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ATTORNEYS AT LAW

PATENTS, TRADEMARKS AND COPYRIGHTS
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PENINSULA OFFICE
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PALO ALTO, CALIF. 94306
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June 10, 1981

1703-0198

Mr. Edward W. Goodman
Licensing Counsel
The Magnavox Company
580 White Plains Road
Tarrytown, New York 10591

Dear Mr. Goodman:

We represent Activision in patent matters.

Your letters of March 23, 1981 and May 18, 1981
have been referred to us for response.

In your letter of March 23, 1981, you indicate
that more than 50 sub-licenses have been granted world-
wide, including a license to Atari, Inc.

We have read re-issue patent 28,507 and
particularly its claims. We note that all of the claims
are directed to a combination of elements. When the
purchaser installs the cartridge in the Atari machine
he completes a combination.

Assuming arguendo that the completed combination
is within a claim of the noted patent there still is no
infringement. The user has a license to practice the
combination because of the license he obtains through
Atari because of his purchase of the licensed Atari machine.

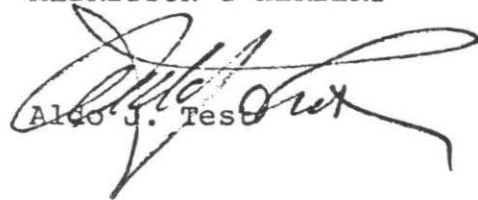
It is well established that there can be no contribu-
tory infringement if there is no direct infringement.
Aro Mfg Co., Inc. v. Convertible Top Replacement Co. 365
US 336, 128 USPQ 354 (1961).

Mr. Edward W. Goodman
Licensing Counsel
The Magnavox Company
Page 2
June 10, 1981

We are therefore of the opinion that our client
does not require a license for the manufacture and sale of
its game cartridges.

Very truly yours,

FLEHR, HOHBACH, TEST,
ALBRITTON & HERBERT



Alvin J. Test

AJT:sg

cc: James H. Levy

Arthur Schneiderman

O B.D. -
The Magnavox Company

580 WHITE PLAINS ROAD
TARRYTOWN, NEW YORK 10591

(914) 332-0222

1700-0198

June 26, 1981

Mr. Aldo J. Test
Flehr, Hohback, Test,
Albritton & Herbert
Suite 3400
Four Embarcadero Center
San Francisco, CA 94111

Dear Mr. Test:

Re: Activision - 1703-0198

This is in response to your letter of June 10, 1981.

As you stated in your letter, the claims of re-issue patent 28,507 are directed to a combination and, as such, a licensed product would be a combination manufactured, used and/or sold under the aegis of a valid license agreement. With respect to programmable video games, each combination of a "game cartridge" when installed in a "control unit", e.g. the Atari console, which allows a user to play an infringing game would then be the subject matter of a license under re-issue patent 28,507.

It is inconceivable to us how you can advise your client Activision, that the license to Atari would encompass any combination of a "game cartridge" along with the Atari console which would allow one to play an infringing game, when the infringing game combination was not sold by the Licensee Atari. It should be noted that the license to Atari only inures to game combinations sold by Atari.

It would therefore be in your client's best interest to advise them that if they want to avoid a suit for infringement, which in the alternative will be pursued, a license agreement with The Magnavox Company is then a necessity.

Very truly yours,

Edward W. Goodman
Licensing Counsel

EWG/jrw

cc: J.H. Levy- Activision

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HENRY K. WOODWARD
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WILLIAM J. EGAN III
REGINALD J. SUYAT

July 15, 1981

Mr. Edward W. Goodman
Licensing Counsel
The Magnavox Company
580 White Plains Road
Tarrytown, New York 10591

Re: Our File: G-36862/AJT
Activision - 1703-0198

Dear Mr. Goodman:

This is in response to your letter of June 26, 1981.

In your letter you take the position that any combination of a game cartridge along with an Atari Console would result in infringement of your company's patent. We have read the claims of the issued Patent 28,507 and find that all of the claims are directed to hardware supplied by Atari. Our client merely supplies software, which programs the Atari console. Since the patent only contains claims to apparatus we wonder how our client's cartridge is considered a part of the claimed combination. We would appreciate your comments.

We also note from your letter of May 18, 1981 that of all the games sold by our client you have singled out Fishing Derby and Boxing as combinations which allegedly infringe your claims. We are unclear as to which claims are involved. Would you please list those claims which you believe are infringed. Would you also please indicate why certain games are believed to be infringing and others are not. We ask this especially in view of the fact that in the present letter you state that any combination of a game cartridge with an Atari machine would be an infringement. This appears to us to be a change of position.

Along with the other options available to our client it would like to consider the standard license terms you offer to the industry. Would you please provide us with a copy of your standard license agreement for cartridge manufacturers.

Very truly yours,

FLEHR, HOHBACH, TEST,
ALBRITTON & HERBERT

Aldo J. Test

Check early
Atari file

AJT:ht
cc: Mr. Jim Levy

SKIF Paul

1703-0198

September 11, 1981

Mr. Aldo J. Test
Flehr, Hohback, Test,
Albritton & Herbert
Suite 3400
Four Embarcadero Center
San Francisco, CA 94111

Dear Mr. Test:

RE: ACTIVISION - 1703-0198

This is in response to your letter of July 15, 1981.

First of all, I have never stated that "any combination of a game cartridge along with an Atari Console would result in infringement" of U.S. Patent Re. 28,507. Rather, in my letter of June 26, 1981, I did state "With respect to programmable video games, each combination of a 'game cartridge' when installed in a 'control unit', e.g. the Atari console, which allows a user to play an infringing game would then be the subject matter of a license under re-issue patent 28,507" (emphasis added).

With respect to the applicability of the patent claims to your client's game cartridges, I refer you to claim 51 therein which states that the apparatus comprises "means for generating a hitting symbol; and means for generating a hit symbol . . ." (emphasis added) which would surely include the software contained within a cartridge in combination with a control unit (the Atari console).

