

1 PILLSBURY, MADISON & SUTRO  
2 JEROME C. DOUGHERTY  
3 225 Bush Street  
4 Mailing Address P. O. Box 7880  
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6 Telephone: (415) 983-1000

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

10 Of Counsel:

11 NEUMAN, WILLIAMS, ANDERSON & OLSON  
12 THEODORE W. ANDERSON  
13 JAMES T. WILLIAMS  
14 77 West Washington Street  
15 Chicago, IL 60602  
16 Telephone: (312) 346-1200

17 United States District Court for the  
18 Northern District of California

19 THE MAGNAVOX COMPANY, a Corpora- )  
20 tion, and SANDERS ASSOCIATES, )  
21 INC., a Corporation, )

22 Plaintiffs, )

23 vs. )

24 ACTIVISION, INC., a Corporation, )  
25 Defendant. )

No. C 82 5270 TEH

AFFIDAVIT OF

THOMAS A. BRIODY

26 STATE OF NEW YORK )  
27 ) SS:  
28 COUNTY OF WESTCHESTER )

I, THOMAS A. BRIODY, do depose and say as follows:

1. I am an attorney licensed to practice in the States of California, New York, and others. I am presently the Corporate Patent Counsel for North American Philips

AFFIDAVIT OF THOMAS A. BRIODY

1 Corporation. The Magnavox Company (hereinafter "Magnavox"),  
2 one of the plaintiffs in this action, is a subsidiary of  
3 North American Philips Corporation. I first joined Magnavox  
4 as patent counsel in September, 1972. I joined the North  
5 American Philips Corporation organization when it acquired  
6 Magnavox. Since 1972 until now I have been responsible for  
7 the patent and other intellectual property affairs of Magnavox  
8 either directly or in the role of supervising the work of  
9 other attorneys that report to me.

10           2. Sanders Associates, Inc. (hereinafter "Sanders"),  
11 the other plaintiff in this action, is the owner of a number  
12 of patents, both United States and foreign, relating to  
13 television games. Those patents include U.S. patents 3,497,829;  
14 3,599,221; 3,728,480; 3,737,566; 3,778,058; 3,829,095;  
15 3,921,161; Re. 28,507 and its original patent 3,659,284; and  
16 Re. 28,598 and its original patent 3,659,285 and their  
17 counterpart patents in approximately twenty-two other countries.  
18 Magnavox is the exclusive licensee of Sanders under these  
19 patents with the right to sublicense the patents and bring  
20 actions for infringement of the patents. Since 1972 I have  
21 been responsible, either directly or in a supervisory role,  
22 for the Magnavox efforts to sublicense those patents and,  
23 when necessary, enforce those patents through litigation.  
24 Magnavox presently has over forty sublicensees under those  
25 patents throughout the world.

26           3. Since 1972, Magnavox has brought nine civil  
27 actions in the United States to enforce the Sanders television  
28 game patents, many of which actions involved multiple parties,

1 and has been a defendant in four other actions for declaratory  
 2 judgments on those patents. Those actions are as follows:

3	FILING	COURT &	SANDERS	FIRST	
4	DATE	NUMBER	PATENTS	NAMED	STATUS
			INVOLVED	DEFENDANT	
5	4/12/74	S.D.N.Y.	Re. 28,507	Midway Mfg. Co.	Settled
6		74C1657	Re. 28,598	(Dec. Jdg.	
7			3,728,480	plaintiff)	
			3,778,058		
8	4/15/74	N.D.Ill.	Re. 28,507	Bally Mfg. Corp.	Tried -
9		74C1030	Re. 28,598		Re. 28,507
					held valid
					& infringed
10	9/3/74	N.D.Ill.	Re. 28,507	Seeburg Industries	Tried -
11		74C2510	Re. 28,598		Re. 28,507
					held valid
					& infringed
13	7/11/75	N.D.Ill.	Re. 28,507	Atari, Inc.	Transferred
14		C75-1442	Re. 28,598	(Dec. Jdg.	to N.D.Ill.
			3,728,480	plaintiff)	- Settled
15	9/22/75	N.D.Ill.	Re. 28,507	Sears, Roebuck	Settled
16		75C3153	Re. 28,598	& Co.	
			3,728,480		
17	12/9/76	S.D.Fla.	Re. 28,507	Allied Leisure	Settled
18		76-2221	Re. 28,598	Industries	
			3,728,480		
19	8/25/77	N.D.Ill.	Re. 28,507	APF Electronics	Settled
20		77C3159			
21	12/13/78	N.D.Ill.	Re. 28,507	Bally Mfg. Corp.	Settled
		78C4951			
22	12/19/78	N.D.Ill.	Re. 28,507	Fairchild Camera	Settled
23		78C5041		& Instrument Corp.	
24	3/2/79	S.D.N.Y.	Re. 28,507	APF Electronics	Settled
		79C1129		(Dec. Jdg.	
				plaintiff)	
25	5/13/80	N.D.Ill.	Re. 28,507	K mart Corp.	Settled
26		80C2409			
27	8/5/80	N.D.Ill.	Re. 28,507	Mattel, Inc.	Tried -
28		80C4124			Re. 28,507
					held infringe
					on appeal

