

NEUMAN, WILLIAMS, ANDERSON & OLSON

77 WEST WASHINGTON STREET

CHICAGO, ILLINOIS 60602

COPY

September 30, 1983

Algy Tamoshunas, Esquire
North American Philips Corporation
580 White Plains Road
Tarrytown, New York 10591

Re: Magnavox v. Activision

Dear Algy:

As you requested on the telephone yesterday, enclosed are copies of Activision's responses to plaintiffs' interrogatories and document requests.

Very truly yours,

NEUMAN, WILLIAMS, ANDERSON & OLSON

By James T. Williams

JTW/sjm
Enc.

CC: L. Etlinger, Esquire/with enc. ✓
T. W. Anderson, Esquire



Handwritten signatures and initials:
- Top right: A stylized signature.
- Middle left: "RIS" with an arrow pointing to the date.
- Middle right: "RIS" with a signature below it.
- Bottom right: A signature.

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Attorneys for Defendant

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 THE MAGNAVOX COMPANY,)
a Corporation and)
14 SANDERS ASSOCIATES, INC.,) Civil Action No.
a Corporation,) C82 5270 TEH
15)
Plaintiffs,)
16 v.)
17 ACTIVISION, INC.,)
a Corporation,)
18)
Defendant.)
19

20 DEFENDANT'S RESPONSE TO PLAINTIFFS' INTERROGATORIES

21 COMES NOW, defendant, Activision, Inc., and in response to Plaintiffs'
22 Interrogatories to Defendant served on or about February 23, 1983, submits as follows:

23 Interrogatory No. 1(a): State the date upon which Activision, Inc. was
24 incorporated.

25 Answer: October 1, 1979
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Defendant's Response to
Plaintiffs' Interrogatories

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Interrogatory No. 1(b): Identify the incorporators of Activision, Inc.

Answer: James H. Levy.

Interrogatory No. 1(c) Identify any person, corporation or other entity which presently owns more than fifteen percent of the voting stock of Activision, Inc.

Answer: Genstar Pacific Corporation and Sutter Hill Ventures.

Interrogatory No. 1(d): Identify every person who has served as a member of the board of directors of Activision, Inc., and as to each such person, state the period of time during which he was such a member.

Answer: James H. Levy - October 12, 1979 to Present

Alan Miller - October 12, 1979 - November 20, 1979

David Crane - October 12, 1979 - November 20, 1979

William Draper - November 20, 1979 - July 1981

Richard Muchmore - November 20, 1979 to Present

David Anderson - September 3, 1981 to Present

Interrogatory No. 1(e): Identify every person who has been an officer of Activision, Inc. and, as to each such person, identify the office(s) he has held with Activision, Inc. and state the period(s) of time during which he held that office.

Answer: James H. Levy: President and Chief Executive Officer from November 20, 1979 to the present; Treasurer -

November 20, 1979 to February 2, 1983;

Arthur F. Schneiderman: Secretary - November 20, 1979 to the present;

Allan Epstein: Vice President of Operations - May 1, 1980 to the present;

Thomas Lopez: Vice President Editorial Development - June 28, 1982 to the present;

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Cheryl Reed: Assistant Secretary - July 19, 1982 to the present;

Barbara Hazlett: Assistant Treasurer - June 19, 1982 to the present;

Thomas W. Pomeroy: Vice President Planning - June 28, 1982 to the present;

Harvey Gillis: Vice President Finance - Treasurer - February 2, 1983 to the present.

Interrogatory No. 1(f): State the business of Activision, Inc.

Answer: Designer and manufacturer of computer software.

Interrogatory No. 1(g): Identify every corporation in which Activision, Inc. owns a controlling interest, and as to each such corporation, state the business of that corporation.

Answer: Activision International, Inc., international sales and Activision Caribe, Inc., dormant.

