

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

Before the Honorable Paul J. Luckern
Chief Administrative Law Judge

In the Matter of

CERTAIN VIDEO GAME MACHINES
AND RELATED THREE-DIMENSIONAL
POINTING DEVICES

Investigation No. 337-TA-658

JOINT MOTION OF THE PRIVATE PARTIES FOR
TERMINATION OF THE INVESTIGATION BASED ON A
SETTLEMENT

Complainant Hillcrest Laboratories, Inc. ("Hillcrest") and Respondents Nintendo Co., Ltd. and Nintendo of America, Inc. ("Nintendo") hereby move for issuance of an initial determination terminating this investigation based on settlement under Commission Rule 210.21(b). Hillcrest and Nintendo have executed a settlement agreement that includes an agreement to terminate this investigation. The terms of settlement are set forth in the attached Exhibit A. The parties state that there are currently no other agreements, written or oral, express or implied, between them concerning the subject matter of this investigation. Hillcrest and Nintendo agree that termination of this investigation by settlement does not constitute a determination as to the violation of section 337 of the Tariff Act of 1930, including as to the merits of the claims or defenses raised during this investigation. See 19 C.F.R. § 210.21(b)(2).

Commission policy and the public interest generally favor settlements, which preserve resources for both the Commission and the private parties, and termination based on a settlement

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agreement is routinely granted. *See, e.g., Certain Equipment for Telecommunications or Data Communications networks, Including Routers, Switches, and Hubs, and Components Thereof*, Inv. No. 337-TA-574, Order No. 27 at 4 (May 24, 2007); *Certain Safety Eyewear and Components Thereof*, Inv. No. 337-TA-433, Order No. 37 at 2 (November 3, 2000); *Certain Synchronous Dynamic Random Access Memory Devices, Microprocessors, and Products Containing Same*, Inv. No. 337-TA-431, Order No. 11 at 2 (July 13, 2000); *Certain Integrated Circuit Chipsets, Components Thereof and Products Containing Same*, Inv. No. 337-TA-428, Order No. 16 at 5 (August 22, 2000); *Certain Equipment for Telecommunications or Data Communications Networks, Including Routers, Switches, and Hubs, And Components, Thereof*, Inv. No. 337-TA-574, Order No. 52 (September 8, 2008). The parties accordingly urge that the joint motion to terminate the investigation based on a settlement be granted.

Complainant has consulted with the Commission Investigative Attorney regarding this Motion. The Commission Investigative Attorney will provide the position of the Office of Unfair Import Investigations after reviewing the attached papers.

PUBLIC VERSION

Respectfully submitted,

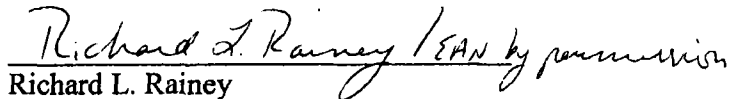


J. Michael Jakes
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Counsel for Complainant
Hillcrest Laboratories, Inc.

DATE: August 21, 2009


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Nintendo Co., Ltd.
Nintendo of America Inc.

PUBLIC VERSION

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

**Before the Honorable Paul J. Luckern
Chief Administrative Law Judge**

In the Matter of

**CERTAIN VIDEO GAME MACHINES
AND RELATED THREE-DIMENSIONAL
POINTING DEVICES**

Investigation No. 337-TA-658

**MEMORANDUM IN SUPPORT OF JOINT MOTION OF THE PRIVATE PARTIES
FOR TERMINATION OF THE INVESTIGATION BASED ON A SETTLEMENT**

Complainant Hillcrest Laboratories, Inc. (“Hillcrest” or “Complainant”) and Respondents Nintendo Co., Ltd and Nintendo of America Inc. (collectively “Nintendo”) hereby submit this memorandum in support of their joint motion for termination of this investigation based on a settlement agreement.

The Settlement Agreement executed by authorized representatives of Hillcrest and Nintendo is attached. In light of the attached Settlement Agreement, there no longer exists a basis upon which to continue this Investigation. The termination of this Investigation on the basis of the attached agreement poses no threat to the public interest. There are no other agreements, written or oral, express or implied, between Hillcrest and Nintendo concerning the subject matter of this Investigation.

