

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE MAGNAVOX COMPANY,)

Plaintiff,)

vs.)

BALLY MIDWAY MANUFACTURING CO.,)

Defendant.)

No. 83 C 2357
Hon. Prentice H.
Marshall

BALLY MIDWAY MANUFACTURING CO.,)

Third party plaintiff,)

vs.)

SANDERS ASSOCIATES, INC.,)

Third party defendant.)

The deposition of DR. THOMAS A. DE FANTI, called for examination pursuant to notice and the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before LISA A. KOTRBA, a notary public within and for the County of Cook and State of Illinois, at One IBM Plaza, 43rd Floor, Chicago, Illinois, on the 31st day of January, 1985, at the hour of 2:30 p.m.

Victoria Court Reporting Services, Inc.
189 WEST MADISON STREET SUITE 402 CHICAGO ILLINOIS 60602 443-1025

PRESENT:

REUBEN & PROCTOR

BY: MR. STEVEN WEISS
MR. DAVID MAHER
19 South LaSalle Street
Suite 1400
Chicago, Illinois 60603

on behalf of the plaintiff;

JENNER & BLOCK

BY: MR. RONALD L. WANKE
MR. ROGER R. WISE
One IBM Plaza
44th Floor
Chicago, Illinois 60611

on behalf of the defendant,
third party plaintiff.

ALSO PRESENT:

ROBERT PELOVITZ,
SANDERS ASSOCIATES, INC.

I N D E X

WITNESS:

DR. THOMAS A. DE FANTI

EXAMINATION

PAGE

BY MR. WEISS

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E X H I B I T S

NUMBER

PAGE

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12 1 MR. WANKE: We are resuming, for a limited purpose,
2 the deposition of Dr. DeFanti who has brought with him
3 today the matters referred to during his deposition.

4 I note for the record that Mr. Pelovitz of
5 Sanders Associates has been present in the room when the
6 slides and videotape have been produced.

7 We have now played a videotape having a time
8 code on it.

9 DR. THOMAS A. DE FANTI,
10 called as a witness herein, having been previously duly
11 sworn on oath, was examined and testified further as
12 follows:

13 FURTHER EXAMINATION

14 BY MR. WEISS:

15 Q. Dr. DeFanti, you know you are still under oath?

16 A. Yes.

17 Q. You produced today two VHS tapes, one of which
18 we just played, and that's in a box labeled, "Bally Midway
19 1/25/85 Dub W/TC Burn."

20 What does the W/TC stand for?

21 A. With time code burning.

22 Q. The label also says "Pac-Man, T. DeFanti Explain
23 Setup Game Play."

24 Is that a tape that you had prepared?

1 A. Yes.

2 Q. When did you have it prepared?

3 A. Last Thursday night which was the 24th.

4 Q. Where was it prepared?

5 A. At Bally Midway.

6 Q. Where is that location?

7 A. It's on Belmont Avenue in Franklin Park.

8 Q. And you were present while the tape was
9 prepared?

10 A. Yes.

11 Q. Who else was present in the room?

12 A. Roger Wise, the two video technicians and Cary
13 Mednick.

14 Q. There is also present in this room, that you
15 produced, another VHS tape titled, "Bally Midway 1/25/85
16 Pac-Man Setup Explanation Game Play, No Burn Through Time
17 Code."

18 Is that tape a duplicate of the tape which we
19 just saw absent the time code burn?

20 A. It's the same, but not a duplicate. In other
21 words, it wasn't copied from that tape; otherwise, it
22 would have the time code burn.

23 Q. Was the time code tape copied from the other
24 tape?

1 A. No.

2 Q. Which of the two tapes was prepared first?

3 A. I don't know which -- they are both copies, so I
4 don't know which one I made first.

5 Q. They are both copies of another tape?

6 A. Two other tapes.

7 Q. Where are those two other tapes?

8 MR. WEISS: I have them.

9 THE WITNESS: Roger has them.

10 BY MR. WEISS:

11 Q. What type of tape are those on?

12 A. Three-quarter inch tape.

13 Q. Other than the fact that one has a time code
14 burn and the other does not, are the two tapes identical?

15 A. As far as I know under my directions. I haven't
16 looked at the other tape.

17 Q. Are you planning on making any changes to either
18 of these two tapes?

19 A. I'm not planning on doing anything right now
20 with them. I have no plans at this point. I haven't
21 discussed it.

