

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.

Defendant.

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Civil Action No. 9:06-CV-158

JUDGE RON CLARK

ORDER ON LETTER BRIEFS

The court received two letter briefs asking permission to file motions for summary judgments. Defendants may file a motion for summary judgment seeking dismissal of Plaintiff's claim for willful infringement.

Plaintiff requests permission to file a motion for summary judgment addressing infringement of claims 19 and 20 of the '700 patent. Plaintiff bases its motion upon the Sony Dual Shock controller. The parties seem to agree that it has all of the structural and functional features of the asserted claims, yet Plaintiff asserts: "Defendants, however, erroneously claim that the Sony Dual Shock controller is prior art to the asserted claims." Plaintiff's Letter Br., p. 2, n. 1. There is no indication in the letter of any evidence to support this. At this late date, there seems little reason to consider such a fact intensive motion, especially if the claims are anticipated. Plaintiff may not file this motion.

Plaintiff also seeks to file a motion for summary judgment on nine different affirmative defenses pled by Defendants. It appears that evidence on certain affirmative defenses may be set forth if Plaintiff brings a doctrine of equivalents case. At the same time, letters indicate that one

or more of the defenses may be dropped and Plaintiff's request may become moot. Plaintiff's Letter Br., p. 2, n. 3. Leave to file this motion is denied. There is an indication that Defendants may wish to file four other motions for summary judgment (other than one related to a stipulation). Since no basis has been submitted, leave is denied as to any other summary judgment motions.

So **ORDERED** and **SIGNED** this **14** day of **March, 2008**.

A handwritten signature in black ink, appearing to read "Ron Clark". The signature is written in a cursive, slightly slanted style.

Ron Clark, United States District Judge