

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.	§	

NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to the discussion at the claim construction hearing yesterday, Microsoft Corporation submits the following supplemental authority for the Court's consideration:

Claim Differentiation

Kraft Foods, Inc. v. International Trading Co., 203 F.3d 1362, 1368 (Fed. Cir. 2000) (“[C]laim differentiation only creates a presumption that each claim in a patent has a different scope; it is ‘not a hard and fast rule of construction.’ ‘Claim differentiation cannot broaden claims beyond their correct scope.’ “[T]hat the claims are presumed to differ in scope does not mean that every limitation must be distinguished from its counterpart in another claim, but only that at least one limitation must differ”) (emphasis added).

Andersen Corp. v. Fiber Composites, LLC, 474 F.3d 1361, 1370 (Fed.Cir. 2007) (“A further reason for **not applying the doctrine of claim differentiation** in this case is that the Group I claims are not otherwise identical but for the references to pellets, linear extrudates, and composite compositions, and thus the district court's construction does not make the composite composition claims redundant. Instead, there are **numerous other differences varying the scope of the claimed subject matter.**”) (emphasis added).

Claim Constructions with Negative Limitations

Aquatex Indus. v. Techniche Solutions, 419 F.3d 1374, 1378-82 (Fed. Cir. 2005) (District Court’s construction of “fiberfill batting material” to cover synthetic fibers, **and not** natural fibers or a combination of synthetic and natural fibers, was affirmed; accused product contained a combination of natural and synthetic fibers) (emphasis added).

Microsoft Corp. v. Multi-Tech Systems, 357 F.3d 1340 1347-50 (Fed. Cir. 2004) (based on the description in the specification the Court construed the “sending,” “transmitting,” and “receiving” limitations “to require that the claimed data packets travel directly from a local site to a remote site (and vice versa) over a telephone line **and not** a packet-switched network”) (emphasis added).

Interactive Gift Express v. Compuserve Inc., 256 F.3d 1323, 1329, 1337-1338 (Fed. Cir. 2001) (the term “material object” construed to **not** cover “the hard disk component of a home personal computer” where the accused activities involve download of information over the Internet to a consumer’s hard disk on a home personal computer) (emphasis added).

On Demand Machine Corp. v. Ingram Industries, 442 F.3d 1331, 1339-40 (Fed. Cir. 2006) (limited the term “customer” to “retail customer” and not to cover “resellers” because the “claims cannot be of broader scope than the invention that is set forth in the specification”).

Respectfully submitted,

Dated: August 23, 2007

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 23rd day of August, 2007, the foregoing pleading was electronically filed with the Court. Pursuant to Local Rule CV-5, this constitutes service on the following counsel:

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