

While the complaint does not specifically identify the accused products other than to suggest that they are “home video game consoles and video game controllers” (*see* Complaint ¶ 3), Anascape presumably asserted different patents against the different defendants because of structural and functional differences between Nintendo’s accused products and Microsoft’s accused products. For example, Nintendo sells hand-held controllers for use with its GameCube home video game console and Microsoft sells different hand-held controllers for use with its X-Box 360 home video game console.

In view of the foregoing, Nintendo respectfully requests permission to provide a further response on the appropriate grouping of the patents after Anascape has served its Disclosure of Asserted Claims and Preliminary Infringement Contentions pursuant to P.R. 3-1. At that time, the parties will know: (1) which specific Nintendo and Microsoft products are accused of infringement; (2) which claims of each patent are alleged to be infringed; and (3) the extent of overlap, if any, of the asserted claims of the five patents that Nintendo and Microsoft are both accused of infringing.

With such information in hand, Nintendo submits that it will be in a better position to logically propose groupings of the patents-in-suit in a manner that will best serve the administrative ease objective of the Court’s Order. Accordingly, Nintendo respectfully requests the opportunity to provide its specific proposed grouping of the patents-in-suit within one week of service of Anascape’s Disclosure of Asserted Claims and Preliminary Infringement Contentions.

Dated: September 25, 2006

Respectfully submitted,

By: /s/ Lawrence L. Germer

Lawrence L. Germer
Texas Bar No. 0782400
GERMER GERTZ L.L.P
550 Fannin, Suite 400
P.O. Box 4915
Beaumont, Texas 77701
Tel.: (409) 654-6700
Fax: (409) 835-2115

Robert J. Gunther, Jr.
(robert.gunther@lw.com)
James S. Blank
(james.blank@lw.com)
LATHAM & WATKINS LLP
885 Third Avenue
New York, NY 10022
Tel.: (212) 906-1200
Fax: (212) 751-4864

Robert W. Faris
(rwf@nixonvan.com)
Joseph S. Presta
(jsp@nixonvan.com)
NIXON & VANDERHYE, P.C.
1100 North Glebe Road
8th Floor
Arlington, VA 22201
Tel.: (703) 816-4000
Fax: (703) 816-4100

Attorneys for Defendant Nintendo of America
Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served to the following counsel of record in the manner indicated this 25th day of September, 2006:

Via ECF/Notice of Electronic Filing

Sam Baxter
McKool Smith, P.C.
505 E. Travis, Suite 105
Marshall, Texas 75670

/s/ Lawrence L. Germer