The claims of U.S. Patent Re 28,507 which we consider to be infringed include, but are not limited to, claims 51, 52, 54, 55, 57, and 60.

With respect to our criterion for determining whether any particular game infringes the patent, I refer you to The Magnavox Co., et al v Chicago Dynamic Industries, et al. 201 USPQ 25 at 26, 27 in which District Judge Grady states "This invention

Mr. A.J. Test
September 11, 1981
Page -2-

discloses a movable hitting spot which is controlled by the player and which, by striking a hit spot, can change the direction of that hit spot."

Finally, acknowledging your request, I am enclosing a blank copy of our standard sub-license agreement for your review. I sincerely hope that you will then advise your client to take a license in order to avoid any unpleasant legal actions.

Very truly yours,

Edward W. Goodman
Licensing Counsel

cc: J.H. Levy - Activision

NONEXCLUSIVE SUBLICENSE AGREEMENT
FOR
HOME VIDEO GAME DEVICES

AGREEMENT, having an effective date of _____, by and
between THE MAGNAVOX COMPANY (hereinafter called LICENSOR), a
corporation of the State of Delaware, U.S.A., having a place of
business at ~~1700 Magnavox Way, Fort Wayne, Indiana, U.S.A., 46804~~ and
100 East 42nd Street, New York, New York, U.S.A., 10017
(hereinafter called LICENSEE),

W I T N E S S E T H

WHEREAS, LICENSOR is the exclusive licensee under a plurality of
patents and patent applications, the titles of which reside in Sanders
Associates, Inc. (hereinafter called SANDERS), a corporation of the
State of Delaware, U.S.A., having an office at Daniel Webster Highway
South, Nashua, New Hampshire 03061;

WHEREAS, LICENSOR has the exclusive right under an Agreement
dated January 27, 1972, as amended by a Supplemental Agreement
effective January 1, 1976, between itself and SANDERS (hereinafter
referred to as OTHER LICENSE AGREEMENT) to grant licenses under such
plurality of patents and applications; and

WHEREAS, LICENSEE desires a nonexclusive sublicense under certain
patents of such OTHER LICENSE AGREEMENT.

NONEXCLUSIVE SUBLICENSE AGREEMENT
FOR
HOME VIDEO GAME DEVICES

AGREEMENT, having an effective date of _____, by and
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corporation of the State of Delaware, U.S.A., having a place of
business at 100 East 42nd Street, New York, New York, U.S.A. 10017 and
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referred to as OTHER LICENSE AGREEMENT) to grant licenses under such
plurality of patents and applications; and

WHEREAS, LICENSEE desires a nonexclusive sublicense under certain
patents of such OTHER LICENSE AGREEMENT.

NOW, THEREFORE, for and in consideration of the mutual understanding and obligations herein set forth, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.01 As used herein, the following terms shall have the following meanings:

(a) LICENSED PRINCIPAL PATENTS shall mean the following Patents:

<u>United States Patent No.</u>	<u>Issue Date</u>
3,497,829	02/24/70
3,599,221	08/10/71
3,659,284	04/25/72
3,659,285	04/25/72
3,737,566	06/05/73
3,778,058	12/11/73
3,829,095	08/13/74
RE 28,507	08/05/75
RE 28,598	10/28/75
3,921,161	11/18/75

and any and all reissues, divisions, continuations and extensions of any such Patents.

(b) LICENSED SECONDARY PATENTS shall mean the Patents and Patent Applications of Argentina, Australia, Belgium, Canada, France, Great Britain, Greece, Holland, Hong Kong, India, Israel, Italy, Japan, Mexico, Singapore, Spain, Sweden, Switzerland, Venezuela, West Germany, and West Malaysia which are set forth on the Attached Exhibit A, and any and all reissues, divisions, continuations and extensions of any such Patents and Patent Applications in such Countries.

(c) LICENSED PATENTS shall mean both LICENSED PRINCIPAL PATENTS and LICENSED SECONDARY PATENTS.

(d) LICENSED PRODUCT shall mean any consumer or home electronics type game apparatus (including housing, power-supply, controls and means of attachment to a television receiver or monitor), which employs apparatus, circuits, systems, methods or improvements covered by one or more of LICENSED PATENTS (as defined above), with such coverage being determined by and to the extent of that provided by the law of the country of Licensed Patent issuance for the generation, display, control, manipulation, and use of symbols, geometric figures, or other objects on cathode ray tubes such as television-type displays. The term LICENSED PRODUCT as used herein shall not include any apparatus, circuits, systems, methods or improvements covered by LICENSED PATENTS for coin-operated amusement games or other type of commercial amusement games not intended primarily for home use, and further shall not include in its meaning any apparatus, circuits, systems, methods or improvements covered by LICENSED PATENTS for a home game built into or provided as an integral part of a television receiver. If any home game which is not a LICENSED PRODUCT comprises a LICENSED PRODUCT when considered in combination with an accessory unit (such as a toy pistol or rifle) which is removably connectable to such home game, one such accessory unit which is not sold with a home game (the total of which are hereinafter referred to as the first quantity) shall, for royalty determining purposes, be considered in combination with such a home game as comprising a LICENSED PRODUCT

