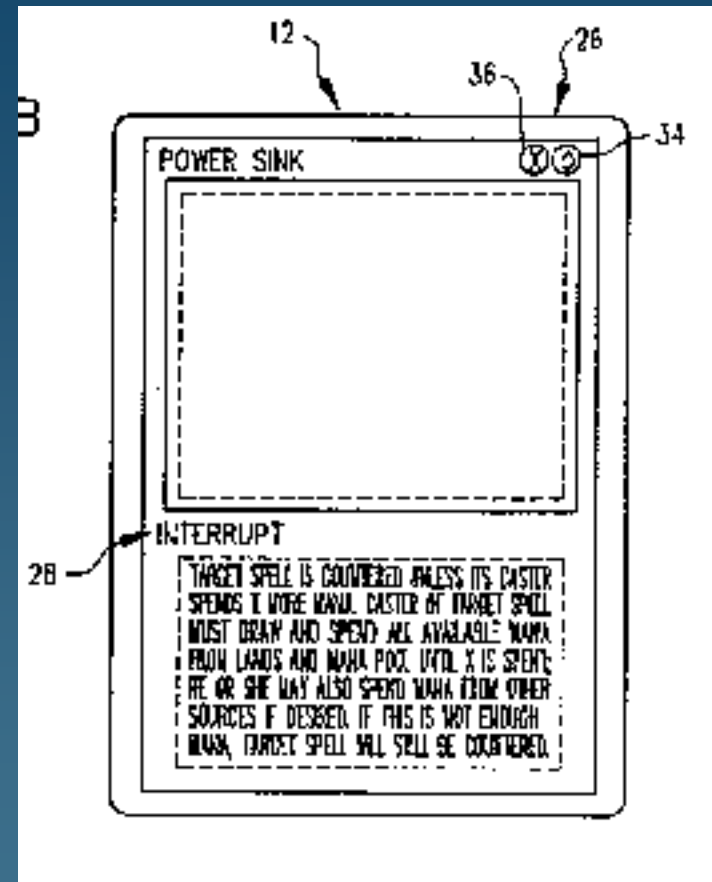
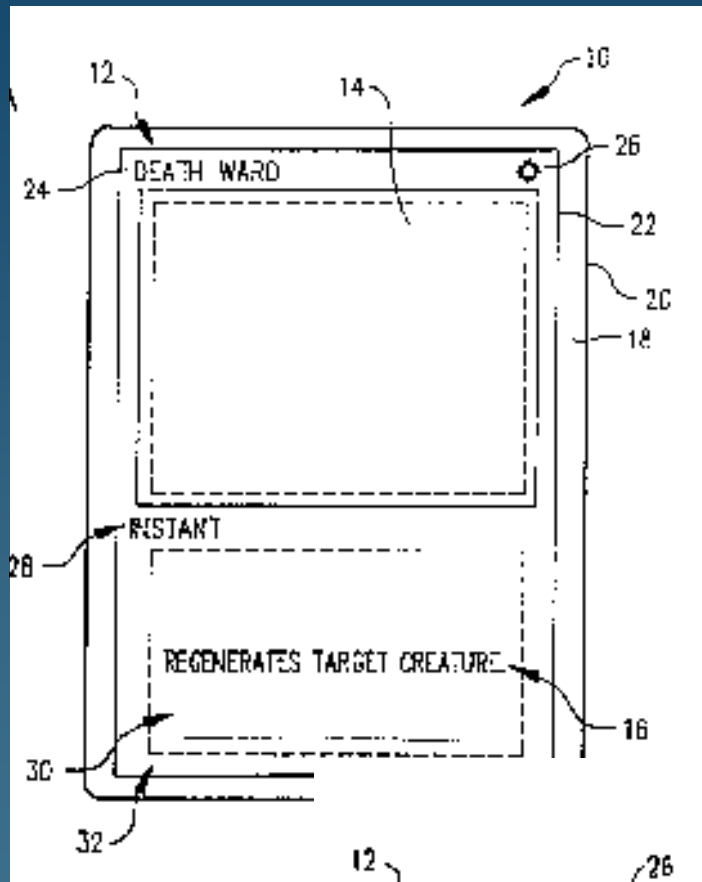
# The Landlord's Game



# Earliest Interactive Electronic Game



# Magic the Gathering



# Physical & Virtual Game Patent

**United States Patent** [49]

**Forrest et al.**



[11] **Patent Number:** 5,679,075

[45] **Date of Patent:** Oct. 21, 1997

[51] **INTERACTIVE MULTI-MEDIA GAME SYSTEM AND METHOD**

[75] **Inventors:** Andrew R. Forrest, Everett, Alan J. Pruzan, William J. Moore, both of Seattle, all of Wash.

