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9 Attorneys for Defendant-Appellant
 10 Activision, Inc.

11 UNITED STATES COURT OF APPEALS
 12 FOR THE FEDERAL CIRCUIT

HOWARD
 RICE
 NEMEROVSKI
 CANADY
 ROBERTSON
 & FALK

A Professional Corporation

14	THE MAGNAVOX COMPANY, a corpora-)	No. 86-852
15	tion, and SANDERS ASSOCIATES,)	
16	INC., a corporation,)	ACTIVISION, INC.'S
17)	<u>DESIGNATION OF APPENDIX</u>
18	Plaintiffs-Appellees,)	
19)	Fed. R. App. P.30
20	vs.)	Local Rule 12
21)	
22	ACTIVISION, INC., a corporation,)	
23)	
24	Defendant-Appellant.)	
25)	

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 Plaintiff's Response to Defendant's First Set of
- 6 Def's First Set Interrogatories (Nos. 1-125), dated February, 1983
- 7 Plf's Supp. Plaintiff's Supplemental Response to Defendant's
- 8 Resp. 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. 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 re-issue); TT 8/12 p.m. at 143, line 21 - 144, line 10
- 23 (Thacker); Mayer Dep. (5/9/84, Activision) at 34, lines 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, lines 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).

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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 (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, lines 18-25 - 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, lines 2-15; 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 //

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1 TT 3-131, lines 17-25 (Baer); Admissions: Ex. JL-5 (Seligman Supp.
2 Amendment to 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 (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, lines 11-25 -- 4-28, lines 1-9 (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 18 (Baer); TT 8/12 p.m. at 122, line
22 12-123, line 8 (Higinbotham); Harrison Dep. (3/16/76, Bally) at 7,
23 line 39 - 11, Q. 74; 40-41, Q. 261.
24 TT 8/12 p.m. at 122, line 5-123, line 8 (Higinbotham); TT 8/12 p.m.
25 at 142, line 14-143, line 20; 144, line 25-145, line 6 (Thacker).
26 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).
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- 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. (5/28/84, 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.
(5/27/76, CDI) at 6-11; TT 8/13 a.m. at 160, line 19 - 161, line 24
13 (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, line 22-25;
25 7-68, line 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, line 2-7
(Bushnell); Fritsche counterdesignation at 537, 538.

- 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, line 2-17; 7-90, line 2-18 (Bushnell).
- 11 DM (Coleco license); DN (Atari license); TT 7-75, line 8 - 7-79,
- 12 line 3 (Bushnell)
- 13 TT 6-124, lines 1-5, 21-25; 6-125, line 21; 6-126, line 22 (Briody).
- 14 TT 7-24, lines 10-19 (Levy).
- 15 TT 6-126, lines 5-22 (Briody); Mayer Dep. (5/9/84, Activision)
- 16 at 59, 66, 175.
- 17 TT 8/13 p.m. at 260, line 28 - 262, line 22; 292, line 16-25
- 18 (Lopez).
- 19 Ex. DC (Seligman).
- 20 Ex. JL-4 (Baer Canadian affidavit - May 5, 1982).
- 21 Ex. DS at 40; Ex. ID (Mayer affidavit); Ex. DY (Examiner's Statement
- 22 from File Wrapper).
- 23 TT 4-19, lines 8-10 (Baer); Ex. JL-1 (Anderson's Opening Statement,
- 24 CDI); Plf's Resp. to Def's First Set (#71).
- 25 Exs. JL-4 and CJ.
- 26 TT 5-24, line 7 - 5-39, line 3 (Ribbens).
- TT 6-63, line 25 - 6-65, line 9 (Ribbens).
- TT 6-64, line 21 - 6-65, line 9 (Ribbens).
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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 Exs. GT, 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; 21, line 11 - 22, line 1
8 (Thacker); TT 8/12 p.m. at 86, line 10 - 87, line 9 (Nielsen).

8 Exs. JT, HZ.

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

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

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

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

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

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

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

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

18 TT 6-36, line 21 - 6-37, line 16 (Ribbens); TT 7-139, line 10 -
19 7-140, line 16 (Thacker).

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

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

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

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

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

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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 Exs. DN, DM, EI.
12 TT 7-131, line 13 - 7-133, line 16 (Thacker).
13 Ex. CF ('284 file wrapper) at 127, 146; Ex. CV.
14 Ex. CF ('284 file wrapper) at 147, 148.
15 Ex. CF ('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; 3-113, line 20 - 3-115, line 9; 3-116, lines 8-25;
21 3-101, line 25 - 3-107, line 18 (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, line
29 7-19 (Baer).

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- 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. CF ('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; Exs. IO, IP, IQ.
- 16 TT 7-26, lines 3-19 (Levy).
- 17 Plf's Third Supp. Response to Defendant's Interrogatories, Dated
September 7, 1984 (#38).
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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).

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DATED: February 3, 1986

MARTIN R. GLICK*
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020386/4-355905Jb

DECLARATION OF SERVICE

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

5 On February 3, 1986, I served the attached

6 Activision, Inc.'s Designation of
7 Appendix

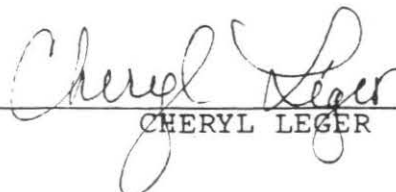
8 by causing to have a true copy hand-delivered to:

9 Robert L. Ebe, Esq.
10 McCutchen, Doyle, Brown & Enersen
11 3 Embarcadero Center, 27th Fl.
12 San Francisco, CA 94111

13 and by placing a true copy thereof enclosed in a sealed Federal Expre
14 envelope with postage thereon fully prepaid, delivered by Federal
15 Express and addressed as follows:

16 Theodore Anderson, Esq.
17 Neuman, Williams, Anderson & Olson
18 77 W. Washington Street
19 Chicago, IL 60602

20 I, Cheryl Leger, declare under penalty of perjury that
21 the foregoing is true and correct and was executed at San
22 Francisco, California on February 3, 1986.

23
24 
25 _____
26 CHERYL LEGER

1 MARTIN R. GLICK*
2 H. JOSEPH ESCHER III
3 MARLA J. MILLER
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6 *Counsel of Record

7 Of Counsel:
8 SCOTT HOVER-SMOOT

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10 Activision, Inc.

11 UNITED STATES COURT OF APPEALS
12 FOR THE FEDERAL CIRCUIT

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14 THE MAGNAVOX COMPANY, a corpora-)
15 tion, and SANDERS ASSOCIATES,)
16 INC., a corporation,)

16 Plaintiffs-Appellees,)

17 vs.)

18 ACTIVISION, INC., a corporation,)

19 Defendant-Appellant.)
20

No. 86-852

STATEMENT OF ISSUES
ON APPEAL

Fed. R. App. P. 10(b)

21 Appellant Activision, Inc. sets forth the issues it
22 intends to present on appeal:

23 1. Whether the District Court erred in holding that
24 Activision did not sustain its burden of proving that any of
25 claims 25, 26, 51, 52 or 60-62 of U.S. Patent Re 28,507 ("the
26 '507 patent") is invalid for obviousness under 35 U.S.C. Section