The ALJ is authorized to terminate this Investigation under 19 C.F.R. § 210.21. Commission policy and the public interest generally favor settlements, which preserve resources for both the Commission and the private parties. Motions to terminate investigations based on settlement agreements are routinely granted. *See, e.g., Certain Buffer Systems and Components*

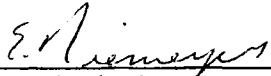
PUBLIC VERSION

Thereof Used in Container Processing Lines, Inv. No. 337-TA-609, Order No. 8 (Sept. 27, 2007); *Certain Wireless Communications Equipment, Articles Therein and Products Containing Same*, Inv. No. 337-TA-577, Order No. 59 (August 9, 2007); *Certain NAND Flash Memory Devices and Components Thereof, and Products Containing Same*, Inv. No. 337-TA-592, Order No. 4 (April 3, 2007); *Certain Semiconductor Timing Signal Generator Devices, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-465, Order No. 31 (Aug. 22, 2002); *Certain Safety Eyewear and Components Thereof*, Inv. No. 337-TA-433, Order No. 37 (Nov. 3, 2000).

For all of the foregoing reasons, Hillcrest and Nintendo respectfully request that the Administrative Law Judge issue an initial determination terminating this Investigation pursuant to 19 C.F.R. § 210.21(b).

PUBLIC VERSION

Respectfully submitted,

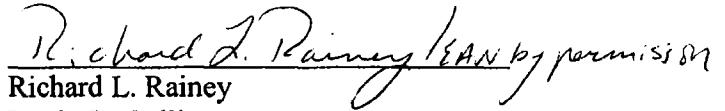


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Counsel for Complainant
Hillcrest Laboratories, Inc.

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Counsel for Respondents
Nintendo Co., Ltd.
Nintendo of America Inc.

REDACTED PUBLIC VERSION

LICENSE AND SETTLEMENT AGREEMENT

THIS LICENSE AND SETTLEMENT AGREEMENT ("Agreement"), effective as of August 20, 2009 (the "Effective Date"), between HILLCREST LABORATORIES, INC., a corporation organized and existing under the laws of the State of Delaware, USA, having its principal office at 15245 Shady Grove Road, Suite 400, Rockville MD 20850 ("Hillcrest"), NINTENDO CO., LTD., a corporation organized and existing under the laws of Japan, having its principal office at 11-1 Kamitoba-hokotate-cho, Minami-ku, Kyoto, Japan 601-8501 ("Nintendo"), and NINTENDO OF AMERICA INC., a corporation having its principal office at 4820 150th Avenue, NE, Redmond, WA 98052 ("NOA"). Hillcrest, Nintendo and NOA are hereinafter also referred to collectively as the "Parties" and individually as a "Party."

WHEREAS, Hillcrest represents that it is the sole owner of, among others, the following United States Patents: 7,139,983 (the "'983 patent"), 7,158,118 (the "'118 patent"), 7,262,760 (the "'760 patent"), and 7,414,611 (the "'611 patent") (collectively, the "Asserted Patents").

WHEREAS, Hillcrest submitted a Complaint against Nintendo and NOA under 19 U.S.C. Section 1337, before the United States International Trade Commission, Washington, D.C. in an action styled *In the Matter of Certain Video Game Machines and Related Three-Dimensional Pointing Devices*, Inv. No. 337-TA-658 alleging unlawful sale for importation, importation and sale after importation into the United States of certain goods that Hillcrest claimed infringed the Asserted Patents ("ITC Action");

WHEREAS, Hillcrest filed a lawsuit against Nintendo and NOA in the United States District Court for the District of Maryland, Case No. 08-CV-02188-RWT, alleging infringement of the Asserted Patents, which case is currently stayed ("Maryland Action");

WHEREAS, Nintendo and NOA each deny (a) all liability for all Claims (as defined below) asserted in the ITC Action and the Maryland Action, including all Claims for infringement, and (b) the validity and enforceability of each of the Asserted Patents;

WHEREAS, [REDACTED]

WHEREAS, [REDACTED]; and

WHEREAS, the Parties, by their entry into this Agreement, seek to fully resolve the issues between them and avoid the expense and inconvenience of any further litigation.

CONFIDENTIAL

Exhibit C-2 (Exhibit A), Page 1

REDACTED PUBLIC VERSION

[REDACTED]

NOW THEREFORE, in consideration of the foregoing premises, the mutual promises, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** Capitalized terms used in this Agreement are defined in the text or in Appendix A hereto.
2. **License Grants.**

2.1

[REDACTED]

2.2

[REDACTED]

a.

[REDACTED]

b.

