

**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, LTD.'S THIRD AMENDED REPLY TO  
MICROSOFT CORPORATION'S COUNTERCLAIMS**

Plaintiff Anascape, Ltd. ("Anascape") files this Reply to Defendant Microsoft Corporation's ("Microsoft") Second Amended Counterclaims, filed December 3, 2007, and states as follows:

**RESPONSE TO COUNT I**

1. Anascape admits that Microsoft purports to allege a counterclaim arising under 28 U.S.C. §§ 1338, 2201, and 2202 and 35 U.S.C. Anascape denies that Microsoft is entitled to any declaratory relief.

2. Anascape admits the allegations of this paragraph.

3. Anascape admits the allegations of this paragraph.

4. Anascape admits the allegations of this paragraph.

5. Anascape admits the allegations of this paragraph.

6. Anascape admits that it commenced a civil action for infringement of the '084, '802, '886, '271, '525, '991, '791, '997, '205, '303, '415, and '700 patents and admits that there

is an actual controversy between Anascape and Microsoft with respect to Microsoft's infringement of the '084, '802, '886, '271, '525, '991, '791, '997, '205, '303, '415, and '700 patents. Anascape denies the remaining allegations of this paragraph.

7. Anascape denies the allegations of this paragraph.

8. Anascape admits that Microsoft has sold at least two models of controllers for use with its original Xbox video game system. Anascape admits that photographs of two controllers are attached to Microsoft's First Amended Counterclaims as Exhibit A. Anascape admits that Microsoft refers to these two controllers as "Microsoft's Xbox Controllers." Because Microsoft has not yet provided any discovery regarding its products, Anascape is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies the same.

9. Anascape admits that Microsoft has sold at least two models of controllers for use with its Xbox 360 video game system. Anascape admits that photographs of two controllers are attached to Microsoft's First Amended Counterclaims as Exhibit B. Anascape admits that Microsoft refers to these two controllers as "Microsoft's Xbox 360 Controllers." Because Microsoft has not yet provided any discovery regarding its products, Anascape is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies the same.

10. Anascape denies the allegations of this paragraph.

11. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

12. Anascape denies the allegations of this paragraph.

13. Anascape denies the allegations of this paragraph.

14. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

15. Anascape denies the allegations of this paragraph.

16. Anascape denies the allegations of this paragraph.

17. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

18. Anascape denies the allegations of this paragraph.

19. Anascape denies the allegations of this paragraph.

20. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

21. Anascape denies the allegations of this paragraph.

22. Anascape denies the allegations of this paragraph.

23. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

24. Anascape denies the allegations of this paragraph.

25. Anascape denies the allegations of this paragraph.

26. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

27. Anascape denies the allegations of this paragraph.

28. Anascape denies the allegations of this paragraph.

29. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

30. Anascape denies the allegations of this paragraph.

31. Anascape denies the allegations of this paragraph.

32. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

33. Anascape denies the allegations of this paragraph.

34. Anascape denies the allegations of this paragraph.

35. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

36. Anascape denies the allegations of this paragraph.

37. Anascape denies the allegations of this paragraph.

38. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

39. Anascape denies the allegations of this paragraph.

40. Anascape denies the allegations of this paragraph.

41. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

42. Anascape denies the allegations of this paragraph.

43. Anascape denies the allegations of this paragraph.

44. Anascape denies the allegations of this paragraph.

## **RESPONSE TO COUNT II**

45. Anascape incorporates by reference its responses to paragraphs 1-5, as if fully restated herein. Anascape denies the remaining allegations of this paragraph.

46. Anascape admits that it commenced a civil action for infringement of the '084, '802, '886, '271, '991, '791,'997, '205, '303, '415, and '700 patents and admits that there is an

actual controversy between Anascape and Microsoft with respect to Microsoft's infringement of the '084, '802, '886, '271, '991, '791,'997, '205, '303, '415, and '700 patents. Anascape denies the remaining allegations of this paragraph.

47. Anascape denies the allegations of this paragraph.

48. Anascape denies the allegations of this paragraph.

### **RESPONSE TO COUNT III**

49. Anascape incorporates by reference its responses to paragraphs 1-5, as if fully restated herein. Anascape denies the remaining allegations of this paragraph.

