

1 MARTIN R. GLICK\*  
2 H. JOSEPH ESCHER III  
3 MARLA J. MILLER  
4 HOWARD, RICE, NEMEROVSKI, CANADY,  
5 ROBERTSON & FALK  
6 A Professional Corporation  
7 Three Embarcadero Center, 7th Floor  
8 San Francisco, California 94111  
9 Telephone: 415/434-1600

\*Counsel of Record

Of Counsel:  
SCOTT HOVER-SMOOT

Attorneys for Defendant-Appellant  
Activision, Inc.

11 UNITED STATES COURT OF APPEALS  
12 FOR THE FEDERAL CIRCUIT

14 THE MAGNAVOX COMPANY, a corpora- )  
15 tion, and SANDERS ASSOCIATES, )  
16 INC., a corporation, )  
17 Plaintiffs-Appellees, )  
18 vs. )  
19 ACTIVISION, INC., a corporation, )  
20 Defendant-Appellant. )

No. 86-1263

ACTIVISION, INC.'S  
DESIGNATION OF APPENDIX

Fed. R. App. P.30  
Local Rule 12

21 Appellant Activision, Inc. designates the following mate-  
22 rial for inclusion in its Appendix. For convenience, the following  
23 abbreviations are used in citations throughout the Designation of  
24 Appendix:

25 TT \_\_-\_\_ Trial transcript, volume \_\_-page \_\_ (June, 1985  
26 // session)

- 1 TT 8/\_\_\_ a.m. Trial transcript, August \_\_, 1985, morning session
- 2 TT 8/\_\_\_ p.m. Trial transcript, August \_\_, 1985, afternoon
- 3 - session
- 4 Dep. Deposition
- 5 Plf's Resp. to Def's First Set Plaintiff's Response to Defendant's First Set of
- 6 Interrogatories (Nos. 1-125), dated February, 1983
- 7 Plf's Supp. Resp. Plaintiff's Supplemental Response to Defendant's
- 8 Interrogatories, dated May 11, 1984

9 DESIGNATIONS:

- 10 Findings of Fact.
- 11 Stipulation of the Parties Regarding Undisputed Facts, dated May 1,
- 12 1985.
- 13 Plf's Third Supplemental Response to Defendant's Interrogatories,
- 14 dated September 7, 1984 at 2.
- 15 TT 1-10, lines 10-12; TT 8/13 a.m. at 153, lines 13-17
- 16 TT 8/12 p.m. at 102, line 20 - 103, line 1; 105, line 6 - 111, line
- 17 10 (Higinbotham).
- 18 TT 8/12 p.m. at 112, line 13 - 120, line 6 (Higinbotham); TT
- 19 8/12 p.m. at 140, line 5 - 141, line 23 (Thacker); Ex. E.
- 20 TT 8/12 p.m. at 103, line 2 - 104, line 27 (Higinbotham).
- 21 Ex. BD (Spiegel patent); Ex. DQ (Examiner's discussion of Spiegel in
- 22 Baer reissue); TT 8/12 p.m. at 143, line 21 - 144, line 10
- 23 (Thacker); Mayer Dep. (5/9/84, Activision) at 34, line 9 - 39,
- 24 line 12; 43, lines 22-25; 44, lines 1-15.
- 25 Lipper Dep. (5/13/82, APF) at 97, 136-138; Mayer Dep. (5/9/84,
- 26 Activision) at 34-39, 43-44.
- TT 2-4, line 4 - 2-5, line 8 (Baer).
- TT 3-97, line 3 - 3-101, line 16; 3-113, line 20 - 3-115, line 9
- (Baer); Ex. CA (Baer, September 1966 memo).
- TT 2-16, line 25 - 2-17, line 25; 2-24, line 4 - 2-25, line 2
- (Baer).

