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Attorneys for Defendants Nintendo of America
Inc. and Nintendo Co., Ltd.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GAMEVICE, INC.,

Plaintiff,

v.

NINTENDO CO., LTD., and NINTENDO OF
AMERICA INC.

Defendants.

NINTENDO OF AMERICA INC.,

Counter-Claimant,

v.

GAMEVICE, INC.,

Counter-Defendant.

CASE NO. 3:18-cv-1942-RS

**JOINT CASE MANAGEMENT
STATEMENT**

Date: August 10, 2023

Time: 10:00 a.m.

Place: Videoconference

Judge: Hon. Richard Seeborg

1 **A. Background and Current Status**

2 This case involves Plaintiff Gamevice, Inc.’s allegations that Defendants Nintendo Co., Ltd.
3 and Nintendo of America Inc. (collectively “Nintendo”) infringe three Gamevice patents: U.S.
4 Patent Nos. 9,808,713, 9,855,498, and 10,391,393. Dkt. 1 and Dkt. 213. All three patents were also
5 the subject of infringement claims in two now-terminated investigations before the U.S. International
6 Trade Commission. Both investigations resulted in findings of no violation.

7 Because of those ITC litigations, Gamevice’s claims based on the ’713 and ’498 patents in
8 this Court were stayed until November 2021, and Gamevice’s claims based on the ’393 patent did
9 not become part of this case until the amended complaint was filed in March of 2022. Also, in light
10 of the prior ITC litigations, the parties initially proposed a limited schedule in this case that
11 permitted only claim construction discovery until after the completion of claim construction
12 proceedings, and agreed that materials exchanged during the ITC litigations and *inter partes* review
13 proceedings would satisfy the infringement and invalidity contentions called for under the local
14 patent rules. *See* Dkt. 219.

15 In accordance with that limited schedule, Gamevice disclosed that the following patent
16 claims were at issue:

- 17 • ’713 patent, claims 1-4, 6-8, and 16-19;
- 18 • ’498 patent, claims 1-2; and
- 19 • ’393 patent, claims 1-4, 6, 7, and 12

20 Following the Court’s claim construction order, dated January 19, 2023 (Dkt. 241) and
21 summary judgment practice (including the summary judgment order, dated March 14, 2023 (Dkt.
22 245), and reconsideration order, dated June 14, 2023 (Dkt. 250)), the currently asserted claims are 3,
23 4, 6, 7 and 16 of the ’713 patent and claim 6 of the ’393 patent.

24 **B. Schedule to Trial**

25 Gamevice and Nintendo have consulted and propose the following alternative schedules for
26 the remainder of the case leading up to the trial:
27
28

Deadline/Event	Gamevice's Proposed Date	Nintendo's Proposed Date
Serve Initial Disclosures pursuant to Fed. R. Civ. P. 26(a)(1) (including identification of individuals likely to have discoverable information and a computation of each category of damages claimed by the disclosing party)	Friday, August 25, 2023	Agreed
Serve Damages Contentions pursuant to Patent L.R. 3-8	Friday, August 25, 2023	Agreed
Serve Responsive Damages Contentions pursuant to Patent L.R. 3-9	Monday, September 25, 2023	Agreed
Deadline to complete fact discovery and file Motions to Compel Discovery	Monday, October 23, 2023	Friday, November 3, 2023
Serve Opening Expert Reports by the party with the burden of proof	Friday, November 3, 2023	Friday, December 1, 2023
Serve Rebuttal Expert Reports	Friday, December 8, 2023	Friday, January 12, 2024
Deadline to complete expert discovery	Friday, December 22, 2023	Friday, February 9, 2024
Deadline for dispositive motions and Motions to Strike Expert Testimony (including <i>Daubert</i> motions)	Friday, January 19, 2024	Friday, March 8, 2024
Serve Pretrial Disclosures (including witness lists, deposition and discovery designations, exhibit lists, jury voir dire questions, proposed jury instructions, proposed jury verdict forms); Plaintiff serves draft Pretrial Statement and Order	Friday, February 16, 2024	Friday, April 5, 2024
Serve objections to Pretrial Disclosures and Rebuttal Disclosures; Defendant serves revised draft Pretrial Statement and Order	Friday, March 1, 2024	Friday, April 19, 2024
Serve objections to Rebuttal Pretrial Disclosures	Friday, March 8, 2024	Friday, April 26, 2024

