

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

In the Matter of

**CERTAIN VIDEO GAME SYSTEMS
AND WIRELESS CONTROLLERS AND
COMPONENTS THEREOF**

Investigation No. 337-TA-_____

**COMPLAINT OF CREATIVE KINGDOMS, LLC & NEW KINGDOMS, LLC UNDER
SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED**

COMPLAINANTS

Creative Kingdoms, LLC
195 Walden Way
Wakefield, RI 02879
Telephone: (401) 782-4803

New Kingdoms, LLC
17005 Miami Forest Road
Nehalem, OR 97131
Telephone: (503) 322-2277

COUNSEL FOR COMPLAINANTS

James R. Barney
Paul C. Goulet
Michael A. Morin
Michael V. O'Shaughnessy
Elizabeth D. Ferrill
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
901 New York Avenue, N.W.
Washington, DC 20001
Telephone: (202) 408-4000
Facsimile: (202) 408-4400

PROPOSED RESPONDENTS

Nintendo Co., Ltd.
11-1 Kamitoba hokotate-cho,
Minami-ku, Kyoto 601-8501
Japan
Telephone: 81-75-662-9600

Nintendo of America, Inc.
4820 150th Avenue, N.E.
Redmond, WA 98052
Telephone: (425) 882-2040

TABLE OF CONTENTS

TABLE OF CONTENTS.....	ii
TABLE OF EXHIBITS.....	iv
TABLE OF APPENDICES.....	vii
I. INTRODUCTION	1
II. COMPLAINANTS	2
III. PROPOSED RESPONDENTS.....	3
A. Nintendo Japan.....	3
B. Nintendo of America.....	4
IV. THE TECHNOLOGY AND PRODUCTS AT ISSUE	5
V. THE PATENTS-IN-SUIT AND NON-TECHNICAL DESCRIPTION OF THE INVENTIONS	8
A. U.S. Patent No. 7,500,917.....	8
1. Identification of the Patent and Ownership by Creative Kingdoms	8
2. Non-technical Description of the Patent.....	8
3. Foreign Counterparts to the Patent	9
4. Licenses.....	9
B. U.S. Patent No. 6,761,637.....	9
1. Identification of the Patent and Ownership by Creative Kingdoms	9
2. Non-Technical Description of the Patent.....	10
3. Foreign Counterparts to the Patent	10
4. Licenses.....	10
C. U.S. Patent No. 7,850,527.....	11
1. Identification of the Patent and Ownership by Creative Kingdoms	11
2. Non-Technical Description of the Patent.....	11
3. Foreign Counterparts to the Patent	12
4. Licenses.....	12
D. U.S. Patent No. 7,896,742.....	12
1. Identification of the Patent and Ownership by Creative Kingdoms	12

2.	Non-technical Description of the Patent	13
3.	Foreign Counterparts to the Patent	13
4.	Licenses.....	14
VI.	UNLAWFUL AND UNFAIR ACTS OF PATENT INFRINGEMENT OF PROPOSED RESPONDENTS	14
A.	Nintendo Japan.....	14
B.	Nintendo of America.....	14
C.	Nintendo's Infringement of the '917, '637, '527, and '742 Patents	15
1.	Direct Infringement of All Asserted Claims of the '917, '637, '527, and '742 Patents.....	15
2.	Contributory and Induced Infringement	15
VII.	SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE	17
VIII.	HARMONIZED TARIFF SCHEDULE ITEM NUMBERS	17
IX.	THE DOMESTIC INDUSTRY	18
A.	Technical Prong	18
B.	Economic Prong.....	19
X.	RELATED LITIGATION	22
XI.	RELIEF REQUESTED.....	23
	VERIFICATION OF COMPLAINT	25

TABLE OF EXHIBITS

Exhibit	Document
Exhibit 1	Certified Copy of U.S. Patent No. 7,500,917
Exhibit 2	Assignment Documents for U.S. Patent No. 7,500,917
Exhibit 3	Certified Copy of U.S. Patent No. 6,761,637
Exhibit 4	Assignment Documents for U.S. Patent No. 6,761,637
Exhibit 5	Certified Copy of U.S. Patent No. 7,850,527
Exhibit 6	Assignment Documents for U.S. Patent No. 7,850,527
Exhibit 7	Certified Copy of U.S. Patent No. 7,896,742
Exhibit 8	Assignment Documents for U.S. Patent No. 7,896,742
Exhibit 9	Pages 1 and 7 from Proposed Respondent Nintendo Co. Ltd.'s website discussing 2007 sales of the Wii System in the United States
Exhibit 10	Page from Proposed Respondent Nintendo Co. Ltd.'s website discussing 2008 sales of the Wii System in the United States
Exhibit 11	Nintendo press release reprinted on Gamasutra website discussing Wii System sales in the United States through August 2010.
Exhibit 12	Page from Proposed Respondent Nintendo Co. Ltd.'s website stating that Proposed Respondent Nintendo of America, Inc. is a wholly-owned subsidiary of Nintendo Co. Ltd., http://www.nintendo.com/corp/faq.jsp (last visited Mar. 17, 2011).
Exhibit 13	CONFIDENTIAL 2006 Nonexclusive and Nontransferable License Agreement between Nintendo of America, Inc. and Electronic Arts, Inc.
Exhibit 14	CONFIDENTIAL Identification of Licensees and Creative Kingdoms and New Kingdoms License Agreements
Exhibit 15	Table Identifying Foreign Counterparts of the '917 and '527 Patents
Exhibit 16	Claim chart applying each asserted independent claim of U.S. Patent No. 7,500,917 to the Accused Products and supporting documentation
Exhibit 17	Claim chart applying each asserted independent claim of U.S. Patent No. 6,761,637 to the Accused Products and supporting documentation

