

Intellectual Property Revenue Generation Game

RECOMMENDED AGES 24 AND UP

A lifetime to learn and master

Robert Cantrell

Center For Advantage

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Intellectual Property Strategy Board™

Home Company
Intellectual Property

- 💰 Employ
- 💰 Lend
- Block
- Disclose

[Hold]

Other Company
Intellectual Property






- ←
- Buy
 - Borrow
 - Better
 - Sue
 - (Avoid)

Six Angles of
Competition™

- Direct
- Competition
- Alternative Use
- Substitute
- Economic
- Complement
- Client Enabler

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Pieces

-  Black – Internally Developed (Home Organization) Intellectual Property
-  Red – Externally Developed (Other Organization) Intellectual Property
-  Gray – Externally Developed (Other Organization) Intellectual Property that is licensed to the home company
-  Yellow – Intellectual Property no longer legally protected against use by other organizations (Advanced Game)
-  Brown – Intellectual Property belonging to a joint venture or strategic-alliance company that is not licensed to the home company (Advanced Game)

GAME OBJECTIVE

The game objective is to move into scoring positions as much intellectual property from either of the board's two blue boxes to the \$ denoted categories of "Use in a Product" and "License" as you can. You score points when intellectual property under "Use in a Product" or "License" generates positive revenue numbers for your team.

PRE GAME SET UP

Black Piece

Place all black pieces, which denote Internally Developed Intellectual Property such as patents, trademarks, copyrights, trade secrets, or otherwise, into the blue box under "Hold" in a fashion that suits you. Move these pieces to the "Use in a Product," "License," "Block," or "Disclose" categories, or leave them in "Hold" until one of the three previous uses develops. If a black piece falls under both "Use in a Product" and "License" categories, it can straddle those two categories. Straddling is also permitted between block and disclose categories since you may want competitors to know about the intellectual property before they attempt to claim it as their own. Straddling is not permitted otherwise since intellectual property that is both a block and usable in a product or license is automatically moved to "Use in a Product" and/or "License."

Assign a revenue number, a remaining commercial a legal life number, and a maintenance fee number if applicable. Revenue numbers can be positive, neutral or negative. If pieces remain in the blue box under "Hold" for longer than the time deemed acceptable to you, review them and. Unless a reason is specifically discovered otherwise, discard or disclose them so as to eliminate the need to subtract their maintenance numbers from your score.

Gray Pieces

Place all gray pieces, which denote Externally Developed Intellectual Property obtained through license, on the “Use in a Product,” “License,” “Block,” or “Hold” categories along with the black pieces.

Assign all gray pieces a revenue number, a remaining life number/license term number, and a royalty fee number if applicable as per the black pieces.

Review immediately the purpose for any gray pieces found in the “Hold” category.

Red Pieces

Red pieces denote Externally Developed Intellectual Property with no affiliation to you. Since the millions of red pieces in the world would bury your board if place on it, the majority of red pieces should be stored in a fashion suitable to the player off the board. The player should have the facility to search through the red pieces for the following six competitive angles:

- That intellectual property directly competitive to your own
- That intellectual property that could compete as an alternative use for your own
- That intellectual property that could substitute for your own
- That intellectual property that opens new markets relevant to your own
- Complementary intellectual property that improves the value of your own
- That intellectual property considered a client enabler that allows clients to do for themselves what they would otherwise pay you to do

Place red pieces held by other companies that appear relevant after a search and review into the large blue box on the right side of the board under their respective competitive angle. Until noted otherwise, classify these pieces under the category “Avoid.” On the board, “Avoid” is surrounded by parentheses as a reminder of this special condition.

Player’s Note: The red pieces on your board are other players’ black and gray pieces on those other players’ boards. Those other players will have positioned their pieces on their own “Use in a Product,” “License,” “Block,” and “Disclose” positions. As such, for the other players, their pieces will have revenue numbers, remaining life, and maintenance fees attached to them. The other players’ internal positioning of his pieces will affect the moves you can play once you start the game.

HOW TO PLAY THE GAME

Again, the objective of the game is to move a many pieces of any color to the revenue generating categories of “Use in a Product” and “License” on your board as possible. You accomplish this by creating new black pieces or by converting red pieces into gray or black pieces that you can then place into scoring positions on “Use in a Product” and/or “License.”

Those red pieces you license become gray pieces. Those red pieces you acquire outright become black pieces. (Yellow and Brown pieces are discussed in the advanced game notes and in side notes in the general rules.)

