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Transcript of Telephonic Court Call

Date: October 15, 2024

Case: Nintendo -v- American GNC (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

IPR2024-00667
AGNC EX2018

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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NINTENDO CO., LTD. AND NINTENDO : CASE NUMBER
OF AMERICA, INC., : IPR2024-0067
Petitioner, : (Patent 6,508,122 B1)
v. : IPR2024-00668
AMERICAN GNC CORPORATION, : (Patent 6,671,648 B2)
Patent Owner. :
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Telephonic Court Call
Before the Honorable BRIAN J. McNAMARA
SCOTT A. DANIELS, and
LISA L. TSANG, Administrative Patent Judges.
Tuesday, October 15, 2024
12:33 p.m.

Job No.: 557648
Pages 1 - 27
Reported by: Cynthia Lichtman, CSR No. 14601, CVR

Transcript of Telephonic Court Call
Conducted on October 15, 2024

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1 Call with the Court held telephonically:

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8 Pursuant to agreement, before Cynthia

9 Lichtman, Notary Public in and for the State of

10 California.

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A P P E A R A N C E S

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1 THE COURT: Good afternoon, everyone. This
2 is Judge McNamara. This is a conference call in IPR
3 2024-00667 and 00668. The case is, I guess, the
4 petitioner in this case is Nintendo, and the patent
5 owner is GNC. Let me first begin by asking if we have
6 a court reporter on the line.

7 THE REPORTER: Yes, you do, sir. My name is
8 Cynthia Lichtman. You can call me, Cindy. Will there
9 be other judges here?

10 THE COURT: I was about to get to that.
11 Judge Scott Daniels and Lisa Tsang, T-S-A-N-G, are on
12 the line with me as well. Got that?

13 THE REPORTER: Yes, sir, thank you.

14 THE COURT: Okay. Great. Thank you very
15 much. Can you please tell me who's on for the
16 petitioner?

17 MR. BRIGHAM: Yes, this is Matt Brigham.

18 THE COURT: I can hear something -- excuse me
19 just a second. Let me interrupt you for just a second.
20 I hear someone speaking in the background very low. I
21 don't know if it's from one of you or what, but I just
22 want to ask you to try to avoid that, if you can.

23 THE REPORTER: That's me. I'm a Voice
24 Writer. I thought I was quieter. Okay.

25 THE COURT: Okay. Great. Thank you. All

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1 right. Let me have it, again, appearance by the
2 petitioner.

3 MR. BRIGHAM: Yes, this is Matt Brigham, from
4 Cooley, on behalf of the petitioner. Also on the line
5 is Andrew Mace and Patrick Lauppe, also from Cooley.

6 THE COURT: Okay. And Mr. Brigham, will you
7 be doing most of the speaking today?

8 MR. BRIGHAM: I will.

9 THE COURT: Okay, great. And for the patent
10 owner, who do we have on the line?

11 MS. ENTZMINGER: Good afternoon, Your Honor.
12 This is Brenda Entzminger, lead counsel for patent
13 owner, of the law firm of Bunsow De Mory. I have with
14 me on the line my co-counsel, Corey Johanningmeier. And
15 Corey will be doing the argument today, most of the
16 speaking.

17 THE COURT: Oh, okay. Great. Thank you so
18 much. And is that Mister -- and let me get that name
19 again?

20 MR. JOHANNINGMEIER: Johanningmeier. Yeah.

21 THE COURT: Okay. Great. Thank you. All
22 right. I believe this call was requested by the patent
23 owner as a -- I guess, it's a motion -- who wants to
24 file a motion for additional discovery; is that correct?

25 MR. JOHANNINGMEIER: Yes, Your Honor, that is

1 correct. And so, you know, we met and conferred but
2 couldn't come to agreement on it. So we're doing that.

3 The motion is just for additional discovery,
4 and it's directed to basically two things that go to the
5 real party in interest issue that was discussed already
6 in the institution decisions. But we are seeking
7 discovery into an agreement between Nintendo and
8 STMicro. There's an agreement that has already been
9 produced in the District Court case, but we just want to
10 go forward with discovery here.

