

*Action
Litigation*

VIA FEDERAL EXPRESS

May 16, 1984

James T. Williams, Esq.
Neuman, Williams, Anderson & Olson
77 West Washington St.
Chicago, Illinois 60602

Dear Jim:

Enclosed herewith are copies of the documents which may not have been previously supplied to you concerning Sanders' looking into the validity of the '480 patent in view of Spiegel for the period prior to the filing of the '480 Reissue Application.

Because of the time constraint, I did not make copies of these documents and am sending you the originals. I would appreciate it if, when you are through with them, you would return them to me or, if you need them for any lengthy time period, send me copies.

Very truly yours,

SANDERS ASSOCIATES, INC.



Richard I. Seligman
Assistant Corporate Director
Patents and Licensing

RIS:nd
Enclosures



*Fed Exp
5-16-84
ND*

C.S. 868

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03061-0868

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9 BILL OF LADING NUMBER		10 NO. OF CARTONS	11 GROSS WEIGHT	12 SEC. CL.
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5 TO
James T. Williams, Esq.
Neuman, Williams, Anderson & Olson
77 West Washington St.
Chicago, IL 60602

17 ITEM	18 QUANTITY	19 DESCRIPTION	20 PART NUMBER	21 REV.
	1	envelope		

TO BE REWORKED ON: ORIG. WORK ORD. NEW WORK ORD.

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29 ORIGINATOR'S SIGNATURE R. I. Seligman	30 MAIL ADDRESS NHQ 1-719	31 DEPARTMENT NO. 0-6300	32 TELEPHONE EXT. 5186	33 APPROVER'S SIGNATURE L. Etlinger
			34 TITLE Corporate Director	
			DEPARTMENT NO. Patents & Licensing 0-6300	

SHIPPING RECORD

1 FORM DD 250 REQUIRED YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		2 SHIPMENT TYPE 5	SHIPMENT NUMBER 3 CONTROL 2 4 SERIAL —	
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5 TO

VINCENT P. FINIGAN, JR., ESQUIRE
BROBECK, PHLEGER & HARRISON
SPEAR STREET TOWER
ONE MARKET PLAZA
SAN FRANCISCO, CALIFORNIA 94105

17 ITEM	18 QUANTITY	19 DESCRIPTION	20 PART NUMBER	21 REV.
	1	Letter		
	1	Supplemental Response		

TO BE REWORKED ON:

RECEIVER NO. _____

DISCREP. RPT. NO. _____

22 COMPLETE FOR TYPE 5 SHIPMENTS

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23 REASON FOR SHIPMENT / NOTES / INSTRUCTIONS

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29 ORIGINATOR'S SIGNATURE Anne Marie Cashman	30 MAIL ADDRESS NHQ 1-719	31 DEPARTMENT NO. 0-6300	32 TELEPHONE EXT. 5-2641	33 APPROVER'S SIGNATURE Louis Etlinger	34 TITLE Corp. Director Patents & Licensing
			35 DEPARTMENT NO. 0-6300		

038424

NEUMAN, WILLIAMS, ANDERSON & OLSON

77 WEST WASHINGTON STREET

CHICAGO, ILLINOIS 60602



COPY

May 14, 1984

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

Re: Magnavox v. Activision

Dear Algy:

Enclosed are copies of Activision's reply memorandum supporting its motion to compel and the accompanying declaration of Ed Wright. Also enclosed is another copy of the supplemental responses to plaintiffs' interrogatories which were filed earlier this week.

Very truly yours,

NEUMAN, WILLIAMS, ANDERSON & OLSON

By _____
James T. Williams

JTW:de
Enclosures

cc: T. A. Briody - w/o encls.
L. Etlinger - w/Reply Memo ←
T. W. Anderson - w/o encls.

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2 ALBRITTON & HERBERT
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12 Two Palo Alto Square
13 Palo Alto, CA 94304
14 Telephone: (415) 493-9300

15 Attorneys for Defendant

16
17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE NORTHERN DISTRICT OF CALIFORNIA

19 THE MAGNAVOX COMPANY,)
20 a Corporation, and)
21 SANDERS ASSOCIATES, INC.,)
22 a Corporation,)
23)
24 Plaintiffs,)
25)
26 v.)
27)
28 ACTIVISION, INC.,)
29 a Corporation,)
30)
31 Defendant.)

Civil Action
C 82 5270 JPV(FSL)

REPLY TO MEMORANDUM IN
OPPOSITION TO MOTION FOR
ORDER COMPELLING DISCOVERY

Hearing Date: May 11, 1984

Time: 1:30 p.m.