Black Pieces

Move black pieces still in the blue “Hold” box under Internally Developed Intellectual Property after set up to the categories of “Use in a Product,” “License,” or “Block” as soon as possible. This is the primary goal for black piece use.

Create new black pieces through internal research and development efforts, or acquire red pieces outright from another organization through a purchase, merger, or acquisition and convert them into black pieces. (In the advanced game, you may treat brown pieces in the same fashion.)

Leave black pieces in place until their use changes or their legal life expires. (In the advanced game, you can switch black pieces for yellow pieces to denote intellectual property that has lost legal protection status but still continues to draw revenue for you for other reasons.)

Gray Pieces

Gray pieces placed on the board at set up or acquired during play behave much as black pieces do with the following additions and differences.

Create new gray pieces by converting red pieces into gray pieces. Do this through the payment of royalties or through a technical exchange to the red piece owner for a license to one or more of your black pieces. (In the advanced game, you can also exchange a brown piece for a gray piece if the brown piece owner agrees with the terms.)

If the license to a gray piece expires, that gray piece becomes a red piece and is moved back to the appropriate red category. (A gray piece may become a brown piece in the advanced game.)

If the term of legal protection for a licensed patent expires, the gray piece is removed. (In the advanced game, you can switch a gray piece for a yellow piece to denote that a licensed or formally licensed intellectual property has lost legal protection status but still continues to draw revenue for you for other reasons.)

Draw up a contingency plan with the original owner for legal action against any one of your gray pieces by a third player.

Red Pieces

Keep red pieces off the board until defined as having potential relevance to you.

As you define red pieces as relevant, add them to either direct competition IP, alternative use IP, substitute IP, new market IP, complementary IP or client-enabling IP, along with those red pieces so placed at the setup.

Assign those red pieces placed on your board under direct competition IP to either the “Buy”, “Borrow,” “Better,” “Sue,” categories or leave them in place and define them as “Avoid.” (In the advanced game, “Avoid” is only a suggestion.) This step repeats for alternate use IP, substitute IP, new market IP, complementary IP and client-enabling. These placements represent your intent or desire for acquiring red piece intellectual property. (In the advanced game, you can treat brown pieces the same way.)

Player's Note: "Buy" generally means to acquire another player's organization or that part of another player's organization that holds the relevant intellectual property outright. "Borrow" generally means to license that intellectual property but can also mean joint venture or strategic alliance in the advanced game. (Joint venture or strategic alliance intellectual property is denoted with a brown piece for the duration of the joint venture or strategic alliance. If the joint venture or strategic alliance ends, all brown pieces convert back to red pieces.)

Based on the need or desire for acquiring any red piece denoted intellectual property, conduct a reality check. For each red piece on either of your "Buy," "Borrow," "Better," or "Sue," categories learn where, on that red piece owner's board, his/her red piece falls as a black pieces on his/her own "Use in a Product," "License," "Block," or "Hold" categories. This will serve as your best indicator of how this other intellectual property owner will respond to your acquisition advances.

For those red pieces on the "Buy" category, you must move all the other pieces owned by the target owner to the "Buy" category as well. (In the advanced game, you can try to avoid this.) Your acquisitions price will depend on the value of all the intellectual property as a whole plus the sum of the physical company parts as per standard accounting practices.

For any red pieces on the "Borrow" category, assess the potential value of that red piece to you, the current value to the red piece owner, and the potential value to any third parties that might also have interest in that red piece. Decide whether you require an exclusive relationship. Then negotiate the opportunity. If values prove difficult to agree upon, try to find a precedent involving similar intellectual property. The precedent at least gives you a base from which to work. If the other intellectual property owner chooses not to license, do not take it personally. (In the advanced game, borrow also allows the formation of joint ventures and strategic alliances that may or may not actually include licenses.)

For those red pieces in the "Better" category, make sure your research teams have the competence, an appropriate intellectual property base, and the finances and infrastructure to make your desire to better a given red piece a reality. In lieu of the creation of your own intellectual property, you can also fill your desire to better another player's red piece by acquiring a different red piece you determine to be indeed better than that targeted first red piece. Place that different red piece on the "Buy," "Borrow," or "Sue" category appropriate for your acquisitions intent.