Interrogatory No. 2(a): Does defendant contend that the patent in suit or any of claims 25, 26, 44, 45, 51, 52, 60, 61 or 62 thereof is invalid, void, or unenforceable for any reason under 35 U.S.C. 102 or 103? If so, state each and every reason, ground, or basis known to defendant to support each such contention and fully identify each and every item of prior art upon which defendant bases that contention.

(b) To the extent not included in defendant's response to subparagraph (a) of this interrogatory, identify each and every item of prior art supporting the contentions stated by defendant in paragraphs 15 and 16(a)-(e), (g) & (h), 17, 18, and 19 of the "Affirmative Defenses" in defendant's Answer and Counterclaims" filed in this action.

Answer: Yes. As presently advised, defendant relies in part upon the prior art presented in Magnavox Co. et al v. Bally Manufacturing Corp. et al, a suit consolidating Civil Actions 74 C 1030, 74 C 2510, 75 C 3153 and 75 C 3933 in the

1 United States District Court for the Northern District of Illinois, Eastern Division.
2 More specifically, defendant relies upon the prior art presented in the Notice by
3 Defendants Bally, Midway and Empire of Prior Art Pursuant to 35 U.S.C. §282(4) filed
4 23 April 1976 and the Notice of Prior Art by Atari, Inc. and Sears, Roebuck &
5 Company filed on or about 25 May 1976.

6 Defendant also relies in part upon the prior art presented in Civil Action
7 No. 80 C 4124 entitled, The Magnavox Company et al v. Mattel, Inc., et al filed in the
8 District Court for the Northern District of Illinois, Eastern Division.

9 Defendant also relies in part upon the prior art cited in Baer Reissue
10 Application, Serial No. 810,538, filed June 27, 1977 and U.S. Patent No. 3,728,480,
11 filed March 22, 1971.

12 Defendant will identify the prior art it considers most pertinent after a
13 detailed analysis of all prior art presented. In addition, pursuant to 35 U.S.C. §282
14 defendant will notify plaintiff of any other prior art it intends to use but which is not
15 now known to defendant.

16 Interrogatory No. 3(a): Does defendant contend that the patent in suit or
17 any of claims 25, 26, 44, 45, 51, 52, 60, 61 or 62 thereof is invalid, void or
18 unenforceable for any reason under 35 U.S.C. 103? If so, state each and every reason,
19 ground, or basis known to defendant to support each such contention including a
20 statement of what defendant contends is the art to which the subject matter patented
21 in the patent in suit pertains and what defendant contends was the level of skill of a
22 person of ordinary skill in that art at the times the invention of the patent in suit was
23 made and the application for the original patent in suit was filed.

24 (b) To the extent not included in defendant's response to subparagraph (a)
25 of this interrogatory, state each and every reason, ground, or basis known to defendant
26 to support the contentions stated by defendant in paragraph 16(e) of the "Affirmative
27 Defenses" in defendant's "Answer and Counterclaims" filed in this action.

1 Answer: See answers to Interrogatories 2(a) and (b).

2 Interrogatory No. 4(a): Does defendant contend that the patent in suit or
3 any of claims 25, 26, 44, 45, 51, 52, 60, 61 or 62 thereof is invalid, void, or
4 unenforceable for any reason under 35 U.S.C. 112? If so, state each and every reason,
5 ground, or basis known to defendant to support each such contention, including a
6 statement of each and every alleged deficiency or omission in the written description
7 of the invention in the patent in suit and why such alleged deficiency or omission
8 would prevent any person skilled in the art to which the invention of the patent in suit
9 pertains or is most nearly connected from making and using the same, each mode of
10 carrying out the invention of the patent in suit which was contemplated by the
11 inventor named in the patent as better than the mode or modes set forth therein, and
12 each ambiguity, unclarity, or other manner in which the claims of the patent in suit
13 fail to particularly point out or distinctly claim the subject matter which the inventor
14 regarded as his invention, and identify every act, fact, or occurrence relied upon by
15 defendant to support each such reason, ground, or basis.

