

Anticipating the Direction of Technology in Drafting Patents or Contracts

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Apple TV+ released a film on March 31, 2023, entitled “Tetris,” about, you guessed it, the creation and global release of the mega popular video game by the same name. Since the creator of the original version lived and worked behind the Iron Curtain in the former Soviet Union, securing and exploiting the international rights to the game created a thorny enough situation to warrant an entire feature film. Nested within that story of international intrigue and drama was a small detail that should serve as a cautionary tale that resonates with all intellectual property attorneys (and their clients), and that is, what can happen when you fail to anticipate the future of your technology and where it is, or will be, ultimately be headed?

Specifically in the film this was portrayed by the character Robert Stein, a character based upon the individual by the same name, who thought he had secured the worldwide video game and distribution rights for Tetris, only to be flummoxed by the fact his contract only secured for him the “computer” rights to the game, with a “computer” being defined as a “device with a keyboard, monitor, and disc drive” Since video game consoles lack a keyboard, his rights amounted to very little actual value. It is important to note that at the time he entered the contract, video game consoles were hardly ubiquitous, but coin-operated arcades did exist, and video game systems were actively being developed and sold, so anticipating the direction of the industry was not impossible, just simply not obvious.

Personally, this cut close to the bone as I have been involved in litigation where large sums of money hinged upon whether certain patents that applied to “computers” could be infringed by “tablets.” At present, that question could reasonably include “telephones” as well, although a patent drafter could hardly be blamed for failing to consider at the time how his computer technology would later be handled by a user’s telephone!

Regardless, to best serve our clients, it is incumbent upon us to anticipate the future of their industries and the wider landscape of their emerging technology. Failing to do so could have far-reaching, costly consequences. For questions about this and other intellectual property matters, contact an IP attorney at Sandberg Phoenix.