Deadline/Event	Gamevice's Proposed Date	Nintendo's Proposed Date
File Motions in Limine (Seeborg Guidelines, Section D.2)	Friday, March 22, 2024	Friday, May 31, 2024
File Joint Pretrial Statement and Order (Seeborg Guidelines, Section B)	Friday, March 22, 2024	Friday, May 31, 2024
Exchange exhibits (Seeborg Guidelines, Section D.1.a)	Friday, March 22, 2024	Friday, May 31, 2024
File Oppositions to Motions in Limine (Seeborg Guidelines, Section D.2)	Thursday, March 28, 2024	Friday, June 7, 2024
File Jury Materials (Seeborg Guidelines, Section D.4.a)	Friday, March 29, 2024	Friday, June 7, 2024
Final Pretrial Conference	Wednesday, April 3, 2024, or at the Court's convenience	Wednesday, June 12, 2024 or at the Court's convenience
Last day to order daily transcript and/or Realtime reporting (Seeborg Guidelines, Section D.6)	Monday, April 8, 2024	Monday, June 24, 2024
File excerpts of deposition testimony or other discovery to be offered at trial (Seeborg Guidelines, Section D.3)	Wednesday, April 17, 2024	Friday, June 28, 2024
File (Optional) Trial Briefs (Seeborg Guidelines, Section D.5)	Wednesday, April 17, 2024	Friday, June 28, 2024
Jury selection and trial	Monday, April 22, 2024, or at the Court's convenience	Monday, July 8, 2024 or at the Court's convenience

As set forth in the order adopting the Markman schedule, the parties agreed that certain previously exchanged materials from the ITC cases and the first '393 patent *inter partes* review petition would serve as proxies for the initial infringement and invalidity contentions called for in the local patent rules. But the parties have not yet exchanged damages contentions as set forth in L. Pat. R. 3-7 and 3-8. Dates are provided for those exchanges. In addition, while there are dates set out

1 for “dispositive motions and motions to strike,” neither party is precluded from filing a dispositive
2 motion at some earlier time in the schedule.

3 **C. Fact Discovery and Damages Discovery**

4 The parties previously agreed to stay all discovery in this case other than claim construction
5 discovery until after the completion of claim construction proceedings. Dkt. 219. Since claim
6 construction is now complete, the parties are ready to proceed with discovery into other issues,
7 including damages. For the avoidance of doubt, the parties agree that either party can serve
8 interrogatories, document requests, requests for admission, and deposition notices as of the date of
9 the Case Management Conference. The parties exchanged a substantial amount of material during
10 the previous ITC investigations. The proposed schedule reflects the parties’ belief that discovery can
11 be completed within a relatively short time, assuming prompt responses.

12 **D. Dispositive Motions that May Narrow the Issues for Trial**

13 Gamevice intends to file a motion for summary judgment that all remaining patent claims are
14 infringed based on law of the case, judicial estoppel, and the absence of any genuine issue of
15 material fact as to any claim limitations have not already been found to exist in the accused Nintendo
16 Switch product. Nintendo has filed a second *inter partes* review petition with respect to the ’393
17 patent; if the PTAB institutes that proceeding, Gamevice will file motions to preclude Nintendo from
18 relying on certain prior art in this case.

19 Nintendo intends to file a motion for summary judgment of non-infringement based on, at
20 least, failure to meet the “computing device” limitation with an integrated screen and a back, as
21 opposed to “a screen and a back [thrown] onto a pile of random parts.” *See* Dkt. 250 at 8. Nintendo
22 may also file a motion for summary judgment of non-infringement as to the “confinement
23 structures,” “passageway,” “apertures,” “electronic communication,” and/or “structural bridge”
24 limitations.

25 In addition, if the PTAB initiates a proceeding based on Nintendo’s second *inter partes*
26 review petition on the ’393 patent, Nintendo expects to file a motion to stay the instant case.

27
28

E. Settlement

During prior proceedings before this Court and the ITC, the parties engaged in two mediations with retired Judge Faith S. Hochberg, but were unable to make any progress towards settlement.

Dated: August 3, 2023

By: /s/ Smith R. Brittingham IV
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Attorneys for Defendants Nintendo of America Inc.
and Nintendo Co., Ltd.

ATTESTATION

Counsel for Plaintiff Gamevice, Inc. hereby attests by his signature below that concurrence in the filing of this document was obtained from counsel for Defendants Nintendo of America Inc. and Nintendo Co., Ltd.

Dated: August 3, 2023

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