

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

Anascape, Ltd.,

Plaintiff,

v.

Microsoft Corp., and  
Nintendo of America, Inc.,

Defendants.

Civil Action No. 9:06-cv-158-RC

**NOTICE OF SUPPLEMENTAL AUTHORITY**

Anascape, Ltd. submits the following Notice of Supplemental Authority relevant to both the August 22, 2007 claim construction hearing and the claim construction hearing tentatively scheduled for September 19, 2007. Anascape submits the following case, which was decided after the completion of the parties' claim construction briefing, for the Court's consideration regarding claim differentiation and its role in the claim construction process:

*The Saunders Group, Inc. v. Comfortrac, Inc.*, \_\_\_ F.3d \_\_\_, No. 2006-1576, 2007 U.S. App. LEXIS 15235 (Fed. Cir. June 27, 2007). (rejecting the district court's construction of the term "pneumatic cylinder" as requiring at least one pressure activated seal, despite the specification's teaching of only a single embodiment that included such a seal and limiting statements in the prosecution history, because of the "powerful indicator" of claim differentiation, and stating that "while the restrictive language of the specification might be sufficient in other contexts to limit the scope of the claims, it is not sufficient in this case, where

the language of the claims so clearly distinguishes between those claims that require the presence of a pressure activated seal and those that do not”).

DATED: August 31, 2007

Respectfully submitted,

**McKOOL SMITH PC**

\_\_\_\_\_/s/ Sam Baxter

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**ATTORNEYS FOR PLAINTIFF  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on August 31, 2007. As such, this notice was served on all counsel who has consented to electronic service. Local Rule CV-5(a)(3)(A).

/s/ Luke F. McLeroy