

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C.**

In the Matter of

**CERTAIN VIDEO GAME SYSTEMS  
AND CONTROLLERS**

**Inv. No. 337-TA-743**

**NOTICE OF FINAL COMMISSION DETERMINATION TO REVIEW-IN-PART AND  
AFFIRM THE FINAL INITIAL DETERMINATION OF NO VIOLATION;  
TERMINATION OF THE INVESTIGATION**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part and affirm the final initial determination of the administrative law judge that no violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), has been shown in the above-captioned investigation. The investigation is terminated.

**FOR FURTHER INFORMATION:** Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on November 5, 2010, based on a complaint filed by Motiva, LLC of Dublin, Ohio ("Motiva"). 75 *Fed. Reg.* 68379 (Nov. 5, 2010). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video game systems and controllers by reason of infringement of claims 16, 27-32, 44, 57, 68, 81, and 84 of U.S. Patent No. 7,292,151 and claims 1-6 and 8-15 of U.S. Patent No. 7,492,268. The complaint named Nintendo Co., Ltd. of Kyoto, Japan and

Nintendo of America, Inc. of Redmond, Washington (collectively, “Nintendo”) as the only respondents.

On November 2, 2011, the administrative law judge (“ALJ”) issued his final initial determination (“ID”) in this investigation finding no violation of section 337. Specifically, the ALJ found that the accused products do not infringe the asserted patents. The ALJ also determined that Motiva had not proven that a domestic industry exists or is in the process of being established with respect to the two asserted patents.

On November 15, 2011, complainant Motiva and the Commission investigative attorney (“IA”) filed petitions for review of portions of the ID. On November 23, 2011, respondent Nintendo filed a response to both petitions and the IA filed a response to Motiva’s petition.

Having examined the record of this investigation, including the ALJ’s final ID and the parties’ submissions, the Commission has determined to deny the petitions for review. The Commission has further determined to review two issues in the ID on its own initiative: (1) a statement in the ID connecting the relevant level of skill in the art to the skill of the inventors, and (2) the relevant time frame for considering whether a domestic industry exists or is in the process of being established. Upon review, the Commission has issued an opinion relating to those two issues. The Commission has determined not to review the remainder of the ID, thus affirming the ALJ’s determination of no violation of section 337. The investigation is terminated.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

James R. Holbein  
Secretary to the Commission

Issued: January 5, 2012