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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,

Plaintiffs,

vs.

ACTIVISION, INC., a Corporation,

Defendant.

No. C 82 5270 TEH

AFFIDAVIT OF

THOMAS A. BRIODY

22 STATE OF NEW YORK)
23 COUNTY OF WESTCHESTER) SS:

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

25 1. I am an attorney licensed to practice in the
26 States of California, New York, and others. I am presently
27 the Corporate Patent Counsel for North American Philips
28

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	et al.	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 infringed
					on appeal

1 1/28/81 S.D.N.Y. Re. 28,507 North Amer. Settled
2 81C0564 Foreign Trading
3 (Dec. Jdg.
4 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

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 *Thomas A. Briody*
5 THOMAS A. BRIODY

6 Subscribed and sworn to
7 before me this 15th
8 day of November, 1982

9
10 *Barbara Josephine Freeman*
Notary Public

11 BARBARA JOSEPHINE FREEMAN
12 Notary Public, State of New York
No. 4670230
13 Qualified in Westchester County
Term Expires March 30, 1987

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