

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

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

**DECLARATION OF JOHN D. VANDENBERG IN SUPPORT OF DEFENDANTS’
JOINT REPLY IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY
JUDGMENT OF INVALIDITY OF CLAIMS 19-20, 22-23 OF THE ‘700 PATENT**

I, John D. Vandenberg, declare that:

1. I am over 18 years of age and make this declaration based on my own knowledge, personal experience and belief. I am competent to make this declaration, and if called as a witness could testify as to the facts set forth below.
2. I am an attorney with the firm of Klarquist Sparkman, LLP, Portland, Oregon, co-counsel for Microsoft Corporation in this action.
3. The Appendix for Defendants’ Joint Motion for Partial Summary Judgment of Invalidity of Claims 19-20, 22-23 of the ‘700 Patent contained a copyright registration for a publication titled “100% Independent PlayStation Magazine.” (Docket #205-2, p. A156.) This certificate was incorrectly matched with an article from the November 1999 issue of “Official U.S. PlayStation Magazine.”
4. Counsel for Microsoft discovered this error on the evening of March 14, 2008, and shortly thereafter obtained replacement evidence described below.
5. Attached hereto as Exhibit 1 is a true and correct copy of a web page obtained from the Internet Archive (<http://web.archive.org>).

6. On information and belief, the Internet Archive comprises historical Internet information that is automatically downloaded, date stamped, and stored in an electronic database for later retrieval. However, the Internet Archive generally is not indexed to be searchable by keyword or content; and thus, locating any specific page can be difficult without knowing the original URL of the destination.

7. According to the Internet Archive, the page attached at Exhibit 1 is an archive of the web page bearing the title "Closing Dates: Official U.S. PlayStation Magazine" once accessible at the URL "http://www.ziffdavis.com/properties/usmags/consumermags/ops/ops_closdate.htm." According to the Internet Archive, this page was archived on April 22, 1999. The full Internet Archive URL for this page is:

http://web.archive.org/web/19990422083132/http://www.ziffdavis.com/properties/usmags/consumermags/ops/ops_closdate.htm

8. On information and belief, the page attached at Exhibit 1 described advertising deadlines for the Official U.S. PlayStation Magazine, and therefore, it was important to the publisher, Ziff-Davis, for this information to be accurate.

9. According to the web page, the on-sale date for the November 1999 issue of Official U.S. PlayStation Magazine was October 12, 1999, more than one year prior to the filing of the application of the '700 Patent (and seven days earlier than the October 19, 1999 publication date for the November 1999 issue of 100% Independent PlayStation Magazine.

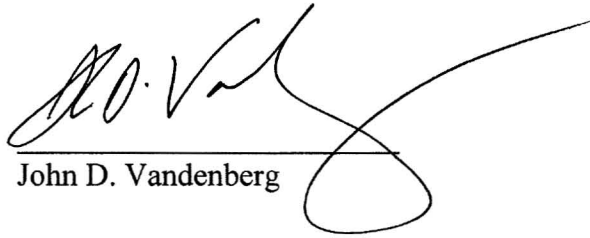
10. Attached hereto as Exhibit 2 is a true and correct copy of a Usenet posting to the newsgroup alt.games.final-fantasy, that I accessed via the Google Groups on-line service. I have used Google Groups often in my work and have found its information to be reliable.

11. This posting, dated October 13, 1999, states that the author "just went down to a stationary store on campus and picked up a copy of the latest Official US PlayStation Magazine," and mentions two topics that appear in the November 1999 issue of Official U.S. PlayStation Magazine: the game "Crash Team Racing!" (mentioned on the cover of the Nov. 1999 issue of Official U.S. PlayStation Magazine (see A153)) and a GRANDIA game demo (mentioned on pg.

166 (attached as Exhibit 3) of the Nov. 1999 issue of Official U.S. PlayStation Magazine). This posting further confirms that this issue was on sale no later than October 13, 1999.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on this 17th day of March, 2008, in Portland, Oregon.



John D. Vandenberg

CERTIFICATE OF SERVICE

The undersigned certifies that on the 17th day of March, 2008, the foregoing was electronically filed with the Court. Pursuant to Local Rule CV-5, this constitutes service on Anascape's counsel of record:

By: /s/ John D. Vandenberg
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