Exhibit 18	Claim chart applying each asserted independent claim of U.S. Patent No. 7,850,527 to the Accused Products and supporting documentation
Exhibit 19	Claim chart applying each asserted independent claim of U.S. Patent No. 7,896,742 to the Accused Products and supporting documentation
Exhibit 20	Receipts of Purchase for Accused Products from retail stores in the United States.
Exhibit 21	Photographs of the Accused Products and their boxes showing the products are manufactured by Nintendo Co. Ltd. and "Made in China."
Exhibit 22	Photographs of the MagiQuest Wand and Effects
Exhibit 23	CONFIDENTIAL Photographs of Underlying Technology in MagiQuest Wands and Effects
Exhibit 24	MagiQuest Ancient Book of Wisdom, the beginner player's guide for the MagiQuest interactive game
Exhibit 25	CONFIDENTIAL Claim chart applying each asserted independent claim of U.S. Patent No. 7,500,917 to the MagiQuest game attraction and supporting documentation
Exhibit 26	CONFIDENTIAL Claim chart applying each asserted independent claim of U.S. Patent No. 6,761,637 to the MagiQuest game attraction and supporting documentation
Exhibit 27	CONFIDENTIAL Claim chart applying a representative independent claim of U.S. Patent No. 7,850,527 to the MagiQuest game attraction and supporting documentation
Exhibit 28	CONFIDENTIAL Claim chart applying a representative independent claim of U.S. Patent No. 7,896,742 to the MagiQuest game attraction and supporting documentation
Exhibit 29	CONFIDENTIAL Creative Kingdoms' Investments in Plant and Equipment
Exhibit 30	CONFIDENTIAL Creative Kingdoms' Investments in Labor and Capital
Exhibit 31	CONFIDENTIAL Creative Kingdoms' Investments in Research and Development
Exhibit 32	CONFIDENTIAL Creative Kingdoms' Investments in Licensing Operations

- Exhibit 33 CONFIDENTIAL Creative Kingdoms' Investments in Development and Installation Operations
- Exhibit 34 Complaint, Creative Kingdoms, et al., v. Nintendo Co. Ltd., et al., filed contemporaneously in the United States District Court for the District of Oregon, Portland Division.
- Exhibit 35 Pages from Proposed Respondent Nintendo Co. Ltd.'s website discussing forthcoming sale of Nintendo 3DS in the United States, available at <http://www.nintendo.com/3ds/hardware>.
- Physical Exhibit 1 Physical Samples of Creative Kingdoms' products, including MagiQuest Silver/Gold Adventure Series Wand, MagiQuest Ice Dragon Series Wand, MagiQuest Key of Gold, and MagiQuest Compass
- Physical Exhibit 2 Physical Samples of Nintendo's hardware products, including Wii console (including Wii Sports and Wii Sports Resort games), the Wii remote controller, the Wii Remote Plus controller, the Wii Nunchuk controller, and the Wii MotionPlus attachment.
- Physical Exhibit 3 Physical Samples of Nintendo-manufactured game discs and peripherals, including Mario Kart Wii with Wii Wheel, Pokémon Battle Revolution, Super Swing Golf Season 2, Harry Potter and the Order of the Phoenix, Monster Hunter 3 Tri, Hooked! Again Real Motion Fishing with Fishing Rod, and The Legend of Zelda: Twilight Princess.

TABLE OF APPENDICES

Appendix	Document
A	A certified copy and three copies thereof of the prosecution history of U.S. Patent No. 7,500,917
B	A certified copy and three copies thereof of the prosecution history of U.S. Patent No. 6,761,637
C	A certified copy and three copies thereof of the prosecution history of U.S. Patent No. 7,850,527
D	A certified copy and three copies thereof of the prosecution history of U.S. Patent No. 7,896,742
E	Four copies of each technical reference mentioned in the prosecution histories of the '917 patent, the '637 patent, the '527 patent, and the '742 patent

I. INTRODUCTION

1. This complaint is filed by Creative Kingdoms, LLC (hereinafter “Creative Kingdoms”) and New Kingdoms, LLC (hereinafter “New Kingdoms”) (collectively referred to as “Complainants”), pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based on the unlawful importation into the United States, the sale for importation, and the sale within the United States after importation of certain video game systems and wireless controllers and components thereof that infringe United States Letters Patent Nos. 7,500,917 (“the ’917 patent”), 6,761,637 (“the ’637 patent”), 7,850,527 (“the ’527 patent”), and 7,896,742 (“the ’742 patent”) (collectively referred to as “the Asserted Patents”). Complainants assert claims 1-7 of the ’917 patent; claims 1, 2, 7, 11, 14, 17, and 72 of the ’637 patent; claims 1-12, 17-19, 22-24, 27, 37-41, 45-50 of the ’527 patent; and claim 24 of the ’742 patent.

2. The proposed respondents are Nintendo Co., Ltd. (“Nintendo Japan”) and wholly-owned subsidiary Nintendo of America, Inc. (“Nintendo of America”) (collectively referred to as “Respondents” or “Nintendo”).

3. Certified copies of the ’917, ’637, ’527, and ’742 patents are attached to the complaint as Exhibits 1, 3, 5, and 7. Creative Kingdoms owns all right, title, and interest in the Asserted Patents. Certified copies of the recorded assignments for the Asserted Patents are attached as Exhibits 2, 4, 6, and 8.

4. An industry as required by 19 U.S.C. § 1337(a)(2) and (3) exists in the United States relating to the products and technology protected by the Asserted Patents.

5. Complainants seek, as relief, a permanent limited exclusion order barring from entry into the United States all infringing video game systems and wireless controllers and components thereof. Complainants also seek, as relief, a cease and desist order prohibiting the sale for importation, importation, sale after importation, offer for sale, advertising, testing, the

solicitation of sales, and other commercial activity relating to all infringing products by Nintendo Japan and Nintendo of America.

II. COMPLAINANTS

6. Complainant Creative Kingdoms has its corporate headquarters located at 195 Walden Way, Wakefield, RI 02879 and its principal place of business located at 17005 Miami Forest Road, Nehalem, OR 97131.

