

EXHIBIT 40

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

Anascape, Ltd.,

I 1011111111,

v.

Microsoft Corp., and
Nintendo of America Inc.,

Defendants.

Civil Action No. 9:06-cv-158-RC

JURY TRIAL REQUESTED

DECLARATION OF MARK BALDWIN

I, Mark Baldwin, declare and state under the penalty of perjury as follows:

1. My name is Mark Baldwin. I am over the age of twenty-one (21) years, have never been convicted of a felony, and am fully competent to make this declaration. I have personal knowledge of matters set forth herein and know them to be true and correct. I understand that this declaration will be attached to Anascape's Surreply to Defendants' Motion for Partial Summary Judgment of Invalidity ("Surreply").

2. Attached as Exhibit 41 is a true and correct copy of my curriculum vitae.

3. I have been provided with many materials in this case, including deposition transcripts, and documents produced from Microsoft's and Nintendo's files.

4. I have been asked to opine, *inter alia*, as to the value of certain controller features.

5. I have reviewed the section of my expert report that was attached to Anascape's Omnibus Response to Defendants' Motions for Summary Judgment as Exhibit 30. I still agree with the opinions and analysis expressed therein today. I incorporate those opinions and analysis into this declaration, by reference.

6. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct, and that this declaration was executed on March 18, 2008 in Colorado.

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Mark Baldwin

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