EXHIBIT 44

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.	§	

EXPERT WITNESS REPORT OF EDWARD G. FIORITO PURSUANT TO FED. R. CIV. P. 26(a)(2)(B) REGARDING UNENFORCEABILITY AND PRIORITY OF U.S. PATENT NO. 6,906,700

I, Edward G. Fiorito, make the following first opening expert report:

I. STATEMENT OF OPINIONS TO BE EXPRESSED AT TRIAL AND REASONS THEREFOR

1. I have been asked by counsel for Defendants Microsoft Corporation (Microsoft) and Nintendo of America Inc. (Nintendo) to provide opinions on issues contested in this case, as well as on various aspects of patent law and patent procedure.

2. Based on more than 40 years of experience in patent law and USPTO practice, I am familiar with the rules, practices, and procedures of the USPTO as governed by the Code of Federal Regulations, the Manual of Patent Examining Procedure ("MPEP"), and other applicable rules and laws. I am knowledgeable and prepared to testify about the preparation, filing, and prosecution of patent applications and the issuance of patents in accordance with those rules, practices, and procedures.

3. At trial, I expect to provide general testimony describing the practices and procedures used in the USPTO to examine a patent prior to its grant. I may testify on the general organization of the USPTO, the assignment of applications to the Examiner, the search for prior

new matter in the application, constituted inequitable conduct. As the Federal Circuit has noted, priority claims are inherently material to patentability because they determine what qualifies as prior art.

199. The evidence demonstrates that Armstrong had the intent to mislead or deceive the Patent Office. Armstrong understood the difference between the various types of continuation applications, originally correctly filed the '700 Application as a continuation-in-part of the '525 Application. Armstrong later changed the designation without any credible reason. Armstrong's changing of his priority claim would allow him to obtain an earlier priority date for the flexible sheet membrane elements of the claims he added in his preliminary amendment-allowing him to accuse additional products of infringement while avoiding them as prior art. In changing his priority claim. I do not see any credible reason in the record for Armstrong's change of the nature of his priority claim.

200. As explained above, Armstrong's change to the nature of his priority to claim to the '525 Application was inherently material. Armstrong had the intent to deceive the Patent Office, as demonstrated by the benefit he would obtain by avoiding the CyberMan art and other art, while being able to accuse additional products of infringement. Weighing the inherently material nature of his conduct with the evidence of Armstrong's intent to deceive the Patent Office, I conclude that Armstrong committed inequitable conduct in the prosecution of the '700 Patent, rendering it unenforceable. Misleading the Patent Office about the date of an invention is an important matter. Accordingly, misleading the Patent Office in such a way would justify the Court in finding the '700 Patent unenforceable.

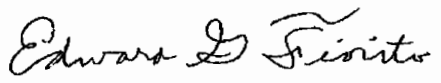
member of the Advisory Commission on Patent Law Reform. I have also served as a member of The United States Delegation to the World Intellectual Property Organization Diplomatic Conference at the Hague for the purpose of harmonizing patent laws throughout the world.

V. COMPENSATION TO BE PAID FOR TIME SPENT IN STUDY AND TESTIMONY

244. Compensation is based upon an hourly rate for the time spent on this case. The rate is $375 per hour.

VI. LISTING OF OTHER CASES IN WHICH TESTIMONY WAS GIVEN AS AN EXPERT, AT TRIAL OR BY DEPOSITION WITHIN THE PRECEDING FOUR YEARS

245. Attached hereto as Exhibit C is a listing of other cases in which I have testified as an expert, at trial or by deposition, within the preceding four years.



Edward G. Fiorito, Esq.

February 11, 2008