7. Complainant New Kingdoms has its corporate headquarters and principal place of business located at 17005 Miami Forest Road, Nehalem, OR 97131.

8. Complainant Creative Kingdoms designs, develops, and markets an interactive live-action adventure game and handheld controllers embodying technology covered by the Asserted Patents. This technology represents the core of Creative Kingdoms' flagship product, MagiQuest, as well as related products from certain licensees, including DinoQuest and SplashQuest. In MagiQuest, the player serves as the main character in a live-action world. Players, called Magi, use a specially designed handheld motion activated transmitter to cast seemingly magical "spells" to Effects (containing electronic receivers) that react accordingly. By successfully casting spells, the player can complete various tasks and advance in the game. In DinoQuest, players use similar technology to complete an interactive archeology quest. Likewise, in SplashQuest, players use an "AquaGlove" to complete challenges, activate water effects and score points as they explore a water park.

9. Complainant Creative Kingdoms, through its wholly-owned subsidiary, Complainant New Kingdoms, owns and operates a MagiQuest attraction, located in Myrtle Beach, South Carolina. This 20,000 square-foot, stand-alone facility has been in operation since June 2005. At the MagiQuest location, players pay an admission fee and have the opportunity to buy interactive wands and other devices for use during the game, as well as associated retail

items such as wand decorations and player costumes. Creative Kingdoms had annual revenues of \$11.6 million in 2009 and \$10.6 million in 2010.

10. Complainant Creative Kingdoms developed the technology underlying the MagiQuest adventure game and designed the game in the United States. Creative Kingdoms' retail products, including the wands and accessories, are designed and developed in the United States, assembled in China, and tested in the United States.

11. Complainant Creative Kingdoms and its wholly-owned subsidiary, Complainant New Kingdoms, have licensed this technology to a number of licensees who have, in turn, opened several additional locations worldwide. The franchised locations can be found domestically in: Santa Ana, CA; Poconos, PA; Traverse City, MI; Kansas City, KS; Williamsburg, VA; Grapevine, TX; Pigeon Forge, TN; Concord, NC; East Hanover, NJ; Grand Mound, WA; Mason, OH; Wisconsin Dells, WI; and Lombard, IL. Additional overseas locations include the Tokyo Dome attraction in Tokyo, Japan and the Lagunasia attraction in Aichi, Japan. New Kingdoms continues to actively market, develop, and license the MagiQuest concept for additional locations in the United States and abroad.

12. Complainants have made significant domestic investments in the design, development, testing, and technical support of MagiQuest attractions, related technology and retail goods, the licensing of the MagiQuest technology and adventure game, as well as labor and capital in their Myrtle Beach, South Carolina attraction.

III. PROPOSED RESPONDENTS

A. Nintendo Japan

13. On information and belief, proposed respondent Nintendo Japan is a Japanese corporation with its principal place of business at 11-1 Kamitoba hokotate-cho, Minami-ku, Kyoto 601-8501, Japan.

14. On information and belief, Nintendo Japan is the corporate parent of a multinational corporation that designs, develops, manufactures, and sells for importation wireless video game systems and controllers and components thereof and game discs for use therewith. *See* Exhibit 9, pages from Nintendo Japan's website with an October 2007 financial briefing by Nintendo Japan's president Saturu Iwata, discussing sales of the "Wii" in the United States; *see also* Exhibit 10, a page from Nintendo Japan's website stating the 2008 total sales of the Wii video game machine.

15. On information and belief, Nintendo Japan wholly owns proposed respondent Nintendo of America as well as several other subsidiaries. *See* Exhibit 12, a page from the Nintendo Japan website stating "Nintendo of America, Inc. is a wholly-owned subsidiary of Nintendo Co., Ltd."

B. Nintendo of America

16. On information and belief, proposed respondent Nintendo of America is a corporation formed under the laws of the State of Washington with its principal place of business at 4820 150th Avenue N.E., Redmond, WA 98052.

17. On information and belief, Nintendo of America, through its distribution centers in Atlanta, GA and North Bend, WA, imports and sells infringing wireless gaming systems and controllers and components thereof throughout the United States. In 2008, the total sales of the Wii video game machine in the United States exceeded 10.71 million units. *See* Exhibit 10. On August 10, 2010, Nintendo announced that it had sold over 30 million Wii video game machines in the United States since it first began offering them for sale in November 2006. *See* Exhibit 11.

18. On information and belief, Nintendo of America possesses substantial control over the production of Wii-compatible games by third-party game designers, and Nintendo Japan actually manufactures all game discs used in the Wii console. As shown in Confidential Exhibit

13,¹ Nintendo of America grants third-party game designers a license to sell Wii-compatible games under certain conditions. A third-party game designer must go through Nintendo of America each time it wants to develop a game under the license agreement or reproduce an existing game. *Id.* at ¶3.3(h). As also shown in Confidential Exhibit 13, Nintendo provides certain development tools, such as kits, programming materials, and emulators, to assist the third-party game designer in the design and development of a game. *Id.* at ¶3.5.

IV. THE TECHNOLOGY AND PRODUCTS AT ISSUE

19. Complainants' MagiQuest attraction and proposed Respondents' Wii system both seek to bring the fun and challenge of the traditional videogame into a more interactive environment. The distinguishing feature of both MagiQuest and the Wii system is a motion-activated, portable wireless handheld device that facilitates a physically interactive play experience for participants. Consequently, MagiQuest, along with the related products DinoQuest and SplashQuest, and the Wii system are able to target a broader demographic than other game systems.

20. The technology at issue for the '917 patent concerns, for example, a toy wand for facilitating a wireless interactive game where the toy has multiple motion sensors that cause different play effects based on different movement, or alternatively, where the toy is capable of sending different command signals based on movement of the toy and storing user tracking information.