1 1/28/81 S.D.N.Y. Re. 28,507 North Amer. Settled  
2 81C0564 Foreign Trading  
3 (Dec. Jdg.  
plaintiff)

4 4. In 1977, Sanders decided to file an application  
5 to reissue U.S. patent 3,728,480, and such an application  
6 was actually filed in the United States Patent and Trademark  
7 Office on June 27, 1977. That application for reissue is  
8 still pending. At that time, Magnavox decided to take no  
9 further steps to enforce patent 3,728,480 while the appli-  
10 cation for reissue of that patent was pending. As a result,  
11 since the filing of that reissue application, Magnavox, to  
12 the best of my knowledge, has not charged any party with  
13 infringement of that patent and has not instituted any  
14 actions for infringement of that patent. If a party expressed  
15 a desire for a license under the 3,728,480 patent, Magnavox  
16 was willing to grant such a license on suitable terms, but  
17 Magnavox has done nothing since the filing of the reissue  
18 application to suggest to any party located in the United  
19 States that it had a need for a license under that patent  
20 because it was infringing it. Since the filing of the  
21 application to reissue the 3,728,480 patent and prior to  
22 filing this case, Magnavox has filed five actions for  
23 infringement of the patent alleged as infringed in this

24  
25  
26  
27  
28

1 action, i.e., Re. 28,507. None of those actions has included  
2 any charge of infringement of patent 3,728,480.

3  
4  
5 THOMAS A. BRIODY

6 Subscribed and sworn to

7 before me this \_\_\_\_\_

8 day of \_\_\_\_\_, 1982

9  
10 \_\_\_\_\_  
11 Notary Public

1 PILLSBURY, MADISON & SUTRO  
2 JEROME C. DOUGHERTY  
3 225 Bush Street  
4 Mailing Address P. O. Box 7880  
5 San Francisco, CA 94120  
6 Telephone: (415) 983-1000

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

10 Of Counsel:

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17 United States District Court for the  
18 Northern District of California

19	THE MAGNAVOX COMPANY, a Corpora-	)	
20	tion, and SANDERS ASSOCIATES,	)	
21	INC., a Corporation,	)	No. C 82 5270 TEH
22		)	
23	Plaintiffs,	)	AFFIDAVIT OF
24		)	
25	vs.	)	EDWARD W. GOODMAN
26		)	
27	ACTIVISION, INC., a Corporation,	)	
28		)	
29	Defendant.	)	

30 STATE OF NEW YORK )  
31 ) SS:  
32 COUNTY OF WESTCHESTER )

33 I, EDWARD W. GOODMAN, do depose and say as follows:

34 1. I am employed as a patent attorney for North  
35 American Philips Corporation. In fulfilling the duties  
36 associated with that job I report directly or indirectly to

1 Thomas A. Briody. During 1981 one of my duties was to act  
2 as Licensing Counsel for The Magnavox Company (hereinafter  
3 "Magnavox") and attempt to enter into sublicense agreements  
4 with various organizations in the television game business  
5 under the television game patents owned by Sanders Associates,  
6 Inc. and exclusively licensed to Magnavox. Those patents  
7 include the patent in suit in this action, patent Re. 28,507.

8 2. During 1981, I, as Licensing Counsel for  
9 Magnavox, initiated and carried on contacts between Magnavox  
10 and Activision, Inc. concerning Activision's infringement of  
11 the Re. 28,507 patent and its need for a license under that  
12 patent. These contacts were by letters and telephone, first  
13 with James H. Levy, President of Activision, and later with  
14 Aldo J. Test, outside patent counsel for Activision. Copies  
15 of my correspondence with Activision and its counsel are  
16 attached hereto.

17 3. During my communications with Activision the  
18 only patent which was ever discussed was Re. 28,507. My  
19 correspondence with Activision and its counsel makes no  
20 reference to U.S. patent 3,728,480. I do not recall and do  
21 not believe that during the course of any of my communications  
22 with Activision I ever raised the subject of the 3,728,480  
23 patent or in any way suggested or charged that Activision  
24 was infringing that patent or needed a license under that  
25 patent.

26 4. In his letter to me of July 15, 1981, Mr. Test  
27 requested a copy of a sublicense agreement. I replied and

28

1 with my letter of September 11, 1981 forwarded such a sublicense  
2 to Mr. Test. Both letters and the proposed sublicense are  
3 attached hereto. The U.S. patents to be included in the  
4 sublicense are listed at page 2 thereof. That list does not  
5 include the 3,728,480 patent.