notwithstanding such accessory unit is not sold with such home game. The term LICENSED PRODUCTS as used herein shall include LICENSED PROGRAMMABLE PRODUCTS, LICENSED PROGRAMS, and LICENSED NON-PROGRAMMABLE PRODUCTS. A LICENSED PROGRAMMABLE PRODUCT shall be a home game comprising a LICENSED PRODUCT which includes a control unit (such as a microprocessor) and one memory unit or circuit element (either residing and incorporated in the housing of the control unit or removably connectable thereto) which when connected together for operation comprises, in combination, apparatus, circuits, systems, methods or improvements covered by one or more of LICENSED PATENTS. Each such control unit being capable of having more than one memory unit or circuit element connected for operation with it whereby a purchaser of a LICENSED PROGRAMMABLE PRODUCT can program it differently depending upon which memory unit or circuit element he connects with the control unit. If any control unit does not have at least one memory unit or circuit element residing and incorporated in its housing, such that a combination exists in that housing which comprises a LICENSED PROGRAMMABLE PRODUCT, one unincorporated such memory unit or circuit element (the total of which are hereinafter referred to as the second quantity), whether or not sold together with a control unit shall, for royalty determining purposes, be considered in combination with such a control unit as comprising a LICENSED PROGRAMMABLE PRODUCT. LICENSED ACCESSORY shall mean each accessory unit in excess of those of the first quantity which is not sold with a home game and which when connected for operation with a home game

comprises in combination therewith apparatus, circuits, systems, methods or improvements covered by one or more of LICENSED PATENTS. LICENSED PROGRAM shall mean each memory unit or circuit element not incorporated in the housing of a control unit, in excess of those of the second quantity, which when connected for operation with a control unit comprises in combination with the control unit a LICENSED PROGRAMMABLE PRODUCT. LICENSED NON-PROGRAMMABLE PRODUCTS shall include any home game comprising a LICENSED PRODUCT which does not come within the definition of LICENSED PROGRAMMABLE PRODUCT, LICENSED ACCESSORY or LICENSED PROGRAM.

(e) NET SELLING PRICE for each LICENSED PRODUCT shall mean the invoice price of the equipment comprising each LICENSED PRODUCT, F.O.B. Inland Carrier at Factory of LICENSED PRODUCT manufacture. All invoice prices hereunder shall be determined after deduction of trade and quantity discounts but before deducting any other item and shall be understood not to include commodity taxes, insurance premiums for transportation, transportation costs and special packaging costs charged for separately, if any.

(f) TERRITORY shall mean The United States of America.

(g) DOLLARS shall mean United States of America Dollars.

(h) SUBSIDIARY shall mean any corporation (including any legal entity similar thereto) or other kind of business organization in which LICENSOR or LICENSEE, as the case may be, now or hereafter during the term of this Agreement has a "controlling interest". The term SUBSIDIARY also includes any other corporation or other kind of business organization in which such a corporation or business

organization controlled by said LICENSOR or LICENSEE, now or hereafter during the term of this Agreement has a "controlling interest". "Controlling interest" in the case of a corporation or business organization shall mean direct or indirect ownership or control by LICENSOR or LICENSEE of that number of the shares of said corporation, entity, or organization which represents the right to elect a majority of the directors of the corporation, or persons performing similar functions; and in the case of any other kind of business organization, it means that direct or indirect ownership or control of the capital thereof, or other interest therein, by or through which LICENSOR or LICENSEE exercises or has the power to exercise in any manner, directly or indirectly, control or direction thereof.

ARTICLE II

LICENSES AND RIGHTS

2.01 LICENSOR hereby grants to LICENSEE, subject to the reservations and conditions set forth herein, a nonexclusive license under LICENSED PRINCIPAL PATENTS, without the right to sublicense, to make and have made LICENSED PRODUCTS in and for the TERRITORY and a nonexclusive license under LICENSED PRINCIPAL and SECONDARY PATENTS, without the right to sublicense, to use and sell LICENSED PRODUCTS made or had made by LICENSEE hereunder in the Countries of Argentina, Australia, Belgium, Canada, France, Great Britain, Greece, Holland, Hong Kong, India, Israel, Italy, Japan, Mexico, Singapore, Spain, Sweden, Switzerland, United States of America, Venezuela, West Malaysia and West Germany.

2.02 Nothing herein shall be construed as preventing or restricting either party from manufacturing, using, or selling any product in any country or territory, it being understood, however, that no licenses under patents expressed or implied, are hereby granted except under LICENSED PRINCIPAL and SECONDARY PATENTS as defined in Paragraphs 1.01 (a) and (b) of Article I, and to the extent set forth in Paragraph 2.01 of this Article II.

2.03 LICENSOR hereby warrants that it has the right to grant the license herein granted to LICENSEE.

ARTICLE III

CONSIDERATION

3.01 In consideration of the nonexclusive licenses herein granted by LICENSOR to LICENSEE, LICENSEE agrees to and shall make payment to LICENSOR as follows:

(a) An initial payment of One Hundred Thousand DOLLARS (\$100,000) due and payable to LICENSOR thirty (30) days after execution of this Agreement. This initial payment shall be considered as an advanced nonreturnable royalty payment creditable for royalties which are due or become due under the non-exclusive license.

(b) A basic royalty for the Patent License based on a percentage of the NET SELLING PRICE for each LICENSED PRODUCT made, had made,

used, sold, leased, or otherwise disposed of (except as scrap) under any of the LICENSED PRINCIPAL PATENTS on and after the effective date of this Agreement as follows:

(i) Five Percent (5%) of the NET SELLING PRICE for each such LICENSED PRODUCT for the first Two Hundred Fifty Thousand (250,000) such LICENSED PRODUCTS made, had made, used and/or sold under this Agreement;

(ii) Four Percent (4%) of the NET SELLING PRICE for the next Two Hundred Fifty Thousand (250,000) such LICENSED PRODUCTS made, had made, used and/or sold under this Agreement; and

(iii) Three Percent (3%) of the NET SELLING PRICE for each such LICENSED PRODUCT in excess of Five Hundred Thousand (500,000) such LICENSED PRODUCTS made, had made, used and/or sold under this Agreement.

(c) A royalty for the Patent License based on a percentage of the NET SELLING PRICE for each such LICENSED PRODUCT used, sold, leased or otherwise disposed of (except as scrap) under any of the LICENSED SECONDARY PATENTS outside the TERRITORY, said percentage being One Percent greater than the applicable percentage for the basic royalty as set forth in Paragraph 3.01 (b) above.