11 And also, we are seeking communications
12 between Nintendo and STMicro about the challenge patents
13 and petitions board, if they're going to assert
14 privilege over those communications and privilege logs.

15 And so, you know, I don't know to the extent
16 that you just want me to launch into a -- the
17 justification for this. But this goes, you know, this
18 is really just we are asking for authorization to file
19 the motion where we would detail our good cause at
20 length and explain why, but, you know, as we will show
21 in that motion, the discovery goes to relevant issues.

22 It goes to, you know, whether the petition is
23 defective for failing to list an RPI. It goes to
24 whether or not STMicro would be estopped under 315(e)
25 because they are an RPI or privy. And it goes to

1 whether the petitioner is actually time-barred pursuant
2 to 315(b) because STMicro is a real party in interest or
3 privy.

4 And I would also just note that recently, I
5 guess, last year the director, on a sua sponte review,
6 allowed identical discovery that was in the Samsung v
7 Netlist case, IPR 2022-00614, paper 40. And there -- it
8 is also, you know, any indemnification agreements and
9 related communications to the litigation and the patents
10 where discovery into that was granted on sua sponte
11 director review.

12 So we think, you know, obviously, we can make
13 the case for that. We can make the showing under the
14 Garmin factors. I can go through those to the extent
15 Your Honor wants to explain why these are
16 (indiscernible) --

17 THE COURT: That's okay.

18 MR. JOHANNINGMEIER: And so, I guess,
19 (inaudible).

20 THE COURT: Sure. (Inaudible.)

21 MR. JOHANNINGMEIER: Right. Right. I mean,
22 so we will, of course, make the motion under Garmin of
23 why this is relevant and can't be gotten any other way.

24 I think the other thing I will just preview
25 for Your Honor is the reason I, you know, we're asking

1 what should be ordinary discovery on a call with
2 opposition is because Nintendo believes that there is
3 a -- that they have -- essentially, there's going to be
4 a legal problem with the ultimate time bar question.
5 There is a disputed interpretation of the time bar
6 statute here that we think actually is an issue of legal
7 first impression.

8 We talked about this with Nintendo, and they
9 don't agree with our read. But, you know, just to put
10 it as simply as possible, the literal requirements of
11 315(b) have been met because STMicro NG [sic] and SRL
12 were served with the complaint that alleged infringement
13 of the challenged patents. But what actually happened
14 in the case was STMicro's customer, Oneplus, was alleged
15 to have infringed the challenge patents through the use
16 of ST's chips, and then ST itself was accused of
17 infringing two related patents. So they were
18 co-defendants in the litigation.

19 But the way it came down is that the two
20 challenge patents here were sort of against ST's
21 customer where two different patents were sort of
22 against ST. So we think this meets the actual
23 legitimate -- the requirements of the statute. And, you
24 know, we've looked at cases, and the closest case we
25 could find is the Facebook versus Windy City case where

1 it didn't matter for purposes of the time bar that the
2 specific claim wasn't asserted in the complaint that was
3 filed. It was ultimately barring it.

4 You know, we've also looked at the cases
5 about, you know, there's plenty of cases that say you
6 don't read additional limitations into the plain
7 language of the statute, but it does appear to be a --
8 you know, there's this sort of co-defendant situation
9 appears to be a legal question of first impression. And
10 I think Nintendo thinks they're going to win on that,
11 and we think we're going to win on that.

12 But more to the direct point of this call, we
13 are just asking for the discovery about whether or not
14 there's an RPI which is relevant, not only to the time
15 bar issue but also to estoppel also to whether or not
16 the petition itself is complete.

17 So we think the discovery is authorized
18 either way. And the fact that there might ultimately be
19 a, you know, dispute about whether or not the time bar
20 applies, that is going to come down to a statutory
21 interpretation, you know, might be a very interesting
22 question. But we need to do the discovery first. That
23 discovery comes before --

24 THE COURT: Okay. I appreciate that, yeah.
25 So let me ask you this at the very beginning then. My

1 understanding from what you've just said is that the
2 document, the alleged agreement, that is at issue here,
3 has already been produced in the District Court case; is
4 that correct?