[73] **Assignee:** Headtalk Entertainment Enterprises, Seattle, Wash.

[31] **Appl. No.:** 554,578

[22] **Filed:** Nov. 6, 1995

[51] **Int. Cl.<sup>6</sup>** ..... G06T 13/00

[52] **U.S. Cl.** ..... 463/9

[58] **Field of Search** ..... 463/9, 21, 30, 403/31, 35, 424/406

[56] **References Cited**

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**BILL. TV:** "The Visionary Thing." *Entertainment Weekly*, pp. 66-67, Apr. 28, 1995.

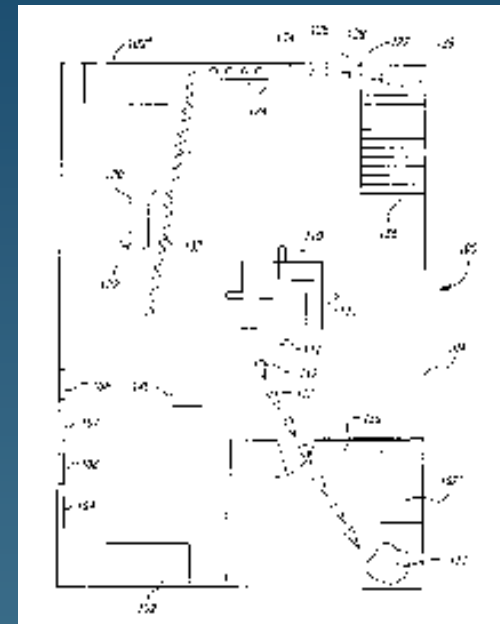
Von Schwaben, Linda and Erick, "Virtual Reality Virtually Here." *PC Magazine* 4(5): 166-169, 198, Mar. 14, 1995.

**Primary Examiner—**George Manuel  
**Attorney Agent, or Firm—**Seed and Berry LLP

[57] **ABSTRACT**

An interactive, multi-media game system and method is provided. In a preferred embodiment, an audio and/or visual playback system contains portions of a prerecorded narrative stored therein. Teams of players cooperatively solve puzzles, obtain information fragments and directional clues, and ultimately solve an overall meta-puzzle that can be in the context of the narrative. The players move between the portions of the prerecorded narrative and the puzzles that are positioned at selected locations in a defined space. The players solve threshold puzzles to permit them to access, or reaccess, selected portions of the narrative on the audio and/or visual playback device. The players gather sets of information fragments to solve a global meta-puzzle.

28 Claims, 5 Drawing Sheets





# The Value of Patents

- Defensive
- Offensive
- Revenue stream
- Asset
- Marketing
- Miscellaneous

# Identifying Patentable Ideas

- Patentable subject matter
- Sample patents
- What is worth patenting?
- Patentability does not require complexity or sophistication
- It doesn't have to be rocket science
- Considerations in determining whether an invention should be patented

# Patentable Subject Matter

- Articles of manufacture, machines, processes (methods), and improvements thereof:
  - Apparatus, equipment, systems, e.g. new hardware necessary to enrich the gaming experience (olfactory output devices).
  - Methods of playing a game (game mechanics); storing or manipulating data; communications techniques
  - Software, UI techniques, Internet-related businesses
  - New data structures (e.g. those involved in creating a character, rendering an environment, virtual objects)

# Patentable Subject Matter

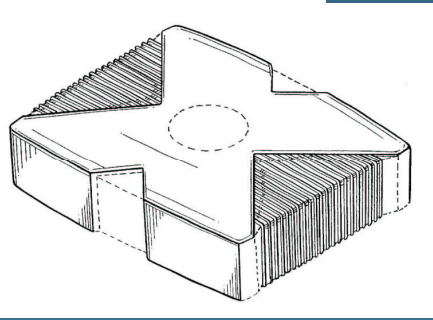
- Purely mathematical algorithms or abstract ideas are not patentable
- But, a process containing a mathematical algorithm is patentable where process applies algorithm to produce a useful and concrete or tangible result without preempting other uses of algorithm