50. Anascape admits that it commenced a civil action for infringement of the '084, '802, '886, '271, '991, '791,'997, '205, '303, '415, and '700 patents and admits that there is an actual controversy between Anascape and Microsoft with respect to Microsoft's infringement of the '084, '802, '886, '271, '991, '791,'997, '205, '303, '415, and '700 patents. Anascape denies the remaining allegations of this paragraph.

51. Anascape denies the allegations of this paragraph.

52. Anascape admits that U.S. Patent Application No. 09/715,532 was filed on November 16, 2000 with claims 1-38 and issued as U.S. Patent No. 6,906,700. Anascape admits that Brad A. Armstrong is named as the inventor of U.S. Patent No. 6,906,700. Anascape admits that Mr. Armstrong participated in the prosecution of U.S. Patent No. 6,906,700. Anascape denies the remaining allegations of this paragraph.

53. Anascape admits that Mr. Armstrong was aware of one or more video game controllers after U.S. Patent Application No. 09/715,532 was filed. Anascape denies the remaining allegations of this paragraph.

54. Anascape admits that Mr. Armstrong filed a Preliminary Amendment with the Patent & Trademark Office dated July 15, 2002, in which he cancelled original claims 1-38 and added new claims 39-77 to the application. Anascape denies the remaining allegations of this paragraph.

55. Anascape admits that the new claims 39-77 have a claim scope that covers one or more video game controllers. Anascape denies the remaining allegations of this paragraph.

56. Anascape denies the allegations of this paragraph.

57. Anascape admits the allegations of this paragraph.

58. Anascape denies the allegations of this paragraph.

59. Anascape admits that section 112 of Title 35 of the United States Code states, in part, that:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Anascape admits that section 2163.06 of the Manual of Patent Examining Procedure states, in part, that:

If new matter is added to the claims, the examiner should reject the claims under 35 U.S.C. 112, first paragraph - written description requirement. *In re Rasmussen*, 650 F.2d 1212, 211 USPQ 323 (CCPA 1981).

Anascape denies the remaining allegations of this paragraph.

60. Anascape denies the allegations of this paragraph.

61. Anascape denies the allegations of this paragraph.

62. Anascape admits the allegations of this paragraph.

63. Anascape admits the allegations of this paragraph.

64. Anascape admits that the Examiner rejected a number of claims based on the Cyberman reference. Anascape is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations of this paragraph and, therefore, denies the same.

65. Anascape admits that the '525 patent was filed on July 5, 1996 as a continuation-in-part application. Anascape denies the remaining allegations of this paragraph.

66. Anascape admits that the '525 patent includes a disclosure of flexible membrane sheets that was not present in the previous '828 and '891 patents. Anascape denies the remaining allegations of this paragraph.

67. Anascape admits that claims of the '525 patent recite the term "flexible membrane sheet." Anascape denies the remaining allegations of this paragraph.

68. Anascape admits that the '525 patent issued on April 24, 2001. Anascape denies the remaining allegations of this paragraph.

69. Anascape admits the allegations of this paragraph.

70. Anascape admits that the December 4, 2003 IDS states that the Cyberman controller had been "first sold in 1993 in the USA by Logitech Inc. . ." and that a flyer was submitted with the IDS as well as pictures of the Cyberman. Anascape denies the remaining allegations of this paragraph.

71. Anascape admits that the December 4, 2003 IDS is quoted accurately. Anascape denies the remaining allegations of this paragraph.

72. Anascape admits that the December 4, 2003 IDS stated that "Applicant believes an element disclosed in the Cyberman that was not taught in the '828 patent is the membrane element." Anascape denies the remaining allegations of this paragraph.

73. Anascape denies the allegations of this paragraph.

74. Anascape denies the allegations of this paragraph.

75. Anascape denies the allegations of this paragraph.

76. Anascape denies the allegations of this paragraph.

77. Anascape cannot admit or deny how the facts “appear” to Microsoft and, therefore, denies those allegations. Anascape admits that Rule 56 is quoted accurately. Anascape denies the remaining allegations of this paragraph.

