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SIDNEY NEUMAN
FRED T. WILLIAMS
COUNSEL

VAN METRE LUND
ASSOCIATE COUNSEL

September 10, 1984

Marla Miller, Esq.
Howard, Rice, Nemerovski,
Canady, Robertson & Falk
Three Embarcadero Center - 7th Floor
San Francisco, California 94111

Re: Magnavox v. Activision

Dear Marla:

Your letter of August 22, 1984 requests with reference to interrogatories 140-152 identification of prototypes and physical models of Magnavox's alleged inventions. The work leading to both the '480 and '507 patents was performed, of course, at Sanders Associates by its personnel. We assume you are seeking identification of the prototypes and models constructed at Sanders during the course of the early television game work as you stated during our subsequent telephone conference.

Seven television game models were constructed. They have been labelled as Chassis Nos. 1-7, and have been identified during deposition and trial proceedings as follows:

Chassis No.	S/ADX No.	CDIPX No.	MDX No.	MPX No.
1	24	55	28	2
2	28	56	29	3
3	29	57	30	4
4	30	59	31	6
5	33	60	32	7
6	34	61	33	8
7	35	62	34	9

S/ADX = Exhibit number assigned during deposition of Sanders Associates' personnel taken by Midway and Atari in first Chicago action.

CDIPX = Plaintiffs' exhibit number assigned during trial in first Chicago action, i.e., Magnavox v. Chicago Dynamic Industries.

MDX = Exhibit number assigned during deposition of Sanders Associates' personnel taken by Mattel in second Chicago action.

MPX = Plaintiffs' exhibit numbers assigned during trial in second Chicago action, i.e., Magnavox v. Mattel.

Some accessories for use with these models, such as an "odd/even" decoder (S/ADX 31, CDIPX 58), photocell light guns or rifles (S/ADX 33A, CDIPX 63), and a circuit for giving a hit spot a velocity proportional to the velocity with which it was hit (MDX 35) also exist.

The models have suffered the effects of time. Chassis 7 is the only one known to be presently operative. It is now located in Nashua, New Hampshire. The remaining units are here in Chicago at our offices. Each of the Chassis 2-7 included the subjects matter of interrogatories 140 and 149, and each of the Chassis 4-7 included the subjects matter of interrogatories 141-152.

Very truly yours,

NEUMAN, WILLIAMS, ANDERSON & OLSON

By _____
James T. Williams

JTW:de

cc: Robert L. Ebe, Esq.
Theodore W. Anderson, Esq.

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SIDNEY NEUMAN
FRED T. WILLIAMS
COUNSEL

VAN METRE LUND
ASSOCIATE COUNSEL

September 5, 1984

Louis Etlinger, Esquire
Director, Patents and
Licensing
Sanders Associates, Inc.
Daniel Webster Highway, South
Nashua, New Hampshire 03061

Re: Magnavox v. Activision

Dear Lou:

Enclosed herewith for execution by Sanders is Plaintiffs' Third Supplemental Response to Defendant's Interrogatories. Kindly see that they are appropriately executed by Sanders and then forward the original on to Chuck Quarton at Magnavox for execution by Magnavox. By carbon of this letter we are requesting Chuck to return the responses to us for filing after he has executed them. We would like to have the documents back in our offices by Monday, September 10.

Very truly yours,

NEUMAN, WILLIAMS, ANDERSON & OLSON

By _____
James T. Williams

JTW:de
Enclosure

cc: Charles E. Quarton, Esq. - w/o encl.
Algy Tamoshunas, Esq. - w/encl.
Thomas A. Briody, Esq. - w/o encl.
Theodore W. Anderson, Esq. - w/o encl.

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Attorneys for Plaintiffs
The Magnavox Company and
Sanders Associates, Inc.

United States District Court For The
Northern District Of California

THE MAGNAVOX COMPANY, a corporation, and SANDERS ASSOCIATES, INC., a corporation, Plaintiffs, v. ACTIVISION, INC., a corporation, Defendant.	No. C 82 5270 JPV PLAINTIFFS' THIRD SUPPLEMENTAL RESPONSE TO DEFENDANT'S INTERROGATORIES

Plaintiffs herewith supplement their responses to defendant's interrogatories 38, 39, 50, 54, 98, 100(e), 108, 119, 126-127, 130-134, 138, 139, 184, 185, and 188-192.

INTERROGATORY NO. 38

Identify the claims of United States Letters Patent Re. 28,507 which Magnavox and Sanders contend have been infringed by Activision.

