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.	)

<u>MEMORANDUM ORDER</u>

AND NOW, this 17th 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.

<div style="text-align:right">

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

</div>

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*)