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May 10, 2008

By Email

Honorable Ron Clark
United States District Court
104 North Third Street
Lufkin, Texas 75901

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

Dear Judge Clark:

Nintendo respectfully requests an additional instruction in the final instructions to the jury to clarify the issues to be decided and to avoid any confusion.

Specifically, Nintendo requests that the jury be instructed that the accelerometer in the Wii Nunchuk shall not be considered evidence of infringement of any of the asserted claims. As recognized by the Court in a sidebar on Thursday, Anascape's infringement contentions are confined to the presence of the Wii Nunchuk controller's joystick, and do not assert that the Wii Nunchuk's accelerometer reads on to any of the elements of claims 19, 22 or 23. Mr. Cawley's questioning of Mr. Ikeda regarding the accelerometer in the Wii Nunchuk may have confused the jury as to which structures they are to consider in their infringement analysis, and thus an instruction on the issue is appropriate to remedy any such confusion.

Accordingly, Nintendo requests the following instruction at the end of Nintendo's proposed Literal Infringement instruction on page 10 of the Proposed Final Jury Instructions filed on April 18, 2008:

"You have heard some evidence regarding the presence of an accelerometer in the Wii Nunchuk. The accelerometer in the Wii Nunchuk is not evidence of literal infringement, and does not satisfy any of the requirements of the claims of the '700 patent."

To the extent that the Court decides to instruct the jury on the Doctrine of Equivalents, Nintendo requests that a similar instruction be included in the Doctrine of Equivalents section of the final instructions.

LATHAM & WATKINS LLP

Respectfully,

A handwritten signature in black ink, appearing to read 'J S Blank', with a stylized flourish at the end.

James S. Blank
of LATHAM & WATKINS LLP

cc: All counsel of record (by email)