[REDACTED]



REDACTED PUBLIC VERSION

[REDACTED]

c. [REDACTED]

2.3 Limitations, Restrictions and Acknowledgements.

a. [REDACTED]

b. [REDACTED]

c. [REDACTED]

d. [REDACTED]

e. [REDACTED]

[Handwritten signature]

REDACTED PUBLIC VERSION

[REDACTED]

[REDACTED]

f. [REDACTED]

2.4

[REDACTED]

2.5

[REDACTED]

3.

[REDACTED]

[Handwritten signature]

REDACTED PUBLIC VERSION

[REDACTED]

3.1 [REDACTED]

a. [REDACTED]

b. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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3.4 [REDACTED]

4. **Mutual Release; Dismissal**

4.1 **Hillcrest Release.** [REDACTED]

[REDACTED] Hillcrest, for itself and for its Affiliates, hereby fully, finally and forever, irrevocably and unconditionally releases, acquits and discharges each Nintendo Released Party from any and all Claims, known or unknown, including (a) those Claims that have been or could have been made or asserted in the Litigation, and (b) all Claims based on or arising out of any of the underlying facts, events or circumstances described in the Litigation.

4.2 **Nintendo and NOA Release.** Subject to the full and final dismissal of the ITC Action and the Maryland Action, Nintendo and NOA, for themselves and for their Affiliates, hereby fully, finally and forever, irrevocably and unconditionally release, acquit and discharge each Hillcrest Released Party from any and all Claims, known or unknown, including (a) those Claims that have been or could have been made or asserted in the Litigation, and (b) all Claims based on or arising out of any of the underlying facts, events or circumstances described in the Litigation.

4.3 **Stay of ITC Action.** Within one (1) Business Day following the Effective Date, Hillcrest shall file a motion, in the form attached hereto as Exhibit A, with the ITC seeking a stay of all proceedings before the ITC, including issuance of an Initial Determinations on Violation, in anticipation of termination of the investigation by way of settlement pursuant to 19 C.F.R. § 210.21(b) (the "ITC Stay").

4.4 **Dismissal of the Litigation.**

a. Within three (3) Business Days of the filing of the motion for ITC Stay, the Parties shall cause to be filed in the ITC Action a fully executed Joint Motion to Terminate Inv. No. 337-TA-658 in the form attached hereto as Exhibit C-1, seeking to terminate the investigation in its entirety as to both Nintendo and NOA pursuant to 19 C.F.R. § 210.21(b).

b. The Parties agree to submit the Joint Motion to Terminate (Public Version) that is attached hereto as Exhibit C-2 to the ITC as the version to be publicly filed [REDACTED]

REDACTED PUBLIC VERSION

[REDACTED]

[REDACTED]

c. Within three (3) Business Days following [REDACTED], Hillcrest shall file in the Maryland Action a fully executed stipulated order of dismissal with prejudice and without costs in the form attached hereto as Exhibit B.

4.5 Cooperation. The Parties agree to execute, acknowledge and deliver any other instruments, pleadings and documents and to take any further action consistent with the terms of this Agreement as may be required to effect the specified intent and purpose of this Agreement. Without limitation of the foregoing, should either the Maryland Action or the ITC Action not be dismissed following submission of the papers specified in Section 4.4, the Parties shall take such steps as are necessary under the circumstances to secure full and final dismissal of the Litigation; provided, however, nothing herein shall be deemed to require Nintendo or NOA to disclose any information that has been redacted in the version of this Agreement attached to the Joint Motion to Terminate (Public Version) in Exhibit C-2.

4.6 No Decision on the Merits. This Agreement sets forth a compromise and settlement of disputed claims in the Litigation for the purpose of avoiding the costs, disruptions, and uncertainties associated with further litigation. Such compromise and settlement does not constitute a ruling on the merits, an admission as to any issue of fact or principle at law or an admission of liability of either Hillcrest, Nintendo or NOA. Any and all such admission of liability is expressly denied by Hillcrest, Nintendo and NOA. Without limiting the foregoing, (a) no admission is made by Nintendo or NOA by execution of this Agreement [REDACTED] as to the validity or enforceability of [REDACTED] or of Nintendo's or NOA's infringement thereof, (b) no admission is made by Nintendo or NOA [REDACTED]

5. Validity; Enforcement.

5.1 [REDACTED]

[REDACTED]

[REDACTED]

5.2

[REDACTED]

6. Warranties and Disclaimers.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

i. [REDACTED]

6.3 Limitation of Liability.

[REDACTED]

