



## **COPPER INNOVATIONS GROUP, LLC v. NINTENDO CO., LTD et al**

2013 | Cited 0 times | W.D. Pennsylvania | April 17, 2013

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
PENNSYLVANIA

COPPER INNOVATIONS GROUP, ) LLC, ) Plaintiff, ) v. ) 2:07cv1752 Electronic Filing NINTENDO  
CO., LTD., NINTENDO ) OF AMERICA INC., SONY ) CORPORATION, SONY COMPUTER )  
ENTERTAINMENT, INC., and SONY ) COMPUTER ENTERTAINMENT ) AMERICA, INC., )  
Defendants. )

### MEMORANDUM ORDER

AND NOW, this 17 th

day of April, 2013, upon due consideration of defendants Nintendo Co., Ltd. and Nintendo of  
American Inc.'s motion for Attorney fees and Non-taxable Costs and the parties' submissions in  
conjunction therewith, IT IS ORDERED that [137] the motion be, and the same hereby is, denied.

As noted by plaintiff: "Copper presented an amended infringement contention that was based on the  
Court's claim construction and the evidence. The Court struck that theory, as untimely brought,  
eight months later, and on the same basis struck the summary judgment response." It then granted  
defendant's summary judgment based on the motion as presented.

In presenting this theory, plaintiff was entitled to test the boundaries of Local Patent Rule 3.7 and in  
doing so plaintiff did not venture into a course of conduct warranting sanctions under either 35  
U.S.C. § 285 or 28 U.S.C. § 1927. Leeway properly is permitted for colorable advancement of new  
and/or expansive applications of the law regardless of whether such attempts are successful in the  
first instance. Furthermore, the fact that plaintiff chose to judiciously limit the issues presented on  
appeal does not change the nature of plaintiff's approach in litigating its claims to conclusion in this  
court or otherwise warrant the extraordinary relief requested.

s/ David Stewart Cercone David Stewart Cercone United States District Judge

cc: Raymond P. Niro, Esquire Patrick F. Solon, Esquire Timothy J. Haller, Esquire Douglas M. Hall,  
Esquire Gene A. Tabachnick, Esquire Kirstein R. Rydstrom, Esquire Robert W. Faris, Esquire Anna  
B. Folger, Esquire (Via CM/ECF Electronic Mail)