5 MR. JOHANNINGMEIER: Right. So before we
6 filed our preliminary response, we told Nintendo that we
7 were intending to include it as an exhibit and then file
8 a motion to seal, but then Nintendo objected based on
9 the protective order in the District Court case. And so
10 --

11 THE COURT: Where are we going next?

12 MR. JOHANNINGMEIER: Yeah, so I can't -- I
13 can't put it in without authorization. You know,
14 Nintendo is taking the position that these are separate
15 proceedings and that we can't -- so I -- what I ended up
16 doing in the response is dropping a footnote and citing
17 and mentioning that there was an agreement out there
18 which, you know, you all noted in the --

19 THE COURT: Right. Right.

20 MR. JOHANNINGMEIER: -- the record being
21 insufficient. But basically, we're trying to fill in
22 the record with that, obviously under seal, with, you
23 know, the board's protective order or whatever. The
24 protective order we can negotiate with Nintendo.

25 And the only other thing we're asking for is

1 the communications between the two parties, or if
2 they're going to assert privilege then, you know,
3 obviously, we would just want them to do so and provide
4 a log.

5 THE COURT: Right. Okay. Let me ask the
6 petitioner at this point. Counsel, it's -- the
7 protective order, does the District Court protective
8 order preclude use of discovery material in the District
9 Court in another proceeding?

10 MR. BRIGHAM: Thank you, Your Honor. Yes,
11 it's limited to use in that case. So there's a
12 restriction there. And in addition, it would involve
13 third-party confidential information. So the third
14 party in this case, STMicro would need to give
15 permission.

16 THE COURT: I see, which I'm assuming is not
17 likely to be forthcoming.

18 MR. BRIGHAM: Yeah, I can't speak for them.
19 They would need to be asked.

20 THE COURT: Have you asked them?

21 MR. BRIGHAM: We asked their approval to
22 produce it in the underlying litigation but have not
23 asked to be produced in this case. There are reasonings
24 why we think we shouldn't even get to discovery that I
25 can go through, but I'm happy to answer other questions

1 first.

2 THE COURT: Okay. Fine. I just wanted to
3 make sure, you know, that the District Court order does
4 not allow -- well, there's a distinction. It can -- the
5 documents are produced or the discovery is produced for
6 use of the District Court case. Does it prohibit the
7 use of the same discovery in another case?

8 MR. BRIGHAM: Yes, it says that the documents
9 produced can only be used for purposes of that case.

10 MR. JOHANNINGMEIER: And, Your Honor --

11 THE COURT: I suspect -- let me say one thing
12 to both of you -- I suspect that we probably won't make
13 a decision on this today. But based on what I'm
14 hearing, if we do make a decision to allow any kind of a
15 motion, we'll need to have that protective order with us
16 filed with anything like that so that we know what the
17 District Court's position is this on this.

18 Petitioner's counsel was about to explain to
19 me why he thinks we shouldn't have this discovery in the
20 first place so -- and again, I -- we are not at the
21 issue of arguing the merits of what the law actually
22 requires or what implications of the discovery might be.
23 So although I heard some of that from patent owner's
24 counsel, and you can feel free to answer that if you
25 like, but that's not the issue that we're dealing with

1 today.

2 The primary issue we're dealing with today is
3 whether we should allow the discovery. I do recognize
4 to some extent to say, well, it may be purposeless if it
5 can't be used. But we are not in a position to make
6 that kind of decision at this stage of the game.

7 So please, go ahead and tell me why you think
8 we should not -- we should not even authorize a motion
9 for this discovery.

10 MR. BRIGHAM: Thank you, Your Honor. So I
11 will not get into all the details. We think there are a
12 number of flaws, both legally and factually, with their
13 IPR theory. STMicro has not agreed to indemnify us.
14 There was no coordination on IPRs. There's other legal
15 issues. Let me focus on the one that counsel raised.

16 And the reason why we do not think that even
17 discovery -- even the parties should even need to engage
18 in discovery is that section 315(b) has not been met.
19 There has -- there was not a complaint served on STMicro
20 that alleges infringement of the two patents that are
21 subject to these IPRs.