6.4 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.1 OR 6.2 ABOVE, NEITHER PARTY MAKES ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EXPRESSED OR IMPLIED. IN PARTICULAR, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.1 OR 6.2 ABOVE, EACH PARTY HEREBY EXPRESSLY DISCLAIMS ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES OF ANY KIND AS TO

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

7.3

[REDACTED]

8. Public Announcements

8.1 Permitted Disclosures

a. The Parties acknowledge that they are obligated to submit a public version of this Agreement, which is annexed hereto as part of Exhibit C-2, to the ITC in connection with dismissal of the ITC Action. The Parties agree that,

[REDACTED]



REDACTED PUBLIC VERSION

[REDACTED]

[REDACTED]

b. Any Party may make otherwise prohibited disclosure to its legal, financial, accounting or other similar advisors, to its insurers and to bona fide prospective acquirers and investors in each case who are under a binding obligation not to disclose the information received from the disclosing Party, either in the form of a professional or ethical obligation or a signed non-disclosure agreement having a confidentiality term of not less than five years from the date of disclosure.

[REDACTED]

[REDACTED]

[Handwritten signature]

REDACTED PUBLIC VERSION

[REDACTED]

[REDACTED]

9.

[REDACTED]

10. **Notices.** Any notice or report required or permitted to be given or made under this Agreement by a Party to the other Parties shall be given (a) by facsimile transmission (with confirmation copy by express courier or registered first-class mail), (b) by registered mail (return receipt requested), or (c) express courier, to the Parties at the addresses and facsimile numbers indicated below, and shall be effective upon the earlier of the date of actual receipt by the addressee. Notices shall be sent:

[REDACTED]

[REDACTED]

[Handwritten signature]
10/88

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A Party may change such address or contact person by giving written notice to the other Parties pursuant to this Agreement.

11. Assignment.

11.1 General. Except as set forth in this Section 11 or as otherwise provided herein, this Agreement shall not be assignable by a Party, in whole or in part, to any other Person, nor, except as provided in Sections 2.1, 2.2, 11.2, 11.4 and 11.5, shall the rights herein of a Party otherwise be or become in any way, directly or indirectly, transferable or available to, or divisible or capable of being shared with, or inure to the benefit of, any other Person without the prior written consent of the other Party or Parties, which consent shall not be unreasonably withheld. Any assignment or transfer of this Agreement without such consent shall be null and void and shall constitute a breach of this Agreement.

11.2 [REDACTED]

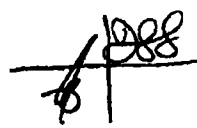
[REDACTED]

[REDACTED]

[REDACTED]

11.5 [REDACTED]

12. **Relationship.** Nothing in this Agreement shall be construed to create a principal-agent relationship, partnership or joint venture between Hillcrest, on the one hand, or Nintendo and NOA, on the other hand, or give rise to any fiduciary duty from one Party to the another Party. Notwithstanding the foregoing, Hillcrest shall be entitled to rely upon any communication, agreement, consent, waiver or notice from either Nintendo or NOA as a communication, agreement, consent, waiver or notice binding upon them both. Nintendo and NOA shall be jointly and severally liable for their obligations hereunder.
13. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or contrary to law, the remaining provisions of the Agreement will remain in full force and effect.
14. **No Waiver.** The failure of a Party at any time to require performance by the another Party of any provision of this Agreement shall not be construed as acquiescence or waiver of such failure to perform such provision. The failure of a



REDACTED PUBLIC VERSION

[REDACTED]

Party to take action upon the breach of any provision of this Agreement shall not be construed as acquiescence or waiver of any such breach.

15.

[REDACTED]

16. Article and Section Headings. The Section headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

17. Representation of Counsel; Mutual Negotiation. Each Party acknowledges that it has been represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated at arm's length, with the advice and participation of counsel, and prepared at the joint request, direction, and instruction of the Parties, and shall be interpreted in accordance with its terms without favor to any Party.

18. English Language. The Parties hereto have required that this Agreement and all documents relating thereto be drawn in the English language and that the English language version shall control over all translations thereof.

19.

[REDACTED]

[Handwritten signature]

REDACTED PUBLIC VERSION

20. **Construction.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof. As used herein, except as the context otherwise indicates, the singular shall include the plural and vice versa and words of any gender shall include any other gender. The conjunction "or" shall be understood in its inclusive sense (and/or). The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation."

21.

