

# EXHIBIT 50

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

**Anascape Ltd.,**  
*Plaintiff,*

v.

**Microsoft Corp., and  
Nintendo of America Inc.**  
*Defendants.*

Civil Action No. 9:06-CV-158

JUDGE RON CLARK

**Expert Report of Robert Dezmelyk**

1. I, Robert Dezmelyk, have been retained by counsel for Nintendo of America Inc. ("Nintendo") to provide testimony regarding the validity of the asserted claims of United States Patent 6,906,700 ("the '700 patent"). Anascape has asserted that claims 14, 16-20, 22-23 and 32-33 of the '700 patent are infringed by one or more Nintendo products.

2. I have been asked to provide my expert opinion on whether claims 14, 16-20, 22-23 and 32-33 of the '700 patent were anticipated by prior art or would have been obvious to a person of ordinary skill in the art at the time of the purported invention. I have also been asked to provide testimony regarding the history, prevalence, and state of image controller and related input device technology at the time of the purported invention, how it is related to the technology described and claimed in the '700 Patent, and the knowledge at the time of persons skilled in the art to which the '700 Patent pertains. I have also been asked to provide testimony explaining the technology described

that the '700 specification did not add new matter over the '525 specification (a conclusion with which I would disagree), the asserted claims of the '700 patent, which have been construed as covering multiple input member 6DOF controllers, would not be adequately described from the perspective of one of ordinary skill in the art.

### **Claim 19 and its Dependent Claims**

#### **Invalidity due to apparatus mixed with method claim**

59. In my opinion, Claim 19 of the '700 patent is invalid as indefinite under 35 U.S.C. § 112 because it is an impermissible apparatus-method, i.e., a claim that includes limitations which are directed to a method of using the claimed apparatus.

In particular, Claim 19 states in part:

“a second element movable on two mutually perpendicular axes, said second element structured to activate two bi-directional proportional sensors providing outputs at least in part controlling objects and navigating a viewpoint;” (emphasis added) and

“a third element movable on two mutually perpendicular axes, said third element structured to activate two bi-directional proportional sensors providing outputs at least in part controlling objects and navigating a viewpoint;” (emphasis added)

60. Claim 19 of the '700 patent, as in Claim 25 of the *IPXL* case, is unclear. I find that one skilled in the art would not know if they infringe the claim unless they hook up the “second element” and “third element” to a game and see, with respect to each element, if they can generate “outputs” that “at least in part control[] objects and navigate[] a viewpoint.” This required use of the claimed apparatus “to provid[e] outputs at least in part controlling objects and navigating a viewpoint” is a method limitation. In other words, a determination of infringement of claim 19 cannot be made by study of the device itself. Instead, the infringement inquiry requires that the device be used to

perform method steps (providing outputs controlling objects and navigating a viewpoint) before one can determine infringement of claim 19. Accordingly, in my opinion Claim 19 does not “provide competitors with an accurate determination of the ‘metes and bounds’ of protection involved.” *IPXL* at 1834 (citations omitted). As a result, it is my opinion that claim 19 and its dependent claims are invalid as indefinite under 35 U.S.C. § 112.

### **Invalidity due to Anticipation**

61. Under Anascape's infringement contentions and Anascape's apparent construction of claim 19<sup>3</sup>, claims 19 and 20 are anticipated by the Sony/Goto prior art because Anascape ignores the controlling objects and navigating a viewpoint limitations of claim 19 and asserts (incorrectly) that these limitations are met by the hardware components themselves (e.g., joysticks) without any need to find applicable software that performs the method step or steps of the controlling objects and navigating a viewpoint limitations. Under Anascape's apparent claim construction, claims 19 and 20 are anticipated by EP 867212 (Goto '212) [Exhibit 7], USP 6,231,444 (Goto '444) [Exhibit 8], and the controllers themselves, the Sony Dual Shock [Exhibit 9] and Dual Shock 2 [Exhibit 10] controllers. The Dual Shock 2 controller also anticipates dependent claims 22 and 23, under Anascape's construction.

### **Anticipation of Claims 19, 20, 22 and 23 by the Sony/Goto controllers**

62. Under Anascape's infringement contentions and Anascape's apparent construction of claim 19, and its dependent claims 20, 22 and 23, each and every limitation of the claims is present in the Sony Dual Shock 2 controller. The Sony Dual

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<sup>3</sup> I believe Anascape is incorrect in its infringement contentions, and their claim construction.