22 If Your Honor looks at Exhibit 2012, which is
23 the complaint that AGNC points to as the basis for this
24 RPI, paragraphs 47 and 48 make it clear that STMicro was
25 accused of infringing two other patents, not these two

1 patents. And to the extent there was any ambiguity at
2 all, we asked AGNC in the underlying litigation of the
3 Western District of Washington, and this is not before
4 the board, but on February 13th, 2024, docket 40, in an
5 answer to counterclaims, AGNC admitted the following:
6 American GNC admits that it did not include allegations
7 of infringement of the '122 patent and the '648 patent
8 by STMicro in the 171 [sic] case.

9 So, again, there's a lot of flaws that I
10 won't get into today, but this one seems to be a key
11 gating item for 315(b) can't be triggered because the
12 complaint was not served on STMicro alleging
13 infringement of the patent.

14 THE COURT: Okay. And so your theory is then
15 we shouldn't have any discovery because they could not
16 possibly rely on that discovery because it doesn't --
17 they weren't sued on the patents that are subject to
18 these two cases; is that correct?

19 MR. BRIGHAM: Correct. Correct. Reporting
20 (indiscernible) the parties, the board, third parties,
21 with discovery for no upside given that they can't pass
22 this fundamental gating item.

23 THE COURT: Okay. And let me hear from the
24 patent owner again on that point. I think you may have
25 covered some of this before, but that's perhaps a bit

1 more pointed analysis of it.

2 MR. JOHANNINGMEIER: Right. Thank you, Your
3 Honor. Right. And so we are not asserting anything
4 contrary to the statement that he read from our amended
5 answer. The -- what happened in the prior litigation
6 was -- there was -- STMicro was a co-defendant, there
7 were four patents asserted. Two of them were against
8 STMicro's customer, and two were against it. And the
9 two that are challenged here are the ones that were
10 asserted against STMicro's customers.

11 So, again, we've looked very closely to see
12 whether this issue had ever come up before because the,
13 you know, and we've read all the cases on this issue.
14 And it turns out that it's not clear because all of the
15 statute says is that serves was a complaint alleging
16 infringement of the challenged patent, which is
17 technically met.

18 Now, you know, one could assume, based on
19 that, that means that the, you know, the particular
20 co-defendant has to be accused. But the cases don't
21 actually lead you to that conclusion. So there's an
22 interesting legal question because the -- what -- the
23 time bar is based on notice and STMicro clearly had
24 notice, right? And so, you know, that it is actually an
25 issue that's going to require statutory interpretation

1 decision.

2 But, again, you know, so this comes up a lot
3 in cases where people say, well, you couldn't win so we
4 don't have to give you discovery. I mean, I think we
5 could win this issue. I think it is a questionable --
6 we have her colorable argument, a good faith colorable
7 argument that what did happen was enough to trigger
8 their interest in moving to bring an IPR if they were
9 going to. Right? And so that's an argument for later
10 on.

11 What we are asking for now is to just take
12 the discovery, which is relatively simple and
13 straightforward, in order to, you know, establish the
14 facts that we need to establish.

15 Again, as I said before, it isn't simply the
16 time bar issue. I mean, American GNC is concerned about
17 the estoppel issue as well. Because if STMicro should
18 be an RPI in this proceeding, we want to establish that
19 in this proceeding so that we don't get future IPRs from
20 ST entities, right?

21 I mean -- and, you know, if they are really
22 officially should have been RPI in this case, then
23 technically, the petition is deficient now. And
24 Nintendo may be allowed to share that. It is relevant
25 that their representation that they're the only RPI, you

1 know, we're challenging that. And we need -- this
2 discovery would go straight to that point as well. So
3 we think that the discovery --

4 THE COURT: Okay. So let me ask you this
5 then. So as to goes to what -- what was actually served
6 on STMicro. They were served with a complaint in which
7 they were a co-defendant, and as a co-defendant. And as
8 a co-defendant, there were accused -- there were four
9 patents, let's say: A, B, C, and D. C and D are
10 different from A and B. A and B are the two patents
11 that are involved in these two cases. But STMicro was
12 not accused of infringing those two patents. They were
13 accused of infringing two different patents, C and D
14 patents; is that right?