[REDACTED]

22. **Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to its principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of the laws of another jurisdiction. With respect to all civil actions or other legal or equitable proceedings directly arising between or among the Parties under this Agreement, the Parties consent to exclusive jurisdiction and venue in the United States District Court for the Southern District of New York. Each Party irrevocably consents to personal jurisdiction and waives the defense of *forum non conveniens* in such court with respect to itself and its Affiliates. Process may be served on a Party in any manner authorized by applicable law or court rule.

23. **Appendices and Exhibits.** The following appendices and exhibits are part of this Agreement and are hereby incorporated by reference:

Appendix A	Certain Definitions
Exhibit A	Motion to Stay ITC Action
Exhibit B	Stipulation and Order of Dismissal in Maryland Action
Exhibit C-1	Joint Motion to Terminate ITC Action (Confidential Version)
Exhibit C-2	Joint Motion to Terminate ITC Action (Public Version)
Exhibit D	[REDACTED]
Exhibit E	Confidentiality Agreement

24. **Amendment.** No amendment, modification, supplement, or waiver in any way of this Agreement shall be effective unless such amendment, modification, supplement, or waiver is in writing and specifically references this Agreement, and is signed by all Parties hereto.

[REDACTED]

REDACTED PUBLIC VERSION

- [REDACTED]
- [REDACTED]
25. **Entire Agreement; Amendment.** This Agreement, together with the appendices and exhibits attached hereto, sets forth the entire agreement between the Parties concerning the subject matter hereof and supersedes all previous agreements, written or oral, in this respect; provided, however that the obligations of the Parties under the protective order in the ITC Action shall not be affected by this Agreement.
- [REDACTED]
26. **Termination.** If, under 19 C.F.R. § 210.42(a)(1), the administrative law judge in the ITC Action issues a final initial determination on violation and recommended determination on remedy and bonding in the investigation, this Agreement shall automatically terminate without further action of the Parties and shall be of no further force or effect, and all rights, licenses and releases granted hereunder, and all obligations of the Parties hereunder, shall terminate forthwith.

1288
/s/

IN WITNESS WHEREOF, each of the Parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first written above.

~~NINTENDO CO., LTD.~~

HILLCREST LABORATORIES, INC.

By: Genyo Ohada

By: Daniel S. Simpkins

Name: Genyo Takeda

Name: Daniel S. Simpkins

Title: Senior Managing Director

Title: President and Chief Executive Officer

NINTENDO OF AMERICA INC.

By: Tatsumi Kimishima

Name: Tatsumi Kimishima

Title: Chairman & CEO

6/1/88

APPENDIX A

Certain Definitions

1. **Affiliate.** This means, with respect to a particular Party, any Person that from time to time, directly or indirectly, Controls, is Controlled by, or is under common Control with such Party (including subsidiaries, parent companies and sibling companies).
2. **Asserted Patents.** This has the meaning set forth in the recitals.
3. **Business Day.** This means any calendar day other than a Saturday or Sunday on which banks are open for business in New York and Tokyo.
4. **Business Transfer.** This means the acquisition of all or substantially all of the business or assets of a Person or the merger of a Person with or into another Person.
5. **Claim.** This means any claim, counterclaim, third party claim, demand, debt, liability, action or cause of action of any kind and of whatever nature or character regardless of whether existing in the past, present or future, whether known or unknown, whether asserted or unasserted, or whether accrued, actual, contingent, latent or otherwise, made or brought for the purpose of recovering any damages or for the purpose of obtaining any equitable relief or any other relief of any kind.
6. **Confidentiality Agreement.** This has the meaning set forth in Section 25.
7. **Control.** This means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise and will be presumed to exist (a) in the case of corporate entities, where a Party has direct or indirect ownership of more than fifty percent (50%) of the voting shares or interest of such corporation or business entity having the right to vote for the election of directors, and (b) in the case of non-corporate entities, where a Party has direct or indirect ownership of more than fifty percent (50%) of the equity interest with the power to direct the management and policies of such non-corporate entities. The terms "Controlled", "Controlling" and "Controlled by" shall have their correlative meanings.

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Exhibit C-2 (Exhibit A), Page 20



[REDACTED]

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. [REDACTED]

11. [REDACTED]

12. **ITC**. This means the United States International Trade Commission.

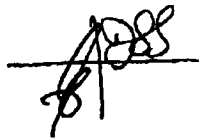
13. **ITC Action**. This has the meaning set forth in the recitals.

14. **ITC Litigation Termination Date**. This means the date on which the ITC issues a notice of determination not to review an initial determination terminating the ITC Action on the basis of a settlement agreement or otherwise issues an equivalent notice which serves as a final determination of the ITC terminating the ITC Action on the basis of a settlement agreement.