78. Anascape denies the allegations of this paragraph.

79. Anascape denies the allegations of this paragraph.

80. Anascape denies the allegations of this paragraph.

81. Anascape denies the allegations of this paragraph.

82. Anascape denies the allegations of this paragraph.

83. Anascape admits that U.S. Patent No. 5,164,697 is entitled “Input Keyboard for an Electronic Appliance in Entertainment Electronics” and issued with Richard Kramer named as an inventor on November 17, 1992. Anascape denies the remaining allegations of this paragraph.

84. Anascape admits that the application that led to the '084 patent received a rejection on or about April 26, 1999. Anascape admits that the rejection stated that the Kramer patent was “made of record and not relied upon” and “considered pertinent to applicant’s disclosure.” Anascape admits that a response dated April 30, 1999 stated that: “the prior art of record and not relied upon . . . Kramer . . . disclose variable resistors or switches, but after a careful reading . . . none singularly or in combination suggest or teach the present invention . . . .” Anascape denies the remaining allegations of this paragraph.

85. Anascape admits that the '802, '886, and '991 patents had not issued as of April 30, 1999. Anascape admits that the '802 patent was filed on October 1, 1997 and issued on

October 24, 2000. Anascape admits that the '886 patent was filed on July 24, 1998 and issued on October 24, 2000. Anascape admits that the '991 patent was filed on February 22, 2000 and issued on February 5, 2002. Anascape denies the remaining allegations of this paragraph.

86. Anascape cannot admit or deny how the facts “appear” to Microsoft and, therefore, denies those allegations. Anascape admits that Rule 56 includes a duty to disclose information material to patentability. Anascape denies the remaining allegations of this paragraph.

87. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

88. Anascape admits that the Kramer patent was not disclosed in an IDS in conjunction with the '802, '886, and '991 patents. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

89. Anascape denies the allegations of this paragraph.

90. Anascape denies the allegations of this paragraph.

91. Anascape denies the allegations of this paragraph.

92. Anascape denies the allegations of this paragraph.

93. Anascape denies the allegations of this paragraph.

94. Anascape admits that Microsoft filed a request for *ex parte* reexamination of the '802 patent with the PTO. Anascape admits that the PTO issued an order granting Microsoft's request for *ex parte* reexamination of the '802 patent on March 9, 2007, and issued an Office Action rejecting claims 1-19 of the '802 patent on July 12, 2007. Anascape denies any remaining allegations of this paragraph.

95. Anascape admits that Microsoft filed a request for *inter partes* examination of the '991 patent with the PTO, and filed a correction to this request on February 15, 2007. Anascape admits that the PTO issued an order granting Microsoft's request for *inter partes* reexamination of the '991 patent on July 18, 2007, and that the PTO issued an office action rejecting claims 1-74 of the '991 patent. Anascape denies any remaining allegations of this paragraph.

96. Anascape admits that Brad Armstrong conducted a telephonic interview with the PTO examiner regarding the '802 Patent, and that Anascape stated that it would submit evidence of commercial success. Anascape denies the remaining allegations of this paragraph.

97. Anascape admits that a declaration by Brad Armstrong was submitted to the PTO that stated that Anascape had entered into a license agreement with Sony Computer Entertainment America, Inc. The declaration submitted in connection with the '991 reexamination states "This Agreement was executed to resolve a dispute that had arisen between the parties, namely, whether Sony's PlayStation 2 video game system infringed Anascape's patents, including the '991 game controller patent." Anascape denies the remaining allegations of this paragraph.

98. Anascape admits that the declaration by Mr. Armstrong submitted in connection with the '991 reexamination states "The Sony PlayStation 2 gaming system is the most popular video game of all time. According to published reports from Sony, as of March 2007, over 117 million PS2 units have shipped worldwide. See, [http://www.scei.co.jp/corporate/data/bizdataps2\\_e.html](http://www.scei.co.jp/corporate/data/bizdataps2_e.html) Each system includes at least one game controller that incorporates the invention described and claimed in my '991 patent." Anascape admits that the same declaration states "Moreover, the game controller incorporated the invention described and claimed in my '991 patent was a feature Sony itself touted when

introducing its PlayStation 2 gaming console. In this regard, I have attached hereto excerpts from a Sony brochure describing the gaming system and that included what Sony referred to as the **DUALSHOCK 2** Analog Controller. Sony introduced the controller as a device that ‘redefines the meaning of ‘next generation.’ The buttons are pressure-sensitive, making it possible for multiple responses during gameplay for each button. Surgical strikes, a wider range of fighting maneuvers and precision handling of your vehicle as you rip up the road and cut through the turns. Now that’s next generation!’” Anascape denies the remaining allegations of this paragraph.