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
ROBERTSON  
& FALK  
A Professional Corporation

1 TT 3-115, lines 17-25 (Baer); Ex. HD (Baer Disclosure Sheet) at 2.  
2 TT 2-14, lines 8-10 (Baer).  
3 TT 3-116, lines 8-25; 3-101, line 25 - 3-107, line 18 (Baer);  
4 Harrison Dep. (3/17/76, Bally) at 60.  
5 TT 3-105, lines 14-19 (Baer).  
6 TT 3-117, lines 1-8 (Baer).  
7 TT 3-118, line 18 - 3-123, line 2 (Baer); Ex. CD (Summary of Major  
Games); Ex. HD.  
8 Ex. DA (Baer-1 patent); Ex. IU; TT 8/12 p.m. at 128, line 24 - 132,  
9 line 11 (Thacker).  
10 TT 3-122, lines 15-22; 3-123, lines 3-5; 4-40, lines 8-25.  
11 TT 3-124, line 23 - 3-125, line 7 (Baer).  
12 TT 3-123, line 19 - 3-124, line 21.  
13 TT 6-29, lines 5-15 (Baer).  
14 TT 3-117, line 22 - 3-118, line 17; TT 3-132, line 22 - 3-133,  
line 2; Ex. JL-8 (Baer).  
15 TT 3-125, line 8 - 3-126, line 1 (Baer); Ex. JL-7 (Baer).  
16 TT 3-119, line 13 - 3-122, line 12; 3-123, lines 3-5; 4-40,  
17 lines 8-25 (Baer); Ex. JL-6 (Baer); Ex. DU (Seligman argument for  
Baer-1 reissue) at 14; Ex. DX (Seligman argument for Baer-1 reissue)  
18 at 5.  
19 TT 3-137, line 24 - 3-138, line 23; 3-139, line 18 - 3-140, line 1  
(Baer); TT 5-150, line 22 - 5-151, line 2 (Ribbens).  
20 Ex. DZ (Baer Supplemental Declaration).  
21 TT 3-126, line 2 - 3-128, line 9 (Baer); Ex. CF (Rusch Notebook)  
22 at 95.  
23 Ex. CJ (Rusch Disclosure Sheet) at 1 (#5); Ex. HT (Rusch First  
Progress Report); Harrison Dep. (3/24/76, Bally) at 42-43.  
24 TT 3-127, lines 1-23 (Baer).  
25 TT 3-131, lines 6-16 (Baer).  
26 //

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
ROBERTSON  
& FALK  
A Professional Corporation

1 TT 3-131, lines 17-25 (Baer); Ex. JL-5 (Seligman Supp. Amendment to  
2 Response to Opposer's 2nd Paper).

3 Ex. HD (Baer Disclosure Sheet); Ex. HT (Rusch First Report); Ex. HU  
4 (Status Report); Ex. HV (Sanders Stop Order); Ex. HW (Rusch Final  
5 Report).

6 Ex. HW (Rusch Final Report) at 5.

7 Ex. CJ (Rusch Disclosure Sheet) at 1.

8 Judicial Notice: Ex. M; Ex. GY (excerpt from textbook).

9 TT 5-7, lines 11-13.

10 TT 7-121, line 9 - 7-122, line 2 (Thacker).

11 Exs. CT, CU, CV, CW (excerpts from '284 file wrapper).

12 Exs. DH, DI (excerpts from '507 file wrapper).

13 Ex. DI (excerpt from '507 file wrapper).

14 Ex. JL-3 at 1288-89 (Professor Kayton).

15 Ex. JL-5 (Seligman).

16 TT 4-27, line 11 - 4-28, line 1 (Baer).

17 TT 3-123, lines 13-18 (Baer); Etlinger Dep. (4/6/76, Bally) at 38,  
18 39; Ex. HD (Baer Disclosure Sheet) at 1 (¶7); Ex. HW (August 1968  
19 Rusch Final Report) at 1, 5.

20 TT 8/12 p.m. at 142, lines 3-13 (Thacker).

21 TT 3-30, line 22 - 3-31, line 17 (Baer); TT 8/12 p.m. at 122, line  
22 12 - 123, line 8 (Higinbotham); Harrison Dep. (3/16/76, Bally) at 7,  
23 Q. 39 - 11, Q. 72; 40-41, Q. 261.

24 TT 8/12 p.m. at 122, line 5 - 123, line 8 (Higinbotham); TT 8/12  
25 p.m. at 142, line 14 - 143, line 20; 144, line 25 - 145, line 6  
26 (Thacker).

TT 8/12 p.m. at 122, line 5 - 123, line 8 (Higinbotham); TT 8/12  
p.m. at 142, line 14 - 143, line 20 (Thacker).

TT 8/12 p.m. at 144, line 25 - 145, line 6 (Thacker).

TT 4-49, line 21 - 4-50, line 15 (Russell); Ex. Q.

TT 4-52, line 8 - 4-57, line 9 (Russell).