15. **ITC Stay**. This has the meaning set forth in Section 4.3.

16. **Licensed Patents**. This means:

[REDACTED]



REDACTED PUBLIC VERSION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. [REDACTED]

17. [REDACTED]

18. **Litigation.** This means the ITC Action and the Maryland Action.

19. **Litigation Termination Date.** This means the date that is the later of (a) the date of dismissal of the Maryland Action with prejudice, and (b) ITC Litigation Termination Date.



REDACTED PUBLIC VERSION

[REDACTED]

20. Maryland Action. This has the meaning set forth in the recitals.

21. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. [REDACTED]

23. [REDACTED]

24. Patent License. [REDACTED]

[REDACTED]

[REDACTED]

27. [REDACTED]

28. Person. This means a natural person, partnership, limited liability company, limited liability partnership, association, joint venture, corporation, legal representative, trustee, trustee in bankruptcy, receiver, governmental authority, or any other legal entity whatsoever.

29. Sell, Sale or Sold. This means, in relation to products, to import, export, offer for sale, sell, lease or license the products, and in relation to services to offer for sale, sell, or to provide or perform services.

[Handwritten signature]

REDACTED PUBLIC VERSION

[REDACTED]

[REDACTED]

31. [REDACTED]

32. [REDACTED]

[Handwritten signature]

REDACTED PUBLIC VERSION



EXHIBIT A

Motion to Stay ITC Action



Exhibit C-2 (Exhibit A), Page 25

CONFIDENTIAL

A handwritten signature consisting of a stylized 'A' followed by a vertical line and the number '1008' written above it.

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**Contents of Confidential Exhibit A
Redacted in Their Entirety**

Exhibit C-2 (Exhibit A), Page 26

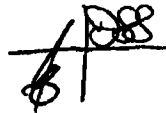
CONFIDENTIAL

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EXHIBIT B

Stipulation and Order of Dismissal in Maryland Action

(Public)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division)

HILLCREST LABORATORIES, INC.,)

Plaintiff,)

v.)

NINTENDO CO., LTD.)

and)

NINTENDO OF AMERICA INC.,)

Defendants.)

Civil No. 08-02188 RWT

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff Hillcrest Laboratories, Inc. and Defendants Nintendo Co., Ltd. and Nintendo of America Inc., pursuant to Federal Rule 41(a), hereby agree and stipulate to a dismissal with prejudice of all claims brought against Defendants in this action, with each party to bear its own costs, and respectfully request that the Court enter an order of dismissal with prejudice.

Dated: _____

Lawrence L. Ilag (Md. Bar No. 16882)
J. Michael Jakes
Christine E. Lehman
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Attorneys for Plaintiff

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Attorney for Defendant



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division)

HILLCREST LABORATORIES, INC.,)

Plaintiff,)

v.)

NINTENDO CO., LTD.)

and)

NINTENDO OF AMERICA INC.,)

Defendants.)

Civil No. 08-02188 RWT

ORDER

Upon consideration of the Joint Stipulation to Dismiss with Prejudice all claims brought against Defendants in this action, it is this ____ day of August, 2008, by the United States District Court for the District of Maryland,

HEREBY ORDERED that all claims in the instant civil action are dismissed with prejudice with each side to bear its own costs.

Roger W. Titus
United States District Judge

* * *



REDACTED PUBLIC VERSION



EXHIBIT C-1

Joint Motion to Terminate ITC Action



Exhibit C-2 (Exhibit A), Page 29

CONFIDENTIAL

US1DOC3 7270836v2

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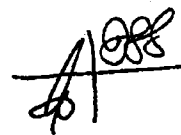
REDACTED PUBLIC VERSION

**Contents of Confidential Exhibit C-1
Redacted in Their Entirety**

Exhibit C-2 (Exhibit A), Page 30

CONFIDENTIAL

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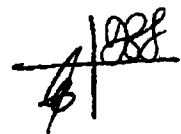
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PUBLIC VERSION

EXHIBIT C-2

Joint Motion to Terminate ITC Action -- Public Version

(Public)

