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11 UNITED STATES DISTRICT COURT

12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 THE MAGNAVOX COMPANY, a corporation,)
and SANDERS ASSOCIATES, INC.,)
15 a corporation,)
16 Plaintiffs,)
17 v.)
18 ACTIVISION, INC., a corporation,)
19 Defendant.)

No. C 82 5270 JPV

PLAINTIFFS' SETTLEMENT
CONFERENCE STATEMENT

Magistrate
Frederick J. Woelflen

Date: September 13, 1984
Time: 9:30 a.m.

21 The following settlement conference statement is lodged
22 by plaintiffs pursuant to Local Rule 240-1. It is understood that
23 this document will not be filed or otherwise made a part of the
24 file in this case and will not be served on defendant or its
25 counsel.

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1 decided in plaintiffs' favor in the Mattel case.

2 A U.S. patent is presumed by statute to be valid. 35
3 U.S.C. § 282. Defendant bears the burden of proving to the con-
4 trary. The most common challenge to patent validity is an attempt
5 to show that the patented subject matter is taught or made obvious
6 by the prior art. 35 U.S.C. §§ 102 and 103. Activision has
7 identified sixteen items of prior art it will rely upon to estab-
8 lish invalidity of the '507 patent. Fourteen of those items were
9 part of the record leading to the trial of at least one of the
10 earlier two cases. Substantially all the prior art Activision
11 relies upon has previously been tested and found wanting when
12 measured against plaintiffs' '507 patent.

13 PROCEEDINGS TO DATE

14 This case has proceeded through the completion of
15 discovery. A status conference is scheduled for September 13,
16 1984 at 10:00 a.m., a pretrial conference is scheduled for
17 September 27, and trial is scheduled to commence on October 8,
18 1984. None of the prior proceedings have significantly narrowed
19 the issues as stated above.

20 ESTIMATES OF COST FOR TRIAL

21 Plaintiffs estimate the cost through completion of trial
22 will be in the range of \$50,000 to \$75,000.

23 AGREED FACTS AND ISSUES

24 Activision initially filed a counterclaim for a declara-
25 tory judgment that another of plaintiffs' patents, U.S. Patent
26 3,728,480, was invalid and not infringed by it. It has been

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1 tentatively agreed that this counterclaim will be dropped and
2 plaintiffs will agree not to assert that patent against Activision.

3 Activision also filed a counterclaim for unfair competi-
4 tion based on acts of the plaintiffs in attempting to enforce their
5 patents. Plaintiffs understand that Activision is no longer pur-
6 suing that counterclaim.

7 Activision also initially alleged that the '507 patent
8 is invalid because of an alleged failure to inform the Patent and
9 Trademark Office of certain purported items of prior art while the
10 application for that patent was pending. Plaintiffs understand
11 that Activision is no longer asserting that ground for invalidity.

12 DISCREET ISSUES

13 Plaintiffs have no knowledge of any such issue.

14 RELIEF SOUGHT

15 Plaintiffs seek an award of their damages caused by
16 Activision's infringement, which damages shall be not less than a
17 reasonable royalty for use of the patented subject matter, with
18 interest and costs. 35 U.S.C. § 284. The amount so determined
19 should also be trebled in light of the willful nature of Activi-
20 sion's infringement, 35 U.S.C. § 284, and plaintiffs should be
21 awarded their attorneys' fees, 35 U.S.C. § 285. Plaintiffs also
22 seek an injunction against further infringement of the '507 patent.

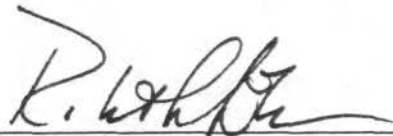
23 SETTLEMENT STATUS

24 Prior to the filing of this action, Magnavox offered
25 Activision a license under the '507 patent at its then current
26 royalty rates. Activision did not take a license. Magnavox will

PLAINTIFFS' SETTLEMENT CONFERENCE STATEMENT

1 still consider licensing Activision at its current royalty rate.
2 Prior to entering into such a license, the matter of Activision's
3 past infringement would have to be resolved.

4 As of the time this document is being prepared, Acti-
5 vision has made no offer to settle this action, and no serious
6 settlement negotiations have occurred. Based on sales information
7 Activision has provided to palintiffs, the lost royalty damages
8 due to past sales by Activision (with interest) is approximately
9 \$4 million, which should be tripled. Plaintiffs would be willing
10 to settle for \$12 million plus their attorneys' fees and an
11 injunction against further acts of infringement of the '507 patent.
12 Plaintiffs are also willing to consider resolution of this matter
13 and all future claims based upon this patent by entering into
14 a paid up, nonroyalty bearing license under the '507 patent with
15 Activision.

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