32 For the most part, plaintiffs do not deny that defendant
33 is entitled to the information requested by the interrogatories
34 which are the subject of the motion to compel. The only question
35 seems to be when this information will be provided. All of these
36 interrogatories have been outstanding for over a year, and some
37 have been outstanding for almost 15 months. Whenever defendant
38 has requested proper responses, plaintiffs have said they would

39 ///

1 provide further information, but the interrogatories still remain
2 unanswered.

3 From the outset, plaintiffs have attempted to frustrate
4 defendant's discovery by procrastination and delay. These tactics
5 are perhaps best exemplified by plaintiffs' failure to supplement
6 their answers to defendant's first set of interrogatories until
7 September 1, 1983, almost six months after they agreed to do so at
8 a Rule 230-4(a) conference in March, 1983. It has now been
9 approximately six weeks since defendant's letter of March 22, and
10 notwithstanding repeated promises of further responses by
11 plaintiffs' counsel, no such responses have been received. At
12 plaintiffs' request, defendant's counsel spent considerable time
13 preparing the letter of April 6, 1984 (Exhibit F to defendant's
14 supporting memorandum) in an effort to reduce the number of
15 outstanding issues and thereby facilitate plaintiffs' response.
16 That letter went totally unanswered. Finally, with the impending
17 close of discovery, defendant had no chance but to proceed with
18 its motion to compel. Even then, rather than answering the
19 interrogatories which plaintiffs admit should be answered,
20 plaintiffs waited until the day before a response to the motion
21 was due and requested a further extension of two weeks. Even
22 though this request was accompanied by another of plaintiffs'
23 promises to provide the missing answers, past experience indicated
24 that this was simply another delaying tactic on plaintiffs' part,
25 and consequently defendant could not agree to the extension. At
26 about 4 p.m. on April 27, the day the response to the motion was
27 due, defendant's counsel received a telephone call from plaintiffs'

28 ///

1 local counsel requesting an extension of three days for filing and
2 serving an opposition to the motion. Defendant's counsel agreed
3 to this extension on the express understanding that the opposing
4 memorandum would be served by hand first thing in the morning of
5 April 30. Plaintiffs failed to meet this commitment, and the
6 opposing memorandum was not served until after noon and then only
7 after defendant's counsel called plaintiffs' local counsel around
8 noon to find out why the memorandum had not been served.

9 Contrary to the suggestion in plaintiffs' memorandum,
10 not all of plaintiffs' interrogatory responses have been signed
11 and verified as required by Rule 33(a) of the Federal Rules of
12 Civil Procedure. Defendant has never received a signed and
13 verified copy of either PLAINTIFFS' SUPPLEMENTAL RESPONSE TO
14 DEFENDANT'S FIRST SET OF INTERROGATORIES (NOS. 1-125) or
15 PLAINTIFFS' SUPPLEMENTAL RESPONSE TO DEFENDANT'S INTERROGATORIES
16 38 AND 39. Likewise, defendant has not received a signed and
17 verified copy of PLAINTIFFS' RESPONSE TO DEFENDANT'S THIRD SET OF
18 INTERROGATORIES (NOS. 183-192).

19 Plaintiffs' complaint about the number of interrogatories
20 served upon them by defendant is not well-founded. Prior to the
21 motion to compel, plaintiffs never objected to the number of
22 interrogatories, and this objection is not timely now. Moreover,
23 the number of interrogatories was necessitated largely by plain-
24 tiffs' own conduct. In this regard, it will be noted that the two
25 patents in suit contain a total of 110 claims. In addition,
26 plaintiffs' charge of infringement is directed to 13 of defendant's
27 approximately 40 video game programs. The interrogatories are
28

1 concerned largely with an identification of the allegedly infringed
2 claims and the manner in which they are infringed. As plaintiffs'
3 memorandum indicates, plaintiffs own approximately 27 U.S. patents
4 relating to television games and approximately 108 such patents in
5 other countries. Plaintiffs' memorandum also indicates that the
6 Re. 28,507 patent itself has been the subject matter of approxi-
7 mately 13 previous civil actions, two of which went through trial.
8 Extensive discovery was taken in a number of these previous
9 actions, and plaintiffs have a large amount of information relating
10 to the issues in the present case. Plaintiffs cannot conceal
11 pertinent information on the basis of the amount of information
12 involved.

13 Assuming that the motion to compel has finally motivated
14 plaintiffs to respond to the interrogatories they have indicated
15 they will answer, the remainder of this reply memorandum is
16 limited to the relatively few interrogatories for which plaintiffs'
17 memorandum has indicated any reluctance to answer fully.

