

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

ANASCAPE, LTD.	§	
	§	Hon. Ron Clark
Plaintiff,	§	
	§	
v.	§	Civil Action No. 9:06-CV-00158-RC
	§	
MICROSOFT CORPORATION, and	§	
NINTENDO OF AMERICA, INC.,	§	
	§	
Defendants.	§	

**MOTION TO EXPEDITE BRIEFING ON MICROSOFT'S RENEWED
MOTION TO STAY LITIGATION PENDING REEXAMINATION
IN LIGHT OF PATENT OFFICE REJECTIONS OF ANASCAPE'S CLAIMS**

Pursuant to Eastern District of Texas Local Rule CV-7(e), Defendant Microsoft Corporation moves the Court for an Order expediting the briefing of Microsoft's Renewed Motion Stay Litigation In Light Of Patent Office Rejections of Anascape's Claims, Docket No. 123, which was filed Monday, July 30, 2007.¹ Microsoft requests that the Court set the following briefing schedule:

- Any opposition brief to be filed no later than Monday, August 6, 2007
- Any reply to be filed no later than Wednesday, August 8, 2007
- Any surreply to be filed no later than Friday, August 10, 2007

Briefing on this motion should be expedited for the following reasons:

¹ In the renewed motion to stay, Microsoft requested this expedited briefing schedule. Docket No. 123, pp. 1-3. After filing, Microsoft realized that Local Rule 9(e) appears to require a separate motion for an expedited briefing schedule, prompting this motion. Microsoft apologizes for any confusion caused by its unintentional failure to file a separate motion pursuant to Local Rule 9(e) on the same day as the motion at issue.

First, the Court and parties have a claim construction proceeding on August 22, 2007 in which 64 of the 68 claims being construed have already been rejected by the PTO. Part of the resources that would be wasted by continuing with the litigation while claims stand rejected (the basis for the renewed motion for stay) include those preparing for and conducting the upcoming hearing.

Second, the parties have already briefed most of the relevant law in the earlier motion for stay. Thus, this motion only requires the parties to address the effect of all of the rejections and decisions by the PTO on the stay of the remaining six patents.

Third, Microsoft brought this motion as soon as the claims reached a point where the majority of claims were rejected. On July 18, 2007, the PTO rejected all 46 asserted claims of claims of U.S. Patent No. 6,343,991 (to be construed at the August 22 hearing). Then, just late last week, on August 26-27, the PTO issued three more decisions ordering the following three patents into reexamination: U.S. Patent Nos. 6,135,886 (to be construed at the August 22 hearing), 6,400,303, and 6,208,271. Seeing these PTO decisions, Microsoft prepared and filed the motion within a few days.

In conferring on the renewed motion to stay, Microsoft asked Anascape to agree to the above expedited schedule. Anascape refused, explaining that it preferred to follow the standard, month-long briefing schedule. Anascape certainly knows that dragging out the briefing would likely postpone decision until after the Court and the parties have incurred all of the time and resources to prepare for and conduct the August 22 hearing in which nearly all the claims to be construed stand rejected.

For the above reasons, Microsoft requests that the Court enter the proposed order expediting the briefing schedule of the renewed motion for stay.

Respectfully submitted,

Dated: August 1, 2007

By: /s/ J. Christopher Carraway
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 1st day of August, 2007.

/s/ J. Christopher Carraway

CERTIFICATE OF CONFERENCE

Counsel for Microsoft has conferred with counsel for Anascape in a good faith attempt to resolve without court intervention the matters raised by Microsoft's motion to expedite briefing of the renewed motion to stay. Counsel for Anascape stated that Anascape opposes Microsoft's request that briefing on the motion be expedited to avoid wasting further resources.

/s/ J. Christopher Carraway