

1 PILLSBURY, MADISON & SUTRO
2 ROBERT T. TAYLOR
3 225 Bush Street
4 Mailing Address P. O. Box 7880
5 San Francisco, CA 94120
6 Telephone: (415) 983-1000

Attorneys for Plaintiffs
The Magnavox Company and
Sanders Associates, Inc.

Of Counsel:

7 NEUMAN, WILLIAMS, ANDERSON & OLSON
8 THEODORE W. ANDERSON
9 JAMES T. WILLIAMS
10 77 West Washington Street
11 Chicago, IL 60602
12 Telephone: (312) 346-1200

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,)
18 Plaintiffs,)
19 vs.)
20 ACTIVISION, INC., a Corporation,)
21 Defendant.)

No. C 82 5270 TEH

REPLY TO FIRST AND
THIRD COUNTERCLAIMS

22
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:

28 REPLY TO FIRST AND
THIRD COUNTERCLAIMS

1 REPLY TO FIRST COUNTERCLAIM

2 22. The allegations of paragraph 22 of the First
3 Counterclaim are admitted.

4 23. Plaintiffs admit that plaintiff The Magnavox
5 Company has alleged in the Complaint herein that it is a
6 corporation organized and existing under the laws of the
7 State of Delaware, that plaintiff Sanders Associates, Inc.
8 is a corporation organized and existing under the laws of
9 the State of Delaware, and that both plaintiffs are before
10 this Court for the purposes of defendants First and Third
11 counterclaims by reason of filing their Complaint herein;
12 plaintiffs otherwise deny each and every other allegation of
13 paragraph 23 of the First Counterclaim.

14 24. The allegations of paragraph 24 of the First
15 Counterclaim are admitted.

16 25. The allegations of paragraph 25 of the First
17 Counterclaim are admitted.

18 26. Plaintiffs admit that in the Complaint they
19 have asserted ownership of United States Letters Patent Re.
20 28,507 and infringement of that patent by defendant, that
21 plaintiff The Magnavox Company has previously charged defendant
22 with infringement of said patent, and that an actual and
23 justiciable controversy exists between defendant and plaintiffs
24 involving the validity and infringement by defendant of
25 Letters Patent Re. 28,507; plaintiffs otherwise deny each
26 and every other allegation of paragraph 26 of the First
27 Counterclaim.

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.

13

14

SECOND COUNTERCLAIM

15

16

17

18

19

20

21

22

REPLY TO THIRD COUNTERCLAIM

23

24

25

26

27

28

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
6 by Atari, Inc. and that Atari's manufacture and sale of
7 television games comprising a game console and a game cartridge
8 for use together in combination therewith or a cartridge for
9 use in such a console is licensed by plaintiff herein The
10 Magnavox Company; plaintiffs deny each and every other
11 allegation of paragraph 21.

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

16 39. Plaintiffs deny each and every allegation of
17 paragraph 39 of the Third Counterclaim.

18 40. Plaintiffs deny each and every allegation of
19 paragraph 40 of the Third Counterclaim.

20
21 WHEREFORE, plaintiffs pray as follows:

22 1. That each of defendant's First and Third
23 Counterclaims be dismissed.

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

27
28