

## **PATENT 101 LEVEL 1: UNDERSTANDING PATENT IN THE AGGRESSIVE MONETIZATION OF VIDEO GAMES**

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### **Abstract**

From being a household product to a billion-dollar industry, video games have evolved a lot. Despite its early inceptions in the 1950s, video games started to flourish in the late 1970s. Its expansion all over the world made people from all ages and walks of life love video games. It is one of the only few mediums of entertainment whose worlds could be interacted by the audience. Let me give you an example of Harry Potter. Imagine the difference between playing a Harry Potter game and reading a Harry Potter novel. Playing a Harry Potter game is more interactive than a novel. The reason being, the novel creates the world visually through words. A movie shows the world through its camera so that the casual audience would see it. It's video games that can make a player interact with the character and the world. Imagine playing as Ronald Weasley and defeating Draco Malfoy most epically. Or Hermione beats Lord Voldemort herself. It's possible to do that in video games than in movies or novels. Video Games have changed the shape of the entertainment industry's history, but this paper will look at this world differently. Especially in the eyes of the patent. In recent times video games are aggressively monetized. The corporations do this just to squeeze out money from the players. And these monetization policies have been patented by several companies. This is despite the criticism received by gamers, media, and even politicians alike for both legal and ethical grounds. This paper aims to discuss the concept of patent, its impact in the video game industry, the aggressive monetization practices, and lastly, patenting such practices.

### **Level 1: Introduction: Understanding the Concept of Patent in Brief<sup>1</sup>**

Allow me to give an example. Suppose I made a new invention, say a wristwatch that has an in-built camera. Now I want to protect the camera-built wristwatch from being copy-pasted by my rivals. So I decided to get the wristwatch patented. In other words, I legally seek the protection of my invention for few years.

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<sup>1</sup>Pandey, A., 2017. *Guide to IPR and Patent in India - iPleaders*. [online] iPleaders. Available at: <<https://blog.ipleaders.in/guide-ipr-patent-india/>> [Accessed 21 September 2021].

That is an example of a patent. In layman's terms, a patent is the legal guardian of the invention for a limited time. It means that a new creation cannot be carbon copied by another person within the time limit given by the law. If a person wishes to patent their invention, they must include the following features:

1. Innovative Step
2. Novelty
3. Utility
4. Industrial applications are necessary.

The tools and technologies which helped create an invention are made public. The purpose of this is to refrain another person from duplicating the invention's effort and finances. In the aforementioned example, I've talked about the inbuilt-camera wristwatch. So I decided to make the tools responsible for my watch's creation public. If anyone tries to plagiarize it, then I can take them to court.

A person (patent-holder) can have his patent granted for twenty years, meaning that they can hold the monopoly. They can also prohibit others from using their invention. At the same time, they must not milk the patent for their gains. If they want to earn essential royalties, they must license its use and implementation through third parties.

### **Netflix vs. Blockbuster<sup>23</sup>**

#### Facts

- Netflix Inc. (then a video rental chain) sued the once largest mail-order movie rental service, Blockbuster.
- Netflix accused Blockbuster of patent infringement.
- Allegations: Blockbuster copied its rival's method of providing customers to order videos via the Internet.

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<sup>2</sup>Blockbuster Makes Gains in Patent Case, Los Angeles Times (Aug. 23, 2006), [www.latimes.com/archives/la-xpm-2006-aug-23-fi-netflix23-story.html](http://www.latimes.com/archives/la-xpm-2006-aug-23-fi-netflix23-story.html).

<sup>3</sup>Leo Saini, How Netflix Destroyed Blockbuster in Just 6 Years, Better Marketing (Nov. 16, 2019), [bettermarketing.pub/how-netflix-destroyed-blockbuster-in-just-6-years-4c5c3006fe3e](http://bettermarketing.pub/how-netflix-destroyed-blockbuster-in-just-6-years-4c5c3006fe3e).