(d) A credit shall be allowed against the royalty payable under subparagraph 3.01 (c) in an amount equal to any basic royalty paid under subparagraph 3.01 (b) for the same LICENSED PRODUCT.

ARTICLE IV

MAXIMUM AND MINIMUM ROYALTY SCHEDULES

4.01 Should any computed royalty payable by LICENSEE to LICENSOR under the provisions of subparagraphs 3.01 (b) and (c) hereof for LICENSED NON-PROGRAMMABLE PRODUCTS be less than the following minimum royalty during the term of this Agreement, then LICENSEE shall make payment of the applicable minimum royalty in lieu of said computed royalty as follows:

Minimum Royalty

\$0.50 per LICENSED PRODUCT

4.02 Should any computed royalty payable by LICENSEE to LICENSOR under the provisions of subparagraphs 3.01 (b) and (c) hereof for LICENSED PROGRAMMABLE PRODUCTS be either more than a maximum royalty of \$1.50 per LICENSED PROGRAMMABLE PRODUCT or less than a minimum royalty of \$1.00 per LICENSED PROGRAMMABLE PRODUCT during the term of this Agreement, then LICENSEE shall make payment of the respective maximum or minimum royalty for those LICENSED PROGRAMMABLE PRODUCTS in lieu of said computed royalty.

ARTICLE V

PAYMENTS

5.01 All payments made by LICENSEE to LICENSOR are to be in United States DOLLARS, or any other currency acceptable by LICENSOR, at their offices in New York, State of New York, United States of America.

5.02 LICENSEE shall make timely withholding and payments to appropriate authorities in the TERRITORY for the account of LICENSOR of any applicable withholding taxes or any other appropriate governmental taxes due from payments remitted by LICENSEE to LICENSOR. LICENSEE shall see that LICENSOR is given full credit with the appropriate government authorities for having paid such taxes and shall send to LICENSOR an official return and receipt reflecting such payments.

ARTICLE VI

REPORTING OF ROYALTIES

6.01 LICENSEE, within thirty (30) days after and as of the end of each calendar quarter of each year during the term of this Agreement, shall furnish to LICENSOR a royalty report specifying:

(a) the total number of LICENSED PRODUCTS which have been made, had made, used, sold, or otherwise disposed of (except as scrap) in any country by LICENSEE, on a country by country basis, during the preceding calendar quarter,

(b) in separate listings the number and types of LICENSED PROGRAMMABLE PRODUCTS, LICENSED ACCESSORIES, LICENSED PROGRAMS and LICENSED NON-PROGRAMMABLE PRODUCTS used and/or sold during the preceding calendar quarter and the prices thereof upon which royalties are based;

(c) the amount or amounts due to LICENSOR,

(d) the taxes of any government withheld and paid on behalf of LICENSOR pursuant to Paragraph 5.02 above.

6.02 Each report so submitted or submitted under the terms of Paragraph 6.03 below shall be accompanied by the payments due to LICENSOR.

6.03 The first such royalty report shall be furnished to LICENSOR within thirty (30) days after this Agreement is signed by both parties and shall cover and include all LICENSED PRODUCTS made, had made, used, sold, or otherwise disposed of (except as scrap) by LICENSEE and its SUBSIDIARIES from the effective date of this Agreement. 6.04 LICENSEE agrees to make a written report to LICENSOR within thirty (30) days after the date of any termination by LICENSEE of any license under a LICENSED PATENT received by LICENSEE under this Agreement and within thirty (30) days of the termination of this Agreement howsoever arising, stating in such report the number and NET SELLING PRICES of all LICENSED PRODUCTS sold or otherwise disposed of and the number of LICENSED PRODUCTS manufactured but not sold or otherwise disposed of, and upon which royalty not previously reported to LICENSOR is payable in consequence of such LICENSED PATENT(S).

6.05 LICENSEE shall retain, for a period of six (6) years after making a royalty report, the records, files and books of account prepared in the normal course of business, which contain data reasonably required for the computation and verification of the amounts to be paid and the information to be given in such report. LICENSEE shall permit the reasonable inspection, at reasonable times

during normal business hours, at LICENSOR'S expense, of such records, files and books of account by a certified public accountant acceptable to LICENSEE. Said accountant shall be permitted to inspect said records, files, and books and LICENSEE shall give said accountant such other information as may be necessary and proper to enable the amounts of payments payable hereunder to be accurately ascertained. Neither LICENSOR nor said accountant shall disclose to anyone, directly or indirectly, any of the information which they obtain as a result of any such inspection, and such accountant shall report to LICENSOR only the amount of royalty due and payable.

6.06 LICENSEE shall pay interest at the rate of One and One-Half Percent (1-1/2%) per month on any sums due from LICENSEE to LICENSOR and not paid by their due date.

6.07 In order to insure to LICENSOR the full royalty payments contemplated hereunder, LICENSEE agrees that, in the event any LICENSED PRODUCTS shall be sold (1) to a corporation, firm, or association which, or individual who shall own a controlling interest in LICENSEE by stock ownership or otherwise, or (2) to a corporation firm or association in which LICENSEE or stockholders of the LICENSEE, or any subsidiary company of the LICENSEE shall own, directly or indirectly, a controlling interest by stock ownership or otherwise, or (3) to a corporation, firm, or association with which, or individual with whom LICENSEE or its stockholders or subsidiary companies shall have any agreement, understanding, or arrangement (such as, among

other things, an option to purchase stock, or an arrangement involving a division of profits or special rebates or allowances) without which agreement, understanding, or arrangement, prices paid by such corporation, firm, association, or individual for LICENSED PRODUCTS would be higher than the NET SELLING PRICE reported by the LICENSEE, or if such agreement, understanding, or arrangement results in extending to such corporation, firm, association, or individual lower prices for LICENSED PRODUCTS than those charged to outside concerns buying similar merchandise in similar amounts and under similar conditions, then, and in any of such events, the royalties to be paid hereunder in respect of such LICENSED PRODUCTS shall be based upon the NET SELLING PRICE at which the purchaser of LICENSED PRODUCTS so sold resells such PRODUCTS rather than upon the NET SELLING PRICE of the LICENSEE; provided, however, that the LICENSEE shall not be obligated under the foregoing to pay royalty based upon selling prices in excess of the standard net selling price at which it or any of the organizations or individuals associated with it as specified in this Paragraph shall sell LICENSED PRODUCTS to any wholly independent jobber or distributor.