16 (b): To the extent not included in defendant's response to subparagraph (a)
17 of this interrogatory, state each and every reason, ground, or basis known to defendant
18 to support the contentions stated by defendant in paragraphs 17(f) & (i) of the
19 "Affirmative Defenses" in defendant's "Answer and Counterclaims" filed in this action
20 and identify every act, fact, or occurrence relied upon by defendant to support each
21 such reason, ground, or basis.

22 Answer: Yes. As presently advised, the patents in suit fail to sufficiently
23 disclose how to make and use a coincidence detecting means or how to impart a
24 distinct motion to a "hit" symbol. In addition, the application was indefinite because
25 of the uncertain meaning of "distinct motion", "hit" and "hitting". Moreover, as
26 plaintiffs presently seem to interpret the claims, each of the "means" clauses of the
27

1 claims is indistinct in that it relates neither to any such means disclosed in the patent
2 nor to any equivalent thereof.

3 Defendant's allegation that the specification did not set forth the best
4 mode contemplated by the applicant for carrying out the alleged invention is still
5 under investigation.

6 Interrogatory No. 5: Does defendant contend that the patent in suit or any
7 of claims 25, 26, 44, 45, 51, 52, 60, 61 or 62 thereof is invalid, void, or unenforceable
8 for any reason under 35 U.S.C. 251 or 252? If so, state each and every reason, ground,
9 or basis known to defendant to support such contentions and identify every act, fact,
10 or occurrence relied upon by defendant to support each such reason, ground, or basis.

11 Answer: As presently advised, defendant is not aware of any defense in 35
12 U.S.C. §251 or 252. However, defendant will attempt to locate facts in support of
13 such a defense.

14 Interrogatory No. 6(a): Does defendant contend that the patent in suit or
15 any of claims 25, 26, 44, 45, 51, 52, 60, 61 or 62 thereof is or at any time was invalid,
16 void, or unenforceable against defendant or others for any reasons other than those
17 stated in defendant's responses to interrogatories 2-5 hereof? If so, state in detail
18 each and every such other contention, state each and every reason, ground, or basis
19 known to defendant to support each such contention, and identify every document, act,
20 fact, or occurrence relied upon by defendant to support each such reason, ground, or
21 basis.

22 (b): To the extent not included in defendant's response to subparagraph (a)
23 of this interrogatory, state each and every reason, ground, or basis known to defendant
24 to support the contentions stated by defendant in paragraphs 15 and 39 of the
25 "Affirmative Defenses" and "Third Counterclaim" in defendant's "Answer and Counter-
26 claims" filed in this action and identify every document, act, fact, or occurrence
27 relied upon by defendant to support each such reason, ground, or basis.

1 Answer: As presently advised, defendant has not sufficiently reviewed the
2 massive materials presently available to it to respond in any greater detail than as set
3 forth in its Answer and Counterclaims. However, defendant does intend to rely on the
4 proofs offered in support of the allegations of fraud, as set forth in the application for
5 Reissue of Baer patent No. 3,728,480.

6 Interrogatory No. 7: Identify each and every television game product
7 which defendant has manufactured, used, and/or sold by (i) stating its name or title,
8 (ii) stating its model or type number, (iii) identifying each television game console with
9 which the television game product may be used, (iv) stating the date on which
10 defendant first began to manufacture and/or sell that television game product, (viii)
11 identifying the persons responsible for preparing or writing any programs included in
12 that television game product.