99. Anascape admits that it cited to Mr. Armstrong’s declarations. Anascape denies the remaining allegations of this paragraph.

100. Anascape admits that Microsoft accurately quotes an excerpt from the a response to an office action related to the ’991 reexamination. Anascape denies the remaining allegations of this paragraph.

101. Anascape admits that the license provides that “Anascape Parties hereby grants and transfer an exclusive, irrevocable, world-wide license under the Licensed Anascape Patent known as United States Patent 6,310,606 entitled ‘Multi-Plane Sheet Connected Sensors’ (the ’606 Patent) to Sony. This exclusive license is a transfer to Sony of all rights held by each of the Anascape Parties in the ’606 Patent. This transfer is of a capital asset by each of the Anascape Parties in accordance with United States Code Title 26, Section 1235,” and provides that “Sony shall pay the Anascape Parties US\$10,000,000 (Ten Million United States Dollars) no later than July 7, 2004, in consideration for Sony’s receipt of all substantial rights in the Anascape patent described in Paragraph 2.2 above. All of the rights and releases provided by the Anascape

Parties in Section 2 are conditioned on the Anascape Parties' timely receipt of this sum." Anascape denies the remaining allegations of this paragraph.

102. Anascape admits that the license provides that "'Licensed Anascape Patents' means any patent or patent application anywhere in the world (a) assigned to Anascape, or which Anascape or Armstrong can license, prior to May 1, 2005, (b) in which Armstrong is an inventor, provided that the application from which the patent issues was filed prior to May 1, 2005, (c) listed in Schedule A, or (d) is a continuation, continuation-in-part, divisional, reissue, reexamination, substitute application (as defined in MPEP § 201.09) or any other patent or patent application which claims the benefit of priority of a patent or patent application meeting the requirements of clauses 'a', 'b' or 'c' of this paragraph. For the purposes of this paragraph, a patent shall be deemed to be licensable only if Anascape or Armstrong have the right to grant a license or sublicense to Sony within the scope of the license granted hereunder." Anascape admits that the license provides that "'Licensed Sony Patents' means (a) United States Patents 5,551,693; 5,853,326; and 5,716,274 and (b) continuations, continuations-in-part, divisionals, reissues, reexaminations, and substitute applications (as defined in MPEP § 201.09) thereof or any other patent or patent application which claims the benefit or priority thereof." Anascape admits that the license provides that "Anascape Parties hereby grant a non-exclusive, irrevocable, world-wide license under all of the Licensed Anascape Patents (except that patent described in Paragraph 2.2, below) to (a) Sony to Deploy Sony Products, and (b) publishers, developers, distributors, Sony's customers, Sony's suppliers (indirect or direct), and other third parties solely to the extent such entities are Deploying software based Sony Products, and only to the extent that such entities are licensed by Sony and are Permitted Third Parties. By way of example, the license granted by Anascape herein applies to third party software developers and publishers for

video games licensed by SCEA for use with the PS2 console. The license does not cover third party sales of such video games for use on competing video game consoles. The license also does not cover third party sales of hardware peripherals (e.g., controllers and the like) for use with any video game console.” Anascape admits that the license provides that “The Anascape Parties’ right to the non-exclusive use of the Licensed Sony Patents is consideration for Sony’s and Permitted Third Parties’ right to the non-exclusive use of all of the Licensed Anascape Patents described in Paragraph 2.1 above and the other benefits afforded to Sony under this Agreement (other than as provided in Paragraph 2.2 above). Due to the uncertainty as to the value of any of these patents that are the subject of the cross license provisions of this Agreement, the Parties agree and acknowledge that they are unable to arrive at appropriate royalties for these licenses. Accordingly, the Parties have agreed to forego any royalties or other payment of any kind for those patents subject to the cross licenses.” Anascape denies the remaining allegations of this paragraph.