RESPONSE:

Plaintiffs' contend that the manufacture, use, or sale by Activision of the following television game cartridges constitute acts of contributory infringement and inducement to infringe claims 25, 26, 51, 52, 60, 61, and 62 of United States Patent Re. 28,507:

Tennis	Ice Hockey
Boxing	Fishing Derby
Dolphin	Keystone Kapers
Decathlon	Stampede
Grand Prix	Barnstorming
Sky Jinks	Enduro
Pressure Cooker	

INTERROGATORY NO. 39

For each of the claims identified in responses to INTERROGATORY NO. 38, set forth in detail the manner in which the claim has been infringed by Activision, including:

A. The activities of Activision which constitute infringement;

C. Identify each television game cartridge made, used and/or sold by Activision which constitutes an infringement of the claim either by itself or in combination with a television game console;

RESPONSE:

A. The making, using, selling, and offering for sale of the following Activision television game cartridges:

Tennis	Ice Hockey
Boxing	Fishing Derby
Dolphin	Keystone Kapers
Decathlon	Stampede
Grand Prix	Barnstorming
Sky Jinks	Enduro
Pressure Cooker	

C. Plaintiffs contend that the manufacture, use, and/or sale of the following Activision game cartridges in combination with a television game console and, where appropriate, a television receiver, constitutes an act of infringement of the stated claim of U.S. Patent Re. 28,507:

Claim 25: Tennis, Ice Hockey, Boxing, Fishing Derby, Dolphin, Stampede, Pressure Cooker.

Claim 26: Tennis, Ice Hockey, Boxing, Fishing Derby, Pressure Cooker.

Claim 51: Tennis, Ice Hockey, Boxing, Fishing Derby, Dolphin, Stampede, Pressure Cooker.

Claim 52: Tennis, Ice Hockey, Boxing, Fishing Derby, Pressure Cooker.

Claim 60: Tennis, Ice Hockey, Boxing, Fishing Derby, Dolphin, Keystone Kapers, Decathlon, Stampede, Grand Prix, Barnstorming, Sky Jinks, Enduro, Pressure Cooker.

Claim 61: Tennis, Ice Hockey, Fishing Derby.

Claim 62: Tennis, Ice Hockey.

INTERROGATORY NO. 50

Identify each television game console which Magnavox and Sanders contend constitutes an infringement of United States Letters Patent Re. 28,507 when one of Activision's game cartridges is used in combination therewith.

RESPONSE:

The combining of any television game console compatible with any one of the television game cartridges referred to in plaintiffs' response to INTERROGATORY NO. 38 with such a cartridge and the use of that combination with a television receiver constitute acts of infringement of the claims of United States Patent Re. 28,507 stated in that response. Such consoles of which plaintiffs are aware include each of those identified by Activision as being useful with its television game cartridges and are the Atari VCS Model 2600, the Sears Tele-Game Video Arcade, the Coleco Gemini, the combination of the Coleco Colecovision television game console and the Expansion Module 1, the combination of the Atari Model 5200 and the Model 2600 adapter,

the Mattel Intellivision game console, and the Sears, Roebuck & Co. and Tandy Corporation (Radio Shack) versions of the Mattel console.

INTERROGATORY NO. 54

Referring to Paragraph 11 of the Complaint, set forth in detail the basis for the allegations that the alleged infringements, inducements to infringe and contributory infringements were:

A. Willful; and

B. With full knowledge of United States Letters Patent Re. 28,507.

RESPONSE:

Prior to the filing of the complaint in this action, plaintiff Magnavox informed Activision of its need for a license under the patent in suit, but Activision continued its acts of infringement without taking such a license up until the time the complaint was filed. The allegations are additionally supported by the facts and circumstances set forth in the deposition of James H. Levy taken on September 16, 1983 in this action and the exhibits marked during that deposition, the facts and circumstances set forth in the deposition of Charles S. Paul taken on February 22, 1982 in this action and the exhibits marked during that deposition, the provisions of the settlement agreement between Atari, Inc., and Activision, Inc., concerning files, documents, and information relating to the patent in suit, the

interrogatory responses of Activition, Inc., executed on April 18, 1983 in this action, the representation of Activition, Inc., by former counsel for Atari, Inc., and the communications between Activision, Inc., and The Magnavox Company concerning U.S. Patent Re. 28,507 prior to the filing of this action.

INTERROGATORY NO. 98

With regard to the decision to reissue U.S. Patent 3,659,284:

D. Describe in detail the circumstances under which the decision was made;

RESPONSE:

D. The circumstances under which the decision was made to file an application for reissue of U.S. Patent 3,659,284 are fully set forth in the declaration which was filed with and as a part of the reissue application.

INTERROGATORY NO. 100

With regard to the examination and prosecution of the application on which Reissue Patent 28,507 issued:

E. Identify any prior art other than the references cited on the face of the reissue patent which was considered the prosecution of the application and determined not to be material to the examination of the application;

RESPONSE:

E. See plaintiffs' response to defendant's INTERROGATORY NO. 173.

INTERROGATORY NO. 108

If the answer to INTERROGATORY NO. 107 is other than an unqualified negative, identify each such discussion, including:

A. Identification of each person involved in the discussion, including the relationship of each such person to Magnavox and/or Sanders;

B. The date and place of the discussion;

C. The circumstances under which the discussion was held;

D. The substance of the discussion;

E. Any action taken by Magnavox and/or Sanders as a result of the discussion;

F. Identify all persons having knowledge of the subject matter of parts A through E of this interrogatory;

G. Identify all communications relating to the subject matter of parts A through F of this interrogatory; and

H. Identify all documents which refer or relate in any way to the subject matter of parts A through G of this interrogatory.

