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12 United States District Court for the
13 Northern District of California

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15)
16 THE MAGNAVOX COMPANY, a Corpora-)
17 tion, and SANDERS ASSOCIATES,)
INC., a Corporation,)

18 Plaintiffs,)

19 vs.)

20 ACTIVISION, INC., a Corporation,)

21 Defendant.)

No. C 82 5270 TEH

REPLY TO FIRST AND
THIRD COUNTERCLAIMS

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23 Plaintiffs, The Magnavox Company and Sanders
24 Associates, Inc., reply to the First and Third counterclaims
25 of defendant, Activision, Inc., as follows, the numbered
26 paragraphs hereof corresponding to the numbered paragraphs
27 of those counterclaims:
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REPLY TO FIRST AND
THIRD COUNTERCLAIMS

1 27. Plaintiffs deny each and every allegation of
2 paragraph 27 of the First Counterclaim, and plaintiffs
3 further reply to paragraphs 13 through 19 of the Answer as
4 follows:

5 (a) Plaintiffs admit that United States Letters
6 Patent Re. 28,507 is one of a plurality of United States and
7 foreign patents owned by plaintiff herein Sanders Associates,
8 Inc. which relate specifically to television gaming apparatus,
9 that said plurality of television gaming patents includes,
10 without limitation, Patent No. Re. 28,507 charged herein to
11 be infringed and its predecessor Patent No. 3,659,284,
12 United States Letters Patent No. 3,659,285 and its reissue
13 patent Re. 28,598, and United States Letters Patent 3,728,480,
14 that in his decision upholding the Re. 28,507 patent Judge Grady
15 characterized said Patent 3,728,480 as the "pioneer patent"
16 in the art of playing games on a small scale with the players
17 participating in the game in an environment such as a home
18 or some place where a large computer would clearly not be
19 available, and that U.S. Patent 3,728,480 has not been
20 included by plaintiffs in the present litigation; plaintiffs
21 deny each and every other allegation of paragraph 13.

22 (b) Plaintiffs admit that plaintiff The Magnavox
23 Company has attempted to license certain ones of the plurality
24 of television game patents owned by plaintiff Sanders Associates,
25 Inc. to parties involved in the manufacture and/or sale of
26 television game apparatus, or cartridges therefor, coming
27 within the scope of those patents; plaintiffs deny each and
28 every other allegation of paragraph 14.

1 (c) Plaintiffs deny each and every allegation of
2 paragraph 15.

3 (d) Plaintiffs deny each and every allegation of
4 paragraph 16.

5 (e) Plaintiffs deny each and every allegation of
6 paragraph 17.

7 (f) Plaintiffs deny each and every allegation of
8 paragraph 18.

9 (g) Plaintiffs deny each and every allegation of
10 paragraph 19.

11 28. Plaintiffs deny each and every allegation of
12 paragraph 28 of the First Counterclaim.

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SECOND COUNTERCLAIM

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REPLY TO THIRD COUNTERCLAIM

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37. Plaintiffs repeat and incorporate herein by reference their replies to paragraphs 13 through 19 and 22 through 28 of the Answer and Counterclaims and further reply to paragraphs 20 and 21 of the Answer as follows:

1 (a) Plaintiffs deny each and every allegation of
2 paragraph 20.

3 (b) Plaintiffs admit that many of defendant's
4 cartridges charged to infringe are suitable for use only in
5 television game consoles heretofore manufactured and/or sold by
6 Atari, Inc. and that Atari's manufacture and sale of television
7 game consoles is licensed by plaintiff herein The Magnavox
8 Company; plaintiffs deny each and every other allegation of
9 paragraph 21.

10 38. Plaintiffs admit that defendant's Third
11 Counterclaim purports to arise under the laws of the United States
12 28 U.S.C. §1338(b), but otherwise deny each and every allegation
13 of paragraph 38 of the Third Counterclaim.

14 39. Plaintiffs deny each and every allegation of
15 paragraph 39 of the Third Counterclaim.

16 40. Plaintiffs deny each and every allegation of
17 paragraph 40 of the Third Counterclaim.

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19 WHEREFORE, plaintiffs pray as follows:

20 1. That each of defendant's First and Third
21 Counterclaims be dismissed.

22 2. That defendant's Second Counterclaim be
23 dismissed for failure to state a claim upon which relief can
24 be granted.

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3. That plaintiffs be awarded the relief prayed for in their complaint herein.

Dated: November __, 1982.

PILLSBURY, MADISON & SUTRO
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By _____
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The Magnavox Company and
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