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APR 10 1985

WILLIAM L. WHITTAKER
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

14 THE MAGNAVOX COMPANY, a corporation,
15 and SANDERS ASSOCIATES, INC.,
corporation,

16 Plaintiffs,

17 v.

18 ACTIVISION, INC., a corporation,

19 Defendant.

)
)
) No. C 82 5270 CAL
)

) MEMORANDUM IN
) SUPPORT OF
) PLAINTIFFS'
) APPLICATION TO
) CONTINUE TRIAL DATE
)
)
)

21 Plaintiffs seek a nine day delay in the commencement of
22 the trial* of this action to May 1, 1985. The delay is necessary
23 to permit attendance at trial of plaintiffs' expert witness,
24 Dr. William B. Ribbens. In support of this application,

25 / / /

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
APPLICATION TO CONTINUE TRIAL DATE

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*The parties estimate the trial will take approximately three weeks.

1 plaintiffs state as follows:

2 1. At the pretrial conference held in this action on
3 December 13, 1984, trial was set to commence on March 4, 1985.

4 2. Following the December pretrial conference, the
5 parties continued with previously commenced settlement
6 negotiations. Substantial progress was made in these
7 negotiations, and, on February 12-14, 1985, counsel for the
8 parties exchanged signed letters setting forth an agreement in
9 principal to settle this action. The parties, through their
10 counsel, agreed that the agreement in principal would be followed
11 by a formal, definitive agreement. Activision insisted as a
12 condition to the agreement in principal that the parties file a
13 joint stipulation seeking postponement of the trial date.

14 3. On February 14, 1985 the parties filed a
15 stipulation to postpone the trial. The stipulation recited that
16 the parties had reached an agreement in principal, but required
17 time to draft the final documents to memorialize the settlement.
18 The stipulation sought a continuation to after April 8, 1985, and
19 recited the parties had previously been informed that May 6, 1985
20 was the earliest date available. By notice dated February 15,
21 1985, the trial date was reset to April 22, 1985.

22 4. The parties immediately commenced discussions to
23 prepare the necessary final settlement documents. Those
24 discussions culminated in a meeting in Chicago, Illinois during
25 March 12-14, 1985 between the principal trial counsel for
26 plaintiffs and defendants and in house counsel of both plaintiffs.

1 On March 14, 1985, counsel for each of the parties signed a
2 summary of the results of those discussions stating the resolution
3 of all issues remaining between the parties.

4 5. By March 22, 1985 counsel for the parties had
5 completed drafting the final settlement documents reflecting the
6 February agreement in principal and the March 14 resolutions.

7 6. Activision has now refused to accept the agreement
8 agreed to by its counsel. As a result of telephone exchanges
9 between counsel for the parties occurring on April 6 and 8, it
10 does not appear that settlement on any terms is likely.

11 7. Dr. William B. Ribbens has been engaged by
12 plaintiffs as an expert witness. Expert testimony is important,
13 and, indeed, vital, to the presentation of plaintiffs case in this
14 complex patent infringement action. Dr. Ribbens has testified as
15 an expert witness at both of the prior trials on the patent in
16 suit. His background in the subject matter makes him an essential
17 witness. It will be virtually impossible for another expert to
18 complete the necessary preparation to testify in the short time
19 remaining between now and trial.

20 8. Dr. Ribbens is a professor at the University of
21 Michigan, Ann Arbor, Michigan. Dr. Ribbens informs plaintiffs
22 that he has previous commitments which prevent him from being
23 present at trial during the week of April 22 or prior to May 1.
24 Those commitments relate principally to finishing the spring term
25 including giving of the final lectures, giving final exams, and
26 being available to consult with students in preparation for those

1 exams. All these activities require Dr. Ribbens to be present in
2 Michigan. Dr. Ribbens is available to testify during the month of
3 May.

4 9. The plaintiffs have not previously troubled the
5 Court with this motion because of their conviction that the case
6 had, for all intents and purposes, been settled.

7 Thus, plaintiffs request that the commencement of trial
8 in this action be continued to May 1, 1985.

9
10 April 9, 1985

Respectfully submitted,

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Attorneys for The Magnavox Company
and Sanders Associates, Inc.

1 CERTIFICATE OF SERVICE BY MAIL

2 I, MARY A. BULLER, hereby certify under penalty of
3 perjury that:

4 I am employed in the County of San Francisco, California.
5 I am over the age of eighteen years and not a party to the within
6 cause. My business address is Three Embarcadero Center, 28th Floor,
7 San Francisco, California 94111.

8 On April 10, 1985, I served a copy of

9 NOTICE OF APPLICATION TO CONTINUE TRIAL DATE;
10 MEMORANDUM IN SUPPORT OF PLAINTIFFS' APPLICATION
11 TO CONTINUE TRIAL DATE; DECLARATION OF JAMES T.
12 WILLIAMS; AND (PROPOSED) ORDER TO CONTINUE TRIAL

13 upon the following named persons by causing envelopes to be
14 addressed as follows, a copy of the document described above to be
15 enclosed and sealed in them, and to have the envelopes deposited in
16 the United States mail, with postage thereon fully prepaid, at San
17 Francisco, California.

18 Martin R. Glick
19 H. Joseph Escher III
20 Marla J. Miller
21 Howard, Rice, Nemerovski,
22 Canady, Robertson & Falk
23 Three Embarcadero Center, 7th Fl.
24 San Francisco, CA 94111

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Scott Hover-Smoot
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25 Executed on April 10, 1985 at San Francisco,
26 California.