For those red pieces on the "Sue" category, set a clear objective. Do you want to eliminate a red piece, claim it as already one of your own or another's black pieces, or acquire it as a gray piece? If you wish to acquire it, do you plan an exchange of one or more black pieces through a cross-license? Do you want to force the other player to license the red piece to you for royalties or visa versa? (You may create a joint venture or strategic alliance in the advanced game.) Have a clear understanding of the revenue the red piece in question is generating for its owner plus that owner's willingness and ability to defend that red piece. Player's Note: It pays to ensure you have a solid case.

If the red piece owner does not cooperate with your desire and method to obtain his or her intellectual property, you may relocate a red piece to any other category of "Buy," "Borrow," "Better," "Sue," or "Avoid" and try your approach again.

ADDITIONAL RULES OF PLAY AND CONSIDERATIONS FOR THE BLACK PIECES

Your black pieces are among everyone else's red, gray and in the advanced game, brown pieces. So for any actions you take with the red, gray or advanced game brown pieces, other people are likewise playing with your own black pieces in the same fashion.

For your black pieces apparently on someone else's "Buy" category, keep in mind that your shareholders may like the idea of a buyout. Make sure you present the best representation of your black piece values.

For your black pieces apparently on someone else's "Borrow" category, consider if you are better off not lending your black piece, lending it exclusively, or lending it on a non-exclusive basis. If you do decide to lend it, decide if you will lend it as a license, or in the advanced game, as a joint venture or strategic alliance. For your black pieces apparently not on someone else's "Borrow" category where in fact you wish they were, make sure you advertise them.

For your black pieces apparently on someone else's "Better" category, try to better them first either through your own research and development or by buying or borrowing the fruits of someone else's research and development. So long as you do not violate antitrust laws, you may use the player desiring to better you as your source/target.

For your black pieces apparently on someone else's "Sue" category, have a clear understanding of your targeted black piece's value to you. Consider also the competitive ramifications of defending or not defending a targeted black piece when observed by other organizations that may desire to sue you later. Compare your resources available for defense with the suing owner's resources available for attack. Last, but certainly not least, be objective on the merits of the case. That understood, set your defense objective and strategy.

For your black pieces apparently on someone else's "Avoid" category, make sure other people actually do avoid them. Government intellectual property offices do not provide automatic trip wires, nor will people using your black pieces necessary file their documents in your country's government offices. When your black pieces fall under someone else's "Avoid" category, you or someone in your company must monitor those pieces and trip the wires yourself.

ADDITIONAL RULES OF PLAY AND CONSIDERATION FOR THE GRAY PIECES

As is the case with any one of your black pieces, unless your licensor has licensed one of your gray pieces to other people in addition to yourself, it is otherwise a red piece to other people and a black piece to the licensor. (In the advanced game, your gray pieces may be other people's brown pieces if you have a joint venture or strategic alliance with them.) All the rules just above for your black pieces that are other people's red pieces (or brown pieces in the advanced game) apply with the following additions:

For any of your gray pieces apparently on another player's "Buy" category as red pieces, you may have some complicated competitive implications to consider. In this case, your gray pieces, which themselves are the licensor's black pieces, may fall into the hands of a new but competitively incompatible partner. You must consider a counteroffer to buy all or part of the licensor, consider a legal action block of the competitively incompatible partner, or consider a special arrangement to protect or terminate the license relationship denoted by any of your gray pieces. This special arrangement becomes particularly important if your license involves a technical exchange and the acquired licensor has gray pieces on his board that are also your black pieces.

For your gray pieces apparently on someone else's "Borrow" category, make sure the licensor does not violate any exclusivity relationships he/she has with you. (It is usually better to consider the implications of exclusivity before questions arise.)

For your gray pieces apparently on someone else's "Better" category, try to better them first either through your own research and development or by buying or borrowing the fruits of someone else's research and development, whether the licensor or your gray piece or otherwise. Make sure the licensor of any of your gray pieces in question is aware of the competitive threat and responds acceptable to it. If he/she does not respond acceptable, consider alternatives immediately.

For your gray pieces apparently on someone else's "Sue" category, find the contingency plan you placed in effect to deal with this issue that spells out the defense commitment of the licensor. Then hold that licensor to his/her legal commitment. Otherwise, treat the situation as if the gray piece was a black piece to you.

If one of your gray pieces is apparently on someone else's "Avoid" category, treat it just as you would one of your black pieces on someone else's "Avoid" category. Do not necessarily expect that your licensor will help you watch for infringement.

