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By Email, Fax and Federal Express

Honorable Ron Clark
United States District Court
300 Willow Street, Suite 221
Beaumont, Texas 77701

RE: Anascape v. MS & Nintendo (Case No. 9:06-CV-00158-RC)

Dear Judge Clark:

This letter is in response to Anascape's letter of this afternoon stating that it will withdraw certain exhibits relating to "any argument or evidence that Nintendo copied the prototype controller Armstrong provided to Howard Cheng in 1997." Notwithstanding Anascape's withdrawal of the identified exhibits, Nintendo's evidence regarding the design and development of the accused products, including its patents relating to the accused products and predecessor products, remains relevant for the following reasons:

As an initial matter, it would unfair to allow Mr. Armstrong to testify concerning his "invention story," but preclude Nintendo from explaining the development of its products. Both are relevant for context and the inventor should not be permitted to provide context for the patent while the defendant is relegated to providing the accused products devoid of any context as to how they came to be.

In addition, after receiving Mr. Cawley's letter to the Court, I contacted Mr. Cawley to inquire as to whether this meant that Plaintiff's counsel would not elicit testimony from Mr. Armstrong concerning the meeting with Nintendo's Howard Cheng. Mr. Cawley responded that, while he does not intend to elicit testimony from Mr. Armstrong concerning the prototype given to Mr. Cheng at the meeting, Anascape does intend to introduce testimony from Mr. Armstrong that he met with Mr. Cheng in 1997 and discussed "licensing" of Mr. Armstrong's technology. Despite Anascape's willingness to forego testimony concerning the prototype, testimony from Mr. Armstrong that he and Mr. Cheng met and discussed "licensing" is still likely to suggest to the jurors that Mr. Cheng, and Nintendo, were aware of Mr. Armstrong's technology and used or copied it. Thus, evidence regarding how Nintendo's products were developed remains relevant to rebut that suggestion.¹

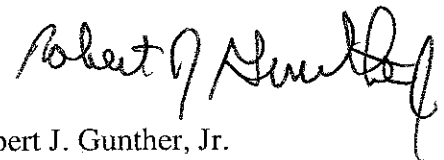
For these reasons, Anascape's blanket objection to evidence concerning the development of the accused products, including Nintendo's patents, should be overruled.

¹ Nintendo notes that four of its patents (DX 132, 136, 142, and 143) are part of the '700 patent file history. As such they should not be excluded. In addition, two Nintendo patent applications relating to the Wii (DX 126 and 127) were not objected to by Anascape an appear on Anascape's exhibit list as PX 126 and 127.

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Finally, evidence of Nintendo's design and development of the accused products is in no way prejudicial to Anascape. Because the evidence is highly relevant, and is in no way prejudicial, it is admissible pursuant to Fed. R. Evid. 402 and 403.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert J. Gunther, Jr.", with a stylized flourish at the end.

Robert J. Gunther, Jr.

cc: All counsel of record