- Netflix asked a San Francisco federal judge to shut the Blockbuster site (Blockbuster.com) which was 20 months old.
- Other allegations:
  1. No late fees on movie rentals.
  2. Allowing customers to get DVD as soon as they return one.
  3. Wish list for movies- that was prioritized by the subscribers on which films they want.

Netflix's business method is protected by two patents in the United States.

1. The first patent, issued in 2003, covered how Netflix users choose and receive multiple movies at once, then return them for additional titles.
2. Second, a subscription-based online rental technique is described that allows users to retain the DVDs they rent for as long as they like without suffering late fees.

To receive new DVDs without incurring additional fees, as well as to prioritize their dynamic queue.

Even though Netflix and Blockbuster entered into a settlement, it was a long-term loss for Blockbuster. Netflix's rising stardom was Blockbuster's downfall. The lawsuit was Blockbuster's final nail in the coffin. By the 2010s, Netflix became a dominant force in the entertainment industry, whereas Blockbuster got dusted when it filed for bankruptcy in 2010.

### **Level 2: Understanding Patent in the Video Game Industry**

Before I go into this topic, let me explain why I chose to write about video games in the first place. From elementary school to college, I spent much of my time playing video games. Bullying, the death of family members, and tedious tuitions were some of the darkest days of my life, and video games helped me escape the worst of reality for few hours. It aided me in speaking and writing English more fluently than at school. So, for better or worse, I believe I owe a great deal to the video gaming community for having such a significant impact on my life.<sup>45</sup>

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<sup>4</sup>Anish Bala, My Connection With Video Games, Live Wire (Feb. 24, 2021), [livewire.thewire.in/personal/my-connection-with-video-games/](https://livewire.thewire.in/personal/my-connection-with-video-games/).

<sup>5</sup>Anish Bachchan, We Slave Away At Schools Only To Find No Jobs At The End Of It, (Aug. 30, 2021), [www.youthkiawaaz.com/2021/08/educational-north-korea-the-majestic-flaws-of-our-school-education-system/](https://www.youthkiawaaz.com/2021/08/educational-north-korea-the-majestic-flaws-of-our-school-education-system/).

Now that's out of the way, let's speak about patents and the video game business. Why do the vast majority of video game firms rely on patents? It's because it's gotten easy for other companies to imitate the game's most crucial aspects. For example, when firms like 343 Studios and Activision imitated Titanfall's (a game franchise established by Respawn Entertainment) wall running mechanics in their games, YouTuber The Act Man expressed his displeasure (Call of Duty and Halo 5 respectively). These two businesses were imitating it to keep up with the times<sup>6</sup>.

Developers can change the story and visuals of the game. However, if they were to change the core mechanics, then it could be difficult. Video games are very expensive to make. For example, the cost of making Metal Gear Solid V was \$80 million<sup>7</sup>. Imagine the cost of changing other core elements because it is at risk of being copied. So developers needed their mechanics to be patented to get their investments secured<sup>8</sup>.

On the other hand, some people look down on patenting video games. The detractors believe that the patent-holders get the royalties for the entire system rather than its component. There were times when the royalties have exceeded the initial cost of the patents. Thus they raise the question of - "Whether using the patent in video games is a good idea or a messy idea?"

### **Lucent Technologies vs. Gateway**

In this case, Lucent Technologies filed a lawsuit against Microsoft. Lucent believes that the latter's date-picker feature on Microsoft Outlook has infringed their patent. The jury awarded the royalties of \$357 million. However, the appeals court rejected the award. They held that Outlook's date-picker feature is small in comparison to Outlook's program as a whole. Therefore, the profit they are attributed to the date-picker feature is a tiny portion<sup>9</sup>.

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<sup>6</sup>The Act Man, The Decline of Gaming, YouTube (Dec. 17, 2019), <https://www.youtube.com/watch?v=2sFrG02xpAw>.

<sup>7</sup>Metal Gear Solid V Cost \$80M to Develop, WholesGame (Aug. 12, 2015), [wholesgame.com/news/metal-gear-solid-v-cost-80m-to-produce/](http://wholesgame.com/news/metal-gear-solid-v-cost-80m-to-produce/).

