

**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

STIPULATION REGARDING THE CLAIM TERM "FLEXIBLE MEMBRANE SHEET"

The undersigned parties to the above-captioned action hereby stipulate and agree that the products accused in the above-captioned action, including the Microsoft Xbox Controller, the Microsoft Xbox Controller S, the Nintendo GameCube Controller (both the wired GameCube controller and the Wavebird wireless GameCube controller), and the Nintendo Wii Classic Controller ("Accused Products"), do not include a "flexible membrane sheet" under the Court's construction of that term, as reflected in the Court's Order of Monday, February 4, 2008 (docket no. 186).¹ This claim term appears in asserted claims of the patents-in-suit, including the following claims asserted by Plaintiff Anascape in this action: (1) all asserted claims in U.S. Patent No. 6,222,525, namely, claims 1, 5-6, and 12-20; and (2) U.S. Patent No. 6,906,700, claims 1-11, 21, 26-29, and 31 (hereafter "the FMS Claims").

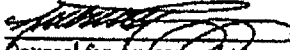
Based on the foregoing, Plaintiff Anascape, Ltd. ("Anascape") hereby stipulates that, to the extent that the claim term "flexible membrane sheet" is construed in accordance with the

¹ The remaining products accused of infringement in this lawsuit, the Nintendo Wii Remote controller when connected to the Wii Nunchuk controller and the Xbox 360 controller, have not been accused by Anascape of infringing any of the "flexible membrane sheet" claims of either the '525 or '700 patents.

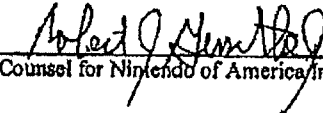
Court's Order of Monday, February 4, 2008 (docket no. 186), the "flexible membrane sheet" limitation is not met in the Accused Products, and for this reason, Defendants Microsoft Corporation ("Microsoft") and Nintendo of America Inc. ("Nintendo") do not infringe, literally or under the doctrine of equivalents, asserted claims 1-11, 21, 26-29, and 31 of U.S. Patent No. 6,906,700 and any asserted claim of U.S. Patent No. 6,222,525. This stipulation does not affect any other element of any claim other than "flexible membrane sheet." Anascape does not stipulate that Defendants Microsoft and Nintendo do not infringe, literally or under the doctrine of equivalents, asserted claims 1-11, 21, 26-29, and 31 of U.S. Patent No. 6,906,700 and any asserted claim of U.S. Patent No. 6,222,525, under any other construction of the claim term "flexible membrane sheet."

Based on the above stipulation, Microsoft and Nintendo will file a motion for partial summary judgment of non-infringement of the FMS Claims. Anascape's opposition will agree that under the Court's present construction of the term "flexible membrane sheet," there is no issue of fact that Microsoft and Nintendo do not infringe the FMS Claims. To preserve its right to appeal the construction of "flexible membrane sheet," Anascape may state its continued opposition to the Court's present construction of the term "flexible membrane sheet" and establish that it believes there would be an issue of fact on infringement of the FMS Claims under Anascape's earlier proposed construction of the term, but will not seek reconsideration of the construction of the term. In the event the Court enters partial summary judgment of non-infringement as to the "flexible membrane sheet" term, Microsoft and Nintendo agree that nothing in this Stipulation will preclude Anascape from arguing, on appeal, that the Court's claim construction of "flexible membrane sheet" was erroneous, or that there would be a fact issue as to infringement under a different construction of "flexible membrane sheet."

The parties expressly reserve the right to challenge the construction of the claim term "flexible membrane sheet" in any appeal relating to that claim term. Anascape expressly reserves the right to contend that the above-listed controllers include a "flexible membrane sheet" under any modified construction of that term. Defendants Microsoft Corporation and Nintendo of America Inc. expressly reserve the right to contend that claims with the claim term "flexible membrane sheet" are invalid, not infringed, and unenforceable should Anascape attempt to assert such claims against Defendants or their customers or suppliers.


Counsel for Anascape Ltd. Date: 11 FEB 2008


Counsel for Microsoft Corporation Date: 2/11/08


Counsel for Nintendo of America Inc. Date: 2/11/08