ADDITIONAL CONSIDERATIONS FOR THE ADVANCED GAME

In the advanced game, you can place any red or brown piece on the “Avoid” category onto your black piece category of “Use in a Product” if you believe that red piece owner will not notice or will/can not defend his piece. (See third item below)

You may place brown pieces that denote a joint venture or strategic alliance but not a license onto “Use in a Product” or “License” categories if the joint venture or strategic alliance allows it. Otherwise, treat brown pieces a red pieces with due consideration of their brown status before considering acquisitions moves.

Within the black piece intellectual property you sell as “Use in a Product” or “License,” you may have red, brown or yellow pieces of intellectual property as a component. In some cases, the red and brown pieces are licensed and converted to gray pieces. Place such gray pieces under your affected black pieces to black their importance to those black pieces. In other cases, red and brown pieces are not licensed and may simply be key components of the overall package the black piece denotes. Place those red pieces or brown pieces whose loss would force any of your black pieces back to the “Hold” or “Block” categories underneath the affected black pieces. Place key yellow pieces there as well if desired. If the use of the red or brown pieces is not technically legal, consider how you want to handle the situation before someone tries to handle it for you.

You may place a red piece or brown piece onto the “Block” category along with any of your black an gray pieces if you determined that the red or brown piece effectively keeps a third intellectual property owner from competing with you. (Since you have little or no control over red or brown pieces, it is recommended that efforts be made to convert them to black or gray pieces if the opportunity presents itself and before a third intellectual property owner does the same.)

In the advanced game, you keep score based both on the revenue generated by intellectual property use and the strength of that intellectual property. For your black pieces, you do this by estimating the market size (X) the market share (X) (Price – Cost) you can obtain for a product that uses denoted intellectual property, plus any protection afforded by the legal status of that intellectual property; less the market size (X) the market share (X) (Price – Cost) you would obtain for the using product if the intellectual property belonged to someone else, was shared with someone else, or was open for public use. If you can find a precedent with a similar technology, you will have an easier time making this estimate. For your gray pieces, you perform the same calculation above with royalty percentages factored in or the market effect of one or a limited number of competitors having access to that intellectual property factored in. Note that where a black piece is both used in a product by you and licensed to someone else, you also have to factor in the potential impact of that other company’s use on the market size, your market share, and the price you can offer less your costs. Such joint “Use in a Product” and “Licensing” can be particularly valuable when attempting to influence a standard. Last, if you desire to forecast a return for intellectual property you need to factor the probability that your goals will be met, will not be met, or will be exceeded. Last, do not forget to discount your values over time.

SOME ADDITIONAL STRATEGY TIPS

When playing the Intellectual Property Revenue Generation Game against skilled players, the offensive stance tends to be easier and more effective than the defensive stance. Those who spend too much time devoted to defense lose valuable resources needed to move black pieces up to “Use in a Product” and “License,” and acquire red pieces for the same. Remember that in the world’s most popular sport of soccer, technically all players could play defense, but teams have only one goalie wholly dedicated to the task.

Note that a lot of players play the ostrich strategy rather than risk point loss through the excessive damages of a willful infringement lawsuit. In effect, if they do not look too closely at competitive intellectual property holdings, than any infringement must be an accident. This is a strategy that many players swear by and can be effective when combined with a strong offense. Whether used as an intentional tactic or not, however, a company using the ostrich strategy always represents an exploitable opportunity. The Intellectual Property Revenue Generation Game is unique in that it will place

and play your black and gray pieces on your board for you, even if you do not monitor it. And just because your pieces are not being monitored on your board does not mean they are not being monitored on another player's board.

Sometimes a third intellectual property owner will, through inducement or his own accord, complete a desired objective regarding a red piece for you. For example, if a red piece is on your "Sue" category and is also on a third intellectual property owner's "Sue" category, you may allow the third intellectual property owner to fight the battle for you. This saves you money and time.

Along with an offensive stance, in the intellectual property arena, it sometimes pays to be greedy. If you do not know what intellectual property to claim in a hot area, claim something. You can always trade it later. Conversely, if you know you do not want to own a piece of intellectual property but do not want someone else to either, disclose it such that it forever becomes a yellow piece, there for all to use.

Always consider that your defined black piece may actually be a red piece, the details of its true identity hidden within the unpublished literature and patent application files. You can not always defend against this. The more black pieces you have to trade, the better off you will likely be in this situation.

Some of the best red pieces to use against other red pieces belong to players from other countries.

The power to buy out other intellectual property owners gives you added flexibility in your decision making.

Don't get lost in the details. Remember to have fun.