103. Anascape denies the allegations of this paragraph.

104. Anascape denies the allegations of this paragraph.

105. Anascape admits that Brad Armstrong stated that the terms of the Sony license were confidential to the PTO. However, since that time, the Sony license has been submitted to the PTO. Anascape denies the remaining allegations of this paragraph.

106. Anascape admits that Microsoft’s quotation of an excerpt of the Sony license is accurate. Anascape denies the remaining allegations of this paragraph.

107. Anascape admits that, as of November 21, 2007, it has not told the PTO that the Sony license places no monetary value on either the ’802 or the ’991 patents. Anascape denies the remaining allegations of this paragraph.

108. Anascape admits that, as of November 21, 2007, the Sony license agreement had not been submitted to the PTO in relation to the '802 or '991 reexaminations. However, since that time, the Sony license has been submitted to the PTO. Anascape denies the remaining allegations of this paragraph.

109. Anascape denies the allegations of this paragraph.

110. Anascape admits that it is aware of the requirements of 37 C.F.R. § 1.56. Anascape denies the remaining allegations of this paragraph.

111. Anascape denies the allegations of this paragraph.

112. Anascape denies the allegations of this paragraph.

113. Anascape incorporates by reference its responses to paragraphs 93-99, as if fully restated herein. Anascape denies the remaining allegations of this paragraph.

114. Anascape admits that Mr. Armstrong's declaration submitted in connection with the reexamination for the '991 patent cited to the following website: [http://www.scei.co.jp/corporate/data/bizdataps2\\_e.html](http://www.scei.co.jp/corporate/data/bizdataps2_e.html). Anascape admits that that website does not mention pressure sensitive variable conductance material. Anascape denies the remaining allegations of this paragraph.

115. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

116. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

117. Anascape denies the allegations of this paragraph.

118. Anascape denies the allegations of this paragraph.

119. Anascape denies the allegations of this paragraph.

120. Anascape denies the allegations of this paragraph.

121. Anascape admits that the declaration by Mr. Armstrong submitted in connection with the '991 reexamination states "The Sony PlayStation 2 gaming system is the most popular video game of all time. According to published reports from Sony, as of March 2007, over 117 million PS2 units have shipped worldwide. See, [http://www.scei.co.jp/corporate/data/bizdataps2\\_e.html](http://www.scei.co.jp/corporate/data/bizdataps2_e.html) Each system includes at least one game controller that incorporates the invention described and claimed in my '991 patent." Anascape admits that Mr. Armstrong's declaration states "Moreover, the game controller incorporated the invention described and claimed in my '991 patent was a feature Sony itself touted when introducing its PlayStation 2 gaming console. In this regard, I have attached hereto excerpts from a Sony brochure describing the gaming system and that included what Sony referred to as the **DUALSHOCK 2** Analog Controller. Sony introduced the controller as a device that 'redefines the meaning of 'next generation.' The buttons are pressure-sensitive, making it possible for multiple responses during gameplay for each button. Surgical strikes, a wider range of fighting maneuvers and precision handling of your vehicle as you rip up the road and cut through the turns. Now that's next generation!" Anascape denies the remaining allegations of this paragraph.

122. Anascape admits that the declaration by Mr. Armstrong submitted in connection with the '991 reexamination states "The Sony PlayStation 2 gaming system is the most popular video game of all time. According to published reports from Sony, as of March 2007, over 117 million PS2 units have shipped worldwide. See, [http://www.scei.co.jp/corporate/data/bizdataps2\\_e.html](http://www.scei.co.jp/corporate/data/bizdataps2_e.html) Each system includes at least one game controller that incorporates the invention described and claimed in my '991 patent." Anascape

admits that Mr. Armstrong's declaration states "Moreover, the game controller incorporated the invention described and claimed in my '991 patent was a feature Sony itself touted when introducing its PlayStation 2 gaming console. In this regard, I have attached hereto excerpts from a Sony brochure describing the gaming system and that included what Sony referred to as the **DUALSHOCK 2** Analog Controller. Sony introduced the controller as a device that 'redefines the meaning of 'next generation.' The buttons are pressure-sensitive, making it possible for multiple responses during gameplay for each button. Surgical strikes, a wider range of fighting maneuvers and precision handling of your vehicle as you rip up the road and cut through the turns. Now that's next generation!" Anascape denies the remaining allegations of this paragraph.