ARTICLE VII

TERM AND TERMINATION

7.01 The word "termination" and cognate words such as "term" and "terminate" used in this Article VII are to be read, except where the contrary is specifically indicated, as omitting from their effect the

following rights and obligations, all of which shall survive any termination to the degree necessary to permit their complete fulfillment or discharge:

(a) LICENSEE's obligation to supply a terminal report in respect to terminated rights as specified in Section 6.04 of Article VI.

(b) LICENSOR's right to receive or recover and LICENSEE'S obligation to pay royalties accrued or accruable for payment at the time of any termination.

(c) LICENSEE's obligation to maintain records and LICENSOR'S right to conduct a final audit as provided in Section 6.05 of Article VI.

(d) Licenses under LICENSED PRINCIPAL and SECONDARY PATENTS running in favor of customers or transferees of LICENSEE in respect to LICENSED PRODUCTS sold or transferred by LICENSEE prior to any termination of this Agreement or of any license arising under this Agreement, subject to payment by LICENSEE of any royalties payable with respect to such LICENSED PRODUCTS.

(e) any cause of action or claim of either party, accrued or to accrue, because of any breach or default by the other party.

7.02 Unless otherwise terminated as provided in Sections 7.03, 7.04 or 7.05 of this Article VII, this Agreement shall run to the end of the life of the last to expire of the LICENSED PRINCIPAL and SECONDARY PATENTS and shall thereupon terminate.

7.03 At any time after _____ LICENSEE shall have the right to terminate this Agreement as a whole or its license and concomitant future obligations in respect to any LICENSED PRINCIPAL and SECONDARY PATENTS, provided there is no default hereunder, by ninety (90) days written notice to LICENSOR; but such termination shall not operate to relieve LICENSEE from its obligation to make a termination report hereunder or from its liability for payment of royalties on sales made hereunder prior to the date of such termination.

7.04 Unless otherwise specified herein, if either LICENSOR or LICENSEE shall default in the performance of any of the terms and provisions of this Agreement to be performed by it, and such default shall not be cured within sixty (60) days after written notice of such default is given by the nondefaulting party to the defaulting party, then at any time after the expiration of such sixty (60) days, the nondefaulting party may give written notice to the defaulting party of its election to terminate this Agreement. Thereupon, this Agreement shall terminate on the date specified in such notice, which shall not be less than thirty (30) days following the receipt of such last mentioned notice. Such right of termination shall not be exclusive of any other remedies or means of redress to which the nondefaulting party may be lawfully entitled, it being intended that all such remedies be cumulative.

7.05 If either LICENSOR or LICENSEE should be dissolved, or should file a voluntary petition in bankruptcy, or an order should be entered

pursuant to any law relating to bankruptcy or insolvency appointing a receiver or trustee for said party, then LICENSOR or LICENSEE, as the case may be, within sixty (60) days thereafter may give written notice to the party filing such petition in bankruptcy or subject to such order of its desire to terminate this Agreement. Thereupon, this Agreement shall terminate on the date specified in such notice, which shall not be less than thirty (30) days following the filing of such notice.

ARTICLE VIII

NO LEGAL REPRESENTATION

8.01 Nothing contained in this Agreement shall be construed as conferring any license or right with respect to any trademark, trade, or brand name, the corporate name of either party or any of its subsidiaries, or any other name or mark, or any contraction, abbreviation, or simulation thereof.

ARTICLE IX

DISCLAIMER OF WARRANTIES-SAVE HARMLESS

9.01 To the best of LICENSOR's knowledge, all LICENSED PRINCIPAL and SECONDARY PATENTS are valid, but LICENSOR does not guarantee the validity thereof. LICENSOR further does not warrant that the manufacture, use, installation, or sale by LICENSEE of the LICENSED PRODUCTS does not or shall not infringe the patents or other rights of persons not a party hereto. LICENSOR shall promptly advise LICENSEE

of any notice received by LICENSOR of any claimed infringement. LICENSOR shall not be obliged to defend or hold LICENSEE harmless against any suit, claim, demand, or action based on actual or alleged infringement of any patents or other rights belonging to persons not a party to this Agreement. Any such infringement by LICENSEE shall not relieve it from performance of its obligations hereunder.

9.02 LICENSOR hereby disclaims any and all liability or responsibility whatsoever for any loss or damage arising out of the production, design, sale, installation, or use of LICENSED PRODUCTS manufactured or sold by LICENSEE under this Agreement. LICENSOR does not warrant that such LICENSED PRODUCTS are or will be of merchantable quality or fit for any particular purpose for which they may be bought or used.

ARTICLE X

INFRINGEMENT BY THIRD PARTIES

10.01 LICENSEE shall promptly inform LICENSOR upon learning of any infringement of LICENSED PATENTS.

10.02 LICENSOR agrees to bring and prosecute such suits for infringement of the LICENSED PATENTS as may reasonably be necessary to protect unlicensed competition from materially interfering with the business of LICENSEE hereunder. However, LICENSOR shall not be obligated to bring more than one such suit at a time, or against more than one type of infringing device at a time.