# Patentable Subject Matter

US00D452282B1

(12) **United States Design Patent** (10) **Patent No.:** **US D452,282 S**  
**Stewart et al.** (45) **Date of Patent:** **\*\* Dec. 18, 2001**

(54) **PORTION OF AN ELECTRONIC HOUSING** Color pictures of Gamecube video game system by Nintendo, from various internet web pages, 3 pages, (date unknown but prior to Jan. 11, 2001).  
 (75) Inventors: **James R. Stewart**, Woodinville; **Hok-Sum Horace Luke**, Mercer Island, both of WA (US) Color pictures of Playstation 2 video game system by Sony, from various internet web pages, 3 pages, (date unknown but prior to Jan. 11, 2001).  
 (73) Assignee: **Microsoft Corporation**, Redmond, WA (US) \* cited by examiner  
 (\*\*) Term: **14 Years** *Primary Examiner*—Prabhakar Deshmukh  
 (21) Appl. No.: **29/135,335** (74) *Attorney, Agent, or Firm*—Banner & Witcoff, Ltd.  
 (22) Filed: **Jan. 11, 2001** (57) **CLAIM**  
 (51) **LOC (7) CI.** ..... **21-01** The ornamental design for a portion of an electronic housing, as shown and described.  
 (52) **U.S. CI.** ..... **D21/333**  
 (58) **Field of Search** ..... D21/324, 328–333; D14/400, 401, 435, 495; 273/148 B; 463/1, 29–35, 46, 47  
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 6,254,477 \* 7/2001 Sasaki et al. .... 463/47  
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 www.Amazon.com, Color Pictures of Outdoor Trekker product by V-Tech, 2 pages, (date unknown but prior to Jan. 11, 2001).



- Business methods, especially those involving a computer somewhere in the method, are patentable (e.g., on-line auction)
- Designs, e.g. lamp shades, machine components, or computer icons (cheap to obtain and enforce)

# What is Worth Patenting?

## Business Value

### Patentable

high

medium

low

likely

yes

yes

maybe

possible

yes

maybe

maybe

unlikely

maybe

maybe

no

# Patentability Does Not Require Complexity or Sophistication

- Patentability does not equate with technical excellence – it's not rocket science
- Simple games can be patentable
- New combinations of elements from different, existing games potentially patentable
- Remember the inventor doesn't determine patentability

# To Patent or Not to Patent?

- Is the invention important to the Company?
- Will the invention be used long into the future?
- Are other companies likely pursuing parallel development?
- Is the solution to a given problem one that others will likely develop in the normal course of their work?
- *Importantly:* to be patentable, no product or prototype needs to be produced. Sufficiently developed ideas alone can become "paper patents"



