

# EXHIBIT 38

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

Anascape, Ltd.,

Plaintiff,

v.

Microsoft Corp., and  
Nintendo of America Inc.,

Defendants.

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

JURY TRIAL REQUESTED

**DECLARATION OF DR. ROBERT HOWE**

I, Dr. Robert Howe, declare and state under the penalty of perjury as follows:

1. My name is Dr. Robert Howe. 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 39 is a true and correct copy of my curriculum vitae.

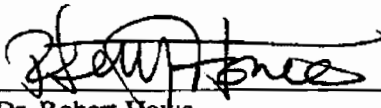
3. I have been provided with many materials in this case, including deposition transcripts, documents produced from Microsoft's and Nintendo's files that relate to the structure and function of the Xbox Controller, the Xbox Controller S, the Xbox 360 Controller, the Xbox 360 Wireless Controller, the Nintendo GameCube Controller, the Nintendo GameCube Wavebird Wireless Controller, the Nintendo Wii Remote Controller, the Nintendo Wii Nunchuk Controller, and the Nintendo Wii Classic Controller (collectively, the "Accused Products.") I have also reviewed Defendants' expert reports as to invalidity, including Mr. Bristow's and Mr. Dezmelyk's reports.

4. I have been asked to opine, *inter alia*, as to whether the asserted claims of the '700 Patent find written description support in the original '525 Application, and thus determine whether the claims are entitled to a priority date of July 5, 1996.

5. It is my opinion that the asserted claims find written description support in the original '525 Application, based on the evidence I have reviewed, and my knowledge as one of skill in the art.

6. I have reviewed the section of my expert report that was attached to Anascape's Omnibus Response to Defendants' Motions for Summary Judgment as Exs. 3 and 4. I still agree with the opinions and analysis expressed therein today. I incorporate those opinions and analysis into this declaration, by reference.

7. 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 Cambridge, Massachusetts.

  
\_\_\_\_\_  
Dr. Robert Howe