RESPONSE:

This interrogatory has been limited by defendant to discussions occurring prior to the date of issue of U.S. Patent Re. 28,507. No such discussions are known to have occurred other than those identified by Mr. Williams in his deposition referred to in plaintiffs' response to INTERROGATORY NO. 107.

INTERROGATORY NO. 119

Did Magnavox and/or Sanders ever consider reissuance of U.S. Patent 3,728,480 in view of U.S. Patent 2,847,661 (Althouse)?

RESPONSE:

No.

INTERROGATORY NO. 126

For each combination of the games identified in response to Interrogatory No. 38 of Defendant's First Set of Interrogatories to Plaintiffs (namely, "Fishing Derby", "Boxing", "Tennis" and "Ice Hockey") and the consoles identified in response to Interrogatory No. 50 of DEFENDANT'S FIRST SET OF INTERROGATORIES TO PLAINTIFFS (namely, the Atari VCS Model 2600, the Sears Tele-Game Video Arcade, and the combination of the Colecovision game console and the Expansion Module 1) which plaintiffs contend constitutes an infringement of Claim 25 of the

United States Patent Re. 28,507, identify the elements which plaintiffs contend correspond to the following elements of the claim:

A. A hitting symbol;

B. Means for generating a hitting symbol;

C. A hit symbol;

D. Means for generating a hit symbol;

E. Coincidence between said hitting symbol and said hit symbol;

F. Means for ascertaining coincidence between said hitting symbol and said hit symbol;

G. A distinct motion imparted to said hit symbol upon coincidence; and

H. Means for imparting a distinct motion to said hit symbol upon coincidence.

RESPONSE:

Plaintiffs' responses to this interrogatory are based on their present knowledge and understanding of the Activision television game cartridges and the television game consoles and adapters referred to. Each response refers to the combination of the indicated Activision television game cartridge and the Atari VCS Model 2600 television game console, the Sears Tele-Game Video Arcade television game console, the Colecovision television game

console with the Coleco Expansion Module 1, the Coleco Gemini television game console, or the Atari Model 5200 television game console with the Model 2600 adapter.

A. Tennis: The player symbols under control of the human players.

Ice Hockey: The player symbols.

Boxing: The boxer symbol under control of the human player.

Fishing Derby: The end of the fishing line symbols.

B. Tennis, Ice Hockey, Boxing and Fishing Derby: Essentially the Activision television game cartridge, the joystick, the microprocessor, the peripheral interface adapter, and the television interface adapter.

C. Tennis: The ball symbol.

Ice Hockey: The puck symbol.

Boxing: The boxer symbol under control of the game.

Fishing Derby: The fish symbols.

D. Tennis, Ice Hockey, Boxing and Fishing Derby: Essentially the Activision television game cartridge, the television interface adapter, and the microprocessor.

E. Tennis: The coincidence between the human controlled player symbol and the ball symbol by which the player hits the ball.

Ice Hockey: The coincidence between the player symbol and the puck symbol by which the player intercepts the puck.

Boxing: The coincidence between the human controlled boxer symbol and the game controlled boxer symbol by which the human controlled boxer hits the game controlled boxer.

Fishing Derby: The coincidence between the fishing line symbol and the fish symbols by which the fish are caught.

F. Tennis, Ice Hockey, Boxing and Fishing Derby: Essentially the Activision television game cartridge, the microprocessor, and perhaps the television interface adapter.

G. Tennis: The motion of the ball symbol following coincidence with the human controlled player symbol.

Ice Hockey: The motion of the puck symbol following coincidence with player symbol.

Boxing: The motion of the game controlled boxer symbol following coincidence with the human controlled boxer symbol.

Fishing Derby: The motion of the fish symbol following coincidence with the fishing line symbol.

H. Tennis, Ice Hockey, Boxing and Fishing Derby: Essentially the Activision television game cartridge and the microprocessor.

INTERROGATORY NO. 127

For each combination of the games identified in response to Interrogatory No. 38 of Defendant's First Set of Interrogatories to Plaintiffs (namely, "Fishing Derby", "Boxing", "Tennis" and "Ice Hockey") and the consoles identified in response to Interrogatory No. 50 of Defendant's First Set Of Interrogatories To Plaintiffs (namely, the Atari VCS Model 2600, the Sears Tele-Game Video Arcade, and the combination of the Colecovision game console and the Expansion Module 1) which plaintiffs contend constitutes an infringement of Claim 26 of the United States Patent Re. 28,507, identify the elements which plaintiffs contend correspond to the following elements of the claim:

A. A variation in the horizontal position of the hitting symbol;

B. A variation in the vertical position of the hitting symbol; and

C. Means for providing horizontal and vertical control signals for varying the horizontal and vertical positions of said hitting symbol.

