

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

ANASCAPE, LTD.

Plaintiff,

v.

NINTENDO OF AMERICA, INC.

Defendant.

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Civil Action No. 9:06-CV-158

JUDGE RON CLARK

FINAL JUDGMENT AND PERMANENT INJUNCTION

On July 31, 2006, Plaintiff Anascape, Ltd. filed suit against Defendant Nintendo of America, Inc. alleging infringement of United States Patent Nos. 6,906,700 (“the ‘700 patent”) and 6,222,525 (“the ‘525 patent”). Issues related to the ‘700 patent were tried to a jury from May 5, 2008 - May 14, 2008. The jury found that i) Nintendo’s Wii Classic controller connected to the Wii Remote infringes claims 19, 22 and 23, ii) Nintendo’s GameCube controller infringes claims 14, 16, 19, 22 and 23, and iii) Nintendo’s GameCube Wavebird wireless controller infringes claim 14. [Doc. #333]. The jury found that Nintendo’s Wii Remote controller connected to the Wii Nunchuk controller does not infringe claim 19. *Id.* The jury did not find that any of these claims is invalid. *Id.*

Prior to verdict, the parties stipulated that the court’s claim construction precludes a finding of infringement as to claims 1, 5-6 and 12-20 of the ‘525 patent and claims 1-11, 21, 26-29 and 31 of the ‘700 patent. Based on the parties’ stipulation, the Court granted summary judgment in favor of Nintendo on Anascape’s allegations of infringement as to

those asserted claims. [Doc. #249]. The court also granted summary judgment in favor of Nintendo on Anascape's claim of willful infringement [Doc. #289].

After a separate bench trial, for the reasons stated on the record, the Court denied Nintendo's claim of inequitable conduct. After the jury returned its verdict, the Court denied Nintendo's motions for judgment as a matter of law, Nintendo's motion for remittitur and found that this was not an exceptional case that merited an award of attorney fees. *See* [Doc. #354 and #380].

Pursuant to Fed. R. Civ. P. 58, this Final Judgment and Permanent Injunction is entered in accordance with the Court's prior rulings, the jury verdict, and the Court's findings and conclusions entered on the record on July 18, 2008.

IT IS THEREFORE ORDERED that Plaintiff Anascape, Ltd. shall recover from Defendant Nintendo of America, Inc. in the sum of Twenty-One Million Dollars (\$21,000,000.00), the amount of actual damages found by the jury, plus the additional amount of Two Million Eighty-Two Thousand Seven Hundred Thirty-Nine Dollars and Seventy-Three Cents (\$2,082,739.73), as prejudgment interest, for a total amount of Twenty-Three Million Eighty-Two Thousand Seven Hundred Thirty-Nine Dollars and Seventy-Three Cents (\$23,082,739.73). The judgment shall bear interest at the rate agreed upon by the parties, namely 2.21% per annum.

IT IS FURTHER ORDERED THAT judgment is entered for Nintendo of America, Inc. and against Anascape, Ltd. on the infringement contentions as to claims 1, 5-6, 12-20 of the '525 patent and claims 1-11, 21, 26-29 and 31 of the '700 patent. Any remaining

counterclaims asserted by Nintendo related to the '525 patent are dismissed without prejudice.

IT IS FURTHER ORDERED THAT judgment is entered for Nintendo of America, Inc. and against Anascape, Ltd. on Anascape's claim of willfulness and claim for attorney fees.

IT IS FURTHER ORDERED THAT Nintendo of America, Inc., its officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice (collectively hereafter, "Nintendo"), are hereby restrained and enjoined, pursuant to Federal Rule of Civil Procedure 65(d) and 35 U.S.C. § 283, from using in the United States, offering to sell in the United States, selling in the United States, or importing into the United States, either alone or in combination with any products, services or systems: i) Nintendo's Wii Classic controller, ii) Nintendo's GameCube controller, and the iii) Nintendo's GameCube Wavebird wireless controller;

IT IS FURTHER ORDERED THAT this injunction shall be in force until the expiration of the '700 patent; however the requirements set out in the preceding paragraph of this order of permanent injunction are stayed conditioned upon the deposit in an interest-bearing escrow account by Nintendo of America, Inc. during the stay of the injunction: (1) 7% of the selling price for each GameCube, Wavebird Wireless and Wii Classic controller sold; and (2) 5% of the selling price for each Wii Remote sold, up to a maximum number of Wii Remotes equal to twice the number of Wii Classics sold. Proceeds shall be deposited from the sales of the foregoing products whether sold individually or bundled with another product. On a quarterly basis, Nintendo of America, Inc. shall place said amount into an

escrow account in accordance with terms as agreed by the parties, or, alternatively, the court registry, until part or all of the amount is released to either Anascape, Ltd. or Nintendo of America, Inc. pursuant only to a court order or an agreement of the parties.

IT IS FURTHER ORDERED THAT the first deposit of said escrow amount shall take place 30 days following the next calendar quarter following entry of this judgment, and would be due 30 days following every calendar quarter thereafter. Along with each deposit, Nintendo of America, Inc. shall provide to Anascape, Ltd. an accounting of the proceeds based on sales of Nintendo's GameCube, Wavebird Wireless, Wii Classic, and Wii Remote controllers, and bundles that include those products during the previous calendar quarter.

IT IS FURTHER ORDERED THAT costs are taxed against Nintendo of America, Inc. All relief not specifically granted herein is denied. All pending motions not previously ruled on are denied. All issues having been disposed of, this is a Final Judgment and is appealable.

So **ORDERED** and **SIGNED** this **23** day of **July, 2008**.



Ron Clark, United States District Judge