1 TT 4-59, line 9 - 4-61, line 4 (Russell); TT 8/13 a.m. at 166,  
2 line 10 - 170, line 6 (Thacker).

3 TT 4-62, line 15 - 4-63, line 24; 4-68, line 24 - 4-70, line 22  
(Russell); Ex. HA; Green Dep. (4/26/76, CDI) at 3, 7, 13-15.

4 Lawrence Dep. (5/23/84, Activision) at 19-21, 68-75.

5 Lawrence Dep. (5/23/84, Activision) at 77-78, 81-83; 5/24/84 at  
6 14-17; TT 8/13 a.m. at 170, line 17 - 172, line 8 (Thacker).

7 Lawrence Dep. (5/24/84, Activision) at 23-26, 29-30, 36-37, 46-64.

8 Lawrence Dep. (5/24/84, Activision) at 19-22; Smith Dep. (5/29/84,  
Activision) at 48-51.

9 Brown Dep. (6/25/76, CDI) at 12-13, 42, 46-55, 79-83; Ex. C; TT 8/13  
10 a.m. at 157, line 15 - 160, line 18 (Thacker).

11 Brown Dep. (6/25/76, CDI) at 36-39, 93-102.

12 Drumheller Dep. (5/31/84, Activision) at 15-21, 23-25; Mullarky Dep.  
13 (5/27/76, CDI) at 6-11; TT 8/13 a.m. at 160, line 19 - 161, line 24  
(Thacker).

14 TT 8/13 a.m. at 162, line 16 - 163, line 20 (Thacker); Lechner Dep.  
(10/28/76, CDI) at 66, 67; Cooke Dep. (10/27/76, CDI) at 39-41.

15 TT 8/13 a.m. at 162, line 16 - 164, line 24 (Thacker).

16 TT 8/12 p.m. at 142, lines 3-13 (Thacker).

17 TT 4-44, line 23 - 4-47, line 1 (Russell); TT 8/12 p.m. at 84, line  
18 7 - 86, line 26 (Nielsen).

19 TT 8/13 a.m. at 173, lines 14-26 (Thacker).

20 TT 4-19, lines 8-10 (Baer); Ex. JL-1 (Anderson's Opening Statement,  
CDI).

21 TT 3-141, lines 19-25; 3-142, lines 9-20; 3-144, lines 9-22.

22 Ex. CP (Magnavox license support schematics); TT 4-15, 4-16 (Baer).

23 TT 4-15, line 7 - 4-16, line 25 (Baer).

24 TT 6-111, line 15 - 6-112, line 19 (Briody); TT 7-65, lines 22-25;  
25 7-68, lines 2-7 (Bushnell); TT 8/14 a.m. at 339, lines 5-10 (Crane).

26 TT 6-114, line 6 - 6-115, line 3 (Briody); TT 7-68, lines 2-7  
(Bushnell); Fritsche counterdesignation at 537, 538.

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
ROBERTSON  
& FALK  
A Professional Corporation

1 TT 7-11, lines 1-4 (Levy).  
2 Ex. IC.  
3 TT 6-115, line 4 - 6-116, line 7 (Briody).  
4 TT 7-58 - 7-59, line 7 (Bushnell).  
5 TT 7-60, line 1 - 7-63, line 13 (Bushnell).  
6 TT 7-65, line 6 - 7-68, line 16 (Bushnell).  
7 TT 7-69, line 12 - 7-71, line 8; 7-78, line 18 - 7-79, line 3  
8 (Bushnell).  
9 TT 7-75, line 8 - 7-79, line 3 (Bushnell).  
10 TT 7-78, lines 2-17; 7-90, lines 2-18 (Bushnell).  
11 DM (Coleco license); DN (Atari license); TT 7-75, line 8 - 7-79,  
line 3 (Bushnell).  
12 TT 6-124, lines 1-5, 22-25; 6-125, line 21 - 6-126, line 22  
13 (Briody).  
14 TT 7-24, lines 10-19 (Levy).  
15 TT 6-126, lines 5-22 (Briody); Mayer Dep. (5/9/84, Activision)  
at 59, 66, 175.  
16 TT 8/13 p.m. at 260, line 28 - 262, line 22; 292, lines 16-25  
17 (Lopez).  
18 Ex. DC (Seligman).  
19 Ex. JL-4 (Baer Canadian affidavit - May 5, 1982).  
20 Ex. DS at 40; Ex. ID (Mayer affidavit); Ex. DY (Examiner's Statement  
from file wrapper).  
21 TT 4-19, lines 8-10 (Baer); Ex. JL-1 (Anderson's Opening Statement,  
22 CDI); Plf's Resp. to Def's First Set (#71).  
23 Ex. JL-4; Ex. CJ.  
24 TT 5-24, line 7 - 5-39, line 3 (Ribbens).  
25 TT 6-63, line 25 - 6-65, line 9 (Ribbens).  
26 TT 6-64, line 21 - 6-65, line 9 (Ribbens).  
//