123. Anascape admits that a declaration from Brad Armstrong was submitted to the PTO, and the declaration by Mr. Armstrong submitted in connection with the '991 reexamination was cited by Anascape during that reexamination. Anascape denies the remaining allegations of this paragraph.

124. Anascape admits that Microsoft served a set of interrogatories and a set of requests for admission on October 19, 2007. Anascape denies the remaining allegations of this paragraph.

125. Anascape admits that it served Objections and Responses to Microsoft's First Set of Interrogatories and served Objections and Responses to Microsoft's Second Set of Requests for Admission on November 19, 2007. Anascape denies the remaining allegations of this paragraph.

126. Anascape admits that Microsoft correctly quotes an excerpt of its interrogatory, and that the term “Asserted Patent” was defined to include the ’991 and ’802 patents. Anascape denies the remaining allegations of this paragraph.

127. Anascape admits that, in its response to Microsoft’s interrogatory number 16, it stated that “During licensing negotiations with Sony, Anascape asserted that the DUALSHOCK 2 Controller was covered by at least one claim of the ’084, ’802, ’806, ’525, and ’991 patents.” Anascape denies the remaining allegations of this paragraph.

128. Anascape admits that, in its response to Microsoft’s interrogatory number 16, it stated that “Anascape further objects to this Interrogatory to the extent that it does not have sufficient information or knowledge to respond to this Interrogatory. Anascape objects to this Interrogatory as premature as the Court has not yet issued its Claim Construction Order.” Anascape denies the remaining allegations of this paragraph.

129. Anascape admits that, in its response to Microsoft’s interrogatory number 16, it stated that “During licensing negotiations with Sony, Anascape asserted that the DUALSHOCK 2 Controller was covered by at least one claim of the ’084, ’802, ’806, ’525, and ’991 patents.” Anascape denies the remaining allegations of this paragraph.

130. Anascape admits that Brad Armstrong signed a verification that accompanied Anascape’s Objections and Responses to Microsoft’s First Set of Interrogatories. Anascape denies the remaining allegations of this paragraph.

131. Anascape admits that the Objections and Responses to Microsoft’s First Set of Interrogatories was signed, electronically, by Luke F. McLeroy, counsel for Anascape. Anascape denies the remaining allegations of this paragraph.

132. Anascape admits that Microsoft accurately quotes an excerpt from its Request for Admission No. 13. Anascape denies the remaining allegations of this paragraph.

133. Anascape admits that its response to Microsoft's Request for Admission No. 13 was "Anascape objects to this Request as premature because the Court has not yet issued its Claim Construction Order. One or more claim construction issues to be decided by the Court may affect Anascape's response to this Request. Anascape further objects to the term "Sony" as overly broad and encompasses third-party products, such that Anascape does not have sufficient information to admit or deny the request. Anascape objects to this Request as compound. Subject to the foregoing general and specific objections, Anascape responds as follows: Anascape does not have sufficient information to admit or deny this Request." Anascape denies the remaining allegations of this paragraph.

134. Anascape admits that Microsoft accurately quotes an excerpt from its Request for Admission No. 19. Anascape denies the remaining allegations of this paragraph.

135. Anascape admits its response to Microsoft's Request for Admission No. 19 was "Anascape objects to this Request as premature because the Court has not yet issued its Claim Construction Order. One or more claim construction issues to be decided by the Court may affect Anascape's response to this Request. Anascape further objects to the term "Sony" as overly broad and encompassing third-party products, such that Anascape does not have sufficient information to admit or deny the request. Subject to the foregoing general and specific objections, Anascape responds as follows: Anascape admits that, during licensing negotiations with Sony, it asserted that the DUALSHOCK 2 controller was covered by at least one claim of the '802 patent." Anascape denies the remaining allegations of this paragraph.