21. The technology at issue for the '637 patent concerns, for example, an interactive game involving a transportable device that stores the player's progress in the game, resulting in a

¹ Exhibit 13 was obtained from publically available sources. But Exhibit 13 is marked as confidential, thus, out of an abundance of caution, CK has chosen to make this document confidential.

modified game experience for the player, where the player moves the transportable device in such a manner as to create a seemingly magical play experience.

22. The technology at issue for the '527 patent concerns, for example, an interactive play system where game participants simultaneously use wireless, handheld devices containing motion-sensitive circuitry to activate various effects throughout the game. In addition to responding to player motions, the wireless devices contain memory enabling players to store information pertaining to game play that can be used to modify the game experience.

23. The technology at issue for the '742 patent concerns, for example, a motion-sensitive input device for facilitating a wireless interactive game having multiple motion sensors that cause different play effects to activate based on different movements of the input device. This input device is also capable of storing information pertaining to the user's identity and progress during game play. Further, one embodiment of the '742 patent provides for an auxiliary device that can attach to the motion-sensitive input device to provide additional motion-sensing capabilities.

24. The accused products at issue in this investigation are certain video game systems and wireless controller and components thereof. The accused products include Nintendo's "Wii" wireless video game system and controllers and components thereof and game discs for use therewith, including, but not limited to, (i) the Wii console; (ii) the Wii Wi-Fi Connection system; (iii) the Wii remote controller, alone and in combination with the Wii Nunchuk controller, the Wii MotionPlus, and/or Nintendo licensed peripherals; (iv) the Wii Remote Plus controller, alone and in combination with the Wii Nunchuck controller, and/or Nintendo licensed peripherals; and (v) various Wii-compatible game discs for use in the Wii console (collectively "Accused Products"). The Wii console, when operated with a Wii-compatible game disc, allows

participants to wirelessly play Wii-compatible games using (i) the Wii remote controller alone, or in combination with the Wii Nunchuk, and/or the Wii MotionPlus or (ii) the Wii Remote Plus controller alone, or in combination with the Wii Nunchuck (collectively “Controller Combinations”). The Wii remote controller, Wii Remote Plus, Wii MotionPlus, and Wii Nunchuk individually contain motion sensors allowing physical, interactive play. The Wii Remote controller and Wii Remote Plus controller also have on-board memory allowing games to save the player’s characters and progress in the game. Using the transceiver in the Wii Remote or the Wii Remote Plus controller, the Controller Combinations are capable of sending command signals to the Wii console to affect the player’s play experience when a Wii-compatible game is running in the Wii console. The Wii Remote and Wii Remote Plus transceivers also permit these controllers to receive signals from the Wii console during game play.

25. Also within the scope of this investigation is a Nintendo portable gaming system known as the “3DS.” On information and belief, proposed Respondents have imported, demonstrated and advertised the 3DS and are currently preparing to make it available for sale in the United States. (Exhibit 35.) On information and belief, the 3DS system employs motion sensors and a wireless transmitter, which permit multiple 3DS users to play interactive games that include motion-sensitive elements or features. On information and belief, the 3DS will be available for sale in the United States on March 27, 2011. *Id.* Complainants will seek through discovery information regarding the operation and function of the 3DS to determine if it infringes the Asserted Patents.

V. THE PATENTS-IN-SUIT AND NON-TECHNICAL DESCRIPTION OF THE INVENTIONS

A. U.S. Patent No. 7,500,917

1. Identification of the Patent and Ownership by Creative Kingdoms

26. The '917 patent, titled "Magical Wand and Interactive Play Experience," issued on March 10, 2009, to inventors Denise Weston and Jonathan Barney. The '917 patent is based on U.S. Patent Application Serial No.10/397,054, filed on March 25, 2003, and claims priority to a Provisional Application No. 60/184,128, filed on February 22, 2000.

27. A certified copy of the '917 patent is attached as Exhibit 1. The '917 patent has 2 independent and 5 dependent claims. Claims 1-7 are asserted in this investigation.

28. Creative Kingdoms owns by assignment the entire right, title, and interest in and to the '917 patent. *See* Exhibit 2.

29. The '917 patent is valid, enforceable, and is currently in full force and effect.

30. Pursuant to Rule 210.12(c) of the Commission's Rules of Practice and Procedure, this Complaint is accompanied by Appendices A and E. Appendix A contains a certified copy and three additional copies of the prosecution history of the '917 patent. Appendix E contains four copies of each reference mentioned in that prosecution history.

2. Non-technical Description of the Patent

31. The '917 patent generally describes an interactive play experience that utilizes a handheld, wireless wand. The wand allows play participants to electronically interact with a surrounding play environment simply by pointing, touching, or using their wands in a particular manner to achieve desired goals or produce desired effects within the play environment. The specification further teaches that the play environment may be real or computer generated.

32. In one embodiment, the wand incorporates a wireless transmitter and motion-sensitive circuitry adapted to actuate the transmitter in response to particular wand motions. Various wireless receivers are distributed throughout the play environment to support such wireless interaction. The specification discloses that this wireless communication may be achieved through a send/receive radio frequency communications protocol, which helps create the seemingly magical interactive play experience for play participants who learn to use the wand. The wireless communication may comprise, for example, the sending and receiving of command signals, user tracking information (*e.g.*, skill level), and unique user identifications.

3. Foreign Counterparts to the Patent

33. The '917 patent has a number of foreign counterparts. Those foreign patents and applications are identified in Exhibit 15.

4. Licenses

34. Pursuant to Commission Rule 210.12(a)(9)(iii), a list of licensed entities and a copy of the license agreements between Creative Kingdoms and New Kingdoms and the licensed entities are attached to the complaint as Confidential Exhibit 14.