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
ROBERTSON  
& FALK

A Professional Corporation

1 TT 7-121, lines 9-19; TT 8/13 p.m. at 235, line 27 - 236, line 9  
2 (Thacker).

3 TT 6-24, lines 10-22 (Ribbens).

4 Ex. GT; Ex. IE.

5 TT 6-9, line 17 - 6-10, line 3 (Ribbens).

6 TT 7-118, line 21 - 7-120, line 2 (Thacker).

7 TT 8/12 a.m. at 8, line 24 - 23, line 10; (Thacker); TT 8/12 p.m.  
8 at 86, line 10 - 87, line 9 (Nielsen).

9 Ex. JT; Ex. HZ.

10 TT 7-125, line 21 - 7-128, line 12; 7-131, line 13 - 7-133, line 16  
11 (Thacker); Ex. GW (ROM Chip photograph).

12 TT 7-148, line 1 - 7-149, line 21 (Thacker).

13 TT 8/14 a.m. at 342, line 9 - 343, line 21 (Crane).

14 TT 7-153, line 3 - 7-155, line 11 (Thacker); TT 8/12 a.m. at 8, line  
15 24 - 23, line 10; 28, line 20 - 42, line 1 (Thacker).

16 TT 8/12 a.m. at 8, line 24 - 11, line 2 (Thacker).

17 TT 6-36, lines 5-8 (Ribbens).

18 TT 8/12 a.m. at 22, line 25 - 23, line 10 (Thacker).

19 TT 8/12 a.m. at 11, lines 3-17 (Thacker).

20 TT 6-36, line 21 - 6-37, line 16 (Ribbens); TT 7-139, line 10 -  
21 7-140, line 16 (Thacker).

22 TT 6-23, line 25 - 6-24, line 12; 6-37, line 21 - 6-38, line 8  
23 (Ribbens).

24 TT 6-39, line 7 - 6-40, line 1 (Ribbens).

25 TT 5-79, lines 1-15 (Ribbens); TT 8/13 a.m. at 211, lines 2-8  
26 (Thacker).

TT 6-42, lines 9-15 (Ribbens); TT 8/12 a.m. at 38, line 28 - 39,  
line 3 (Thacker).

TT 8/12 a.m. at 37, line 25 - 38, line 22 (Thacker); TT 8/14 a.m.  
at 338, line 26 - 340, line 2 (Crane).

//

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
ROBERTSON  
& FALK  
A Professional Corporation

1 TT 8/12 a.m. at 14, line 12 - 15, line 2 (Thacker).  
2 TT 8/14 a.m. at 357, line 21 - 359, line 7 (Crane).  
3 TT 5-96, line 13 - 5-97, line 3; 6-24, line 23 - 6-27, line 20  
4 (Ribbens); TT 8/12 a.m. at 48, line 19 - 52, line 1 (Thacker).  
5 TT 8/13 p.m. at 235, lines 4-18 (Thacker).  
6 TT 8/12 a.m. at 39, line 4 - 42, line 1 (Thacker).  
7 TT 8/12 a.m. at 45, line 3 - 49, line 28 (Thacker).  
8 TT 8/12 a.m. at 43, line 9 - 45, line 2 (Thacker).  
9 Ex. DN-1; TT 8/13 p.m. at 277, line 23 - 278, line 12 (Lehrberg).  
10 TT 6-125, line 21 - 6-126, line 22 (Briody).  
11 Ex. DN; Ex. DM; Ex. EI.  
12 TT 7-131, line 13 - 7-133, line 16 (Thacker).  
13 Ex. CS ('284 file wrapper) at 127, 146; Ex. CV.  
14 Ex. CS ('284 file wrapper) at 147, 148.  
15 Ex. CS ('284 file wrapper) at 163.  
16 Ex. CU (Seligman); Ex. DJ (Seligman).  
17 Ex. DG ('507 file wrapper) at 32 (Rusch Declaration).  
18 Ex. DF (Rusch-2 patent).  
19 TT 8/14 a.m. at 362, line 27 - 363, line 12 (Crane); 3-97, line 3 -  
20 3-101, line 16; 3-101, line 25 - 3-107, line 18; 3-113, line 20 -  
21 3-115, line 9; 3-116, lines 8-25 (Baer).  
22 TT 8/14 a.m. at 363, line 21 - 364, line 28 (Crane); Ex. FT.  
23 TT 8/14 a.m. at 365, lines 1-22 (Crane).  
24 TT 8/14 a.m. at 365, line 25 - 367, line 11 (Crane); Plf's Supp.  
25 Resp. at 12-13 (#41).  
26 TT 8/14 a.m. at 367, lines 15-27 (Crane); Plf's Supp. Resp. at 12-13  
27 (#41).  
28 TT 8/14 a.m. at 371, line 1 - 372, line 11 (Crane); TT 3-113, lines  
29 7-19 (Baer).