13 Answer:

14 (i)	15 (ii)	16 (iii)	17 (iv)	18 (viii)
19 <u>Name</u>	20 <u>Model</u>	21 <u>System</u>	22 <u>Month/</u>	23 <u>Game</u>
24	25 <u>No.</u>	26	27 <u>Year</u>	28 <u>Designer</u>
29	30	31	32 <u>First</u>	33
34	35	36	37 <u>Shipped</u>	38
39 Dragster	40 AG-001	41 Atari 2600	42 07/80	43 David Crane
44 Boxing	45 AG-002	46 "	47 07/80	48 Bob Whitehead
49 Checkers	50 AG-003	51 "	52 07/80	53 Alan Miller
54 Fishing Derby	55 AG-004	56 "	57 07/80	58 David Crane
59 Skiing	60 AG-005	61 "	62 12/80	63 Bob Whitehead
64 Bridge	65 AX-006	66 "	67 12/80	68 Larry Kaplan
69 Tennis	70 AG-007	71 "	72 03/81	73 Alan Miller
74 Laser Blast	75 AG-008	76 "	77 03/81	78 David Crane
79 Freeway	80 AG-009	81 "	82 07/81	83 David Crane
84 Kaboom!	85 AG-010	86 "	87 07/81	88 Larry Kaplan
89 Stampede	90 AG-011	91 "	92 12/81	93 Bob Whitehead

1	Ice Hockey	AX-012	"	12/81	Alan Miller
2	Barnstorming	AX-013	"	03/82	Steve Cartwright
3	Grand Prix	AX-014	"	03/82	David Crane
4	Chopper Command	AX-015	"	05/82	Bob Whitehead
5	Starmaster	AX-016	"	05/82	Alan Miller
6	MegaMania	AX-017	"	09/82	Steve Cartwright
7	Pitfall!	AX-018	"	08/82	David Crane
8	Sky Jinks	AG-019	"	11/82	Bob Whitehead
9	River Raid	AX-020	"	12/82	Carol Shaw
10	Spider Fighter	AX-021	"	01/83	Larry Miller
11	Seaquest	AX-022	"	02/83	Steve Cartwright
12	Oink!	AX-023	"	03/83	Mike Lorenzen
13	Stampede	MP-001	Intellivision	10/82	Bob Whitehead
14	Pitfall!	MP-002	"	10/82	David Crane

15 Interrogatory No. 7(v): stating the date on which defendant last manufac-
16 tured and/or sold that television game product,

17 Answer: All of the identified products are still on the market.

18 Interrogatory No. 7(vi): identifying the manufacturer(s) of and the
19 party(ies) from whom defendant purchased that television game product,

20 Answer: Defendant manufactures all of the products.

21 Interrogatory No. 7(vii): identifying the present employees of defendant
22 having the greatest knowledge of the operation of the electrical circuitry of that
23 television game product,

24 Answer: Defendant's products have no electrical circuitry other than a
25 printed circuit board. Allan Epstein, Vice President, has knowledge of such circuit.

1 Interrogatory No. 7(ix): identifying the present employees of defendant
2 having the greatest knowledge of the function and operation of any programs included
3 in that television game product,

4 Answer: The same persons identified in response to Interrogatory No.
5 7(viii) with the exception that Larry Kaplan and Larry Miller are not employees of
6 Activision. Alan Miller has knowledge of the products designed by Larry Kaplan and
7 Larry Miller.

8 Interrogatory No. 7(x): identifying the present employees of defendant
9 having the greatest knowledge of the structure, circuitry, programming, function, and
10 operation of the television game console with which the television game product may
11 be used,

12 Answer: David Crane, Alan Miller, Bob Whitehead.

13 Interrogatory No. 7(xi): identifying the person or persons responsible for
14 deciding which game or games were included in that television game product,

15 Answer: No such decision was required. Only one game is included in each
16 product.

17 Interrogatory No. 7(xi)(sic): describing the game or games played thereon
18 as they appear to the player, and

19 Answer: Each game is described in an instruction booklet included with the
20 product. Such booklets will be made available for plaintiffs' inspection.

21 Interrogatory No. 7(xii): stating for each calendar or fiscal year defen-
22 dant's sales volume of that television game product in terms of units and dollars.