ARTICLE XI
SUBSIDIARIES

11.01 This Agreement shall be binding upon and inure to the benefit of the SUBSIDIARIES and successors of each party hereto. It shall not be otherwise assignable by either of the parties hereto, in whole or in part, to any third party whatsoever, nor shall the rights hereof of either of the parties hereto otherwise be or become in any way, directly or indirectly, transferable or available to, or divisible or capable of being shared with, or inure to the benefit of any third party without the prior written consent of the other party hereto.

11.02 LICENSEE shall be responsible for, and hereby assumes full liability in respect of all royalty reports and payments for all LICENSED PRODUCTS made, made for, used, sold, or otherwise disposed of by its SUBSIDIARIES during the term of this Agreement.

ARTICLE XII
MARKING

12.01 LICENSEE agrees to mark all LICENSED PRODUCTS sold by it under the license herein granted with the word "Patents" or "Patent", respectively, and the numbers or number of the applicable patents or patent of the country of sale. LICENSOR shall give LICENSEE timely notice of any additional patents issuing pertaining to LICENSED PRODUCTS.

ARTICLE XIII

CONVERSION OF LICENSOR LICENSE
WITH SANDERS TO A NONEXCLUSIVE LICENSE

13.01 In the event that LICENSOR converts its license from SANDERS in the U.S.A. to a nonexclusive license, then LICENSEE shall from the date of notice of such conversion to a nonexclusive license, consider SANDERS the LICENSOR in this Agreement and shall make all payments and be responsible for all obligations under this Agreement to SANDERS.

ARTICLE XIV

NOTICES

14.01 Any notice or request required or permitted to be given under or in connection with this Agreement or the subject matter hereof shall be deemed to have been sufficiently given when, if given to LICENSEE, it shall be addressed to

and when, if given to LICENSOR, it shall be addressed to

Director of Licensing
The Magnavox Company
100 East 42nd Street
New York, New York 10017

and in each case sent by Registered Mail, postage prepaid. The date of receipt shall be deemed to be the date on which such notice or request has been given. Either party may give written notice of a change of address; and after notice of such change has been received, any notice or request shall thereafter be given to such party as above provided at such changed address.

ARTICLE XV

WAIVER--SEVERABILITY

15.01 Waiver--The Waiver by either party of a breach or default in any of the provisions of this Agreement by the other party shall not be construed as a waiver by such party of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power, or privilege that it has or may have hereunder operate as a waiver of any such right, power or privilege by such party.

15.02 Severability--If any term, clause or provision of this Agreement shall be judged to be invalid, the validity of any other term, clause, or provision shall not be affected; and such invalid term, clause, or provision shall be deemed deleted from the contract.

ARTICLE XVI
GOVERNING LAW

16.01 This Agreement shall be governed by and construed, and any claim or controversy arising with respect thereto shall be determined, in accordance with the laws and in the competent courts of New York.

ARTICLE XVII

COMPLIANCE BY PARTIES WITH LAWS
OF THEIR OWN GOVERNMENTS

17.01 LICENSEE shall at all times comply, at its own expense, with all applicable laws, regulations, and orders of the government of the United States of America and all departments, instrumentalities, or political subdivisions thereof, relating to or in any way affecting this Agreement and the performance by LICENSEE and/or LICENSOR hereunder. LICENSEE shall, at its own expense, negotiate and obtain any approval, license, or permit it may need in the performance of its obligations; shall declare, record, or take such other steps as required to render this Agreement binding; and shall make all payments required of it under this Agreement.

17.02 LICENSOR shall at all times comply, at its own expense, with all applicable laws, regulations, and orders of the Government of the United States of America, and of all states, departments, instrumentalities, or political subdivisions thereof, relating to or

in any way affecting this Agreement and the performance by LICENSOR and/or LICENSEE hereunder.

ARTICLE XVIII

ASSIGNMENT

18.01 Except as otherwise provided herein, LICENSEE shall not assign, transfer, sublicense, sublet, or encumber its interest in this Agreement or rights granted herein in any manner without the written consent of LICENSOR.

ARTICLE XIX

INTEGRATION

19.01 This instrument contains the entire and only agreement between the parties for the TERRITORY and supersedes all pre-existing agreements between them respecting its subject matter. No modification, renewal, extension, waiver, and (except as provided in Article VII hereof) no termination of this Agreement or any of its provisions shall be binding upon the party against whom enforcement of such modification, renewal, extension, waiver, or termination is sought, unless made in writing and signed on behalf of such party by one of its executive officers, or in the case of LICENSOR, by a duly authorized officer or the Director of Licensing. As used in this Article XIX the word "termination" includes any and all means of bringing to an end prior to its expiration by its own terms this Agreement, or any provision thereof, whether by release, discharge, abandonment, or otherwise.

ARTICLE XX

MORE FAVORABLE TERMS

20.01 In case LICENSOR shall grant a license under any LICENSED PRINCIPAL PATENTS under which a license is granted hereunder to any manufacturer of consumer or home type amusement games in the TERRITORY other than a company in which LICENSOR has a substantial interest, direct or indirect, such as N.V. Philips Gloeilampenfabrieken, or any of its subsidiaries, which license will permit such company or manufacturer to manufacture and sell for any use within the scope of the license herein granted at rates of royalty lower than that provided for in this Agreement (excepting licenses the consideration for which consists in whole or in part of patent rights or other rights of such substantial value as in the opinion of LICENSOR are sufficient to warrant a reduction in royalty rates below the rates provided for herein, or the acceptance of such rights in lieu of royalties), LICENSOR will promptly notify LICENSEE of the grant of such license and furnish it with a copy thereof, and LICENSEE shall have the option, at any time within thirty (30) days after the submission to it of a copy of such license agreement, to enter into a similar license agreement with LICENSOR and to substitute the same in place of this Agreement.

IN WITNESS WHEREOF, the parties hereto cause their corporate names to be affixed by their respective duly authorized officers or representatives.

