

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

Anascape, Ltd.,

Plaintiff,

v.

Microsoft Corp., and
Nintendo of America, Inc.,

Defendants.

Civil Action No. 9:06-cv-158-RC

JURY TRIAL REQUESTED

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

In compliance with the Scheduling Order and Patent Rule 4-3, Plaintiff Anascape, Ltd. (“Anascape”) and Defendants Microsoft Corp. (“Microsoft”) and Nintendo of America, Inc. (“Nintendo”) jointly submit this Joint Claim Construction and Prehearing Statement setting forth the parties’ proposed claim constructions of the terms of (i) United States Patent No. 5,999,084 (“the ’084 patent”); (ii) United States Patent No. 6,102,802 (“the ’802 patent”); (iii) United States Patent No. 6,135,886 (“the ’886 patent”); (iv) United States Patent No. 6,208,271 (“the ’271 patent”); (v) United States Patent No. 6,222,525 (the ’525 patent); (vi) United States Patent No. 6,343,991 (“the ’991 patent”); (vii) United States Patent No. 6,347,997 (“the ’997 patent”); (viii) United States Patent No. 6,400,303 (“the ’303 patent”); and (ix) United States Patent No. 6,906,700 (“the ’700 patent”).

I. Construction of Claim Terms, Phrases, or Clauses**A. Constructions of Claim Terms, Phrases, or Clauses on Which the Parties Agree**

Anascape and Microsoft¹ agree that the following claim terms should be construed as set forth below.

1. U.S. Patent No. 6,208,271

CLAIM TERM, PHRASE, OR CLAUSE	AGREED CONSTRUCTION
function-control signals <i>Claim 11</i>	signals for instructing the [host or remote] device to perform a desired function
a plurality of said sensors read by said circuitry as sensors having only two readable states <i>Claim 11</i>	at least two sensors are read by the circuitry only as on/off switches

2. U.S. Patent No. 6,347,997

CLAIM TERM, PHRASE, OR CLAUSE	AGREED CONSTRUCTION
means for providing tactile feedback to the finger <i>Claims 32, 34, 35, 36</i>	<i>This term is governed by 35 U.S.C. § 112(6). The function is:</i> providing tactile feedback to the finger <i>The structure is:</i> a dome-cap, and equivalents thereof

3. U.S. Patent No. 6,400,303

CLAIM TERM, PHRASE, OR CLAUSE	AGREED CONSTRUCTION
function-control signals <i>Claim 5</i>	signals for instructing the [host or remote] device to perform a desired function

¹ The '271, '997, and '303 patents are not asserted against Nintendo. Anascape's claims against Microsoft and Nintendo under U.S. Patent Nos. 6,344,791; 6,351,205; and 6,563,415 have been stayed pending the resolution of Microsoft's and Nintendo's reexamination requests. Anascape, Microsoft, and Nintendo are only providing proposed constructions concerning the asserted claims of the non-stayed patents.

At this time, the parties do not agree on the construction of any claim terms, phrases, or clauses of the '084, '802, '886, '525, '991, or '700 patents.

B. Proposed Constructions of Disputed Claim Terms, Phrases, or Clauses

The proposed constructions for each of the disputed claim terms, phrases, or clauses of the patents-in-suit are attached hereto as Exhibit A. The proposed constructions for each of the disputed claim terms, phrases, or clauses of the patents-in-suit together with an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction of the claim or to oppose any other party's proposed construction of the claim, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses are attached hereto as Exhibit B.

II. Claim Construction Briefing and Hearing

A. Length of Time Needed for the Hearing

The claim construction hearing is currently scheduled for August 22, 2007 (part 1) and September 19, 2007 (part 2). The parties suggest that the Court address the '084, '802, '886, '271, '991, '997, and '303 patents, which are only asserted against Microsoft, on one day of the hearing and address the '525 and '700 patents, which are asserted against both Microsoft and Nintendo, on the other day.

Anascope anticipates that the hearing will require three hours on each day. Microsoft and Nintendo anticipate that the hearing regarding the '525 and '700 patents will require four and a half hours. Microsoft anticipates that the hearing regarding the '084, '802, '886, '271, '991, '997, and '303 patents will require six hours.

B. Number of Pages Needed to Brief the Disputed Claim Terms

The parties anticipate needing the following number of pages to brief the disputed claim terms of the '525 and '700 patents:

BRIEF	PAGES
Opening Brief (Anascape)	35
Response Brief (Microsoft and Nintendo)	35 apiece
Reply Brief (Anascape)	20

Anascape anticipates needing the following number of pages to brief the disputed claim terms of the '084, '802, '886, '271, '991, '997, and '303 patents:

BRIEF	PAGES
Opening Brief (Anascape)	30
Response Brief (Microsoft)	30
Reply Brief (Anascape)	10

Microsoft anticipates needing the following number of pages to brief the disputed claim terms of the '084, '802, '886, '271, '991, '997, and '303 patents:

BRIEF	PAGES
Opening Brief (Anascape)	45
Response Brief (Microsoft)	45
Reply Brief (Anascape)	20

C. Witnesses

1. Anascape

Anascape does not propose calling any witnesses at the claim construction hearing. Anascape may offer expert testimony in support of its claim construction positions relating to (1) the background of the technology disclosed by the asserted patents, (2) the witnesses' qualifications as experts, and (3) the proper constructions of the disputed terms as set forth in Exhibit A, including the identification of the structure that corresponds to the means-plus-function elements in order to rebut any expert testimony offered by the Defendants in support of their claim construction positions.

2. Microsoft

Microsoft does not propose calling any witnesses at the claim construction hearing. Microsoft may offer expert testimony in support of its claim construction positions relating to (1) the background of the subject matter disclosed by the asserted patents, (2) the witnesses' qualifications as experts, and (3) the proper constructions of the disputed terms as set forth in Exhibit A, including the identification of the structure, lack of structure and/or insufficiency of structure with respect to the means-plus-function elements, as set forth in Exhibit B.

3. Nintendo

Nintendo does not propose calling any witnesses at the claim construction hearing. In view of Anascape's statement that it may offer expert testimony in rebuttal, Nintendo may offer expert testimony in support of its claim construction positions relating to (1) the background of the technology disclosed by the asserted patents, (2) the witnesses' qualifications as experts, and (3) the proper constructions of the disputed terms as set forth in Exhibit A, including the identification of the structure that corresponds to the means-plus-function elements in order to

respond to any expert testimony offered by Anascape in support of its claim construction positions.

D. Prehearing Conference and Other Issues

At this time, the parties have not identified any additional issues to be submitted for the Court's consideration at a prehearing conference.

DATED: March 27, 2007.

Respectfully submitted,

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DATED: March 27, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on counsel of record via ECF or U.S. Mail on this 27th day of March, 2007.

Luke McLeroy

Luke F. McLeroy