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8 Attorneys For Plaintiffs
The Magnavox Company and
9 Sanders Associates, Inc.

10 United States District Court For The
11 Northern District of California
12

13 _____)
THE MAGNAVOX COMPANY, a corporation,) No. C 82 5270 TEH
14 and SANDERS ASSOCIATES, INC., a)
corporation,) AFFIDAVIT OF
15) CHARLES S. PAUL
16 Plaintiffs,)
17 v.)
18 ACTIVISION, INC., a corporation,)
19 Defendant.)
20 _____)

21 STATE OF CALIFORNIA)
22) SS:
23 COUNTY OF SANTA CLARA)

24 I, Charles S. Paul, being duly sworn, do depose and
25 say as follows:

26 1. I am Senior Vice President and General Counsel
27 of Atari, Inc., Sunnyvale, California. Atari is and has been
28

Affidavit of Charles S. Paul

1 in the business of, among other things, manufacturing and
2 selling, in the United States and elsewhere, television games
3 including television game consoles and television game
4 cartridges for such consoles. One of the television game
5 consoles manufactured and sold by Atari is sold under the
6 trademark VCS and is referred to as the Model 2600. Atari
7 manufactures and sells television game cartridges for the
8 Model 2600 VCS television game console.

9 2. Activision, Inc., of Mountain View,
10 California, the defendant in the above-headed action,
11 manufactures and sells in the United States television game
12 cartridges useful with television game consoles including the
13 Atari Model 2600 VCS television game console. Atari and
14 Activision are competitors in the sale of television game
15 cartridges for the Atari Model 2600 VCS television game
16 console.

17 3. On July 11, 1975, Atari filed a declaratory
18 judgment action against The Magnavox Company and Sanders
19 Associates, Inc. in the United States District Court for the
20 Northern District of California seeking a declaration that
21 certain United States patents owned by Sanders and exclusively
22 licensed to Magnavox were invalid and not infringed by Atari.
23 That action was transferred to the Northern District of
24 Illinois. Principle counsel for Atari in that action was
25 Thomas O. Herbert, Esquire of the firm of Flehr, Hobach, Test,
26 Albritton & Herbert, San Francisco, California. U.S. Patent
27 Re.28,507 was one of the patents involved in that action.

28
Affidavit of Charles S. Paul

1 4. During the course of that action, Mr. Herbert
2 and members of his firm engaged in extensive discovery
3 concerning the Re.28,507 patent on behalf of Atari. That
4 discovery included participation in or conducting depositions
5 of the inventor of the Re.28,507 patent, Mr. William T. Rusch,
6 colleagues of Mr. Rusch when he made the invention of that
7 patent, the attorneys responsible for filing and prosecuting
8 the patent application which resulted in the Re.28,507 patent,
9 and persons having knowledge of prior art activities relating
10 to the Re.28,507 patent. Additionally, Mr. Herbert consulted
11 with technical employees of Atari concerning the subject
12 matter of that patent, possible prior art with respect to that
13 patent, and the validity of that patent, and conducted
14 extensive searches for prior art with respect to that patent.

15 5. On the day the Atari case was scheduled to
16 commence trial, Atari, Mangnavox, and Sanders entered into a
17 settlement of that litigation. That settlement included a
18 sublicense agreement from Magnavox under which Atari received
19 a license under the Re.28,507 patent and others. The license
20 was fully paid up. That license is still in effect. Atari is
21 and, since that sublicense was executed, has been licensed
22 under the Re.28,507 patent. A consent judgment was also
23 entered against Atari in that litigation finding the Re.28,507
24 patent to be valid and enforceable and to have been infringed
25 by Atari.

26 6. Atari presently considers it to be in its best
27 interest to remain a licensee under the Re.28,507 patent.
28

Affidavit of Charles S. Paul

1 Atari further considers that it will be against its best
2 interest for the Re.28,507 patent to be declared invalid or
3 unenforceable by this Court.

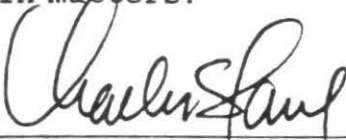
4 7. On information and belief, Mr. Thomas O.
5 Herbert and his firm in its representation of Activision in
6 this action are asserting the position that the Re.28,507
7 patent is invalid and unenforceable. Thus, Mr. Herbert and his
8 firm are asserting positions in this action which are adverse
9 to the present interests of Atari. Atari further believes that
10 in their representation of Activision in this action, Mr.
11 Herbert and his firm will make use of information concerning
12 the Re.28,507 patent obtained by Mr. Herbert and his firm
13 during the course of their representation of Atari, some of
14 which information was obtained by Mr. Herbert and members of
15 his firm from discussions with Atari officers and employees
16 held during the time Mr. Herbert and his firm represented
17 Atari.

18 8. As a part of the settlement referred to in
19 paragraph 5, Magnavox, Sanders, Atari, and Mr. Herbert's law
20 firm executed a "Settlement Agreement", a copy of which is
21 attached to this affidavit. That Settlement Agreement
22 provides at paragraph IV, page 4, that Mr. Herbert's firm will
23 not actively participate in any litigation involving the
24 Re.28,507 patent in which Atari is not a party or in which no
25 television game made by or for Atari is involved. Atari has
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27
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Affidavit of Charles S. Paul

1 never released Mr. Herbert or his firm from the obligation of
2 paragraph IV of the Settlement Agreement.