6  
7  
8 EDWARD W. GOODMAN

9 Subscribed and sworn to  
10 before me this \_\_\_\_\_  
11 day of \_\_\_\_\_, 1982

12  
13 Notary Public



C

Blue copy

# The Magnavox Company

580 WHITE PLAINS ROAD  
TARRYTOWN, NEW YORK 10591

(914) 332-0222

1703-0198

March 23, 1981

James H. Levy, President  
Activision, Inc.  
759 E. Evelyn Avenue  
Sunnyvale, California 94086

Dear Mr. Levy:

I was recently talking with Mike Staup of Magnavox in Knoxville, Tennessee and he indicated that you are interested in producing game cartridges of your design for the Odyssey<sup>2</sup> video game. He also indicated that you have been producing game cartridges for the Atari programmable video game. You may, or may not, be aware that The Magnavox Company holds substantial patent rights in the video game field.

Magnavox is the exclusive licensee under a number of U.S. and Foreign patents relating to video games owned by Sanders Associates, Inc. of Nashua, New Hampshire. We believe that some of your game cartridges are directed to the same subject matter as at least one of these patents, notable reissue patent Re 28,507 (copy enclosed).

Under the terms of the above-noted license from Sanders Associates, Inc., The Magnavox Company has the right to grant worldwide non-exclusive sub-licenses under these patents and has at present more than 50 sub-licenses worldwide, including Atari, Inc.

We sincerely believe that you should be interested in obtaining a patent license for home-type video games. Please call or write us at the letter-head address at which point we can arrange a mutually convenient location and time to meet with you and/or your attorneys in order to answer any questions you might have concerning a license agreement.

Very truly yours,

THE MAGNAVOX COMPANY

Edward W. Goodman  
Licensing Counsel

EWG/jrw  
Enclosure

**ACTIVISION.**

March 30, 1981

*File: 1703-0198*

Mr. Edward W. Goodman  
THE MAGNAVOX COMPANY  
580 White Plains Road  
Tarrytown, NY 10591

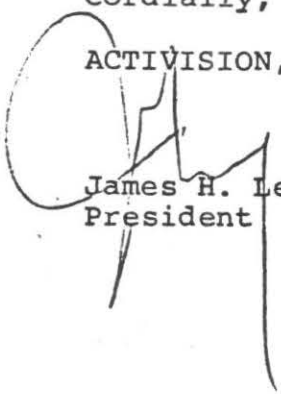
Dear Mr. Goodman:

Thank you very much for your letter of March 23.  
I have referred the patent document to our legal counsel  
in this area.

We will be in touch with you after he has had a  
chance to review the information.

Cordially,

ACTIVISION, INC.

  
James H. Levy  
President

JL:dm



**ACTIVISION.**

20 APR 01 2 19

MAIL ROOM

April 14, 1981

*File: 1703-0198*

Mr. Edward Goodman  
Licensing Counsel  
THE MAGNAVOX COMPANY  
580 White Plains Road  
Tarrytown, NY 10591

Dear Mr. Goodman:

Activision is currently producing game cartridges which are compatible with the Atari Video Computer System. We are not yet producing cartridges for the Magnavox Odyssey II game, although we believe that the availability of additional new cartridges for the Magnavox system can only enhance its desirability for the consumer.

It is not our company's policy to knowingly infringe valid patents of others. Since we manufacture game cartridges only and do not intend to manufacture a home video game system, we do not see the need for licensing discussions at this time.

Thank you for bringing the Magnavox/Sanders patent to our attention.

Cordially,  
ACTIVISION, INC.

*[Signature]*  
James H. Levy  
President

JL:dm

cc: Aldo Test, Esq.

*[Handwritten mark]*

*Blue*

# The Magnavox Company

580 WHITE PLAINS ROAD  
TARRYTOWN, NEW YORK 10591

(914) 332-0222

May 18, 1981

1703-0198

Mr. James H. Levy, President  
Activision, Inc.  
3255-2 Scott Boulevard  
Santa Clara, CA 95051

Dear Mr. Levy:

I am in receipt of your letter of April 14, 1981 and I have also been able to actually use several of your game cartridges in conjunction with the Atari Video Computer System, which I might add, are very interesting and challenging game cartridges.

However, I believe that you should reconsider your position on obtaining a patent license from The Magnavox Company. In particular, it is our belief that both the FISHING DERBY and Boxing game cartridges, when used with the Atari console, present combinations which infringe the reissue patent Re 28,507 (copy in your possession).

Noting the 2nd paragraph of your letter in which you state that you only manufacture game cartridges and not home video game systems, I would like to call your attention to 35 USC 271 (c) (see enclosed copy). Since these particular game cartridges are not a staple article and have no other substantial use other than to play an infringing game, it is our belief that the sale of these cartridges constitute an act of contributory infringement.

In light of the above, it would behoove you to favorably consider our offer of a patent license. Please respond promptly as we have an obligation to both ourselves and our licensees to protect the patent and to actively pursue any and all infringers.

Very truly yours,

THE MAGNAVOX COMPANY

Edward W. Goodman  
Licensing Counsel

EWG/jrw  
Enclosure