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May 3, 2008

By Email and Fax
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:

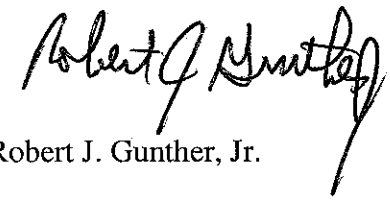
This letter is in response to Anascape's letter of earlier today, arguing that Anascape should be permitted to tell its development story,[1] but Nintendo should be precluded from telling the other half of the story – that Mr. Armstrong knew of the GameCube controller prior to filing the '700 patent application and had the GameCube controller in front of him when he wrote the claims of that patent.

Anascape's attempts to distinguish the case law cited by Nintendo is unavailing. *Gentry Gallery is* directly on point because the Federal Circuit relied upon trial testimony from the inventor that he wrote his claims to cover products made by his competitors as evidence that the original application did not support those claims. *See Gentry Gallery v. Berkline Corp.,* 134 F.3d 1473, 1478-79 (Fed. Cir. 1998). Anascape's argument that the *Gentry Gallery* court did not address the admissibility of the inventor testimony at issue in that case ignores the crucial fact that the court actually relied on that testimony in assessing the priority issue thereby demonstrating its relevance and, thus its admissibility. While Anascape argues that the *Rambus* case was wrongly decided, it provides no support or citation for that contention.

Finally, Nintendo notes that Anascape has failed to present the Court with a single case that excluded inventor testimony in the context of determining whether later drafted claims are entitled to the priority date of an earlier filed application.

[1] Anascape argues that its development story is relevant to whether the '525 patent and its progeny are entitled to an earlier conception date. This argument is a red-herring. Anascape stated in the pretrial order that "Anascape contends that the Asserted Claims of the patent-in-suit are entitled to a priority date of July 5, 1996." Joint Final Pre-Trial Order at 6. July 5, 1996 is the date of the earlier patent application to which Anascape is attempting to claim priority. Because there is no claim by Anascape that it is entitled to a priority date earlier than the July 5, 1996 filing date, the conception date of the '525 patent is not at issue in this case. *Loral Fairchild Corp. v. Matsushita Electrical Industrial Co.,* 266 F3d 1358, 1361 (Fed. Cir. 2001).

Respectfully submitted,



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cc: All counsel of record (by email)