THE MAGNAVOX COMPANY

By _____

Title _____

Date _____

Attest:

LICENSEE

By _____

Title _____

Date _____

Attest:

ARGENTINA

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401D	243,732	08/24/72	201,824	04/24/75
D-2580	243,733	08/24/72	208,872	03/15/77

AUSTRALIA

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	52,329	03/21/69	440,524	03/27/74
D-2401A	12,777	03/19/70	440,977	04/11/74
D-2560	51,980	03/17/69	429,985	04/10/73
D-2580	14,365/70	04/27/70	442,967	05/10/74
D-2837	15,257	05/19/70	441,126	03/25/74
D-3120A	68,922/74	05/14/74	478,656	04/15/77

BELGIUM

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	--Withdrawn and refiled as D-2401A			
D-2401A	79,290	09/19/69	739,124	03/19/70
D-2560	71,443	03/18/69	730,002	09/18/69
D-2580	89,546	05/27/70	751,008	11/27/70
D-2837	92,892	08/17/70	754,932	02/17/71
D-3120A	144,829	05/28/74	815,628	09/16/74

CANADA

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	045,885	03/17/69	934,056	09/18/73
D-2401A	069,111	12/05/69	948,400	06/04/74
D-2560	045,884	03/17/69	895,028	03/07/72
D-2580	075,965	02/26/70	920,160	01/30/73
D-2580re	236,739	09/30/75	993,001	07/13/76
D-2837	080,392	04/17/70	911,484	10/03/72
D-2837A	141,190	05/03/72	927,864	06/05/73
D-2837re	236,711	09/30/75	999,888	11/16/76
D-2401re	286,872	09/16/77		
D-3120A	201,026	05/28/77	1,010,464	05/17/77
D-3439	275,161	03/30/77		

FRANCE

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	69.07714	03/18/69	69.07714	03/14/74
D-2560	69.07715	03/18/69	69.07715	03/17/71
D-2580	70/19,368	05/27/70	70.19368	07/12/76
D-2837	70/29,530	08/11/70	70.29530	05/17/76
D-3120A	74/18,382	05/28/74	74.18382	12/18/78

GREAT BRITAIN

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	13,242	03/13/69	1,268,821	07/26/72
D-2401A	43,036	09/08/70	1,268,822	07/26/72
D-2560	13,243/69	03/13/69	1,255,224	03/29/72
D-2580	25,007	05/22/70	1,318,051	09/19/73
D-2580A	6324/73	05/22/70	1,319,410	10/03/73
D-2837	38,506	08/10/70	1,328,223	12/27/73
D-3120A	23712/74	05/29/74	1,472,480	08/31/77
D-3439	16153/77	04/19/77	1,566,337	07/02/80

GREECE

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401D	44	08/19/72	45,937	10/31/72
D-2580	45	08/19/72	46,582	08/19/72
D-2580re	4943	08/01/74	51,156	01/17/75
D-2401DR	57881	12/22/78	57,881	

HOLLAND

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	69/04775	03/14/69	153,404	09/17/77
D-2560	69/03946	03/27/69	154,894	02/18/78
D-2580	70/07591	05/26/70	152,422	06/16/77
D-2401A	77/06407	06/10/77		
D-3120A	74/06530	05/15/74		

HONG KONG

<u>Docket No.</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	75/1976	02/12/76	75/1976	02/12/76
D-2580A	76/1976	02/12/76	76/1976	02/12/76
D-2837	77/1976	02/12/76	77/1976	02/12/76
D-2401A	483/1977	09/22/77	483/1977	09/22/77
D-2580	484/1977	09/22/77	484/1977	09/22/77
D-3120A			578/1977	11/17/77
D-3439			506/1980	09/11/80

INDIA

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401D	1531/72	09/28/72	136.499	09/28/72

ISRAEL

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	31,836	03/18/69	31,836	07/28/72
D-2401A	38,735	02/10/72	38,735	05/29/73
D-2560	31,826	03/17/69	31,826	03/30/72
D-2580	33,915	02/02/70	33,915	05/29/73
D-2580A	41,011	12/06/72	41,011	05/29/73
D-2837	34,263	04/08/70	34,263	05/29/73
D-3120A	44,575	04/04/74	44,575	01/05/77

ITALY

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2560	14,194A/69	03/17/69	961,012	12/10/73
D-2401A	24,773A/70	05/18/70	897,269	11/15/71
D-2580	24,954A/70	05/22/70	893,433	10/01/71
D-2837	28,773A/70	08/19/70	901,545	01/03/72
D-3120A	23,194A/74	05/27/74	1,019,625	11/30/77
D-3439	49,030A/77	04/20/77		

JAPAN

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	27,171/69	04/08/69		
D-2401A	46,828/70	05/30/70	765,636	07/11/74
D-2560	21,204/69	03/18/69	768,992	11/08/74

JAPAN (CON'T)

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2580	44,908/70	05/27/70	778,416	08/12/74
D-2580A	119828/74	10/16/74	852,060	11/12/76
D-2837	71,143/70	08/12/70	811,493	09/12/75
D-3120A	61,424/74	05/29/74		
D-3439	47,280/77	04/22/77		

KOREA

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-3439	955/77	04/20/77		

MEXICO

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401C	136,581	06/28/72	141,144	02/13/80
D-2580	136,584	06/28/72	140,468	10/30/79
D-2837	136,583	06/28/72	141,091	01/29/80

PHILLIPINES

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-3439	19601	03/30/77		

SINGAPORE

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2580A	380/1975	10/17/75	380/1975	02/13/76
D-2837	381/1975	10/17/75	381/1975	02/13/76
D-3439	354/1980	08/14/80	354/1980	09/03/80