15 MR. JOHANNINGMEIER: Right. The patents that
16 are now at issue in these IPRs were directed to
17 STMicro's customer, OnePlus, and -- but it was related
18 to OnePlus' misuse of STMicro components. So -- but
19 yes, you have it right. The actual allegations of
20 infringement that went straight to ST were on these
21 challenge patents.

22 Now, they clearly had notice of everything
23 because you can see that if you look at their objections
24 to our subpoena at Exhibit 2014, 1 to 2. They, you
25 know, they responded to our subpoena by saying those --

1 these patents were at issue and were improperly trying
2 to accuse them again and all sorts of comments that --
3 and objections that reflect knowledge that they had been
4 implicated under these patents or these patents had
5 been, you know, brought up in a prior case.

6 So, you know, I think it's, you know, but
7 technically they were not in use of infringing these.
8 And, again, I just go to the closest analogy of a case I
9 could find was the Facebook versus Windy City case
10 where, you know, the Federal Circuit said it didn't
11 matter for purpose of the time bar that the served
12 complainant didn't allege infringement of the claims and
13 ultimately got challenged.

14 Now, that was different claims within a
15 patent, not different patents within a family so that's
16 where we have the distinction.

17 THE COURT: Right.

18 MR. JOHANNINGMEIER: But that -- so that's
19 the question that I would, you know, like to get
20 resolved. But, you know, as to whether or not --

21 THE COURT: Okay.

22 MR. JOHANNINGMEIER: -- discovery is so
23 burdensome that it needs to be avoided. You know, we're
24 asking for an agreement that, you know, ST has agreed to
25 produce in the underlying litigation.

1 I'm not sure. You know, we are taking it on
2 good faith their representation that they have to get
3 permission to produce this. But I don't see any reason
4 why it couldn't be produced here if it was produced
5 there.

6 The other point I'd make about the protective
7 order -- I mean, obviously, we'll include that with any
8 motion, but the protective order says, use within
9 litigation. So, you know, they're reading that to mean
10 just the District Court, whether or not, you know, we
11 (inaudible) just going to assume that and essentially
12 move discovery here in order to, you know --

13 THE COURT: That's obviously why we would
14 want to see the protective order -- excuse me,
15 Counselor -- that's exactly why we would want to see the
16 protective order. And then so to summarize what I think
17 I understand your position to be, is that STMicro has a
18 co-defendant in a case where another party was being
19 sued on these patents had notice of a suit that was
20 filed involving these patents, and therefore, could have
21 filed its own IPR. Is that, you know, on these things;
22 is that my correct understanding?

23 MR. JOHANNINGMEIER: Right. That based --
24 you know, this is a fact question, obviously, and it's
25 going to be specifically to the facts of this case.

1 THE COURT: Right. Right.

2 MR. JOHANNINGMEIER: Because it wasn't -- for
3 all we know, they weren't indemnifying in that case as
4 well. But they were certainly a co-defendant. And they
5 certainly had one of their customers accused under these
6 patents and had, you know, themselves accused under
7 patents that are, you know, total continuation in the
8 same family. So, you know, we think that provides
9 enough notice to start the clock, and like I said --

10 THE COURT: Okay. I think I understand where
11 you're coming from.

12 MR. JOHANNINGMEIER: Okay.

13 THE COURT: And I'm going to ask for the
14 patent owners -- I'm sorry -- for the petitioner's
15 response to that, then I think we'll wrap it up. Okay,
16 Counsel, can I hear what you have to say about that in
17 response?

18 MR. BRIGHAM: Yeah. Just simply put, they
19 have not met their threshold burden to establish that
20 there's an RPI issue here. It can't be that notice is
21 enough when you file a complaint and you tell a party
22 you're not accused of these two patents, paragraph 47
23 and 48 of Exhibit 2012. If they wanted to accuse
24 STMicro, it was easy enough. And they purposefully
25 didn't.