B. U.S. Patent No. 6,761,637

1. Identification of the Patent and Ownership by Creative Kingdoms

35. The '637 patent, titled "Method of Game Play Using RFID Tracking Device" issued on July 13, 2004, to inventors Denise Weston and Jonathan Barney. The '637 patent is based on U.S. Patent Application No. 09/792,282 filed on February 22, 2001, and claims priority to a Provisional Application No. 60/184,128, filed on February 22, 2000.

36. A certified copy of the '637 patent is attached as Exhibit 3. The '637 patent has 7 independent and 70 dependent claims. Claims 1, 2, 7, 11, 14, 17, and 72 are asserted in this investigation.

37. Creative Kingdoms owns by assignment the entire right, title, and interest in and to the '637 patent. *See* Exhibit 4.

38. The '637 patent is valid, enforceable, and is currently in full force and effect.

39. Pursuant to Rule 210.12(c) of the Commission's Rules of Practice and Procedure, this Complaint is accompanied by Appendix B. Appendix B contains a certified copy and three additional copies of the prosecution history of the '637 patent. Appendix E also contains four copies of each reference mentioned in that prosecution history.

2. Non-Technical Description of the Patent

40. The '637 patent generally concerns an interactive game and method for carrying out an interactive game. The specification discloses an interactive game comprising a wireless wand actuator device that enables a trained user to electronically send and receive information to and from a master system and/or to actuate various play effects within an interactive play environment that may be real or computer generated.

41. Further, the '637 patent teaches that this actuator device is configured to use a send/receive radio frequency communications protocol that allows play participants to electronically interact with their surrounding play environment by pointing or using their wireless device in a particular manner to achieve desired goals or produce desired effects.

3. Foreign Counterparts to the Patent

42. The '637 patent has no foreign counterparts.

4. Licenses

43. Pursuant to Commission Rule 210.12(a)(9)(iii), a list of licensed entities and a copy of the license agreements between Creative Kingdoms and New Kingdoms and the licensed entities are attached to the complaint as Confidential Exhibit 14.

C. U.S. Patent No. 7,850,527

1. Identification of the Patent and Ownership by Creative Kingdoms

44. The '527 patent, titled "Magic-Themed Adventure Game" issued on December 14, 2010, to inventors Jonathan Barney and Denise Weston. The '527 patent is based on U.S. Patent Application No. 10/889,974, filed on July 13, 2004, and claims priority to Provisional Application No. 60/184,128, filed on February 22, 2000.

45. A certified copy of the '527 patent is attached as Exhibit 5. The '527 patent has 5 independent and 45 dependent claims. Claims 1-12, 17-19, 22-24, 27, 37-41, 45-50 are asserted in this investigation.

46. Creative Kingdoms owns by assignment the entire right, title, and interest in and to the '527 patent. *See* Exhibit 6.

47. The '527 patent is valid, enforceable, and is currently in full force and effect.

48. Pursuant to Rule 210.12(c) of the Commission's Rules of Practice and Procedure, this Complaint is accompanied by Appendix C. Appendix C contains a certified copy and three additional copies of the prosecution history of the '527 patent. Appendix E also contains four copies of each reference mentioned in that prosecution.

2. Non-Technical Description of the Patent

49. The '527 patent generally concerns an interactive play system where game participants concurrently play with wireless, handheld devices containing motion-sensitive circuitry. The specification discloses that these handheld devices wirelessly send and receive information to and from a master system and/or various play effects within an interactive play environment that may be real or computer generated.

50. Further, the '527 patent teaches that the handheld device is configured to use a send/receive radio frequency communications protocol that allows play participants to

electronically interact with their surrounding play environment by pointing, waving, shaking, etc. their wireless device in a particular manner to achieve desired goals or produce desired effects. The handheld devices also contain memory enabling players to store information pertaining to game play that can be used to modify the game experience.

3. Foreign Counterparts to the Patent

51. The '527 patent has no foreign counterparts.

4. Licenses

52. Pursuant to Commission Rule 210.12(a)(9)(iii), a list of licensed entities and a copy of the license agreements between Creative Kingdoms and New Kingdoms and the licensed entities are attached to the complaint as Confidential Exhibit 14.

D. U.S. Patent No. 7,896,742

1. Identification of the Patent and Ownership by Creative Kingdoms

53. The '742 patent, titled "Apparatus and Methods for Providing Interactive Entertainment," issued on March 1, 2011, to inventors Denise Weston, Rick Briggs, and Jonathan Barney. The '742 patent is based on U.S. Patent Application Serial No. 11/777,874, filed on July 13, 2007, and claims priority to a Provisional Application No. 60/184,128, filed on February 22, 2000.

54. A certified copy of the '742 patent is attached as Exhibit 7. The '742 patent has 6 independent and 47 dependent claims. Claim 24 is asserted in this investigation.

55. From the face of the '742 patent, the patent is assigned to Creative Kingdoms. No separate assignment for the '742 patent was recorded at the United States Patent and Trademark Office. The assignment for the parent patent application 09/792,282, which issued as the '627 patent, also assigns all continuations to CK, including the '742 patent. *See* Exhibit 8.

56. The '742 patent is valid, enforceable, and is currently in full force and effect.

57. Pursuant to Rule 210.12(c) of the Commission's Rules of Practice and Procedure, this Complaint is accompanied by Appendix D. Appendix D contains a certified copy and three additional copies of the prosecution history of the '742 patent. Appendix E further contains four copies of each reference mentioned in that prosecution history.

2. Non-technical Description of the Patent

58. The '742 patent generally describes a motion-sensitive input device for use in an interactive play environment. The input device, which senses motion, allows play participants to electronically interact with the surrounding play environment simply by pointing, touching, or using the device in a particular manner to achieve desired goals or produce desired effects. The specification further teaches that the play environment may be real or computer generated.

59. In one embodiment, the input device incorporates motion-sensitive circuitry adapted to track the device's movements. The device also incorporates a wireless transceiver capable of sending signals embodying the sensed motion to wireless receivers distributed throughout the play environment. The specification discloses that this wireless communication may be achieved through a send/receive radio frequency communications protocol. The wireless communication may comprise, for example, the sending and receiving of command signals, user tracking information (*e.g.*, skill level), and unique user identifications. The device is capable of storing the user tracking and unique user identification information it receives during game play.

