



## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1197]

### **Certain Portable Gaming Console Systems with Attachable Handheld Controllers and Components Thereof II**

#### **Commission Determination to Review in Part a Final Initial Determination, and on Review, to Find No Violation of Section 337; 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 a final initial determination (“ID”) with respect to whether the economic prong of the domestic industry requirement was satisfied, and on review, has determined to take no position on the issue. The Commission has determined not to review the remainder of the ID, and thereby finds no violation of section 337 of the Tariff Act of 1930. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov). General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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:** On May 4, 2020, the Commission instituted this investigation based on a complaint filed on behalf of Gamevice, Inc. of Simi Valley, California (“Gamevice”). 85 FR 26492-93 (May 4, 2020). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based

upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable gaming consoles with attachable handheld controllers and component thereof by reason of infringement of one or more of claims 1-4, 6-8, and 12-18 of U.S. Patent No. 10,391,393 (“the ’393 patent”). *Id.* The Commission’s notice of investigation named as respondents Nintendo Co., Ltd. of Kyoto, Japan, and Nintendo of America, Inc. of Redmond, Washington. *Id.* at 26493. The Office of Unfair Import Investigations (“OUII”) is participating in this investigation. *Id.* The Commission subsequently terminated the investigation with respect to claims 13-16 of the ’393 patent. Order No. 6 (Aug. 14, 2020), *unreviewed by* Comm’n Notice (Sept. 10, 2020) (terminating claims 13-15); Order No. 10 (Dec. 7, 2020), *unreviewed by* Comm’n Notice (Jan. 5, 2021) (terminating claim 16).

On July 2, 2021, the presiding administrative law judge issued the subject ID finding no violation of section 337. The ID found that Gamevice failed to show that Nintendo infringed claims 1-4, 6-8, 12, 17, and 18 of the ’393 patent. The ID also found that Nintendo showed by clear and convincing evidence that claims 1-4, 6-8, 16-18, 20, and 22 of the ’393 patent are invalid. The ID found that Gamevice showed that at least one of its domestic industry products practices claims 8-11 of the ’393 patent, and that Gamevice established the economic prong with respect to that product, and therefore satisfied the domestic industry requirement with respect to valid claims 9-11 of the ’393 patent.

On July 19, 2021, Gamevice petitioned for review with respect to the ID’s findings on noninfringement and invalidity with respect to claims 1-4, 6, 7, and 12 of the ’393 patent, thereby abandoning its case with respect to claims 8, 16-18, 20, and 22 of the ’393 patent. *See* 19 CFR 210.43(b)(2) (stating that “[a]ny issue not raised in petition for review will be deemed to have been abandoned by the petitioning party”). That same day, Nintendo contingently petitioned for review with respect to the ID’s validity

findings regarding claims 17, 19, and 21 based on indefiniteness, regarding claim 12 based on obviousness, and regarding claims 1-4, 6-8, and 17-18 based on a lack of adequate written description. On July 27, 2021, Gamevice and Nintendo opposed each other's petitions, and OUII opposed both petitions.

Having examined the record of this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review and take no position on the issue of whether Gamevice demonstrated that it satisfied the economic prong of the domestic industry requirement. *Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984). The Commission has determined not to review the remainder of the ID. The investigation is hereby terminated with a final determination of no violation of section 337.

The Commission vote for this determination took place on September 3, 2021.

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 CFR part 210).

By order of the Commission.

Issued: September 3, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

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