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

ANASCAPE, LTD., Hon. Ronald Clark Plaintiff, Civil Action No.: 9:06-CV-00158 -RC v. § § MICROSOFT CORP. and NINTENDO OF AMERICA INC. Defendants.

NINTENDO'S RESPONSE TO ANASCAPE'S PROPOSED GROUPING OF PATENTS

By Order dated August 16, 2006 (the "Order"), the Court directed Anascape to propose a logical grouping of the twelve patents-in-suit, including no more than four patents in each group, in order to assist the Court in determining how to best group the patents for the Markman hearing and other purposes. On August 25, 2006, Anascape filed its Proposed Grouping of Patents. Nintendo respectfully submits this Response to Anascape's Proposed Grouping of Patents.

Anascape alleges that Nintendo infringes five of the twelve patents-in-suit and that Microsoft infringes eleven of the twelve patents-in-suit. More specifically, Anascape's allegations of infringement of the patents break down as between Nintendo and Microsoft as follows:

PATENTS ASSERTED AGAINST MICROSOFT AND NINTENDO	PATENTS ASSERTED AGAINST ONLY MICROSOFT	PATENTS ASSERTED AGAINST ONLY NINTENDO
6,344,791	5,999,084	6,222,525
6,351,205	6,102,802	
6,563,415	6,135,886	
6,906,700	6,208,271	
	6,343,991	
	6,347,997	
	6,400,303	

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