<sup>8</sup>Video Games: A Growing Market and its Intellectual Property Needs, (Nov. 30, 2020), [blog.jipel.law.nyu.edu/2018/04/video-games-a-growing-market-and-its-intellectual-property-needs/](http://blog.jipel.law.nyu.edu/2018/04/video-games-a-growing-market-and-its-intellectual-property-needs/).

<sup>9</sup>Patents And The Video Game Industry: What You Don't Know Could Hurt You, Game Developer (Jan. 13, 2011), [www.gamedeveloper.com/business/patents-and-the-video-game-industry-what-you-don-t-know-could-hurt-you](http://www.gamedeveloper.com/business/patents-and-the-video-game-industry-what-you-don-t-know-could-hurt-you).

### **Level 3: The concept of aggressive monetizations in video games: Microtransactions and Loot-Boxes<sup>1011</sup>**

If you want to know the aggressive monetization system in the gaming industry, look no further than PUBG Mobile (Now known as BGMI). PUBG Mobile's impact on India's gaming scene was enormous. I can remember my mates in the hostel playing this game when it first came out. When it was banned last year, it affected esports, smartphone companies, YouTubers, and India's gaming community<sup>12</sup>. I wasn't so surprised when it was unbanned a few months ago. Although people were overjoyed.

What people don't know, PUBG Mobile has one of the most aggressive monetization systems. Remember the outfits, the weapon skins, and even in-game currencies that require real-life money? Those are called microtransactions. In the common tongue, it means that people use real-life money to buy products that are priced at low cost<sup>13</sup>.

PUBG Mobile's monetization system was so successful that it made \$3.5 billion through microtransactions<sup>14</sup>. At the same time, it also led to new problems. In 2020, a kid spent Rs 16 lakh on PUBG Mobile. He spent it on cosmetics, tournament passes, ammunitions, etc. The parents thought he was using the money for his studies. To make matters worse, he emptied his account and his mother's provident fund. The money that was saved for the kid's father's medicine was now spent on fictional weapons<sup>15</sup>.

And then, there are the loot-boxes. They're Las Vegas Casinos but online. In other words, loot-boxes are software features where real-life or virtual money is used to get random items.

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<sup>10</sup>Anish Bachchan, Current Issues that Plagued the Video Game Industry, Medium (Jan. 6, 2021), [anishbala147.medium.com/current-issues-that-plagued-the-video-game-industry-5067de7db0a9](https://anishbala147.medium.com/current-issues-that-plagued-the-video-game-industry-5067de7db0a9).

<sup>11</sup>Video Games: An Overview, [www.legalserviceindia.com/legal/article-4271-video-games-an-overview.html](http://www.legalserviceindia.com/legal/article-4271-video-games-an-overview.html).

<sup>12</sup>Cyrus John, How PUBG Mobile Ban Impacts Esports & Gaming Phone-Makers in India, (Sept. 9, 2020), [www.thequint.com/tech-and-auto/tech-news/how-ban-on-pubg-mobile-impacts-the-esports-and-gaming-mobiles-industry-in-india](http://www.thequint.com/tech-and-auto/tech-news/how-ban-on-pubg-mobile-impacts-the-esports-and-gaming-mobiles-industry-in-india).

<sup>13</sup>Computer Hope, What are Microtransactions?, (Aug. 16, 2021), [www.computerhope.com/jargon/m/microtransaction.htm](http://www.computerhope.com/jargon/m/microtransaction.htm).

<sup>14</sup>Christian Allen Tandoc, PUBG Mobile reaches \$3.5 Billion from microtransactions, (Sept. 10, 2020), [pvplive.net/pubg-mobile-reaches-3-5-billion-from-microtransactions/](http://pvplive.net/pubg-mobile-reaches-3-5-billion-from-microtransactions/).