Handwritten signature and date: \$/2008

PUBLIC VERSION

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

**Before the Honorable Paul J. Luckern
Chief Administrative Law Judge**

In the Matter of

**CERTAIN VIDEO GAME MACHINES
AND RELATED THREE-DIMENSIONAL
POINTING DEVICES**

Investigation No. 337-TA-658

**JOINT MOTION OF THE PRIVATE PARTIES FOR
TERMINATION OF THE INVESTIGATION BASED ON A
SETTLEMENT**

Complainant Hillcrest Laboratories, Inc. ("Hillcrest") and Respondents Nintendo Co., Ltd. and Nintendo of America, Inc. ("Nintendo") hereby move for issuance of an initial determination terminating this investigation based on settlement under Commission Rule 210.21(b). Hillcrest and Nintendo have executed a settlement agreement that includes an agreement to terminate this investigation. The terms of settlement are set forth in the attached Exhibit A. The parties state that there are currently no other agreements, written or oral, express or implied, between them concerning the subject matter of this investigation. Hillcrest and Nintendo agree that termination of this investigation by settlement does not constitute a determination as to the violation of section 337 of the Tariff Act of 1930, including as to the merits of the claims or defenses raised during this investigation. See 19 C.F.R. § 210.21(b)(2).

Commission policy and the public interest generally favor settlements, which preserve resources for both the Commission and the private parties, and termination based on a settlement

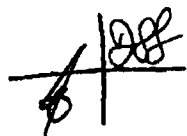
Exhibit C-2, Page 2



PUBLIC VERSION

agreement is routinely granted. *See, e.g., Certain Equipment for Telecommunications or Data Communications networks, Including Routers, Switches, and Hubs, and Components Thereof*, Inv. No. 337-TA-574, Order No. 27 at 4 (May 24, 2007); *Certain Safety Eyewear and Components Thereof*, Inv. No. 337-TA-433, Order No. 37 at 2 (November 3, 2000); *Certain Synchronous Dynamic Random Access Memory Devices, Microprocessors, and Products Containing Same*, Inv. No. 337-TA-431, Order No. 11 at 2 (July 13, 2000); *Certain Integrated Circuit Chipsets, Components Thereof and Products Containing Same*, Inv. No. 337-TA-428, Order No. 16 at 5 (August 22, 2000); *Certain Equipment for Telecommunications or Data Communications Networks, Including Routers, Switches, and Hubs, And Components, Thereof*, Inv. No. 337-TA-574, Order No. 52 (September 8, 2008). The parties accordingly urge that the joint motion to terminate the investigation based on a settlement be granted.

Complainant has consulted with the Commission Investigative Attorney regarding this Motion. The Commission Investigative Attorney will provide the position of the Office of Unfair Import Investigations after reviewing the attached papers.

Handwritten signature or initials, possibly "J/08", written in black ink.

PUBLIC VERSION

Respectfully submitted,

J. Michael Jakes
Christine E. Lehman
James R Barney
James T. Wilson
Elizabeth A. Niemeyer
Rajeev Gupta

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Counsel for Complainant
Hillcrest Laboratories, Inc.

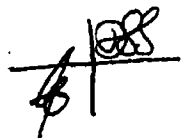
DATE:

Richard L. Rainey
Kevin B. Collins

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Facsimile: 415-591-6091

Counsel for Respondents
Nintendo Co., Ltd.
Nintendo of America Inc.

Handwritten signature and initials, possibly "B" and "OS", written over a horizontal line.

PUBLIC VERSION

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

**Before the Honorable Paul J. Luckern
Chief Administrative Law Judge**

In the Matter of

**CERTAIN VIDEO GAME MACHINES
AND RELATED THREE-DIMENSIONAL
POINTING DEVICES**

Investigation No. 337-TA-658

**MEMORANDUM IN SUPPORT OF JOINT MOTION OF THE PRIVATE PARTIES
FOR TERMINATION OF THE INVESTIGATION BASED ON A SETTLEMENT**

Complainant Hillcrest Laboratories, Inc. ("Hillcrest" or "Complainant") and Respondents Nintendo Co., Ltd and Nintendo of America Inc. (collectively "Nintendo") hereby submit this memorandum in support of their joint motion for termination of this investigation based on a settlement agreement.

The Settlement Agreement executed by authorized representatives of Hillcrest and Nintendo is attached. In light of the attached Settlement Agreement, there no longer exists a basis upon which to continue this Investigation. The termination of this Investigation on the basis of the attached agreement poses no threat to the public interest. There are no other agreements, written or oral, express or implied, between Hillcrest and Nintendo concerning the subject matter of this Investigation.

