

**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

JURY TRIAL REQUESTED

**ANASCAPE’S UNOPPOSED MOTION TO AMEND THE SCHEDULING ORDER  
AND CONTINUE THE MARCH 2008 TRIAL DATE**

Plaintiff Anascape, Ltd. (“Anascape”) hereby moves the Court to amend the Scheduling Order and, specifically, continue the March trial date, and states as follows:

1. This case is currently set for two trials: March 18, 2008, and May 12, 2008. (Docket Nos. 156.) A Final Pretrial Conference for the March 18, 2008 trial date is currently scheduled at 9:00 am on March 17, 2008 (Docket No. 153) and Jury Selection for the March 18, 2008 trial date is currently scheduled at 9:00 am on March 18, 2008 (Docket No. 154).

2. A party seeking leave to amend a court’s scheduling order must show “good cause.” FED. R. Civ. P. 16(b); *S&W Enters., L.L.C. v. Southtrust Bank of Ala.*, NA, 315 F.3d 533, 535 (5th Cir. 2003). In this case, both McKool Smith principals who have entered an appearance in this case and intend to try this case on behalf of Anascape have scheduling conflicts with the March 18, 2008 trial date. No other principals at McKool Smith have developed an understanding of the technology, facts, or issues of this case.

3. Sam Baxter, lead counsel for Anasape, is set for two trials in Judge Folsom's court. *Visto Corp. v. Microsoft Corp.*, case no. 2:05-cv-00546-DF, was originally filed on December 14, 2005, more than seven months before the present case was filed. This case was originally set for trial in October 2007, but was continued by the Court until Judge Folsom's March 2008 docket in the Marshall division at a pretrial conference held on October 1, 2007. Sam Baxter is also set for a March trial date in *Polycom, Inc. v. Codian Ltd.*, case no. 2:05-cv-00520-DF, which was originally filed on November 15, 2005, more than eight months before the present case was filed. The *Polycom* case was originally set for trial in October 2007, but was reset for trial in March 2008 in an Amended Scheduling Order dated November 26, 2007.

4. Ted Stevenson, another Anascape lawyer and McKool Smith principal, will be trying the *Visto Corp. v. Microsoft Corp.* case as well.

5. This is the first continuance sought by Anascape.

6. This continuance is not sought for the purpose of delay. Defendants Microsoft and Nintendo do not oppose this Motion. The parties have agreed to a revised scheduling order reflecting a continuance of the March trial date, which will be filed with the Court shortly.

WHEREFORE, Plaintiff Anascape, Ltd. respectfully moves the Court to amend the Scheduling Order and continue the March 18, 2008 trial date, and for such other and further relief to which it may be entitled in law or in equity.

DATED: December 7, 2007.

Respectfully submitted,

**McKOOL SMITH, P.C.**

*/s/ Sam Baxter with permission by  
Robert Christopher Bunt*

---

Sam Baxter  
Lead Attorney  
Texas State Bar No. 01938000  
sbaxter@mckoolsmith.com  
P.O. Box O  
505 E. Travis, Suite 105  
Marshall, Texas 75670  
Telephone: (903) 927-2111  
Facsimile: (903) 927-2622

Theodore Stevenson, III  
Texas State Bar No. 19196650  
[tstevenson@mckoolsmith.com](mailto:tstevenson@mckoolsmith.com)  
Luke F. McLeroy  
Texas State Bar No. 24041455  
lmcleroy@mckoolsmith.com  
McKool Smith, P.C.  
300 Crescent Court, Suite 1500  
Dallas, Texas 75201  
Telephone: (214) 978-4000  
Telecopier: (214) 978-4044

Robert M. Parker  
Texas State Bar No. 15498000  
rmparker@pbatyler.com  
Robert Christopher Bunt  
Texas State Bar No. 00787165  
rcbunt@pbatyler.com  
Charles Ainsworth  
Texas State Bar No. 00783521  
charley@pbatyler.com  
Parker, Bunt & Ainsworth P.C.  
100 E. Ferguson Street, Suite 1114  
Tyler, Texas 75702  
Telephone: (903) 531-3535  
Telecopier: (903) 533-9687

**ATTORNEYS FOR PLAINTIFF  
ANASCAPE, LTD.**

## CERTIFICATE OF SERVICE

I hereby certify that the all counsel of record, who are deemed to have consented to electronic service are being served this December 7, 2007, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

*/s/ Robert Christopher Bunt*  
Robert Christopher Bunt