<sup>15</sup>Punjab teen spends whopping Rs 16 lakh on PUBG in-game transactions, Technology News, The Indian Express (July 5, 2020), [indianexpress.com/article/technology/gaming/punjab-teenager-khagar-pubg-16-lakh-in-app-purchases-6489572/](http://indianexpress.com/article/technology/gaming/punjab-teenager-khagar-pubg-16-lakh-in-app-purchases-6489572/).

This is akin to gambling slot machines. The loot-box system gives the players rewards of different values. The computer's algorithm generates such rewards through pseudorandom number generation.

In today's time, both loot-boxes and microtransactions are reviled by gamers, media, and even the politicians for various reasons:

1. Video game corporations don't care about pleasing gamers anymore. Their primary people of interest are their shareholders. They sided with profit while turning their backs on their customers. For example, a loot-box system in Call of Duty World War 2 is prioritized more than the game itself.
2. Star Wars Battlefront 2 Scandal: A game that makes you spend 40 hours to unlock a hero has raised a lot of eyebrows. When people found out that they need to pay real-life money to progress and unlock a character quickly, they were outraged. The loot-box system was over monetized too. Things got so bad that the Hawaiian politician Chris Lee described the game as an "Online Star Wars Cantina" luring kids to gamble real-life money. The Hawaiian Lawmakers were also keen on regulating loot-boxes.
3. Metal Gear Survive, a 2018 video game made by Konami made people go banshee mode when they were asked to pay \$10 for a save slot. The move not only destroyed the Metal Gear Franchise's legacy. It destroyed Konami's reputation as well
4. Mobile Games are the worst offenders of microtransactions. Since most mobile games are free-to-play, they allow people to purchase their content through real-life money. In the above-mentioned example, PUBG Mobile made billions of dollars from microtransaction itself. It shows how despite being cheaper to make, mobile gamers are the easiest way to make money<sup>16</sup>.

The loot-box and microtransaction system became infamous over the past few years. People who have the iota of understanding what those two words are have raised ethical and legal questions. The governments and the courts eventually had to step in to counter these. The Dutch Court fined EA (Electronic Arts) 10 million Euros for its aggressive monetization policies in their sports games (Fifa 19, 20, and 21). Sports Games are the worst offenders of

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<sup>16</sup>Johnathan Jaehnig, What Are Microtransactions and How Do They Work?, (June 21, 2021), [www.makeuseof.com/what-are-microtransactions-and-how-do-they-work/](http://www.makeuseof.com/what-are-microtransactions-and-how-do-they-work/).

this aggressive system. Belgium had to ban the use of loot-boxes all over the country. China prohibited the sale of loot-boxes for kids below the age of 8 years<sup>17</sup>. In the end, these systems represented everything wrong with the modern video game industry.

### **Boss Fight Level: Patenting Aggressive Monetization System**

#### **1. Activision's Patent<sup>1819</sup>**

It's an ideal opportunity to face the glaring issue at hand. Activision filed a patent for its microtransaction procedure in 2015. On October 17th, 2017, the US Patent and Trademark Office allowed Activision a patent. Microtransactions in multiplayer matches are permitted under the patent in debate. Matchmaking was set up so that players were constrained to buy in-game substances.

For example, if an average player teamed up with a pro player, it could make the average player buy the same cosmetics used by the pro player. So the purpose of the system was to make an average gamer imitate a pro player by buying in-game weapons, gears, skins, etc.

It was during the same time when Star Wars Battlefront 2 Scandal was beginning to unravel. Public opinion towards microtransactions and loot-boxes was about to change. One critic even found this system scummy. According to him, Activision patented it just so they could milk the money from their user base. It's not the first time Activision got under hot water. In 2019, the Blitzchung controversy turned public opinion against Activision because of their appeasement to the Chinese Government<sup>20</sup>. In 2021, several workers and even the State of California accused the company of sexual misconduct<sup>21</sup>.

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<sup>17</sup>Computer Hope, What is Loot box?, (Aug. 16, 2021), [www.computerhope.com/jargon/l/loot-box.htm](http://www.computerhope.com/jargon/l/loot-box.htm).