136. Anascape admits that Microsoft accurately quotes an excerpt from its Request for Admission No. 16. Anascape denies the remaining allegations of this paragraph.

137. Anascape admits its response to Microsoft's Request for Admission No. 16 was "Anascape objects to this Request as premature because the Court has not yet issued its Claim Construction Order. One or more claim construction issues to be decided by the Court may affect Anascape's response to this Request. Anascape further objects to the term "Sony" as overly broad and encompasses third-party products, such that Anascape does not have sufficient information to admit or deny the request. Anascape objects to this Request as compound. Subject to the foregoing general and specific objections, Anascape responds as follows: Anascape does not have sufficient information to admit or deny this Request." Anascape denies the remaining allegations of this paragraph.

138. Anascape admits that Microsoft accurately quotes an excerpt from its Request for Admission No. 22. Anascape denies the remaining allegations of this paragraph.

139. Anascape admits its response to Microsoft's Request for Admission No. 22 was "Anascape objects to this Request as premature because the Court has not yet issued its Claim Construction Order. One or more claim construction issues to be decided by the Court may affect Anascape's response to this Request. Anascape further objects to the term "Sony" as overly broad and encompassing third-party products, such that Anascape does not have sufficient information to admit or deny the request. Subject to the foregoing general and specific objections, Anascape responds as follows: Anascape admits that, during licensing negotiations with Sony, it asserted that the DUALSHOCK 2 controller was covered by at least one claim of the '991 patent." Anascape denies the remaining allegations of this paragraph.

140. Anascape admits that its Objections and Responses to Microsoft's Second Set of Requests for Admission were signed by Luke F. McLeroy, counsel for Anascape. Anascape denies the remaining allegations of this paragraph.

141. Anascape admits that, as of November 21, 2007, Anascape had not disclosed its responses to Microsoft's Interrogatory No. 16, or Microsoft's Requests for Admission Nos. 13, 16, 19, and 22. Since that time, Anascape has filed those discovery excerpts with the PTO. Anascape denies the remaining allegations of this paragraph.

142. Anascape admits that it is aware of the requirements of 37 C.F.R. § 1.56. Anascape denies the remaining allegations of this paragraph.

143. Anascape denies the allegations of this paragraph.

144. Anascape denies the allegations of this paragraph.

145. Anascape denies the allegations of this paragraph.

146. Anascape admits that the PTO cited to the Furukawa reference in an office action related to the '802 reexamination. Anascape denies the remaining allegations of this paragraph.

147. Anascape admits that it participated in a telephonic interview with the PTO regarding the '802 Reexamination, and that the Interview Summary states "Atty. Judson argued that 'flipping' the device of Furukawa would defeat the essential purpose of the device as the buttons on a game control device are configured in a particular way to align with a user's left and right side brain function (this is also discussed at col. 3 of U.S. Patent No. 6,102,802)." Anascape denies the remaining allegations of this paragraph.

148. Anascape admits that a declaration from Kelly Tyler was submitted to the PTO, and that Microsoft accurately quotes an excerpt from that declaration. Anascape denies the remaining allegations of this paragraph.

149. Anascape admits that the declaration of Kelly Tyler states “I have been asked to consider the question whether the Furukawa controller could be rotated 180° from what is shown in Figure 1 above and still be operable. Based on my experience in game controller design, development, production, and use, the answer is clearly no. In particular, if the controller is flipped over, such as shown below, the user’s directional commands will be the exact opposite of what the user intends. Thus, when the user attempts to move right (by naturally depressing the right-most portion of the pad), the video game element on the display screen will move left; likewise, when the user attempts to move up (by naturally depressing the upper-most portion of the pad), the video game element on the display screen will move down. In each case, the game element will respond in exactly the opposite manner of what the user actually desires. This would be extremely frustrating for the user and would quickly undermine the entire gaming experience: Thus, given the types of control commands that are normally input on the cross key directional control, any 180° rotation of the Furukawa game controller would cause the device to fail to operate for its intended purpose.” Anascape denies the remaining allegations of this paragraph.

150. Anascape admits that it cited to the declaration from Kelly Tyler submitted to the PTO in its Response to the ’802 Office Action. Anascape denies the remaining allegations of this paragraph.