1 And then we asked them seven months ago, was
2 STMicro accused of those two patents in that case? And
3 in a filing in NWG Washington, they say -- they admitted
4 there was no allegations of infringement of the 122
5 patent and 648 patent by STMicro. So any notice, if
6 really the statute was read that far, it would implicate
7 all sorts of parties and will have been intended, and
8 you just can't get around the fact that they told courts
9 and STMicro the opposite, We did not accuse you of those
10 two patents, so (inaudible) --

11 THE COURT: Okay. Okay. I think I
12 understand that. I mean, they were served with the
13 complaint alleging infringement, but it wasn't they who
14 are alleged to be the infringers. But they were served
15 with the complaint that alleged infringement, right?

16 MR. BRIGHAM: No --

17 THE COURT: By a co-defendant; is that right?

18 MR. BRIGHAM: Well, I mentioned that there's
19 a whole host of legal issues. We're not -- I didn't
20 plan on getting into that today. They haven't
21 established service either, Your Honor. So there's a
22 whole (inaudible).

23 THE COURT: (Inaudible) if we -- well, that
24 would clearly be an issue as well if we were to grant a
25 motion for discovery. I guess, you'd want to -- you'd

1 want to -- you'd want to deal with that as well. So
2 you're saying that they weren't served. But if we
3 assume for a moment that they were served, it was all
4 the same complaint though, right? I mean, they were
5 co-defendants, and they allegedly got the same complaint
6 that -- that accused a co-defendant of infringing the
7 patents that are subject matter of these IPRs, right?

8 MR. BRIGHAM: Right. There was a STMicro --

9 THE COURT: Okay.

10 MR. BRIGHAM: -- named in a complaint where
11 that -- where they accused someone else of these
12 patents, correct?

13 THE COURT: Okay. Okay. I just want to make
14 sure I understand the facts because clearly. You know,
15 we're only seeing this from, you know, we're not seeing
16 all these related cases and that sort of thing, so --

17 MR. BRIGHAM: Understood. Understood.

18 MR. JOHANNINGMEIER: Your Honor, this is --

19 THE COURT: Yes.

20 MR. JOHANNINGMEIER: I just -- to say one
21 thing in summary. I mean, this is an interesting
22 factual dependent issue, we would like to brief it in a
23 motion, right? I mean, just technically today is just a
24 call seeking authorization to brief this issue. So, you
25 know, I'm hoping that that's what we can do. And I

1 think that will make the issue much easier for the board
2 to parse and to understand.

3 THE COURT: So if we were to allow briefing
4 on this, how many pages do you guys think you need?
5 Because it sounds like it's a fairly complicated factual
6 and legal issue. So from the petitioner -- from the
7 patent owner's perspective since you are the one seeking
8 the discovery, how many pages of briefing do you think
9 you need?

10 MR. JOHANNINGMEIER: Well, I mean, I'm
11 blanking on what the standard for this is, but I mean,
12 15 or less. I could do it in 10 easily. I mean, I
13 think there's, you know, there's going to be some
14 exhibits that we are going to want to attach, you know,
15 to sort of back up the statements, but it's fairly --

16 THE COURT: I'm talking pages of briefs, I'm
17 not talking --

18 MR. JOHANNINGMEIER: Yeah, so I mean, I'll
19 just say 15 just to put a number out there. But, I
20 mean, I can probably do less, you know.

21 THE COURT: Okay. Somewhere between 10 and
22 15.

23 MR. JOHANNINGMEIER: Yeah, we need to go to
24 the Garmin factors, and we need to explain the sort of
25 background issue so, you know, yeah, 10 to 15 pages

1 should be enough.

2 THE COURT: Okay. And petitioner, do you
3 agree if we were to allow briefing that would be
4 adequate? 10 to 15 pages?

5 MR. BRIGHAM: Yes, that's fine, Your Honor.

6 THE COURT: Okay. Well, as I said we are --
7 just let me check with the panel for just a moment.

8 Okay. It doesn't look like any other panel
9 members have any questions at this time. How quickly
10 can you guys file a transcript?

11 THE REPORTER: Are you talking to me, the
12 court reporter?

13 THE COURT: Well, yes, between you and them.
14 You know, are we looking at five days? Are we looking
15 at 10 days? You know, I just want to get an idea of
16 when we can get a transcript.

