

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

ANASCAPE, LTD.	§	
	§	
VS.	§	Case No. 9:06-CV-158-RC
	§	
MICROSOFT CORPORATION and	§	
NINTENDO OF AMERICA, INC.		§

ORDER ON LIMITATIONS OF TRIAL TIME

This case is set for a final pretrial hearing on **May 1, 2008, at 9:00 a.m.**, in Beaumont, Texas, with **jury selection on May 5, 2008, at 10:30 a.m.** Trial will commence immediately after jury selection. The court gave the parties notice that it would impose time limits on the presentation of their cases at trial. After reviewing the file and considering the issues involved and the estimate of the time needed filed by the parties, the court now allocates **23 hours to plaintiff, 14 hours to defendant Microsoft, and 14 hours to defendant Nintendo**, in which to present their respective cases, including direct examination, redirect, cross and re-cross of all witnesses, but excluding time related to jury selection and opening and closing. A party may, at the conclusion of 80% of its allotted time, move for an extension of time. Such extension will only be granted for good cause shown, and such good cause shall include a showing that the party's past use of time and anticipated use of remaining and requested time does not constitute undue delay, waste of time, or needless presentation of cumulative evidence.

Inequitable conduct will be tried to the court after the jury retires. Pursuant to Fed. R. Evid. 403, the court is not likely to allow expert testimony about any alleged deficiencies of the PTO as a collateral attack on the decisions of the patent office. Complaints about any such alleged deficiencies in procedures or resources, and requests to reduce the property rights conveyed by United States patents should be addressed to Congress. The jury will be instructed

that it will make the decision as to invalidity claims based on the evidence admitted under the clear and convincing standard approved by the appellate courts.

Parties shall notify each other of the witnesses they intend to call live prior to preparation of the pretrial order, so that time and money is not wasted preparing lists of deposition extracts and objections to the same. Unless good cause is shown, witnesses will not be called both by deposition and live, and will be called only once. Counsel are directed to confer about helpful and fair inserts to be included in the juror notebooks. Given the fact that there are three parties and numerous issues, these might include a set of pages with the names and photos of the witnesses to help the jurors remember the testimony. Do not list depositions and expert reports as exhibits. Individual charts to be used by an expert might be proper exhibits.

So **ORDERED** and **SIGNED** this **6** day of **March, 2008**.



Ron Clark, United States District Judge