22 (Discussion off the record.)

23 MR. WEISS: Could you mark as DeFanti Exhibit 21 the
24 VHS tapeholder that contains the time code burn?

1 (Exhibit No. 21 marked as
2 requested.)

3 BY MR. WEISS:

4 Q. Would you please identify what I have had marked
5 as DeFanti Exhibit 21?

6 A. It's the VHS with time code burn through we have
7 been describing.

8 Q. Who was playing the Pac-Man game that was taped?

9 A. Me.

10 Q. And was that your voice that we heard on the
11 tape?

12 A. In general.

13 Q. The narrative was yours?

14 A. Yes.

15 Q. Was a script prepared prior to the narration?

16 A. No.

17 Q. Were any written notes prepared?

18 A. No.

19 Q. What was your purpose in having that tape
20 created?

21 A. I wanted to record the motion of the Pac-Man and
22 the ghosts in various places in the game. I tried to be
23 as complete as possible.

24 Q. Was there any particular action or event that

1 you were attempting to tape?

2 A. I think it's fair to say I concentrated on the
3 Pac-Man catching the blue ghosts.

4 Q. Why is that?

5 A. Because that seems to be the matter that we are
6 discussing here.

7 Q. What type of camera was used to take this tape?

8 A. Ikegami Color TV Camera.

9 Q. Is that camera owned by Bally?

10 A. No. That camera belongs to the people at ENC
11 Media who shot the thing for me.

12 Q. Do you know the name of the photographer?

13 A. The cameraman is Jim Morrissette,
14 M-o-r-r-i-s-s-e-t-t-e.

15 Q. Was there another technician person there?

16 A. Yes.

17 Q. Who was that, if you know?

18 A. Dana Plepys; first name, D-a-n-a, Plepys,
19 P-l-e-p-y-s.

20 Q. Who is Dana Plepys employed by?

21 A. ENC Media.

22 Q. Is Jim Morrissette also employed by ENC?

23 A. Yes.

24 Q. Did anyone tell you or ask you to make this

1 tape?

2 A. It was my idea, and Jenner & Block concurred
3 that it would be a good idea.

4 Q. Did you make any other tapes at the time that
5 you made Exhibit 21?

6 A. No.

7 Q. Have you at any other time made any other tape
8 of the play of Pac-Man?

9 A. No.

10 Q. At the beginning of the tape you demonstrated
11 or showed a camera in front of a monitor hooked up to the
12 Pac-Man game, is that correct?

13 A. Correct.

14 Q. Was the camera that made this tape the one
15 directed at the monitor or --

16 A. Yes.

17 Q. You have produced today four boxes of slides.
18 Were those slides taken with the same camera
19 that made the tape?

20 A. No.

21 Q. What camera -- were those slides taken at the
22 same time that the tape was made or the same day?

23 A. Same evening, yes.

24 Q. Same evening at the same place?

1 A. Yes.

2 Q. Were you the photographer who took the slides?

3 A. Yes.

4 Q. What type of camera did you use?

5 A. Pentax ES-2.

6 Q. These are the four rolls of film that you
7 referred to in your deposition on Tuesday?

8 A. Yes.

9 Q. What types of scenes were you attempting to take
10 pictures of on the slides?

11 A. I was attempting to take pictures of a variety
12 of things in the game, but I would say most of the slides
13 have to do with the Pac-Man eating a power dot and then
14 chasing after blue ghosts, catching of blue ghosts, trying
15 to get the sequence of the eyeballs moving back to the
16 coral.