<sup>18</sup>Alex Osborn, Activision Files Patent for Microtransaction-Minded Matchmaking System, IGN India (Oct. 18, 2017), [in.ign.com/destiny-2/114376/news/activision-files-patent-for-microtransaction-minded-matchmaking-system](http://in.ign.com/destiny-2/114376/news/activision-files-patent-for-microtransaction-minded-matchmaking-system).

<sup>19</sup>Activisions scummy microtransaction patent, Suitably Bored (Oct. 18, 2017), [g33kp0rn.wordpress.com/2017/10/18/activisions-scummy-microtransaction-patent/](http://g33kp0rn.wordpress.com/2017/10/18/activisions-scummy-microtransaction-patent/).

<sup>20</sup>Anish Bachchan, Outrage Culture And Bhedchaal Mentality Are Affecting India Worse Than We Think, (Jan. 10, 2021), [www.youthkiawaaz.com/2021/01/online-bandwagon-and-outrage-culture-in-india/](http://www.youthkiawaaz.com/2021/01/online-bandwagon-and-outrage-culture-in-india/).

<sup>21</sup>Anish Bachchan, Letters: Its time to unite against sexism in gaming, Los Angeles Times (Aug. 7, 2021), [https://www.latimes.com/entertainment-arts/story/2021-08-07/activision-blizzard-sexism-in-gaming?\\_amp=true](https://www.latimes.com/entertainment-arts/story/2021-08-07/activision-blizzard-sexism-in-gaming?_amp=true).

## 2. Sony's Patent<sup>22</sup>

As of July 2021, Sony filed a patent for kicking out players from the game. One of those kicking procedures required microtransactions. According to the said microtransaction system, a person will have to pay the fixed rate of fees to kick out the player from the game. The same microtransaction system also allows spectators to kick the player out. All they have to do is to split the cost.

The reason for implementing this system is to prevent bad actors. And by bad actors, I mean cheaters, hackers, or people who could ruin the game for other people. At the same time, this system could also be used for "nonwholesome reasons." The writer of TechRaptor says that it is highly unlikely Sony would use this patent. The reason stated was companies invested lots of money to protect their innovations and there were times they don't use it at all.

## **Epilogue: Conclusion with Indian Context**<sup>2324</sup>

Even though games like Call of Duty, Fifa, PUBG Mobile, Counter-Strike, etc. are popular in India, it's still young in the gaming industry. Indian video games still don't hold a candle against American, European, and Japanese juggernauts. Our IPR system is not as strong yet as well. So, there's a possibility that the patent system in India could be misused. However, everything is dynamic in the hands of time.

So there's hope that India's condition in both gaming and patent might improve. At the same time, games like PUBG Mobile, Call of Duty Mobile, Subway Surfers, other games need to regulate their monetary system. The reason being, these systems are making children falling in prey to gambling. Something like this might affect their financial situation.

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<sup>22</sup>Robert N Adams, Player-Kicking Microtransaction Patented by Sony, TechRaptor (July 19, 2021), [techraptor.net/gaming/news/player-kicking-microtransaction-patented-by-sony](https://techraptor.net/gaming/news/player-kicking-microtransaction-patented-by-sony).

<sup>23</sup>Rebecca Furtado, Intellectual Property Rights in the Video-Games Industry - iPleaders, IPleaders (June 24, 2016), [blog.ipleaders.in/intellectual-property-rights-video-games-industry/](https://blog.ipleaders.in/intellectual-property-rights-video-games-industry/).

<sup>24</sup>Intellectual Property Rights: What is the status quo in India?, IPTSE <https://iptse.com/impact-of-ipr-in-india/>.



I likewise wish for positive improvements in the computer game business. The video game community in general is being demolished by these scandals. It's awful enough that our society has a negative view of video games (while at the same time promoting a faltering education system), however, presently these organizations are compounding an already painful situation. Right now, the best anyone can hope for at this point is to sit back and watch how the computer game industry's future creates.