RESPONSE:

Plaintiffs' responses to this interrogatory are based on their present knowledge and understanding of the Activision television game cartridges and the television game consoles and adapters referred to. Each response refers to the combination of the indicated Activision television game cartridge and the Atari VCS Model 2600 television game console, the Sears Tele-Game Video Arcade television game console, the Colecovision television game console with the Coleco Expansion Module 1, the Coleco Gemini television game console, or the Atari Model 5200 television game console with the Model 2600 adapter.

A. Tennis: The player symbols under control of the human players may be moved horizontally.

Ice Hockey: The player symbols may be moved horizontally.

B. Boxing: The boxer symbol under control of the human player may be moved vertically.

Fishing Derby: The end of the fishing line symbols may be moved vertically.

C. Tennis, Ice Hockey, Boxing and Fishing Derby: At least the Activision game cartridge, the joystick, the microprocessor, and the peripheral interface adapter.

INTERROGATORY NO. 130

For each combination of the games identified in response to Interrogatory No. 38 of Defendant's First Set of Interrogatories to Plaintiffs (namely, "Fishing Derby", "Boxing", "Tennis" and "Ice Hockey") and the consoles identified in response to Interrogatory No. 50 of Defendant's First Set Of Interrogatories To Plaintiffs (namely, the Atari VCS Model 2600, the Sears Tele-Game Video Arcade, and the combination of the Colecovision game console and the Expansion Module 1) which plaintiffs contend constitutes an infringement of Claim 51 of the United States Patent Re. 28,507, identify the elements which plaintiffs contend correspond to the following elements of the claim:

A. A hitting symbol;

B. Means for generating a hitting symbol;

C. A hit symbol;

D. Means for generating a hit symbol;

E. Coincidence between said hitting symbol and said hit symbol;

F. Means for ascertaining coincidence between said hitting symbol and said hit symbol;

G. A distinct motion imparted to said hit symbol upon coincidence; and

H. Means for imparting a distinct motion to said hit symbol upon coincidence.

RESPONSE:

Plaintiffs' responses to this interrogatory are based on their present knowledge and understanding of the Activision television game cartridges and the television game consoles and adapters referred to. Each response refers to the combination of the indicated Activision television game cartridge and the Atari VCS Model 2600 television game console, the Sears Tele-Game Video Arcade television game console, the Colecovision television game console with the Coleco Expansion Module 1, the Coleco Gemini television game console, or the Atari Model 5200 television game console with the Model 2600 adapter.

A. Tennis: The player symbols under control of the human players.

Ice Hockey: The player symbols.

Boxing: The boxer symbol under control of the human player.

Fishing Derby: The end of the fishing line symbols.

B. Tennis, Ice Hockey, Boxing and Fishing Derby: Essentially the Activision television game cartridge, the joystick, the microprocessor, the peripheral interface adapter, and the television interface adapter.

C. Tennis: The ball symbol.

Ice Hockey: The puck symbol.

Boxing: The boxer symbol under control of the game.

Fishing Derby: The fish symbols.

D. Tennis, Ice Hockey, Boxing and Fishing Derby: Essentially the Activision television game cartridge, the television interface adapter, and the microprocessor.

E. Tennis: The coincidence between the human controlled player symbol and the ball symbol by which the player hits the ball.

Ice Hockey: The coincidence between the player symbol and the puck symbol by which the player intercepts the puck.

Boxing: The coincidence between the human controlled boxer symbol and the game controlled boxer symbol by which the human controlled boxer hits the game controlled boxer.

Fishing Derby: The coincidence between the fishing line symbol and the fish symbols by which the fish are caught.

F. Tennis, Ice Hockey, Boxing and Fishing Derby: Essentially the Activision television game cartridge, the microprocessor, and perhaps the television interface adapter.

G. Tennis: The motion of the ball symbol following coincidence with the human controlled player symbol.

Ice Hockey: The motion of the puck symbol following coincidence with player symbol.

Boxing: The motion of the game controlled boxer symbol following coincidence with the human controlled boxer symbol.

Fishing Derby: The motion of the fish symbol following coincidence with the fishing line symbol.

H. Tennis, Ice Hockey, Boxing and Fishing Derby: Essentially the Activision television game cartridge and the microprocessor.

INTERROGATORY NO. 131

For each combination of the games identified in response to Interrogatory No. 38 of Defendant's First Set of Interrogatories to Plaintiffs (namely, "Fishing Derby", "Boxing", "Tennis" and "Ice Hockey") and the consoles identified in response to Interrogatory No. 50 of Defendant's First Set Of Interrogatories To Plaintiffs (namely, the Atari VCS Model 2600, the Sears Tele-Game Video Arcade, and the combination of the Colecovision game console and the Expansion Module 1) which plaintiffs contend constitutes an infringement of Claim 52 of the

United States Patent Re. 28,507, identify the elements which plaintiffs contend correspond to the following elements of the claim:

A. A variation in the horizontal position of the hitting symbol;

B. A variation in the vertical position of the hitting symbol; and

C. Means for providing horizontal and vertical control signals for varying the horizontal and vertical positions of said hitting symbol.