23 Answer: This interrogatory is objected to as being immaterial and
24 irrelevant to the facts and issues of this litigation. It is overly broad in requesting
25 information on games which are not in issue.

1 Interrogatory No. 8(a): Does defendant contend that the manufacture
2 and/or sale of any television game product identified in defendant's response to
3 interrogatory 7 hereof is not an act of infringement of, contributory infringement of,
4 or inducement to infringe any of claims 25, 26, 44, 45, 51, 52, 60, 61 or 62 of the
5 patent in suit for any reason other than the alleged invalidity or unenforceability of
6 the claim or the patent in suit? If so, state specifically with respect to each such
7 claim each and every reason, ground, or basis known to defendant to support such
8 contention including a statement of any language of the claim which defendant
9 contends is not met by the television game product, and if defendant asserts there is
10 any estoppel with respect to the stated language, specifically identify each and every
11 act, fact, or occurrence and each limitation, interpretation, admission, representation,
12 proceeding, argument, amendment, or other item which defendant contends resulted in
13 any such estoppel.

14 (b): To the extent not included in defendant's response to subparagraph (a)
15 of this interrogatory, state specifically with respect to each of the patent claims
16 referred to in subparagraph (a) of this interrogatory each and every reason, ground, or
17 basis known to defendant to support the contentions of paragraphs 19, 20 and 28 of the
18 "Affirmative Defenses" and "First Counterclaim" in defendant's "Answer and Counter-
19 claims" filed in this action, and specifically identify each and every statement,
20 admission, representation, or other matter in the prosecution history and/or file
21 wrapper of the patent in suit which defendant contends resulted in any estoppel
22 alleged in said paragraph 20, and identify the language of the claims referred to in
23 subparagraph (a) of this interrogatory to which each such statement, proceeding,
24 admission, representation, or other matter relates.

1 Answer: Yes. As presently advised, all of the claims in suit are presented
2 as a combination of elements expressed as "means" with a specified "function".
3 Defendant's television game product, whether alone or in combination with any other
4 device, does not contain the claimed "means" as disclosed in the specification or any
5 equivalents thereof. Moreover, defendant is not aware that any of the claimed
6 "means" or their equivalent is actually present in any console with which defendant's
7 product is used. Moreover, in games played with defendant's products coincidence
8 between a "hit" and "hitting" symbol is not "ascertained" and "distinct motion" to the
9 "hit symbol" is not "imparted" "upon coincidence". There is, therefore, no infringe-
10 ment as defined by 35 U.S.C. §271(a)-(c).

11 Defendant's television game product is a computer program which is not
12 within the scope of the patent in suit.

13 Defendant's television game product is designed for use in consoles
14 manufactured and/or sold by licensees of the patent in suit. The purchasers of such
15 consoles, therefore, have a license to use defendant's television game product. Such a
16 license precludes direct infringement by the purchasers of the licensed console and
17 defendant's television game product. Absent direct infringement, there cannot be
18 contributory infringement or inducement to infringe.

19 Defendant's review of the infringement question is incomplete at this time
20 but further investigation will be undertaken.

21 Interrogatory No. 9: Identify each person whom defendant expects to call
22 as an expert witness at the trial in this civil action and as to each expert witness state
23 the subject matter or subject matters on which he is expected to testify, the substance
24 of the facts and opinions as to which the expert is expected to testify, and summarize
25 the grounds for each such opinion; and identify each person whom defendant has
26 retained or specially employed in anticipation of this civil action and/or in preparation
27 for trial in this civil action.

1 Answer: Defendant has not yet selected an expert witness although it is
2 expected that a selection shall be made in the future and that defendant will call one
3 or more expert witnesses at trial.

4 Interrogatory No. 10(a): State each and every reason, ground, or basis
5 known to defendant to support the contention of paragraph 39(a) of its Third
6 Counterclaim that plaintiffs brought this lawsuit in bad faith, and identify each
7 document, act, fact, or occurrence relied upon by defendant to support each such
8 reason, ground, or basis.