17 THE REPORTER: Depends what you order.
18 I'm -- how about Friday?

19 THE COURT: I'm not ordering it. Talk to
20 them.

21 THE REPORTER: Counsel, how quickly do you
22 need it? Can you -- is Friday okay?

23 MR. JOHANNINGMEIER: I mean, yeah. We can
24 pay whatever expedited fee.

25 THE REPORTER: Who's speaking? Who's

1 speaking?

2 MR. JOHANNINGMEIER: This is Corey
3 Johanningmeier for American GNC. So yes, I'll make sure
4 we have authorization to pay whatever fees that are
5 required to get it done by then, if you think you can
6 get it done by then. That'll be fine.

7 THE REPORTER: Okay. So Friday --

8 THE COURT: This is Judge McNamara -- let me
9 interject. If you can get it to me within a week, that
10 would be fine. So however, guys, that would be great.
11 So however you guys want to handle that, that's fine. I
12 guess, is there anything else from either party at this
13 point?

14 MR. JOHANNINGMEIER: None from American GNC,
15 other than just thanks to the board for your time.

16 THE COURT: Okay. Anything from the
17 petitioner?

18 MR. BRIGHAM: Nothing from the petitioner.
19 Thank you for your time.

20 THE COURT: All right. Well, I appreciate
21 that. If you get the transcript filed within a week, we
22 would -- we'll probably want to take a look at that
23 transcript before we rule and to make sure that we
24 understand everybody's arguments. I appreciate your
25 time today. And you'll be hearing from us in an order

1 of some sort sometime in the next couple weeks. Thank
2 you all very much. We are adjourned.

3 (Off the record at 1:01 p.m.)
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CERTIFICATE OF REPORTER - NOTARY PUBLIC

I, Cynthia Lichtman, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me and thereafter reduced to typewriting under my direction; that reading and signing was not requested; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 18th day of October, 2024.

My Commission Expires: April 7, 2026

Cynthia Lichtman

Notary Public in and for
the State of California

Errata Sheet for Conference Call on October 15, 2024

NINTENDO CO., LTD. AND NINTENDO OF AMERICA, INC., Petitioner,
v.
AMERICAN GNC CORPORATION, Patent Owner.
Case Number: IPR2024-0067, IPR2024-00668

Page/Line	Description of Correction Identified by American GNC
17:20	“ST were on” should be “ST were not on”
20:3	“weren’t indemnifying” should be “were indemnifying”
6:12, 8:15, 8:20, 17:21	“challenge patents” should be “challenged patents”
6:13	“petitions board, if” should be “petitions to the board, and if”
6:14	“communications and privilege” should be “communications, then privilege”
8:1	“what” should be “for what”
8:11	“NG” should be “NV”
8:20-22	“were sort of against” should be “were asserted against”
11:23	“reasonings” should be “reasons”
13:23-24	“RPI” should be “RPI argument”
14:2	“of” should be “in”
14:11	“315(b) can’t” should be “315(b), which can’t”
14:19	“Reporting” should be “Burdening”
15:14	“all of the” should be “all the”
15:15	“that serves was” should be “that what was served was”
16:6	“have her colorable argument” should be “have a colorable argument”
16:24	“share” should be “cure”
18:1	“and were improperly” should be “and we’re improperly”
18:7	“not in use of” should be “not accused of”
18:12	“claims and” should be “claims that”
19:11	(inaudible) should be “agree, we’re”
19:17	“STMicro has” should be “STMicro as”
20:7	“total continuation” should be “continuations”

20:22	“patents, paragraphs” should be “patents, like in paragraphs”
21:3	“NWG” should be “WD”
21:7	“and will” should be “that could not”
22:8	“a STMicro” should be “a STMicro entity”
22:12	“correct?” should be “correct.”

Counsel for American GNC prepared this errata sheet, in consultation with counsel for Nintendo, and hereby certifies that the above corrections are consistent with its best recollection of what was or was intended to be conveyed on the conference call.

/s/ Corey Johanningmeier