RESPONSE:

Plaintiffs' responses to this interrogatory are based on their present knowledge and understanding of the Activision television game cartridges and the television game consoles and adapters referred to. Each response refers to the combination of the indicated Activision television game cartridge and the Atari VCS Model 2600 television game console, the Sears Tele-Game Video Arcade television game console, the Colecovision television game console with the Coleco Expansion Module 1, the Coleco Gemini television game console, or the Atari Model 5200 television game console with the Model 2600 adapter.

A. Tennis: The player symbols under control of the human players may be moved horizontally.

Ice Hockey: The player symbols may be moved horizontally.

Boxing: The boxer symbol under human control may be moved horizontally.

Fishing Derby: The end of the fishing line symbols may be moved horizontally.

B. Tennis: The player symbols under control of the human player may be moved vertically.

Ice Hockey: The player symbols may be moved vertically.

Boxing: The boxer symbol under control of the human player may be moved vertically.

Fishing Derby: The end of the fishing line symbols may be moved vertically.

C. Tennis, Ice Hockey, Boxing and Fishing Derby: Essentially the Activision television game cartridge, the joystick, the microprocessor, and the peripheral interface adapter.

INTERROGATORY NO. 132

For each combination of the games identified in response to Interrogatory No. 38 of Defendant's First Set of Interrogatories to Plaintiffs (namely, "Fishing Derby", "Boxing", "Tennis" and "Ice Hockey") and the consoles identified in response to Interrogatory No. 50 of Defendant's First Set Of Interrogatories To Plaintiffs (namely, the Atari VCS Model 2600, the Sears Tele-Game Video Arcade, and the combination of the Colecovision game console and the Expansion Module 1) which

plaintiffs contend constitutes an infringement of Claim 60 of the United States Patent Re. 28,507, identify the elements which plaintiffs contend correspond to the following elements of the claim:

A. A vertical synchronization signal;

B. A horizontal synchronization signal;

C. Means for generating vertical and horizontal synchronization signals;

D. Means responsive to said synchronization signals for deflecting the beam of a cathode ray tube to generate a raster on the screen of the tube;

E. A first symbol on said screen;

F. A position for the first symbol which is directly controlled by a player;

G. Means coupled to said synchronization signal generating means and said cathode ray tube for generating a first symbol on said screen at a position which is directly controlled by a player;

H. A second symbol on the screen which is movable;

I. Means coupled to a said synchronization signal generating means and said cathode ray tube for generating a second symbol on said screen which is movable;

J. A first coincidence between said first symbol and said second symbol;

K. Means coupled to said first symbol generating means and said second symbol generating means for determining a first coincidence between said first symbol and said second symbol;

L. A distinct motion imparted to said second symbol in response to said coincidence; and

M. Means coupled to said coincidence determining means and said second symbol generating means for imparting a distinct motion to said second symbol in response to said coincidence.

RESPONSE:

Plaintiffs' responses to this interrogatory are based on their present knowledge and understanding of the Activision television game cartridges and the television game consoles and adapters referred to. Each response refers to the combination of the indicated Activision television game cartridge and the Atari VCS Model 2600 television game console, the Sears Tele-Game Video Arcade television game console, the Colecovision television game console with the Coleco Expansion Module 1, the Coleco Gemini television game console, or the Atari Model 5200 television game console with the Model 2600 adapter.

A. Tennis, Ice Hockey, Boxing and Fishing Derby: The vertical synchronization signals at the outputs of the television interface adapter and the television game console.

B. Tennis, Ice Hockey, Boxing and Fishing Derby: The horizontal synchronization signals at the outputs of the television interface adapter and the television game console.

C. Tennis, Ice Hockey, Boxing and Fishing Derby: Essentially the Activision television game cartridge, the microprocessor, and the television interface adapter.

D. Tennis, Ice Hockey, Boxing and Fishing Derby: Essentially the horizontal and vertical deflection circuitry of the associated television receiver.

E. Tennis: The player symbols under control of the human players.

Ice Hockey: The player symbols.

Boxing: The boxer symbol under control of the human player.

Fishing Derby: The end of the fishing line symbols.

F. Tennis, Ice Hockey, Boxing and Fishing Derby: The position of the first symbol.

G. Tennis, Ice Hockey, Boxing and Fishing Derby: Essentially the Activision television game cartridge, the joystick, the peripheral interface adapter, the television interface adapter, and the microprocessor.

H. Tennis: The ball symbol.

Ice Hockey: The puck symbol.

Boxing: The boxer symbol under control of the game.

Fishing Derby: The fish symbols.

I. Tennis, Ice Hockey, Boxing and Fishing Derby: Essentially the Activision television game cartridge, the television interface adapter, and the microprocessor.