SWEDEN

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2560	3521/70	03/13/69	368,467	10/10/74
D-2580	6931	05/20/70	364,186	05/30/74
D-2837	11,255/70	08/18/70	377,889	11/13/75
D-2837A	15697-7	12/13/74		
D-3120A	74/070,442	05/28/74	7,407,044-2	05/18/77
D-2401-1	7800417-3	01/13/78	7800417-3	01/22/81
D-2401-1	7800418-1	01/13/78	7800418-1	01/22/81
D-2401-3	7800419-9	01/13/78	7800419-9	01/22/81

SWITZERLAND

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2560	4101	03/17/69	512.864	09/15/71
D-2401A	4689/70	03/28/70	512.865	09/15/71
D-2580	7,777/70	05/25/70	529.491	10/15/72
D-2837	012,306/70	08/13/70	534.989	03/15/73
D-3120A	7340/74	05/28/74	600,718	12/15/77

VENEZUELA

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401D	1572-72	08/18/72	30.146	10/26/73
D-2580	1571-72	08/18/72	30.171	10/29/73
D-2580A	2581-74	12/19/74	33,789	06/10/76
D-2401DR	2119-77	11/04/77	34,070	

WEST GERMANY

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2401	P1917437.9	04/03/69		
D-2401A	P1951848.0	12/10/69	1,951,848	06/12/74
D-2560	P1913722.5	03/18/69	1,913,722	03/10/78
D-2580	P2017312.0	04/10/70	2,017,312	01/10/74
D-2837	P2030959.5	06/23/70	2,030,959	12/20/73
D-3120A	P2426249.5	05/29/74	2,426,249	06/13/80
D-3439	P2314670.9	04/01/77	2,714,670	01/08/79

WEST MALAYSIA

<u>Docket No.</u>	<u>Filing No.</u>	<u>Filing Date</u>	<u>Patent No.</u>	<u>Issue Date</u>
D-2580A	260/75	12/09/75	260/75	12/09/75
D-2837	261/75	12/09/75	261/75	12/09/75
D-3439			210/81	07/23/81

312 346 1200

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November 24, 1981

Mr. Edward W. Goodman
Licensing Counsel
The Magnavox Company
580 White Plains Road
Tarrytown, N.Y. 10591

USPC-IPD-TTN

30 NOV 81 12:15

Re: Activision - 1703-0198
Our File: G-36862/AJT

Dear Mr. Goodman:

This is in response to your letter of September 11, 1981 and our telephone discussion earlier this month.

In our telephone discussion I advised you that our client had considered the license offered by Magnavox and had sought our advice regarding the validity and scope of the patent(s) being licensed.

As you are aware, our client only manufactures and sells video game cartridges which are used in the licensed Atari Video Game System. Clearly there is no direct infringement under 35 USC 271(a) since our client does not sell the combination covered by the claims in the patents under consideration. In order to have contributory infringement there must be direct infringement. However, the Atari machines with which the cartridges are used are licensed and the license passes to the user on sale by Atari of the Video Game System. Thus, our opinion that our client does not require a license as previously expressed in our letter of June 10, 1981.

Assuming arguendo that the combination is to be considered it is our opinion that there is no infringement under the holding of Digitronic Corporation v. New York Racing Association, Inc. 187 USPQ 602.

We have also noted that the validity of the patents is being contested by others. The outcome of

Page two
Test to Goodman

November 24, 1981

such litigation will have a bearing on our client's future decisions.

Very truly yours,

FLEHR, HOHBACH, TEST,
ALBRITTON & HERBERT



Aldo J. Test

AJT:ht

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United States District Court for the
Northern District of California

15	THE MAGNAVOX COMPANY, a Corpora-)	
16	tion, and SANDERS ASSOCIATES,)	
17	INC., a Corporation,)	No. C 82 5270 TEH
18)	
18	Plaintiffs,)	AFFIDAVIT OF
19	vs.)	ROBERT T. MAYER
19)	
20	ACTIVISION, INC., a Corporation,)	
21)	
21	Defendant.)	

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

24
25 I, ROBERT T. MAYER, do depose and say as follows:
26 1. I am an attorney licensed to practice in the
27 State of New York. I am employed as Group Patent Attorney
28 for North American Philips Corporation; in fulfilling the

1 Counsel of Sanders Associates, Inc. in Nashua, New Hampshire
2 (hereinafter "Sanders"). Sanders is the owner of a number
3 of patents, both United States and foreign, relating to
4 television games. Those patents include U.S. patents 3,497,829;
5 3,599,221; 3,728,480; 3,737,566; 3,778,058; 3,829,095;
6 3,921,161; Re. 28,507 and its original patent 3,659,284; and
7 Re. 28,598 and its original patent 3,659,285 and their
8 counterparts in approximately twenty-two other countries.
9 Magnavox is the exclusive licensee of Sanders under those
10 patents.

11 2. In 1977, Sanders became aware of a prior art
12 reference which it was felt might have an effect on the
13 validity of its U.S. patent 3,728,480, but not on the Re.
14 28,507 patent. It subsequently decided to file an application
15 in the United States Patent and Trademark Office to reissue
16 U.S. patent 3,728,480 so that the Office could consider the
17 effect of the reference on the 3,728,480 patent. That
18 application was filed on June 27, 1977 and is still pending.
19 I am familiar with the contents of both that application and
20 the 3,728,480 patent itself. None of the claims which are
21 presently in the reissue application is the same as any
22 claim in the original patent.

23 3. According to the rules of the Patent and
24 Trademark Office under which the application to reissue the
25 3,728,480 patent was filed, 37 C.F.R., members of the public
26 may have access to reissue applications and file protests to
27 the grant of such applications. The reissue applicant is
28

1 supplied with copies of such protest papers. Two parties
2 have already filed such protests in the application to
3 reissue the 3,728,480 patent. Activision, Inc. has filed no
4 protest in that application.

5
6 RICHARD I. SELIGMAN

7
8 Subscribed and sworn to
9 before me this ____ day
10 of _____, 1982

11
12 Notary Public