18
19 INTERROGATORIES 32-37 AND 78

20 Plaintiffs have indicated that they will provide
21 "substantially" all the information requested by Interrogatories
22 32-37 with respect to the two patents in suit. These interro-
23 gatories relate directly to the validity and/or enforceability of
24 the patents in suit, and they should be answered in full, not just
25 "substantially".

26 In their memorandum, plaintiffs have for the first time
27 objected to Interrogatory 78 as not being limited as to time.
28 This interrogatory concerns plaintiffs' knowledge of certain items

1 entitled to know which of the claimed elements were actually
2 contributed by the named inventor and which elements were
3 contributed by someone else. Plaintiffs cannot conceal this
4 information by their semantic gymnastics and attempts to limit
5 defendant's inquiries to the overall combinations of elements
6 defined by the claims.

7 Moreover, it is not a proper response to these
8 interrogatories for plaintiffs to suggest that defendant can
9 ascertain the information from the transcripts of depositions
10 taken in previous lawsuits. By plaintiffs' own count, there are
11 39 days of relevant deposition testimony, and it is not reasonable
12 for plaintiffs to suggest that defendant search through 39 days of
13 testimony for answers to specific questions which may or may not
14 be found in the transcripts. Moreover, defendant has not as yet
15 been provided with copies of the exhibits to the depositions.
16 Finally, plaintiffs have offered no authority to support their
17 suggestion that deposition transcripts are business records of the
18 type contemplated by Rule 33(c) of the Federal Rules of Civil
19 Procedure for identification in response to an interrogatory.

20
21 INTERROGATORIES 101-116 AND 154

22 Plaintiffs argue that they should not have to respond to
23 these interrogatories because they relate to matters about which
24 the relevant witnesses have already been deposed in previous
25 litigation. That litigation involved different parties and
26 different issues. Activision was not a party to that litigation,
27 and it has never deposed the witnesses identified by plaintiffs as
28 being relevant. This case is fully distinguishable from the

1 Breeland and Schotthofer cases cited in plaintiffs' memorandum,
2 where the depositions and the interrogatories took place in the
3 same case and were employed by the same party. Moreover, it would
4 be unduly and unreasonably burdensome for defendant to have to
5 search through the multitude of deposition transcripts looking for
6 the answers to specific questions when the information sought is
7 within the personal knowledge of plaintiffs' attorneys.

8 Plaintiffs also argue that they do not need to respond
9 to these interrogatories because two courts have concluded that
10 the Re. '507 patent is valid over the '480 patent and the Spacewar
11 game prior art. In the Chicago Dynamic case, the court found that
12 neither side had proved whether the Patent Office Examiner was
13 really aware of what was in the '480 patent, and on the basis of
14 the evidence which was presented to him, he went on to say that he
15 did not believe that the '480 patent was material in the sense
16 that it would have changed the Examiner's mind. There is no
17 discussion of either the Spacewar game or the Examiner's knowledge
18 of this game in the Chicago Dynamic decision, and the validity of
19 the Re. '507 patent was not contested at the trial of the Mattel
20 case. By the interrogatories in question, defendant seeks to
21 ascertain the facts which were missing from the Chicago Dynamic
22 case, and plaintiffs cannot continue to suppress these facts on
23 the basis of two prior cases which were decided without them.

24
25 ATTORNEY'S FEES

26 To the extent that plaintiffs may yet voluntarily
27 respond to some of the interrogatories which are the subject of
28 this motion, both defendant and the Court have been put to the

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9 Attorneys for Defendant

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

13	THE MAGNAVOX COMPANY,)	
	a Corporation, and)	
14	SANDERS ASSOCIATES, INC.,)	Civil Action
	a Corporation,)	C 82 5270 JPV(FSL)
15)	
	Plaintiffs,)	
16)	DECLARATION OF
	v.)	EDWARD S. WRIGHT
17)	
	ACTIVISION, INC.,)	
18	a Corporation,)	
)	Hearing Date: May 11, 1984
19	Defendant.)	Time: 1:30 p.m.
20)	

21 I, EDWARD S. WRIGHT, declare and state as follows:
22 1. I am a partner in the firm of Flehr, Hohbach, Test,
23 Albritton & Herbert, attorneys for defendant in this action, and I
24 have been directly involved in substantially all of defendant's
25 efforts to obtain discovery in this matter.
26 2. I prepared the Reply to Memorandum in Opposition To
27 Motion For Order Compelling Discovery, and I am personally familiar
28 with all of the factual matters discussed in in it. To the best

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of my knowledge and belief, those factual matters are truly and correctly set forth in the aforesaid memorandum.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Date: May 4, 1984



Edward S. Wright