60. The specification also discloses that the input device may consist of a base component and at least one auxiliary device that provides additional motion-sensing capabilities.

3. Foreign Counterparts to the Patent

61. The '742 patent has no foreign counterparts.

4. Licenses

62. Pursuant to Commission Rule 210.12(a)(9)(iii), a list of licensed entities and a copy of the license agreements between Creative Kingdoms and New Kingdoms and the licensed entities are attached to the complaint as Confidential Exhibit 14.

VI. UNLAWFUL AND UNFAIR ACTS OF PATENT INFRINGEMENT OF PROPOSED RESPONDENTS

63. Nintendo's Wii console and Controller Combinations are accused of infringing the '917, '637, '527, and '742 patents, alone and/or in combination with certain Wii-compatible games manufactured by Nintendo Japan. Further discovery is needed to determine whether other Nintendo products within the scope of this investigation, such as the soon-to-be-launched 3DS portable gaming system, infringe one or more claims of the '917, '637, '527, and '742 patents.

A. Nintendo Japan

64. On information and belief, Nintendo Japan manufactures, has manufactured, or directs another party to manufacture the Accused Products, and then Nintendo Japan sells the Accused Products for importation. These products are imported into the United States and sold after importation, and/or sold within the United States after importation in the United States by Nintendo Japan's wholly-owned subsidiary Nintendo of America, as set forth in this Complaint.

B. Nintendo of America

65. On information and belief, Nintendo of America imports and sells within the United States after importation the Accused Products, that are manufactured by, for, or at the direction of Nintendo Japan.

C. Nintendo's Infringement of the '917, '637, '527, and '742 Patents

1. Direct Infringement of All Asserted Claims of the '917, '637, '527, and '742 Patents

66. On information and belief, Nintendo Japan manufactures, has manufactured, or directs another party to manufacture, and sells for importation and Nintendo of America imports and sells after importation the Accused Products that directly infringe, either literally or under the doctrine of equivalents, the '917, '637, '527, and '742 patents as shown by the representative claim charts and supporting documentation included in Exhibits 16-19.

67. On information and belief, Nintendo performs all elements of the asserted claims of the Asserted Patents and/or controls or directs others to perform those elements of the asserted claims of the Asserted Patents that it does not perform alone.

2. Contributory and Induced Infringement

68. Contemporaneously with the filing of this complaint, Complainant provided Nintendo with copies of the '917, '637, '527, and '742 patents. Accordingly, at least as of the filing of this complaint, Nintendo had actual knowledge of the '917, '637, '527, and '742 patents and its infringement of these patents.

a) Contributory Infringement of All Asserted Claims of the '917, '637, '527, and '742 Patents

69. Nintendo contributes to the direct infringement by users of the Wii gaming system of all asserted claims of the '917, '637, '527, and '742 patents by offering to sell, selling for importation, importing, and selling the Wii gaming system, including the Wii remote controller and Wii console, and Wii-compatible games for use in making a patented invention and/or practicing a patented process, knowing those Accused Products are especially made or adapted for use in infringing all asserted claims of the '917 patent as shown by the representative claim chart included in Exhibit 16, all asserted claims of the '637 patent as shown by the

representative claim chart included in Exhibit 17, all asserted claims of the '527 patent as shown by the representative claim chart included in Exhibit 18, and all asserted claims of the '742 patent as shown by the representative claim chart in Exhibit 19.

70. Nintendo's Wii remote controllers are specifically designed to be compatible with and used with the Wii system and Wii compatible games. Consequently, Nintendo's Wii gaming system, including the Wii remote controller and/or Wii Remote Plus controller and Wii console when combined with certain Wii-compatible games, as set forth in Exhibits 16-19, manufactured by or at the direction of Nintendo, have no substantial non-infringing use.

b) Induced Infringement of All Asserted Claims of the '917, '637, '527, and '742 Patents

71. Nintendo induces and intends the direct infringement by users, certain third-party Wii-compatible game designers, and/or certain third-party manufacturers of Wii-compatible extensions and/or attachments of all asserted claims of the '917, '637, '527 and '742 patents by, among other things, requiring licenses to design and develop Wii-compatible games, controlling the manufacturing of all Wii-compatible game discs and approving all instruction and advertising materials related to Wii-compatible games, advertising its products as being capable of operating in an infringing manner, providing instructions and information about how to use the Wii gaming system as an infringing product or how to carry out an infringing method, and offering support and technical assistance to third-party manufacturers and users and that encourages the use of the Wii gaming system in ways that infringe the asserted claims of the '917, '637, '527 and '742 patents, as shown by the representative claim charts included in Exhibits 16-19.

VII. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE

72. The specific instances of importation and sale of infringing Nintendo's Accused Products set forth below are a representative sample of unlawful import and sale of infringing products, and are not meant to limit the scope of the accused products.

73. On information and belief, Nintendo Japan designs the infringing Accused Products at least at one or more facilities in Japan and manufactures, has manufactured, or directs another party to manufacture the Accused Products at least at one or more facilities in China. In addition, Nintendo Japan manufactures, has manufactured, or directs another party to manufacturer all Wii-compatible games whether originally designed by Nintendo or by Nintendo's third-party game-designer licensees. Thereafter, Nintendo Japan sells the Accused Products for importation into the United States through Nintendo of America and sells Wii-compatible game discs for importation into the United States through Nintendo of America to third-party game designers.

74. Exhibit 20 includes receipts showing purchase of the infringing Accused Products from retail stores in Washington, D.C. metro area. Exhibit 21 contains pictures showing labeling on the infringing Accused Products identifying Nintendo Co. Ltd as the manufacturer of the Accused Products and stating that the products were "Made in China." Physical Exhibits 2 and 3 contain physical samples of the Accused Products.

