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The Magnavox Company and
Sanders Associates, Inc.

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11 United States District Court For The
Northern District Of California
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13 THE MAGNAVOX COMPANY, a corporation,)
and SANDERS ASSOCIATES, INC.,)
14 a corporation,)
15 Plaintiffs,) No. C 82 5270 JPV
16 v.) PLAINTIFFS' PRETRIAL
STATEMENT
17 ACTIVISION, INC., a corporation,)
18 Defendant.)

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20 (a) Party.

21 This statement is submitted on behalf of the plaintiffs,
22 The Magnavox Company and Sanders Associates, Inc.

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24 PLAINTIFFS' PRETRIAL STATEMENT
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1 (b) Jurisdiction and Venue.

2 Jurisdiction and venue for plaintiffs' claim of patent
3 infringement are based on 28 U.S.C. §§1338(a) and 1400(b).
4 Jurisdiction for defendant's first counterclaim for declaratory
5 judgment of patent invalidity and noninfringement is based on 28
6 U.S.C. §§1338(a), 2201, and 2202. No party disputes jurisdiction
7 or venue on those claims. Defendant is no longer pursuing its
8 second or third counterclaims in this action.

9 (c) Substance of the Action.

10 This is an action for infringement of United States
11 Letters Patent Re. 28,507. Plaintiffs Magnavox and Sanders are
12 the exclusive licensee and owner, respectively, of that patent.
13 The patent relates in general to television games. Defendant,
14 Activision, manufactures and sells television game cartridges
15 which may be used in combination with television game consoles not
16 manufactured by Activision to play television games. Plaintiffs
17 allege that the combination formed by certain ones of the
18 Activision television game cartridges and the consoles with which
19 they are intended to be used are covered by the Re. 28,507 patent,
20 and that the manufacture and sale of those cartridges by
21 Activision constitutes contributory infringement of, and
22 inducement to infringe, the Re. 28,507 patent.

23 The sole issue plaintiffs will raise in their prima
24 facie infringement case is:

25 Does the use of the combination of any
26 one of the Activision television game
27 cartridges listed in the following table
28 and a television game console capable of
using that cartridge constitute an act
of infringement of the stated claims of

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U.S. Patent Re. 28,507, and is defendant a contributory infringer, or does it induce infringement, of the stated claims of U.S. Patent Re. 28,507 because of its manufacture and sale of each cartridge listed in the following table:

<u>Cartridge Title</u>	<u>Claims</u>
Tennis	25,26,51,52,60,61,62
Ice Hockey	25,26,51,52,60,61,62
Boxing	25,26,51,52,60
Fishing Derby	25,26,51,52,60,61
Stampede	25,51,60
Pressure Cooker	25,26,51,52,60
Dolphin	25,51,60
Grand Prix	60
Barnstorming	60
Sky Jinks	60
Enduro	60
Keystone Kapers	60
Decathlon	60

1 Defendant alleges that the Re. 28,507 patent is invalid
2 and has not been infringed, and seeks a declaratory judgment to
3 that effect. The validity and infringement by Activision of the
4 Re. 28,507 patent are the principal issues to be decided. The
5 Re. 28,507 has twice previously been held valid and/or infringed
6 after full trial on the merits. The Magnavox Co. v. Chicago
7 Dynamic Industries, 201 U.S.P.Q. 25 (N.D. Ill. 1977); The Magnavox
8 Co. v. Mattel, Inc., 216 U.S.P.Q. 28 (N.D. Ill. 1982).

9 (d) Undisputed Facts.

10 The parties have exchanged proposed statements of
11 undisputed facts; as yet they have come to no agreement on those
12 statements.

13 (e) Disputed Factual Issues.

14 See Attachment A hereto.

15 (f) Relief prayed.

16 Plaintiffs seek:

- 17 1. An award of damages to compensate them for
18 Activision's infringement of the Re. 28,507 patent, which damages
19 shall not be less than a reasonable royalty for Activision's use
20 of the patented subject matter, with interests and costs (35
21 U.S.C. §284);
- 22 2. Trebling of the damages so determined (35 U.S.C.
23 §284);
- 24 3. Prejudgment and post-judgment interest and costs;
- 25 4. A permanent injunction against further acts of
26 infringement of the Re. 28,507 patent (35 U.S.C. §283); and
- 27 5. Their reasonable attorney fees (35 U.S.C. §285).

1 (g) Points of Law.

2 See Attachment B hereto.

3 (h) Previous Motions.

4 1. Plaintiffs' motion to dismiss defendant's second
5 counterclaim - denied, but second counterclaim later withdrawn
6 voluntarily;

7 2. Plaintiffs' motion to disqualify certain ones of
8 defendant's counsel - denied;

9 3. Defendant's first motion to compel further
10 interrogatory responses - granted in part;

11 4. Defendant's second motion to compel further
12 interrogatory responses - withdrawn;

13 5. Defendant's motions for status conference and to
14 continue trial date - granted.

15 6. Plaintiffs' motion to compel further interrogatory
16 responses - granted.

17 (i) Witnesses to be Called.

18 Plaintiffs expect to call the following witnesses during
19 their prima facie case:

20 1. Mr. Ralph H. Baer will testify concerning the
21 development of television games at Sanders Associates, Inc.,
22 including the subject matter of the patent in suit, and the
23 development of the television game industry.

24 2. Dr. William B. Ribbens will testify as an expert
25 witness concerning the '507 patent, the Activision television
26 games alleged to infringe that patent, and his conclusions and
27 opinions as to the question of infringement.

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1 2. Paragraph 15 of defendant's "Answers and
2 Counterclaims" should be stricken pursuant to the "Stipulation of
3 the Parties re Amendment of Answer and Counterclaim of Activision,
4 Inc." filed on October 29, 1984.

5 3. Paragraphs 37-40 of defendants "Answers and
6 Counterclaims (which are the entirety of defendants third
7 counterclaim) should be stricken pursuant to the "Stipulation of
8 the Parties re Amendment of Answer and Counterclaim of Activision,
9 Inc." filed in October 29, 1984, and defendant's third
10 counterclaim should therefore be dismissed.

11 (n) Settlement Discussion.

12 The parties attended a Settlement Conference before
13 Magistrate Woelflen on September 27, 1984, but were unable to come
14 to an agreement on settlement. No further settlement negotiations
15 have occurred. Plaintiffs are willing to further discuss the
16 possibility of settlement.

17 (o) Agreed Statement.

18 Presentation of this action in whole upon an agreed
19 statement of facts does not appear feasible. The parties may be
20 able to agree to some facts prior to trial.

21 (p) Bifurcation, Separate Trial of Issues.

22 At a status conference in this action on September 27,
23 1984, Judge Vukasian ordered that the issues of liability and
24 damages be bifurcated.

25 (q) Reference to Master or Magistrate.

26 Plaintiffs do not agree to reference of the trial in
27 this action to a master or magistrate.

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