

## Nintendo Wants Review Of Patent Claim Ruling In Wii IP Row

By **Sindhu Sundar**

*Law360, New York (May 22, 2013, 8:47 PM ET)* -- Nintendo Co. Ltd. argued Wednesday that the U.S. International Trade Commission's chief administrative law judge had not properly considered its arguments to invalidate a patent claim by an interactive game company accusing Nintendo's Wii products of infringing three patents.

ITC Judge Charles E. Bullock ruled May 7 that Nintendo had not violated Section 337 of the Tariff Act of 1930 but had not shown enough proof that Creative Kingdom's asserted claim of U.S. Patent Number 7,896,742 was invalid for being obvious.

Nintendo argued in an ITC petition Wednesday that Judge Bullock was wrong not to address the merits of Nintendo's argument that Creative Kingdom's asserted claim of the '742 was invalid.

Judge Bullock had said that Nintendo had not met its burden of proof because it should have discussed certain issues in greater depth, though those issues were undisputed by all the parties, according to the petition. The video game maker bristled at this particular finding, saying it "turned the concept of burden of proof on its head."

"Aside from being legally erroneous, [Judge Bullock's] new rule — that a party must present exhaustive discussion of issues that are not in dispute — would trigger an avalanche of pointless paper in nearly every case, burying the litigants, staff, and the Commission," Nintendo said in its petition for review. "This rule would also be completely contrary to the Commission's recent efforts to streamline investigations."

Nintendo asked the ITC to review this portion of the judge's decision and call on the judge to conduct a full analysis of Nintendo's arguments about the claims.

Judge Bullock in August issued an initial determination that Nintendo had not violated section 337, responding to allegations by Creative Kingdoms that imports of Nintendo's popular Wii and 3DS video game systems infringed three Creative Kingdoms patents.

Creative Kingdoms had brought its ITC complaint in March 2011, claiming the Nintendo products infringed its patents by mimicking a key feature in Creative Kingdoms' primary product, the "MagiQuest" video game.

The August ruling was largely a victory for Nintendo, but Judge Bullock also said that the contested

Nintendo products infringed a claim of Creative Kingdom's U.S. Patent Number '742. After Creative Kingdoms and Nintendo launched their appeals of portions of that ruling, the ITC agreed in November to review it.

The Commission asked Judge Bullock to decide on matters including whether the asserted claim of the '742 patent would have to be invalidated for obviousness, according to Nintendo's petition Wednesday.

Judge Bullock on May 7 ruled again that Nintendo had not violated Section 337. He also ruled that Nintendo had not shown enough proof that the asserted claim of the '742 was invalid because it was obvious, according to the the petition.

Nintendo is represented by Stephen C. Neal, Thomas J. Friel, Timothy S. Teter, Matthew J. Brigham and Stephen R. Smith of Cooley LLP.

The ITC case is In the Matter of Certain Video Game Systems and Wireless Controllers and Components Thereof, case number 337-TA-770, in the U.S. International Trade Commission.

--Additional reporting by Scott Flaherty, Linda Chiem and Ryan Davis. Editing by Melissa Tinklepaugh.