

**IN THE UNITED STATES DISTRICT COURT  
FOR THE 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-RC

**ORDER ON DEFENDANTS' OBJECTIONS AND COUNTERDESIGNATIONS TO  
PLAINTIFF'S DEPOSITION DESIGNATIONS**

DEPOSITION DESIGNATION	OBJECTIONS	RESPONSE	COURT RULING
<b>Genyo Takeda</b>			
20:6-20:13	Calls for speculation	Tends to show that Nintendo recognizes the value of patented inventions, which goes to its bargaining position in a hypothetical negotiation.	<b>Overruled.</b>
93:10-93:17	Rule 408	Relevant to willfulness, offers to license patents relevant to show that Anascape is interested in licensing its patents, litigation not at issue at this point, so Rule 408 is inapposite.	<b>Sustained.</b>
<b>Russell Sanchez:</b>			
19:22-20:4	Rule 403; (Prejudice, Confusion, Waste Of Time); Rule 602 (Lack Of Personal Knowledge)	Sanchez's personal knowledge of the use of a motor and offset weight in cell phones is relevant to show importance of the	<b>Overruled.</b>

<b>DEPOSITION DESIGNATION</b>	<b>OBJECTIONS</b>	<b>RESPONSE</b>	<b>COURT RULING</b>
	[explanation follows in original] <sup>1</sup>	technology, and acceptance and familiarity with those features. There is no prejudice.	
21:22-22:22	Rule 403; (Prejudice, Confusion, Waste Of Time); Rule 602 (Lack Of Personal Knowledge); Rule 701 (Opinion Testimony by Lay Witnesses)	This testimony shows that an employee at Microsoft did not understand potentiometers to be good for controllers, and constitutes evidence of teaching away. The testimony is based on personal knowledge, and constitutes facts about potentiometers, and is based on his experience with potentiometers.	<b>Overruled.</b>
27:25-28:8	Rule 403; (Prejudice, Confusion, Waste Of Time); Rule 602 (Lack Of Personal Knowledge); Rule 701 (Opinion Testimony by Lay Witnesses)	This is factual testimony regarding the capability of the directional pad and the thumbsticks in the xbox controllers. It is not an opinion, and it is based on personal knowledge. This is not unduly prejudicial.	<b>Designation withdrawn.</b>
49:17-50:4	Rule 403; (Prejudice, Confusion, Waste Of Time); Rule 602 (Lack Of Personal Knowledge); Rule 701 (Opinion Testimony by Lay Witnesses) [explanation follows in original]	Lays foundation for forthcoming testimony.	<b>Designation withdrawn.</b>
53:8-54:7	Rule 403; (Prejudice, Confusion, Waste Of Time); Rule 602 (Lack Of Personal Knowledge); Rule 701	Gives context as to how a Microsoft engineer understood the art, is relevant to rebutting Defendants' obviousness	<b>Designation withdrawn.</b>

<sup>1</sup> Microsoft's objections were often quite long. In the interest of keeping the chart manageable, Anascape has only included the headings for the objections. Anascape has indicated where there is more explanation for the objection. Microsoft's full objections are attached as Ex. A.

<b>DEPOSITION DESIGNATION</b>	<b>OBJECTIONS</b>	<b>RESPONSE</b>	<b>COURT RULING</b>
	(Opinion Testimony by Lay Witnesses) [explanation follows in original]	contentions, and shows the state of the art in the field.	
<b>William Harmon:</b>			
27:19-27:20	Rule 403; (Prejudice, Confusion, Waste Of Time); Rule 602 (Lack Of Personal Knowledge); Rule 1002 (Requirement of Original) [explanation follows in original]	Mr. Harmon is Microsoft's 30(b)(6) regarding licensing. Therefore his responses regarding terms of the licensing and the related technology are relevant and should be binding.	<b>Designation withdrawn.</b>
27:25-27:24	Rule 403; (Prejudice, Confusion, Waste Of Time); Rule 602 (Lack Of Personal Knowledge); Rule 1002 (Requirement of Original) [explanation follows in original]	Mr. Harmon is Microsoft's 30(b)(6) regarding licensing. Therefore his responses regarding terms of the licensing and the related technology are relevant and should be binding.	<b>Designation withdrawn.</b>
30:22-31:7	Rule 402; (Relevance); Rule 403; (Prejudice, Confusion, Waste Of Time); Rule 602 (Lack Of Personal Knowledge); Rule 1002 (Requirement of Original) [explanation follows in original]	Mr. Harmon is Microsoft's 30(b)(6) regarding licensing. Therefore his responses regarding terms of the licensing and the related technology are relevant and should be binding.	<b>Designation withdrawn.</b>
31:14-32:18	Rule 402; (Relevance); Rule 403; (Prejudice, Confusion, Waste Of Time); Rule 602 (Lack Of Personal Knowledge); Rule 1002 (Requirement of Original) [explanation follows in original]	Mr. Harmon is Microsoft's 30(b)(6) regarding licensing. Therefore his responses regarding terms of the licensing and the related technology are relevant and should be binding.	<b>Designation withdrawn.</b>
67:21-67:24	Rule 402; (Relevance); Rule 403; (Prejudice, Confusion, Waste Of Time); Rule 602 (Lack Of Personal	Microsoft has taken the position that Microsoft never agrees to running royalties. Therefore questions of Microsoft's	<b>Designation withdrawn.</b>

<b>DEPOSITION DESIGNATION</b>	<b>OBJECTIONS</b>	<b>RESPONSE</b>	<b>COURT RULING</b>
	Knowledge); Rule 1002 (Requirement of Original) [explanation follows in original]	30(b)(6) licensing witness are relevant to the hypothetical negotiations and Microsoft's contentions that a damages cap should apply.	
68:1-68:9	Rule 402; (Relevance); Rule 403; (Prejudice, Confusion, Waste Of Time); Rule 602 (Lack Of Personal Knowledge); Rule 1002 (Requirement of Original) [explanation follows in original]	Microsoft has taken the position that Microsoft never agrees to running royalties. Therefore questions of Microsoft's 30(b)(6) licensing witness are relevant to the hypothetical negotiations and Microsoft's contentions that a damages cap should apply.	<b>Designation withdrawn.</b>

## **I. Anascape's Objections to Defendants' Counterdesignations**

### **Genyo Takeda, 1/22/08**

80:1-23	Suggests that the Nintendo 64 controller invalidates the patents, but the Nintendo 64 controller was not properly disclosed on Defendants' invalidity contentions, pursuant to P.R. 3-3 and 3-4.	<b>Overruled.</b>
104:25-106:23	Includes opinion testimony improper for a fact witness.	<b>Overruled.</b>

**Russell Sanchez, 10/19/07**

13:20-15:4 20:5-21:21 22:23-23:22 34:25-35:8 36:21-25 46:20-24 49:2-16 50:5-51:5	Testimony regarding prior art references that were not properly disclosed on Defendants' invalidity contentions, pursuant to P.R. 3-3 and 3-4, including the Microsoft Sidewinder controllers, other controllers from Mr. Sanchez's personal experience, and Mr. Sanchez's patents.	<b>Overruled.</b>
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So **ORDERED** and **SIGNED** this 2 day of **May, 2008**.



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Ron Clark, United States District Judge