J. Tennis: The coincidence between the human controlled player symbol and the ball symbol by which the player hits the ball.

Ice Hockey: The coincidence between the player symbol and the puck symbol by which the player intercepts the puck.

Boxing: The coincidence between the human controlled boxer symbol and the game controlled boxer symbol by which the human controlled boxer hits the game controlled boxer.

Fishing Derby: The coincidence between the fishing line symbol and any of the fish symbols by which the fish are caught.

K. Tennis, Ice Hockey, Boxing and Fishing Derby: Essentially the Activision television game cartridge, the microprocessor and perhaps the television interface adapter.

L. Tennis: The motion of the ball symbol following coincidence.

Ice Hockey: The motion of the puck symbol following coincidence.

Boxing: The motion of the game controlled boxer symbol following coincidence.

Fishing Derby: The motion of the fish symbol following coincidence.

M. Tennis, Ice Hockey, Boxing and Fishing Derby: Essentially the Activision television game cartridge and the microprocessor.

INTERROGATORY NO. 133

For each combination of the games identified in response to Interrogatory No. 38 of Defendant's First Set of Interrogatories to Plaintiffs (namely, "Fishing Derby", "Boxing", "Tennis" and "Ice Hockey") and the consoles identified in response to Interrogatory No. 50 of Defendant's First Set Of Interrogatories To Plaintiffs (namely, the Atari VCS Model 2600, the Sears Tele-Game Video Arcade, and the combination of the Colecovision game console and the Expansion Module 1) which plaintiffs contend constitutes an infringement of Claim 61 of the United States Patent Re. 28,507, identify the elements which plaintiffs contend correspond to the following elements of the claim:

A. A third symbol on the screen of the cathode ray tube;

B. Player control of the position of the third symbol;

C. Means coupled to said synchronization signal generating means and said cathode ray tube for generating a third symbol on said screen at a position which is controlled by a player;

D. A second coincidence between said third symbol and said second symbol;

E. Means coupled to said third symbol generating means and second symbol generating means for determining a second coincidence between said third symbol and said second symbol;

F. A first coincidence between said third symbol and said second symbol;

G. A distinct motion imparted to said second symbol in response to the second coincidence; and

H. Means coupled to said second and third symbol coincidence determining means and said second symbol generating means for imparting a distinct motion to said second symbol in response to said second coincidence.

NEUMAN, WILLIAMS, ANDERSON & OLSON
77 WEST WASHINGTON STREET
CHICAGO, ILLINOIS 60602

COPY

SEP 1984
PATENT DEPT.
SANDERS
ASSOC.

September 4, 1984

Algy Tamoshunas, Esquire
North American Philips Corporation
580 White Plains Road
Tarrytown, New York 10591

Re: Magnavox v. Activision

Dear Algy:

We have been pursuing Activision in an attempt to obtain further information in response to our interrogatories. We have received from Marla Miller of the Howard, Rice firm a letter dated August 28, 1984 purporting to supply some of the information requested. Since we believe we require further information as to certain ones of the interrogatories, we have prepared and filed a motion to compel further responses and supporting papers, copies of which are also enclosed.

Very truly yours,

NEUMAN, WILLIAMS, ANDERSON & OLSON

By _____
James T. Williams

JTW:de
Enclosures

cc: T. A. Briody - w/o encls.
L. Etlinger - w/encls.
T. W. Anderson - w/o encls.

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ORIGINAL
FILED

AUG 30 1984

WILLIAM L. WHITTAKER
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Sanders Associates, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE MAGNAVOX COMPANY, a corporation, and SANDERS ASSOCIATES, INC., a corporation, Plaintiffs, vs. ACTIVISION, INC., a corporation. Defendant,	No. C 82 5270 JPV NOTICE OF MOTION AND MOTION BY PLAINTIFFS TO COMPEL RESPONSES TO INTERROGATORIES Hearing Date: September 21, 1984 Time: 1:30 p.m.

PLEASE TAKE NOTICE that, on September 21, 1984 at 1:30 p.m., or as soon after that time as the matter may be heard before United States Magistrate F. Steele Langford, the plaintiffs Magnavox Company and Sanders Associates, Inc. will seek an order requiring the defendant Activision, Inc.

to give complete responses to plaintiffs' Interrogatory Nos. 2, 3, 7(xii), 8 and 9.

This motion is made on the ground that defendant has failed to give full and complete answers to interrogatories as required by the Federal Rules of Civil Procedure.

This motion is based upon Rule 37(a) of the Federal Rules of Civil Procedure, upon Local Rule 220-6 (because this motion is related to the subject matter of a motion brought by defendant for hearing at the same date and time) and upon the accompanying Declaration of James T. Williams, Memorandum of Points and Authorities in support, Certification in Compliance with Local Rule 230-4(a), a proposed form of order and all papers, pleadings and records on file in this action.

Date: August 30, 1984.