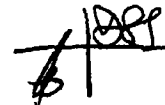
The ALJ is authorized to terminate this Investigation under 19 C.F.R. § 210.21. Commission policy and the public interest generally favor settlements, which preserve resources for both the Commission and the private parties. Motions to terminate investigations based on settlement agreements are routinely granted. *See, e.g., Certain Buffer Systems and Components*



PUBLIC VERSION

Thereof Used in Container Processing Lines, Inv. No. 337-TA-609, Order No. 8 (Sept. 27, 2007); *Certain Wireless Communications Equipment, Articles Therein and Products Containing Same*, Inv. No. 337-TA-577, Order No. 59 (August 9, 2007); *Certain NAND Flash Memory Devices and Components Thereof, and Products Containing Same*, Inv. No. 337-TA-592, Order No. 4 (April 3, 2007); *Certain Semiconductor Timing Signal Generator Devices, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-465, Order No. 31 (Aug. 22, 2002); *Certain Safety Eyewear and Components Thereof*, Inv. No. 337-TA-433, Order No. 37 (Nov. 3, 2000).

For all of the foregoing reasons, Hillcrest and Nintendo respectfully request that the Administrative Law Judge issue an initial determination terminating this Investigation pursuant to 19 C.F.R. § 210.21(b).

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PUBLIC VERSION

Respectfully submitted,

J. Michael Jakes
Christine E. Lehman
James R. Barney
James T. Wilson
Elizabeth A. Niemeyer
Rajeev Gupta

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Counsel for Complainant
Hillcrest Laboratories, Inc.

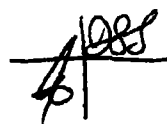
DATE:

Richard L. Rainey
Kevin B. Collins

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Facsimile: 415-591-6091

Counsel for Respondents
Nintendo Co., Ltd.
Nintendo of America Inc.

Handwritten signature and date, possibly "10/28/08".

REDACTED PUBLIC VERSION



EXHIBIT D



Exhibit C-2 (Exhibit A), Page 33

CONFIDENTIAL

US1 DOC3 727085v2

A handwritten signature or initials, possibly "B" followed by a vertical line and a circled "88", written in black ink.

REDACTED PUBLIC VERSION



**Contents of Confidential Exhibit D
Redacted in Their Entirety**

Exhibit C-2 (Exhibit A), Page 34

CONFIDENTIAL

A handwritten signature consisting of a stylized 'B' followed by a vertical line and the number '088' written above it.

REDACTED PUBLIC VERSION



EXHIBIT E

CONFIDENTIALITY AGREEMENT



Exhibit C-2 (Exhibit A), Page 35

CONFIDENTIAL

A handwritten signature consisting of a stylized symbol followed by the number '1008', positioned above a horizontal line.

REDACTED PUBLIC VERSION

**Contents of Confidential Exhibit E
Redacted in Their Entirety**

Exhibit C-2 (Exhibit A), Page 36

CONFIDENTIAL

US1DOCS 7270836v2

Handwritten signature or initials, possibly "A" or "B", with a horizontal line underneath.

**CERTAIN VIDEO GAME MACHINES AND RELATED
THREE-DIMENSIONAL POINTING DEVICES**

Inv. No. 337-TA-658


I, Emily L. Maher, hereby certify that on August 21, 2009, copies of the foregoing document were served upon the following parties as indicated:

<p>Honorable Marilyn R. Abbot Secretary U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, SW, Room 116 Washington, DC 20436</p> <p>(Original + 6 COPIES)</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Courier (FedEx) <input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email (PDF File)</p>
<p>Honorable Paul J Luckern Chief Administrative Law Judge U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, SW, Room 317 Washington, DC 20436</p> <p>(2 COPIES)</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Courier (FedEx) <input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email (PDF File)</p>
<p>Christopher G. Paulraj Office of Unfair Import Investigations U.S. International Trade Commission 500 E Street, SW, Room 401 Washington D.C., 20436</p> <p>Email: christopher.paulraj@usitc.gov</p>	<p><input type="checkbox"/> Via First Class Mail <input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Courier (FedEx) <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Email (PDF File)</p>

**CERTAIN VIDEO GAME MACHINES AND RELATED
THREE-DIMENSIONAL POINTING DEVICES**

Inv. No. 337-TA-658

<p>Counsel for Nintendo Co., Ltd. and Nintendo of America, Inc.:</p>	<p><input type="checkbox"/> Via First Class Mail <input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Courier (FedEx) <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Email (PDF File)</p>
<p>Richard L. Rainey Kevin B. Collins Karin J. Norton Covington & Burling LLP 1201 Pennsylvania Avenue N.W. Washington, D.C. 20004-2401</p>	
<p>(202) 662-6000</p>	
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