

SUPERSEDEAS BOND

Bond No. 6590291

IN THE United States District COURT OF The Eastern District of Texas Lufkin Division
COUNTY OF Angelina STATE OF Texas

ANASCAPE, LTD.,

Plaintiff

vs.

NINTENDO OF AMERICA INC.,

Defendant

CIVIL ACTION NO. 9:06-CV-158-RC

KNOW ALL MEN BY THESE PRESENTS, That we, NINTENDO OF AMERICA INC. as Principal, and Safeco Insurance Company of America a Washington corporation, as Surety are held and firmly bound unto ANASCAPE, LTD. in the amount of Twenty Seven Million Six Hundred and Ninety-Nine Thousand Five Hundred and Thirty-Seven and 68/100 Dollars (\$ 27,699,537.68) for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal has petitioned THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT for an appeal to said court of an action previously decided in THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, LUFKIN DIVISION, wherein the said Principal is Defendant, and being numbered 9:06-CV-158-RC on the docket thereof.

WHEREAS, on Wednesday, July 23, 2008, a Judgment and decree was entered in the above cause number in favor of Plaintiff and against the Defendant, a copy of which said Judgment is attached hereto and by this reference made a part hereof.

NOW THEREFORE, the condition of this obligation is such that if the said Principal shall pay all costs, disbursements and judgments incurred by reason of the said appeal proceeding, then this obligation shall be null and void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following conditions:

1. The maximum liability of the Surety shall in no event exceed the aggregate penal sum of the bond.
2. The liability of the Surety for this obligation shall not extend to royalty payments secured under Safeco Bond 6590292.

IN WITNESS WHEREOF, NINTENDO OF AMERICA INC., as Principal and Safeco Insurance Company of America, as Surety, have hereunto set our hands this 25 day of July, 2008.

ATTEST WITNESS:

By: [Signature]

NINTENDO OF AMERICA INC.
By: [Signature] Principal

Safeco Insurance Company of America
By: [Signature] Attorney-in-Fact

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

ANASCAPE, LTD.	§	
	§	
<i>Plaintiff,</i>	§	
	§	Civil Action No. 9:06-CV-158
v.	§	
	§	
NINTENDO OF AMERICA, INC.	§	JUDGE RON CLARK
	§	
<i>Defendant.</i>	§	
	§	

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



POWER OF ATTORNEY

Safeco Insurance Company of America
General Insurance Company of America
Safeco Plaza
Seattle, WA 98185

No. 13257

KNOW ALL BY THESE PRESENTS:

That SAFECO INSURANCE COMPANY OF AMERICA and GENERAL INSURANCE COMPANY OF AMERICA, each a Washington corporation, does each hereby appoint

*****WILLIAM BAYCROFT; WILLIAM DAVID DERODEE; KATHY DOOLEY-DALBY; CAROL A. KING; MELISSA KIRSHY; GARY LAFOUR; JAMES D. MACWILLIAM; Nacogdoches, Texas*****

its true and lawful attorney(s)-in-fact, with full authority to execute on its behalf fidelity and surety bonds or undertakings and other documents of a similar character issued in the course of its business, and to bind the respective company thereby.

IN WITNESS WHEREOF, SAFECO INSURANCE COMPANY OF AMERICA and GENERAL INSURANCE COMPANY OF AMERICA have each executed and attested these presents

this 165th day of July, 2008

Handwritten signature of Stephanie Daley-Watson

Handwritten signature of Tim Mikolajewski

STEPHANIE DALEY-WATSON, SECRETARY

TIM MIKOLAJEWSKI, SENIOR VICE-PRESIDENT, SURETY

CERTIFICATE

Extract from the By-Laws of SAFECO INSURANCE COMPANY OF AMERICA and of GENERAL INSURANCE COMPANY OF AMERICA:

"Article V, Section 13. - FIDELITY AND SURETY BONDS ... the President, any Vice President, the Secretary, and any Assistant Vice President appointed for that purpose by the officer in charge of surety operations, shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the company in the course of its business... On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

Extract from a Resolution of the Board of Directors of SAFECO INSURANCE COMPANY OF AMERICA and of GENERAL INSURANCE COMPANY OF AMERICA adopted July 28, 1970.

"On any certificate executed by the Secretary or an assistant secretary of the Company setting out,

- (i) The provisions of Article V, Section 13 of the By-Laws, and
(ii) A copy of the power-of-attorney appointment, executed pursuant thereto, and
(iii) Certifying that said power-of-attorney appointment is in full force and effect,

the signature of the certifying officer may be by facsimile, and the seal of the Company may be a facsimile thereof."

I, Stephanie Daley-Watson, Secretary of SAFECO INSURANCE COMPANY OF AMERICA and of GENERAL INSURANCE COMPANY OF AMERICA, do hereby certify that the foregoing extracts of the By-Laws and of a Resolution of the Board of Directors of these corporations, and of a Power of Attorney issued pursuant thereto, are true and correct, and that both the By-Laws, the Resolution and the Power of Attorney are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of said corporation

this 28th day of July, 2008



Handwritten signature of Stephanie Daley-Watson

STEPHANIE DALEY-WATSON, SECRETARY

Safeco® and the Safeco logo are registered trademarks of Safeco Corporation.



State of Texas Surety Bond Claim Notice

In accordance with Section 2253.021(f) of the Texas Government Code and Section 53.202(6) of the Texas Property Code, any notice of claim to the named surety under this bond(s) should be sent to:

SAFECO Surety
Adams Building
4634 154th PL NE
Redmond, WA 98052

Mailing Address:
SAFECO Surety
PO Box 34754
Seattle, WA 98124

Phone: (425) 376-6535
Fax: (425) 376-6533