McCUTCHEN, DOYLE, BROWN & ENERSEN

By _____
Attorneys for Plaintiff
The Magnavox Company

NOTICE OF MOTION AND MOTION BY PLAINTIFFS TO COMPEL RESPONSES TO INTERROGATORIES

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JUN 30 1984
CLERK, U.S. DISTRICT COURT
SAN FRANCISCO

United States District Court For The
Northern District Of California

THE MAGNAVOX COMPANY, a corporation, and SANDERS ASSOCIATES, INC., a corporation, Plaintiffs, vs. ACTIVISION, INC., a corporation, Defendant.	No. C 82 5270 JPV PLAINTIFFS' PROPOSED FORM OF ORDER ON PLAINTIFFS' MOTION TO COMPEL RESPONSES TO INTERROGATORIES

The Court having considered plaintiffs' motion to compel defendant to respond to interrogatories, and it appearing to the

Court that good cause has been shown in support of plaintiffs' motion:

NOW, THEREFORE, IT IS ORDERED:

That plaintiffs' motion is hereby granted and defendant shall answer plaintiffs' interrogatories 2, 3, 7(xii), 8, and 9 fully and completely within four calendar days of the date of this order. Dated: September __, 1984.

_____
John P. Vukasian, Jr.
United States District Judge

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United States District Court For The
Northern District Of California

THE MAGNAVOX COMPANY, a corporation, and SANDERS ASSOCIATES, INC., a corporation, Plaintiffs, v. ACTIVISION, INC., a corporation, Defendant.	Civil Action C82 5270 JPV Hearing Date: September 21, 1984 Time: 1:30 p.m. DECLARATION OF JAMES T. WILLIAMS

I, JAMES T. WILLIAMS, declare and state as follows:

1. I am a partner in the firm of Neuman, Williams, Anderson & Olson, attorneys for plaintiffs in this action, and I have been directly involved in substantially all of plaintiffs'

efforts to obtain discovery in this matter.

2. I prepared the Memorandum in Support of Plaintiffs' Motion to Compel Responses to Interrogatories, and I am personally familiar with all of the factual matters discussed in that Memorandum. To the best of my knowledge and belief, those factual matters are truly and correctly set forth in the aforesaid Memorandum.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Date: August 29, 1994

James T. Williams

COPY

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United States District Court For The
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THE MAGNAVOX COMPANY, a corporation, and SANDERS ASSOCIATES, INC., a corporation, Plaintiffs, v. ACTIVISION, INC., a corporation, Defendant.	Civil Action C82 5270 JPV Hearing Date: September 21, 1984 Time: 1:30 p.m. CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 230-4(a)

I hereby certify that I have complied with the requirements of Local 230-4(a) by conferring with counsel for defendant as set forth in the Memorandum in Support of Plaintiffs' Motion To Compel Responses To Interrogatories.

Date: August 29, 1984

James T. Williams
One of the Attorneys for
Plaintiffs

CERTIFICATE OF COMPLIANCE

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THE MAGNAVOX COMPANY, a corporation, and SANDERS ASSOCIATES, INC., a corporation, Plaintiffs, v. ACTIVISION, INC., a corporation, Defendant.	No. C 82 5270 JPV MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL RESPONSES TO INTERROGATORIES Hearing Date: September 21, 1984 Time: 1:30 p.m.

This motion seeks to obtain from the defendant, Activision, Inc., full and complete responses to plaintiffs' interrogatories 2, 3, 7(xii), and 8 and 9. Plaintiffs'

interrogatories 1-10 were served early in this action. Defendant responded to interrogatories 2, 3, 8 and 9 only incompletely and indicated the subjects matter thereof were still under investigation and review. As trial in this case is now imminent, defendant's investigation and review must now be completed and full and responsive answers supplied. As to interrogatory 7(xii), defendant has supplied plaintiff with only incomplete information; the information requested must now be supplied in its entirety. Copies of Activision's interrogatory responses (which responses include copies of the interrogatories) are attached hereto as Exhibit A; a letter dated August 28, 1984 from defendant's counsel purporting to supply further information in response to some of the interrogatories is attached hereto as Exhibit H.

BACKGROUND

This is an action for infringement of U.S. Patent Re. 28,507 (the '507 patent). That patent relates to television games. It is owned by the plaintiff Sanders Associates, Inc. and is exclusively licensed to the plaintiff The Magnavox Company. Activision is in the business of designing, manufacturing, and selling television game cartridges. Plaintiffs allege that Activision's sales of approximately thirteen of its television game cartridges in the United States constitute acts of infringement of the '507 patent.

The complaint was filed on September 28, 1983. Activision's answer alleges as an affirmative defense that the '507 patent is invalid and unenforceable, among other things. It also filed a first counterclaim affirmatively seeking a declaratory judgment that the patent is invalid and unenforceable.