17 Q. Did you in some way stop the play of the Pac-Man
18 game in order to take these photographs?

19 A. Yes.

20 Q. How did you do that?

21 A. I used an In Circuit Emulator or ICE for short.

22 Q. What was that emulator attached to?

23 A. It was attached to the Z80CPU of the Pac-Man
24 game, I believe.

1 Q. Does the emulator allow you to stop the play of
2 the game at any time --

3 A. Yes.

4 Q. -- by pressing a button?

5 A. Several modes. The mode I used was pressing a
6 button.

7 Q. Is it correct that this group of slides is
8 basically three copies of each slide?

9 A. Yes.

10 Q. And what is the difference between the three
11 copies?

12 A. Different exposures I bracketed.

13 Q. Do the slides show a sequence of events on a
14 Pac-Man game?

15 A. I would say the slides probably show maybe 15 or
16 20 sequences.

17 MR. WEISS: I would like to in some way mark either
18 the boxes or slides depending on how you intend to use
19 them, Mr. Wanke. I would like to know how you would
20 prefer them to be marked.

21 MR. WANKE: We don't know how we intend to use them,
22 but you can mark the boxes.

23 MR. WEISS: Could you please mark these four boxes of
24 slides as DeFanti Exhibits 22, 23, 24 and 25?

1 (Exhibit Nos. 22, 23, 24, and
2 25 marked as requested.)

3 BY MR. WEISS:

4 Q. The court reporter has marked the four boxes of
5 slides as DeFanti Exhibits 22, 23, 24 and 25. The top of
6 each group of slides has several lines through them for
7 identifying where in the box the slides go.

8 Exhibit 22 is the one with one vertical line and
9 one slanted line. Exhibit 23 has two vertical lines and
10 one slanted line. Exhibit 24 has three vertical lines and
11 one slanted line, and Exhibit 25 has four vertical lines
12 and one slanted line.

13 Could you indicate in what order those slides
14 were taken? Would it be possible to do that without too
15 much trouble?

16 A. I think so. First let me state that I drew
17 these diagonals on here to make them easy to line up
18 again. It is possible that there might be one or two
19 actually out of order, but they all have little numbers on
20 them as well. I looked at a couple of them, and I may not
21 have gotten them back in precisely the right order, but
22 they are close. It says 22, 25, 23, 24.

23 Q. That's the order in which you took them; 22
24 being the first one you took?

1 A. As best as I can determine in 35 seconds.

2 MR. WEISS: And, Mr. Wanke, you have agreed that you
3 will produce to us a copy of DeFanti Exhibit 21, which is
4 the tape, and you will also provide to us one-third of
5 the -- approximately one-third of the slides being one of
6 each different slide that has been taken; is that correct?

7 MR. WANKE: Correct.

8 MR. WEISS: I have no further questions.

9 MR. WANKE: I have no further questions.

10 MR. WISE: What format would you prefer that tape to
11 be on, VHS or three-quarter?

12 MR. MAHER: I think it would be better to be
13 three-quarter.

14 AND FURTHER DEPONENT SAITH NOT

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

3 I, LISA A. KOTRBA, notary public within and for
4 the County of Cook and State of Illinois, do hereby
5 certify that heretofore, to-wit, on the 31st day of
6 January, 1985, personally appeared before me DR. THOMAS DE
7 FANTI, a witness in a certain cause now pending and
8 undetermined in the U.S. District Court, wherein The
9 Magnavox Company is the plaintiff and Bally Midway
10 Manufacturing Co. is the defendant.

11 I further certify that the witness was first
12 duly sworn to testify the truth, the whole truth and
13 nothing but the truth in the cause aforesaid; that the
14 testimony then given by the said witness was reported
15 stenographically by me in the presence of said witness and
16 afterwards reduced to writing, and the foregoing is a true
17 and complete transcript of the testimony so given by the
18 said witness as aforesaid.

19 The signature of the witness to the foregoing
20 deposition was not waived by agreement of counsel for the
21 respective parties.

22 I further certify that the taking of this
23 deposition was pursuant to notice, and that there were

24