9 (b) State each and every reason, ground, or basis known to defendant to
10 support the contention of paragraph 39(a) of its Third Counterclaim that plaintiff
11 brought this lawsuit with full knowledge that no infringement of any valid claims of
12 United States Letters Patent Re. 28,507 exists, and identify each document, act, fact,
13 or occurrence relied upon by defendant to support each such reason, ground, or basis.

14 Answer: As presently advised, plaintiffs' bad faith is evidenced by the
15 facts set forth in Paragraphs 13, 14, 15 and 21 of defendant's Answer herein.
16 Defendant will investigate further to ascertain still other facts in support of the
17 contentions of Paragraph 39(a).

18 Interrogatory No. 10(c): State each and every reason, ground, or basis
19 known to defendant to support the contention of paragraph 39(b) of its Third
20 Counterclaim that plaintiffs misled customers of defendants and others in the industry
21 to believe that United States Letters Patent Re. 28,507 is of a scope to cover virtually
22 all television gaming apparatus and identify each document, act, fact, or occurrence
23 relied upon by defendant to support each such reason, ground, or basis.

24 (d) Identify each and every customer of defendant and each and every
25 other in the industry referred to in the allegation of paragraph 39(b) of defendant's
26 Third Counterclaim.

1 Answer: As presently advised plaintiffs have misled defendant's customer,
2 Sears, Roebuck & Co., by filing and eventually dismissing and/or settling civil actions
3 in the United States District Court for the Northern District of Illinois (C.A. Nos. 78
4 C 5041 and 80 C 4124) against Sears, Roebuck & Co. Defendant will investigate
5 further to ascertain still other facts in support of the contentions of Paragraph 39(b).

6 Interrogatory No. 10(e): State each and every reason, ground, or basis
7 known to defendant to support the contention of paragraph 39(c) of its Third
8 Counterclaim that plaintiffs falsely claimed and asserted to others, including defen-
9 dant's customers and potential customers, with intent to injure defendant, that certain
10 products sold by defendant are an infringement of United States Letters Patent Re.
11 28,507, and identify each document, act, fact, or occurrence relied upon by defendant
12 to support each such reason, ground or basis.

13 (f) Identify each and every one of defendant's customers and potential
14 customers referred to in the allegation of paragraph 39(c) of defendant's Third
15 Counterclaim.

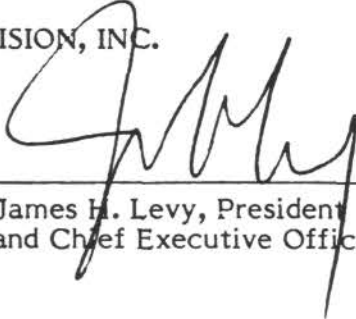
16 Answer: The allegations of Paragraph 39(c) have not yet been investigated
17 by defendant other than as set forth in response to Interrogatories 11 (c) and (d) above.
18 However, defendant will investigate to ascertain facts in support of the contentions of
19 Paragraph 39(c).

20 Interrogatory No. 10(g): Identify by type and amount each and every
21 element of injury or damage to defendant from the facts alleged in defendant's Third
22 Counterclaim, and identify each document, act, fact, or occurrence relied upon by
23 defendant to support each such element of injury or damage and the amount thereof.

1 Answer: As presently advised defendant has been damaged by being
2 required to defend this instant litigation. Defendant will investigate further to
3 ascertain facts evidencing still other injury.

4
5 ACTIVISION, INC.

6
7 By


8 _____
9 James H. Levy, President
10 and Chief Executive Officer

11
12 Objection is hereby made to Interrogatory No. 7(xii).

13
14 FLEHR, HOHBACH, TEST,
15 ALBRITTON & HERBERT
16 Attorneys for Defendant

17 By


18 _____

19 Thomas O. Herbert