

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

ANASCAPE, LTD.

Plaintiff,

v.

MICROSOFT CORPORATION, and  
NINTENDO OF AMERICA, INC.,

Defendants.

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Hon. Ron Clark

Civil Action No. 9:06-CV-00158-RC

**ORDER ON OBJECTIONS TO DEPOSITION DESIGNATIONS**

**A. Susan Panico—Sony Computer Entertainment  
America’s (“SCEA”) 30(b)(6) Deponent (2/20/08)**

Page/Line Numbers	Anascape’s Objection	Defendants’ Response	Court’s Ruling
23:20-24:1	Nonresponsive; speculation; not based on personal knowledge	Ms. Panico has worked for SCEA for thirteen years in positions dealing with marketing PlayStation products. (11:7-13:10.) She testified that SCEA had a business relationship with the publisher of the U.S. Official PlayStation magazine. (22:6-16). Tends to show that SCEA may have provided information for a particular magazine issue.	<b>Overruled.</b>
39:1-40:17	Outside the scope of the 30(b)(6) designation; not based on personal knowledge; no foundation	Ms. Panico has worked for SCEA for thirteen years in positions dealing with marketing PlayStation products. (11:7-13:10.) Moreover, the designated testimony itself shows that the deponent is familiar	<b>Overruled.</b>

CERTIFICATE OF SERVICE

Page/Line Numbers	Anascape's Objection	Defendants' Response	Court's Ruling
		<p>with the subject matter, namely, the Sony analog joystick. (40:9-17; see also, 38:21-25.)</p> <p>SCEA's counsel indicated that SCEA would allow questions about Sony controllers in addition to the Dual Shock and Dual Shock 2 controllers. (9:5-10:8).</p>	

Page/Line Numbers	Anascape's Objection	Defendants' Response	Court's Ruling
60:21-61:16	Lack of authenticity of exhibit introduced; foundation; not based on personal knowledge	<p>Defendants believe Anascape's authenticity objection as to the underlying exhibit is now moot in view of Anascape's withdrawal of its authenticity objection to the exhibit on Defendants' joint exhibit list (see DX 290).</p> <p>Ms. Panico has worked for SCEA for thirteen years in positions dealing with marketing PlayStation products. Deponent provided ample foundation as to her knowledge and experience regarding Sony marketing channels and related information. (11:7-13:10.) Moreover, the designated testimony itself shows that the deponent is familiar with the subject matter, namely, the Sony analog joystick. (40:9-17; see also, 38:21-25.)</p> <p>Furthermore, the testimony is offered to show that the information contained in the document is of a type provided by SCEA. (See 60:21- 62:22.)</p>	<b>If Plaintiff withdrew authenticity objection, then OK. If not, then sustained.</b>
61:22-24	Lack of authenticity of exhibit introduced; foundation; not based on personal knowledge	<i>Id.</i>	<b>If Plaintiff withdrew authenticity objection, then OK. If not, then sustained.</b>

Page/Line Numbers	Anascape's Objection	Defendants' Response	Court's Ruling
62:4-7	Lack of authenticity of exhibit introduced; foundation; not based on personal knowledge	<i>Id.</i>	<b>If Plaintiff withdrew authenticity objection, then OK. If not, then sustained.</b>
63:1-8	Lack of authenticity of exhibit introduced; foundation; not based on personal knowledge; question calls for speculation	<i>Id.</i>  Also, Ms. Panico's responses (which are based on her relevant experience and knowledge at SCEA) as to whether information in the exhibit may have been provided from SCEA are proper and allowable.	<b>Sustained.</b>

**B. Brian Carlson (10/04/07)**

Page/Line Numbers	Anascape's Objection	Defendants' Response	Court's Ruling
130:1-133:7	Alludes to failure to provide the Cyberman reference to the PTO, tending to show inequitable conduct, and thus could prejudice the jury, also improper under FRE 403.	Mr. Carlson testified that he was involved with the prosecution of the '525 patent (129:6-25), that he helped prepare the Information Disclosure Statements (130:1-4), that he generally discussed with Mr. Armstrong what prior art to disclose in the information disclosure statements (130:11-15), and that he and Mr. Armstrong were aware of the Cyberman controller during the prosecution of the '525 patent application (132:21-133:7). This testimony is relevant to the inequitable conduct defense. Further, should the Court deny Defendants' motion for	<b>Sustained as to jury trial.</b>

Page/Line Numbers	Anascape's Objection	Defendants' Response	Court's Ruling
		summary judgment on non-willfulness, Defendants should be allowed to offer evidence of inequitable conduct in order to defend against a claim of willfulness. There is no prejudice.	

**I. DEFENDANTS' OBJECTIONS TO ANASCAPE'S COUNTERDESIGNATIONS**

**A. Susan Panico—Sony Computer Entertainment America's ("SCEA") 30(b)(6) Deponent (2/20/08)**

Anascape's Designations Page/Line Numbers	Defendants' Objections	Court's Ruling
17:11-15	<u>Rule 403 (Prejudice, Confusion, or Waste of Time)</u> —The designated testimony is merely the witness asking for a clarification of a question.	<b>Sustained as to objections by Callahan.</b>
26:8-27:1	<u>Non-responsive</u> —As Anascape's counsel itself recognized at the time of deposition, the only substantive witness testimony cited here was nonresponsive to the question asked. Also, Anascape withdraw its objections to the underlying SCEA Press Release on Defendants' exhibit list (see DX 98).	<b>Overruled.</b>
32:10-19	<u>Rule 403 (Prejudice, Confusion, or Waste of Time)</u> —The question in the designated testimony was unclear, and the deponent's response to the clarified question is available, as shown in 32:20-25. This segment, including the unclear question and a request for clarification, can only cause confusion in light of the availability of the clarified question and answer.	<b>Overruled.</b>
73:10-19; 73:22-24	<u>Rule 30(b)(6) (Beyond Scope of Corporate Designation); Rule 403 (Prejudice, Confusion, or Waste of Time)</u> — The deponent's personal experience playing video games and opinions regarding such personal experience or preferences is beyond the scope of topics on which the deponent was	<b>Overruled.</b>

Anascape's Designations Page/Line Numbers	Defendants' Objections	Court's Ruling
	designated as SCEA's 30(b)(6) witness, and should therefore not be construed as the testimony of SCEA. Furthermore, the deponent's individual opinion, experience, and taste is not relevant to any issue in this case, and is unduly prejudicial, and likely to confuse.	
80:24-82:3	<u>Rule 403 (Prejudice, Confusion, or Waste of Time)</u> —Anascape withdraw its objections to the authenticity of relevant SCEA Press Releases listed on Defendants joint exhibit list (see e.g., DX 97 and 98). Thus, this testimony is prejudicial, unnecessary, and likely to confuse the jury.	<b>Sustained.</b>

So **ORDERED** and **SIGNED** this **2** day of **May, 2008**.




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Ron Clark, United States District Judge