Plaintiffs' interrogatories 1-10 were served upon defendant on February 23, 1983. Defendant's responses were served approximately two months later. The interrogatories in large measure sought the grounds for defendant's assertion that the '507 patent is invalid and not infringed. They also sought information as to the sales of the Activision television game cartridges. As to most of the interrogatories at issue in this motion, defendant did not object to the interrogatory or otherwise assert that plaintiffs were entitled to anything other than full and complete responses. Instead, defendant responded to the general effect that either the matter was still under investigation to develop further facts or information, or the facts and information which were available were still under review. This case is set to commence trial on October 6, 1984. By this time, Activision must have completed its investigation and review; it should be required to give full and complete responses to plaintiff's interrogatories promptly and without delay.

Defendant's counsel in a personal conference on August 14, 1984 stated that Activision would be updating its prior interrogatory responses, and this was confirmed in a telephone

conference on August 23, 1984. On August 29, 1984, plaintiffs received a letter (Exhibit H) purporting to supply further information as to at least some of the interrogatories, but even the responses as supplemented are insufficient, requiring the filing of this motion.

INTERROGATORIES 2 AND 3

Interrogatories 2 and 3 seek the basis for defendant's contention that the '507 patent is invalid over the prior art. In part, they seek the identification of the items of prior art which defendant relies upon as rendering the '507 patent invalid. Activision responded by referring to lists of prior art presented in prior lawsuits on this same patent and a pending U.S. patent application. These lists are attached hereto as Exhibit B (Notice of Bally, Midway and Empire), C (Notice of Atari and Sears, Roebuck & Co.), D (Notice of Mattel), and E (Prior art in Baer reissue application). Mere reference to only Exhibit C makes preposterous any claim that Activision will rely on all the prior art referred to in those lists. That exhibit identifies some 115 U.S. patents, 8 foreign patents, 20 publications, and 9 other alleged activities. Surely Activision does not intend to rely on all those items of prior art. Activision's August 28 letter merely aggravated the problems; it included another list of some 31 alleged items of prior art.

Indeed, Activision's formal response to interrogatory 2 explicitly recognized that it would not rely on all the items of prior art in the lists there referred to. That response stated, in part:

> "Defendant will identify the prior art it considers most pertinent after a detailed analysis of all prior art presented."

The August 28 letter further stated that Activision's statement of the prior art it intends to use at trial is still to come. Defendant should make the promised identification now.

Interrogatory 3 requests a statement of any contentions of defendant that the '507 patent is invalid under the provisions of 35 U.S.C. §103. That statutory section provides that a patent is invalid:

> "If the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains."

The U.S. Supreme Court has stated a three step factual analysis to arrive at a legal conclusion as to whether a patent will survive a challenge to its validity under 35 U.S.C. §103.

> "Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved."

Graham v. John Deere Co., 383 U.S. 1, 17 (1966).

Interrogatory 3 specifically seeks, among other things, defendant's contention as to the pertinent art and the level of ordinary skill in that art at the relevant times. The requested information is highly relevant to the issues of this action, and should be provided now.

INTERROGATORY 7(xii)

Interrogatory 7(xii) requests that Activision set forth on a yearly basis its sales of its television game cartridges. Activision objected to this interrogatory on the grounds that it requests information on Activision cartridges which are not in issue. Plaintiffs restrict the interrogatory to those thirteen cartridges which plaintiffs allege are infringements. Further, since it is only plaintiffs' United States patent which is in issue, it is only sales in the United States which should be included in the response.

Defendant has previously supplied plaintiffs with some of the information requested. With a letter dated February 9, 1984, Activision's counsel provided plaintiffs with the total of domestic and international sales for the four television game cartridges then being charged with infringement (Exhibit F hereto[1]). Plaintiffs then identified further game cartridges as being charged with infringement and asked for sales information as

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[1] The actual sales numbers are expurgated from Exhibit F due to Activision's claim of confidentiality.

to those. Activision's counsel subsequently orally agreed to provide sales information for the further cartridges, which agreement was confirmed by letter, and was asked to provide the United States sales information specifically (Exhibit G, pages 2-3.). On August 14, 1984, Activision's counsel orally agreed to provide the sales information referred to in the prior correspondence, but it has not yet been forthcoming.

The patent infringement damage statute, 35 U.S.C. §284, provides that upon a finding of patent infringement, the patent claimant shall be awarded "damages adequate to compensate for the infringement but in no event less than a reasonable royalty for the use made of the invention by the infringer ...." In order to determine the plaintiffs' damages and the sums to which a reasonable royalty must be applied, it is necessary to have information on the sales of the accused television game cartridges. The information is clearly relevant and necessary; Activision has not denied this. It should be provided immediately.

INTERROGATORY 8

This interrogatory seeks the basis for Activision's allegations that it does not infringe the '507 patent. Activision's response states some such bases, but concludes:

> Defendant's review of the infringement question is incomplete at this time but further investigation will be undertaken.

CONCLUSION

In none of the interrogatories which are the subject of this motion is there even a claim that plaintiffs are not entitled to full and complete responses. Plaintiffs should receive such responses promptly.

Dated: August 30, 1984.

By _____

One of the Attorneys for Plaintiffs
The Magnavox Company and
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