3 9. Mr. Herbert's law firm continues to represent
4 Atari at this time in certain matters.

5 
6 _____
7 Charles S. Paul

8 Subscribed and sworn to before me this 24 day of January,
9 1983, at San Jose, California

10 (SEAL)

11 
12 _____
13 Notary Public

14 My Commission Expires: November 7, 1986



SETTLEMENT AGREEMENT

THIS AGREEMENT, entered into by and between THE MAGNAVOX COMPANY, a corporation of the State of Delaware, with executive offices in New York, New York, and corporate offices at 1700 Magnavox Way, Fort Wayne, Indiana (hereinafter MAGNAVOX), SANDERS ASSOCIATES, INC., a corporation of the State of Delaware, having an office at Daniel Webster Highway South, Nashua, New Hampshire (hereinafter SANDERS), and ATARI, INC., a corporation of the State of California, having an office at Winchester Boulevard, Los Gatos, California (hereinafter ATARI):

WITNESSETH THAT:

WHEREAS, SANDERS is the owner of United States Letters Patent 3,659,284, which issued on April 25, 1972 (hereinafter '284) and was reissued as United States Letters Patent Re. 28,507 on August 5, 1975 (hereinafter '507); United States Letters Patent 3,659,285, which issued on April 25, 1972 (hereinafter '285) and was reissued as United States Letters Patent Re. 28,598 on October 28, 1975 (hereinafter '598) and United States Letters Patent 3,728,480 which issued on April 17, 1973 (hereinafter '480);

WHEREAS, MAGNAVOX is the exclusive licensee under

said Letters Patent '284, '507, '285, '598 and '480;

WHEREAS, ATARI is in the business of manufacturing coin-operated video games and home video games;

WHEREAS, on July 11, 1975, ATARI filed a civil action in the United States District Court for the Northern District of California entitled Atari, Inc. v. The Magnavox Company et al, No. C 75-1442 RFP (hereinafter "the California case") seeking a declaratory judgment that said '284 and '285 patents are invalid and not infringed by the video games manufactured and sold by ATARI, and MAGNAVOX and SANDERS subsequently filed a counterclaim therein for infringement of said '284, '507 and '285 patents;

WHEREAS, on September 22, 1975, MAGNAVOX and SANDERS filed a civil action in the Northern District of Illinois entitled The Magnavox Company, et al. v. Sears, Roebuck and Co., No. 75 C 3153 (hereinafter "the Sears case") for infringement of said '284, '507, '285 and '480 patents;

WHEREAS, the charge of infringement in the Sears case is based upon the sale of home video games sold by Sears, Roebuck and Co. but manufactured by ATARI;

WHEREAS, on November 14, 1975, the California case was transferred to the Northern District of Illinois and was there assigned civil action No. 75 C 3933

(hereinafter "the Atari case");

WHEREAS, by subsequent proposed amendments to the complaints, the validity and infringement of the '284, '507, '285, '598 and '480 patents were to be placed in issue in both the Sears case and the Atari case;

WHEREAS, the parties MAGNAVOX and SANDERS on one hand and ATARI on the other hand are desirous of resolving all controversies with respect to video games and any and all patents owned by MAGNAVOX and/or SANDERS relating to such games.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, the parties hereto agree as follows:

I

ATARI, MAGNAVOX and SANDERS shall use their best efforts to obtain dismissal of the Sears case according to the terms of the "Order of Dismissal" attached hereto as Exhibit A.

II

ATARI, MAGNAVOX and SANDERS shall use their best efforts to obtain disposition of the Atari case according to the terms of the "Final Judgment and Consent" attached hereto as Exhibit B.

III

MAGNAVOX and ATARI have entered into a license under the '284, '507, '285, '598 and '480 patents entitled "Non-Exclusive Cross License for Video Games" executed on the same date as this agreement.

IV

So long as the license agreement is in effect, ATARI or its counsel, will not actively participate in any further litigation relating to the '284, '507, '285, '598 or '480 patents in which they are not a party or in which no game made by or for ATARI is involved, and will not aid or abet any person, other than a customer or supplier of ATARI if sued for violation of the aforementioned patents in connection with the sale of games made by ATARI, accused of infringement of said patents or having an interest adverse to said patents, by supplying any information concerning the validity of said patents, the infringement of said patents, or any possible argument or facts relating to a defense against a charge or potential or possible charge of infringement of said patents except in response to a duly and legally issued subpoena.

V

As to games made or sold by ATARI, MAGNAVOX and SANDERS hereby release and forever discharge ATARI and its customers and each of them, from any and all claims,

demands, actions or causes of action of any nature whatsoever which MAGNAVOX or SANDERS have, shall or may have against ATARI and its customers by reason of any act, cause, matter or thing claimed or alleged in any of the pleadings, records or other papers on file in the Sears case and in the Atari case, or based upon or connected with claims made or filed in the aforesaid actions or in any way related thereto.

VI

ATARI hereby releases and forever discharges MAGNAVOX and SANDERS, and each of them, from all claims, demands, actions or causes of action of any nature whatsoever which ATARI has, shall or may have against MAGNAVOX and SANDERS by reason of any act, cause, matter or thing claimed or alleged by ATARI in any of the pleadings, records or other papers on file in the Sears case and in the Atari case or based upon or connected with claims made or filed in the aforesaid actions or in any way related thereto.

VII

There shall be no publicity release concerning this settlement other than by mutual agreement of the parties.