151. Anascape admits that Kelly Tyler was deposed on October 16, 2007, and that Microsoft correctly quotes an excerpt from that deposition. Anascape denies the remaining allegations of this paragraph.

152. Anascape admits that Kelly Tyler was deposed on October 16, 2007, and that Microsoft correctly quotes an excerpt from that deposition. Anascape denies the remaining allegations of this paragraph.

153. Anascape denies the allegations of this paragraph.

154. Anascape admits that, as of November 21, 2007, Anascape had not submitted any portion of the Kelly Tyler deposition to the PTO. Since that time, Anascape has filed the relevant portions of the deposition with the PTO. Anascape denies the remaining allegations for this paragraph.

155. Anascape denies the allegations of this paragraph.

156. Anascape denies the allegations of this paragraph.

157. Anascape incorporates by reference its responses to paragraphs 83-156, as if fully restated herein. Anascape denies the remaining allegations of this paragraph.

158. Anascape denies the allegations of this paragraph.

159. Anascape denies the allegations of this paragraph.

160. Anascape admits that the '084 application was filed on June 29, 1998. Anascape admits that the '084 patent states: "The present invention specifically involves the use of a tactile feedback dome-cap in conjunction with pressure-sensitive variable-conductance material to provide momentary-On pressure dependent variable electrical output" at col. 1, lines 7-12. Anascape denies the remaining allegations of this paragraph.

161. Anascape admits that Mr. Armstrong discussed prior art in the '084 patent. Anascape denies the remaining allegations of this paragraph.

162. Anascape admits Figure 3 is labeled prior art and does not contain pressure-sensitive variable conductance material. Anascape admits that Figure 5 is described as one

embodiment of the invention of the '084 patent. Anascape denies the remaining allegations of this paragraph.

163. Anascape admits that a number of related applications were filed that were based on the same text and figures as the '084 patent. Anascape admits that the '205 patent was filed on December 6, 1999. Anascape admits that the '415 patent was filed on September 18, 2001. Anascape denies the remaining allegations of this paragraph.

164. Anascape admits that the '271 patent was filed on September 4, 1998. Anascape admits that the '271 patent is quoted accurately at col. 7, lines 42-46 and col. 16, lines 30-35. Anascape denies the remaining allegations of this paragraph.

165. Anascape denies the allegations of this paragraph.

166. Anascape cannot admit or deny how the facts “appear” to Microsoft and, therefore, denies those allegations. Anascape admits that Rule 56 includes a duty to disclose information material to patentability. Anascape denies the remaining allegations of this paragraph.

167. Anascape is without information or knowledge sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, denies the same.

168. Anascape denies the allegations of this paragraph.

169. Anascape denies the allegations of this paragraph.

170. Anascape denies the allegations of this paragraph.

171. Anascape denies the allegations of this paragraph.

172. Anascape denies the allegations of this paragraph.

173. Anascape denies the allegations of this paragraph.

174. Anascape denies the allegations of this paragraph.

Anascape denies each and every allegation contained in Microsoft's Counterclaims that is not expressly admitted herein. Anascape denies that Microsoft is entitled to the relief requested or any other relief.

**PRAYER FOR RELIEF**

Anascape prays for the following relief:

- A. The dismissal of Microsoft's Counterclaims for declaratory relief;
- B. Judgment declaring that Microsoft infringes the '084, '802, '886, '271, '991, '791, '997, '205, '303, '415, and '700 patents;
- C. Judgment declaring that the '084, '802, '886, '271, '991, '791, '997, '205, '303, '415, and '700 patents are valid and enforceable;
- D. An award of Anascape's attorneys' fees and costs, together with pre-judgment and post-judgment interest in the maximum amount provided by law; and
- E. Such other and further relief as the Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

Anascape hereby demands a jury trial on all issues appropriately triable by a jury.

DATED: December 13, 2007.

Respectfully submitted,

**McKOOL SMITH, P.C.**

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

I hereby certify that a true and correct copy of the foregoing document was served on counsel of record via ECF or U.S. Mail on this 13<sup>th</sup> day of December, 2007.

/s/ Luke F. McLeroy

Luke F. McLeroy