HOWARD  
RICE  
NEMEROVSKI  
CANADY  
ROBERTSON  
& FALK  
A Professional Corporation

- 1 TT 8/14 a.m. at 373, line 9 - 376, line 28 (Crane).
- 2 TT 8/14 a.m. at 377, line 9 - 381, line 19 (Crane).
- 3 TT 8/14 a.m. at 382, line 15 - 385, line 25 (Crane).
- 4 TT 8/14 a.m. at 386, line 5 - 388, line 4 (Crane); Plf's Supp. Resp.
- 5 at 12-13 (#41).
- 6 TT 8/14 a.m. at 388, line 9 - 391, line 18 (Crane).
- 7 Plf's Answers to Interrogatory No. 39 as supplemented in February  
1983, March 1984 and September 1984.
- 8 TT 8/14 a.m. at 391, line 27 - 393, line 21 (Crane).
- 9 TT 8/14 a.m. at 397, line 5 - 398, line 21 (Crane); Plf's Supp.
- 10 Resp. at 12-13 (#41).
- 11 TT 8/14 a.m. at 394, line 4 - 397, line 4 (Crane).
- 12 TT 2-29, lines 2-23 (Baer); Ex. CU (Seligman); Ex. DJ (Seligman);  
Ex. CS ('284 file wrapper).
- 13 TT 6-144, line 11 - 6-146, line 6 (Levy).
- 14 TT 8/14 a.m. at 357, line 21 - 359, line 7 (Crane).
- 15 TT 7-8, line 5 - 7-12, line 5; Ex. IO; Ex. IP; Ex. IQ.
- 16 TT 7-26, lines 3-19 (Levy).
- 17 Plf's Third Supp. Response to Defendant's Interrogatories, dated  
18 September 7, 1984 (#38).
- 19 //
- 20 //
- 21 //
- 22 //
- 23 //
- 24 //
- 25 //
- 26 //

1 TT 6-49, lines 21-25; 6-59, lines 1-10 (Ribbens); TT 7-19, lines  
2 5-16 (Levy); TT 6-126, lines 5-8 (Briody).

3 -

4 DATED: May 22, 1986

MARTIN R. GLICK\*  
H. JOSEPH ESCHER III  
MARLA J. MILLER  
HOWARD, RICE, NEMEROVSKI, CANADY,  
ROBERTSON & FALK  
A Professional Corporation

By: Mart R Glick  
MARTIN R. GLICK  
Attorneys for Defendant-Appellant  
Activision, Inc.

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
ROBERTSON  
& FALK  
A Professional Corporation

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

052286/8-355905Jb

DECLARATION OF SERVICE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

I declare that I am employed in the County of San Francisco, California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Three Embarcadero Center, 7th Floor, San Francisco, CA 94111.

On May 22, 1986, I served the attached ACTIVISION, INC.'S DESIGNATION OF APPENDIX (Fed. R. App. P. 30/Local Rule 12) by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid and depositing said envelope in a United States Mail Box in San Francisco, California, addressed as follows:

Theodore W. Anderson, Esq.  
Neuman, Williams, Anderson & Gibson  
77 W. Washington Street  
Chicago, IL 60602

I declare under penalty of perjury that the foregoing is true and correct and was executed at San Francisco, California, on May 22, 1986.

\_\_\_\_\_  
Judy Scott

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
ROBERTSON  
& FALK  

---

A Professional Corporation