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Attorneys for Defendant

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

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

22 DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION  
23 FOR CORRECTED FINDINGS AND RECONSIDERATION OF  
24 MOTION TO DISQUALIFY

25 Defendant agrees with plaintiffs' assertion that the official transcript of  
26 the oral argument of March 14, 1983 is at variance with the Court's Order Denying  
27 Disqualification Motion filed April 11, 1983 (hereinafter Order). Moreover, like  
28 plaintiffs' counsel, the undersigned counsel for defendant recalls some discussion at  
the hearing relative to another of plaintiffs' agreements purporting to similarly  
Defendant's Opposition to Motion  
for Corrected Findings and  
Reconsideration

1 preclude counsel from challenging the Sanders patents. Even so, defendant objects to  
2 plaintiffs' proposed substitute language for the Order.

3 Although the undersigned counsel had copies of, and was aware of the  
4 terms of, those agreements which came into existence during the pendency of the  
5 Magnavox v. Atari litigation, such agreements were far fewer than a "dozen". In fact,  
6 at the time of the hearing on March 14, 1983, and even at the present time, neither  
7 defendant nor its counsel have copies of "dozens" of agreements.

8 Although defendant, on December 17, 1982, requested production of all of  
9 plaintiffs' agreements relative to the patents in suit, that request has not yet been  
10 satisfied. Defendant, therefore, objects to the inclusion of the Briody Affidavit  
11 purporting to characterize those agreements to which defendant did not have access at  
12 the time of the hearing. Even so, Briody's Affidavit, as well as the Williams Affidavit  
13 and plaintiffs' memorandum in support of the instant motion, can be taken as a clear  
14 admission that at least the Atari and Midway settlement agreements both include  
15 similar provisions purporting to restrict counsel from future representation challenging  
16 plaintiffs' patents.

17 It is submitted, that even without "dozens" of agreements restricting  
18 attorneys from subsequent challenges to the patents, the rationale of the Order is well  
19 supported by the record. It is further submitted that the paragraph bridging pages 3  
20 and 4 of said Order would conform to the record herein if amended to read as follows:

21 Magnavox has entered into at least one other settlement agreement  
22 which included provisions similar to the above-quoted provision, purporting  
23 to preclude both the sublicensee and its counsel from challenging the  
24 validity of the Sanders patents except under certain very narrow circum-  
25 stances.

26 Similarly, it is submitted that the Court's conclusion set forth in the  
27 sentence bridging pages 13 and 14 of said Order is well founded whether the attempt is  
28 "to buy out 'dozens' of patent law firms" (Order, p. 13) such that the supply is

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"drastically reduced" (Order, p. 14); or if the attempt is to buy out only one or two of these law firms. Any unjustified limitation on the ability of the defendant to challenge the patent must be stricken.

Pursuant to a telephone conversation today with Jonathan Rowe, Judge Henderson's law clerk, no proposed order is being submitted herewith.

FLEHR, HOHBACH, TEST,  
ALBRITTON & HERBERT  
Attorneys for Defendant

By Thomas O. Herbert

Thomas O. Herbert