VIII. HARMONIZED TARIFF SCHEDULE ITEM NUMBERS

75. On information and belief, the Harmonized Tariff Schedule of the United States item numbers under which the infringing "Wii" video game machines and related Wii remote controller, Wii Remote Plus controller, Wii Nunchuk, Wii MotionPlus, and Wii Remote Plus, have been imported into the United States may be at least the following: 9504.10.00 (Video games of a kind with a television receiver and parts and accessories thereof); 9504.90.40 (Game

Machines, other than those operated by coins, banknotes (paper currency), discs or similar articles; parts and accessories thereof); 8517.62.00 (Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus); 8526.92.00 (Radio remote control apparatus); and/or 8529.90.16 (Of radar, radio navigational aid or radio remote control apparatus: Assemblies and subassemblies, consisting of 2 or more parts or pieces fastened or joined together).

IX. THE DOMESTIC INDUSTRY

76. A domestic industry as defined by 19 U.S.C. § 1337(a)(3) exists with respect to Creative Kingdoms' investment in activities in the United States that exploit the '917, '637, '527, and '742 patents. Those activities are based on the significant investment in plant and equipment, and significant employment of labor and capital with respect to articles protected by the Asserted Patents, as well as substantial investment in the exploitation of the '917, '637, '527, and '742 patents through engineering, research and development, and licensing.

A. Technical Prong

77. Creative Kingdoms, through its wholly owned subsidiary New Kingdoms, owns and operates a live action interactive game named MagiQuest. In MagiQuest, the player serves as the main character in a live-action world where special effects (including animatronic effects, computer-generated animations, computer-controlled lighting and sound effects) react when the player uses a handheld, motion-activated wand to cast seemingly-magical spells. By successfully casting spells, the player can complete various tasks and advance in the game.

78. Creative Kingdoms currently sells two types of wands for play in the MagiQuest attraction: the MagiQuest Adventure Series Wand and the MagiQuest Dragon Series Wand. Each wand has a unique identifier and once the wand has been registered, a player may use the wand in any game location without losing the player's status in the game. Using sensors

embedded in the wand, each player can cast “spells” using their wand by flicking/chopping or twirling the wand through the air, causing the wand to transmit a signal via an infrared transmitter. The receivers in the MagiQuest play area determine whether the spell was properly cast and reward the player accordingly. The entire game is controlled by a central computer, which tracks each player’s progress and aids him or her (via interactive computer terminals) in completing each phase of the quest. Players must buy a wand to play. The wands can interoperate between the MagiQuest locations, so players may continue to use their wand at other MagiQuest locations without having to restart the game.

79. The MagiQuest Silver/Gold Adventure Series Wand is an exemplary product that, when used with the interactive effects at MagiQuest locations, practices at least one claim of each of the ’917, ’637, ’527, and ’742 patents. Photographs of the Silver/Gold Adventure Series Wand and exterior photographs of various MagiQuest Effects are attached as Exhibit 22. Photographs of the underlying technology in a MagiQuest Effect and in the Silver/Gold Adventure Series Wand are attached as Confidential Exhibit 23. A copy of the MagiQuest player’s guide is attached as Exhibit 24. Physical Exhibit 1 contains physical samples of the MagiQuest interactive products. Claim charts demonstrating how the MagiQuest attraction practices representative independent claim 6 of the ’917 patent, representative independent claim 64 of the ’637 patent, representative independent claim 13 of the ’527 patent, and representative independent claim 24 of the ’742 patent are attached as Exhibits 25, 26, 27, and 28, respectively.

B. Economic Prong

80. Creative Kingdoms conducts significant domestic industry activities with respect to the ’917, ’637, ’527, and ’742 patents through its wholly-owned United States subsidiary Complainant New Kingdoms, LLC.

81. Creative Kingdoms and its licensees have made and continue to make significant investment in plant and equipment in the United States dedicated to the operation of gaming attractions and support operations for products covered by the '917, '637, '527, and '742 patents. The plant and equipment used in connection with those Creative Kingdoms products are located in multiple locations in the United States, including: Myrtle Beach, SC, Santa Ana, CA, Poconos Mountains, PA, Traverse City, MI, Kansas City, KS, Williamsburg, VA, Grapevine, TX, Concord, NC, Grand Mound, WA, Mason, OH, Wisconsin Dells, WI, Pigeon Forge TN, East Hanover, NJ, and Lombard, IL. Creative Kingdoms products are also located in two locations overseas: Lagunasia and Tokyo Dome, both in Japan. Confidential Exhibit 29 sets forth in more detail Creative Kingdoms' investments in plant and equipment dedicated to the operation of its wholly-owned gaming attraction and support operations for products covered by the '917, '637, '527, and '742 patents.

82. Creative Kingdoms has employed and continues to employ a significant number of employees in the United States who devote substantial effort toward the operation of its gaming attraction and retail support operation for products covered by the '917, '637, '527, and '742 patents. Confidential Exhibit 30 sets forth in more detail the investments in employees in the United States by Creative Kingdoms for the operation of its gaming attraction and retail support operation for products covered by the '917, '637, '527, and '742 patents.

83. Creative Kingdoms has made and continues to make significant investment in plant and equipment in the United States dedicated to the research, development, design, product support, testing and quality management, and development of specifications, for products covered by the '917, '637, '527, and '742 patents. The plant and equipment used in connection with those Creative Kingdoms products are located in Nehalem, OR. In addition, Creative

Kingdoms has employed and continues to employ a significant number of employees in the United States who devote substantial effort toward the research, development, design, product support, testing and quality management, and development of specifications, for products covered by the '917, '637, '527, and '742 patents. Confidential Exhibit 31 sets forth in more detail Creative Kingdoms' investments in plant and equipment, as well as labor and capital, dedicated to the research, development, design, product support, testing and quality management, and development of specifications covered by the '917, '637, '527, and '742 patents.

