



Pokémon GO Shows How to Augment Reality *and* your Intellectual Property

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No video game has had more impact on communities than Pokémon GO. Within days of the augmented reality game's release, Pokémon hunters were [scouring every nook and cranny](#) to find the elusive virtual creatures. Nintendo, which has 30% ownership in the Pokémon GO business, saw its share price more than double within two weeks of the game's release. It then fell back to earth once Nintendo issued a reality check that the game was not going to have a significant short-term effect on earnings. The game has only limited purchasable content at this time, while its owners try to work out [monetization strategies](#). At the heart of any monetization strategy is the Pokémon intellectual property ("IP").

The Pokémon GO IP is new, but the IP strategies used are not. This article will provide a brief overview of certain registered and unregistered augmented reality IP, focusing primarily on the Pokémon IP. It provides an interesting case study in protecting IP, because the basics are similar whether the IP is computer-related, mechanical, or life sciences. One can also see how the Pokémon IP has evolved over approximately two decades.

Trademarks

In the days when Pokémon was a Game Boy game and trading cards, trademark registrations were filed to protect the brand name. The trademark provides the exclusive right to use the brand with the registered goods and services, which include the game itself and merchandise. Pokémon trademarks were registered in 1997 for software, programs, cartridges, trading cards, TV shows, magazines and merchandise [1].

The Pokémon brands are famous and highly valuable, so extending the brand to Pokémon GO makes good business sense. Pokémon GO trademarks were also registered for the new game, such as Pokémon GO and Pokémon Moon [2]:

Copyright

Copyright is important to protect certain written and artistic works associated with the game. Copyrighted written works include the game instructions as well as the source code in the computer program. Certain artistic aspects of the game may also be copyrighted. Copyright exists as soon as the work is created, but registration can improve enforceability. In the US, there are nearly 3000 copyright registrations over the past couple of decades associated with Pokémon (and accompanying deposits). These cover written text, source code, motion pictures and other visual material [3].

Designs

We did not identify design patent (industrial design) registrations on Pokémon in the US or Canada. Design registrations are useful to protect appearance and ornamentation on mass-produced articles. They are typically used to protect manufactured articles, but can also be used to protect the appearance of computer icons. Designs are confidential until registered, so we may see Pokémon GO-related design registrations in the near future.

Trade Secrets

Trade secrets are another type of property, which reflect the value and competitive advantage that the owner obtains from its secrets not being publicly known. With Pokémon GO, much of the game code and algorithms are stored in the cloud, so users cannot access that IP in any way. Customer lists and other confidential business information can also be trade secrets.

Patents

Certain functional aspects of video games are subject to patent filings. Nintendo has in excess of 100 US patents and published applications related to augmented, mixed and virtual reality. The earliest filing dates back to 2006, with an increase in 2011. Most of these augmented reality patent filings do not specifically relate to Pokémon GO, or necessarily even cover Pokémon GO. These filings cover aspects such as three dimensional image processing, stereoscopic image displays, server-side processing, electronic messaging, and eye tracking. As well, one can look to newer patent applications to see where augmented reality games may go. Given the popularity of augmented reality, it is understandable that its owners would want to protect their inventions with IP as a precaution, before it is known whether that invention will go into production. There is a lag before new patent applications can be viewed because patent offices typically keep them confidential for 18 months until published. Keep an eye out for Pokémon GO specific patent filings next year.

As new technology is adopted, low tech conventional branding and copyright strategies can often be supplemented by high tech patent filings and trade secret protection for technical aspects. Pokémon and augmented reality games show how IP strategies can evolve and adapt to new technology. Augmenting your IP base creates valuable company assets, as well as being a useful tool to prevent competitor copying.

[1] Some examples of early Nintendo POKÉMON trademarks filed in 1997 are US Reg. Nos. 2297050 (computer game software, electronic game programs, video game cartridges, video game software), 2358736 (trading cards, storybooks, games), 2358735 (clothing) and 2265698 (television programs).

[2] US application Nos. 86928567 and 86920142, respectively, filed 2016.

[3] Some example copyright registrations include US Reg. V3461D131 for 190 episodes of a Pokémon television series, US Reg. PA0000900345 for video game computer code, US Reg. SR0000275339 for a Pokémon sound recording, and US Reg. TX0005077302 for a Pokémon activity book.