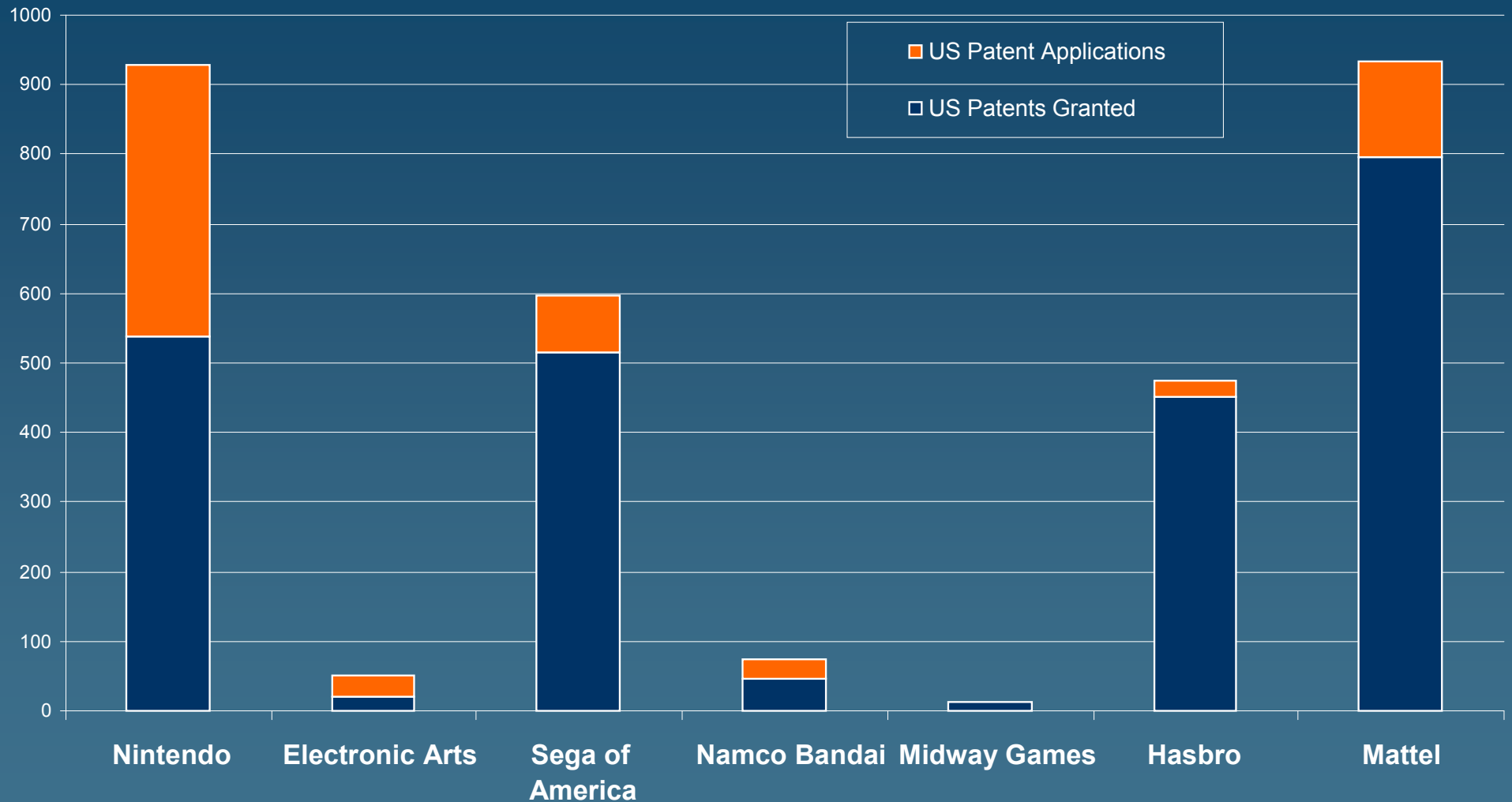
# To Patent or Not to Patent?

- Does the idea constitute a non-infringing design around a patent owned by a competitor?
- Can the invention be exploited under a licensing scheme? (e.g., most game and user interface inventions--easy to detect infringement)
- As an alternative to patent protection, should the invention be protected as a trade secret? Can it be kept secret? (Possibly so if it performed on your secure server.)

# Examples of Patented Technology

- Dancing game with workout mode
- Computer-controlled characters who move out of the way of an oncoming vehicle
- Rewarding players with points based on achieving a goal with "style"
- In-game advertising
- Connectivity patents – networked gaming
- Simulated Musical Concert Experience

# Game Industry Patents



# Sample Game Lawsuits

- Peer-to-Peer Systems obtains patent infringement settlement against PalmOne
- American Video Graphics filed suit against major game companies with respect to patent for a method for display 3-D panning and zoom and settled with most of the companies out of court
- Immersion obtains injunction against PlayStation sales and a \$82M damage award against Sony for technology to vibrate a controller in response to game action

# Patent Litigation

- Gibson Guitar Corporation owns U.S. Patent No. 5,990,405 entitled "System And Method For Generating And Controlling A Simulated Musical Concert Experience"
  - Application for patent filed on July 8, 1998
  - Patent granted on November 23, 1999

# Patent Litigation

- Gibson has filed 2 patent infringement suits against:
  - Wal-Mart, Target, Kmart, Amazon.com, GameStop, and Toys-R-Us
  - Harmonix, MTV (a division of Viacom), and Electronic Arts
- Allegations
  - By creating, selling, or inducing the sale of various Guitar Hero® and Rock Band™ products, defendants infringe, contribute to the infringement of and/or induce the infringement of U.S. Patent No. 5,990,405
- Remedy Sought
  - Gibson seeks damages and an injunction preventing the defendants from infringing, contributing to infringement of, or inducing others to infringe U.S. Patent No. 5,990,405

# Top 4 Things to Remember

- Bar dates!
- Patent essentials: broad claim and early filing date
- Everything that provides a competitive advantage is potentially patentable
- Patents are business decisions