84. Creative Kingdoms, through its wholly-owned subsidiary, New Kingdoms, has made and continues to make substantial investment in the exploitation of its rights in the '917, '637, '527, and '742 patents. In addition to the existing MagiQuest, DinoQuest, and SplashQuest attractions licensees, New Kingdoms actively seeks out additional licensees through general marketing as well as tradeshow and conferences. Furthermore, New Kingdoms monitors licensee facilities to ensure that certain Creative Kingdoms brand standards are maintained, collects royalties as appropriate, and acts as a reseller of MagiQuest retail products to licensees.

85. In support of the licensing operations of New Kingdoms, Creative Kingdoms has made and continues to make significant investment in plant and equipment in the United States dedicated to the exploitation of its rights in the '917, '637, '527, and '742 patents. The plant and equipment used in connection with those licensing activities are located in Myrtle Beach, SC, and Nehalem, OR. In addition, Creative Kingdoms has employed and continues to employ a significant number of employees in the United States who devote substantial effort toward the exploitation of its rights in the '917, '637, '527, and '742 patents. Confidential Exhibit 32 sets

forth in more detail Creative Kingdoms' investments in plant and equipment, as well as labor and capital, dedicated to the exploitation of its rights in the '917, '637, '527, and '742 patents.

86. Typically, once a development and license agreement has been executed for a new MagiQuest site, New Kingdoms designs, develops, and installs a custom MagiQuest attraction for the licensee in the United States. Following installation, New Kingdoms provides technical assistance, technology upgrades, and game expansions to the licensee from the United States.

87. In support of the development and installation operations of New Kingdoms, Creative Kingdoms has made and continues to make significant investment in plant and equipment in the United States dedicated to the development and installation of products covered by the '917, '637, '527, and '742 patents. The plant and equipment used in connection with those development and installation activities are located in Nehalem, OR. In addition, Creative Kingdoms has employed and continues to employ a significant number of employees in the United States that devote substantial effort toward the development and installation of products covered by the '917, '637, '527, and '742 patents. Confidential Exhibit 33 sets forth in more detail Creative Kingdoms' investments in plant and equipment (for its wholly-owned and licensee gaming attractions), as well as labor and capital, dedicated to the development and installation of products covered by the '917, '637, '527, and '742 patents.

X. RELATED LITIGATION

88. Contemporaneously with the filing of this Complaint, Creative Kingdoms has filed suit in the U.S. District Court for the District of Oregon, Portland Division, asserting, *inter alia*, that Nintendo Japan and Nintendo of America infringe the '917, '637, '527, and '742 patents. A copy of that Complaint is attached as Exhibit 34.

89. On information and belief, other than the aforementioned district court action filed contemporaneously with this complaint, the Asserted Patents have not been involved in any other judicial or administrative proceeding.

XI. RELIEF REQUESTED

90. WHEREFORE, by reason of the foregoing, Complainant Creative Kingdoms and New Kingdoms respectfully request that the United States International Trade Commission:

(a) Institute an immediate investigation, pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(a)(1)(B)(i) and (b)(1), with respect to violation of Section 337 based upon the importation, sale for importation, and sale after importation into the United States of Nintendo's video game systems and wireless controllers, and components thereof that infringe one or more of the asserted claims of Creative Kingdoms' United States Letters Patent Nos. 7,500,917; 6,761,637; 7,850,527; and 7,896,742.

(b) Schedule and conduct a hearing on said unlawful acts and, following said hearing;

(c) Issue a permanent limited exclusion order pursuant to 19 U.S.C. § 1337(d)(2) barring from entry into the United States all imported video game systems and wireless controllers and components thereof that infringe one or more of the asserted claims of Creative Kingdoms' United States Letters Patent Nos. 7,500,917; 6,761,637; 7,850,527; and 7,896,742.

(d) Issue a permanent cease and desist order, pursuant to 19 U.S.C. § 1337(f), directing proposed respondent Nintendo of America to cease and desist from importing, marketing, advertising, demonstrating, warehousing inventory for distribution, offering for sale, selling, distributing, licensing, or using video game systems and wireless controllers, including the Wii gaming system, and components thereof that infringe one or more claims of the Asserted Patents; and

(e) Grant such other and further relief as the Commission deems just and proper based on the facts determined by the Investigation and the authority of the Commission.

Respectfully Submitted,

Dated: March 21, 2011



James R. Barney
Paul C. Goulet
Michael A. Morin
Michael V. O'Shaughnessy
Elizabeth D. Ferrill
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
901 New York Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 408-4000
Facsimile: (202) 408-4400

*Counsel for Complainants Creative
Kingdoms, LLC & New Kingdoms, LLC*

VERIFICATION OF COMPLAINT

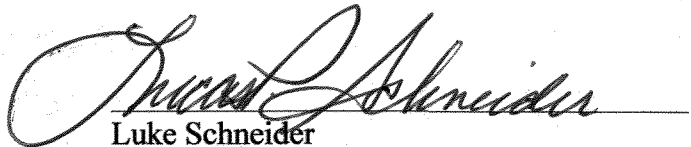
I, Luke Schneider, declare, in accordance with 19 C.F.R. §§ 210.4 and 210.12(a), under penalty of perjury, that the following statements are true:

I am the Chief Executive Officer of Complainant Creative Kingdoms, LLC., and am duly authorized to sign this Complaint on behalf of Complainant Creative Kingdoms, LLC and its wholly-owned subsidiary, Complainant New Kingdoms, LLC.

1. I have read the foregoing Complaint.
2. To the best of my knowledge, information, and belief, based on reasonable inquiry, the foregoing Complaint is well-founded in fact and is warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.
3. The allegations and other factual contentions have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
4. The foregoing Complaint is not being filed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Executed on:

3/18/2011



Luke Schneider
CEO, Creative Kingdoms, LLC