NEUMAN, WILLIAMS, ANDERSON & OLSON
77 WEST WASHINGTON STREET
CHICAGO, ILLINOIS 60602

COPY

April 16, 1985

Robert L. Ebe, Esq.
McCutchen, Doyle, Brown & Enersen
Three Embarcadero Center
San Francisco, California 94111

Re: Magnavox v. Activision

Dear Bob:

Enclosed for filing are the following documents:

PLAINTIFFS' PRETRIAL PROPOSED CONCLUSIONS OF LAW

PLAINTIFFS' PRETRIAL PROPOSED FINDINGS OF FACT

PLAINTIFFS' PRETRIAL DEPOSITION AND INTERROGATORY DESIGNATIONS FOR THEIR PRIMA FACIE CASE

Please call when you receive these.

Very truly yours,

NEUMAN, WILLIAMS, ANDERSON & OLSON

By _____
James T. Williams

JTW:de
Enclosures

cc: Algy Tamoshunas, Esq. - w/o encls.
Thomas A. Briody, Esq. - w/o encls.
Louis Etlinger, Esq. - w/encls.
Theodore W. Anderson, Esq. - w/o encls.

McCUTCHEN, DOYLE, BROWN & ENERSEN
Thomas J. Rosch
Robert L. Ebe
Daniel M. Wall
Three Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 393-2000

NEUMAN, WILLIAMS, ANDERSON & OLSON
Theodore W. Anderson
James T. Williams
77 West Washington Street
Chicago, IL 60602
Telephone: (312) 346-1200

Attorneys for Plaintiffs
The Magnavox Company and
Sanders Associates, Inc.

United States District Court For The
Northern District Of California

THE MAGNAVOX COMPANY, a corporation, and SANDERS ASSOCIATES, INC., a corporation, Plaintiffs, v. ACTIVISION, INC., a corporation, Defendant.	No. C 82 5270 CAL PLAINTIFFS' PRETRIAL PROPOSED FINDINGS OF FACT

1. This case is an action for infringement of United States Letters Patent Re. 28,507 (hereinafter "the '507 patent").

2. The '507 patent is a reissue patent. It was originally issued on April 25, 1972 as United States patent 3,659,284 entitled "Television Gaming Apparatus" to the plaintiff Sanders Associates, Inc., as assignee of the named inventor William T. Rusch from application Serial No. 828,154 filed on May 27, 1969. The application for reissue, Serial No. 464,256, was filed on April 25, 1974. The '507 patent, upon reissue, has the same effect as if it had been originally granted on April 25, 1972 in its amended reissue form.

3. The '507 patent relates in general to apparatus for playing games on television receivers.

4. The plaintiffs in this action are The Magnavox Company (hereinafter "Magnavox") and Sanders Associates, Inc., (hereinafter "Sanders"). At all times relevant here Sanders is and has been a corporation of the state of Delaware and the owner of the '507 patent and corresponding patents in foreign countries. At all times relevant here Magnavox is and has been a corporation of the state of Delaware and the exclusive licensee of Sanders under the '507 patent and the corresponding patents in foreign countries.

5. This is the third action for infringement of the '507 patent to be litigated and decided. The opinions in the two previously decided actions are The Magnavox Co. v. Chicago Dynamic Industries, 201 U.S.P.Q. 25 (N.D. Ill. 1977) and The Magnavox Co. v. Mattel, Inc., 216 U.S.P.Q. 28 (N.D. Ill. 1982). There have

been approximately ten other actions concerning infringement of that patent, all of which were settled or otherwise disposed of prior to trial.

6. In the Chicago Dynamic Industries case, the Honorable John F. Grady of the Northern District of Illinois decided the issue of validity of the '507 patent over the prior art presented to him and found infringement of that patent by the television games there involved. Trial of that case commenced on November 4, 1976 and terminated on January 10, 1977.

7. At the trial of the Chicago Dynamic Industries case, Judge Grady received factual and expert testimony offered by the parties on the issues of validity and infringement of the '507 patent as well as memoranda of the parties on the issues. The testimony was both live, trial testimony and by deposition.

8. At the conclusion of the trial of the Chicago Dynamic Industries case, Judge Grady entered an opinion and judgment holding the '507 patent to be valid and enforceable and to have been infringed by all of the accused television games.

9. In the Mattel case, the Honorable George N. Leighton explicitly found infringement of the '507 patent by the television games there involved. The defendants in Mattel did not explicitly challenge the validity of the '507 patent, but they did present evidence of prior art against the '507 patent to support their argument of noninfringement. Trial of that case commenced on June 22, 1982 and terminated on July 14, 1982.

10. At the trial of the Mattel case, Judge Leighton received factual and expert testimony offered by the parties on the issue of infringement of the '507 patent as well as memoranda of the parties on the issues. The testimony was both live, trial testimony and by deposition.

11. At the conclusion of the trial of the Mattel case, Judge Leighton entered an opinion, findings of fact, conclusions of law, and judgment holding the '507 patent to be enforceable and to have been infringed by all of the games accused in that action. Judge Leighton found that the subject matter of that patent was neither shown nor suggested by the prior art.

12. The defendant Activision, Inc., (hereinafter "Activision") is a corporation of the state of California.

13. Activision is in the business of designing, manufacturing, and selling television game cartridges.

14. A television game cartridge is a device which is used in combination with a television game console to permit the playing of a television game. The nature and play of the game is defined by the configuration of and information contained in the television game cartridge.

15. Activision has manufactured and sold in the United States the television game cartridges known by the titles Tennis, Ice Hockey, Boxing, Fishing Derby, Stampede, Pressure Cooker, Dolphin, Grand Prix, Barnstorming, Sky Jinks, Enduro, Keystone Kapers, and Decathlon, among others.

16. Plaintiffs allege that the manufacture, use, and/or sale of the combination of any one of the Activision television game cartridges listed in the following table and a television game console capable of using that cartridge constitutes an act of infringement of the stated claims of the '507 patent, and plaintiffs further allege that the sale of any one of said cartridges listed in the following table constitutes an act of contributory infringement of, and inducement to infringe, the stated claims of that same patent:

Cartridge Title	Claims
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

17. The '507 patent resulted from work done by William T. Rusch while Rusch was an employee of the plaintiff Sanders in the period beginning in the Spring of 1967.

screen. When the player symbol intercepted the ball symbol, i.e., two symbols appeared to be coincident on the screen, the motion of the ball was changed.

22. In the television game apparatus operated in January, 1968, and embodying some of Rusch's work, upon interception the horizontal motion of the ball was reversed so that it traveled back toward the other player. Each player had an "English" control which permitted him to alter the vertical motion of the ball after he had intercepted it.

23. Apparatus such as described in paragraphs 21 and 22 hereof is described in the '507 patent.

24. From 1968 through 1971, Sanders demonstrated under agreements of confidence television game apparatus using various pieces of equipment and playing various games to parties it thought might be interested in entering into some type of arrangement to further develop and commercialize the work it had done. Demonstrations of that work were made to representatives of Teleprompter Corporation, RCA Corporation, Zenith Radio Corporation, General Electric Company, Motorola, Inc., Warwick Electronics, Inc., The Magnavox Company, and others.

25. In March, 1971, Sanders and Magnavox entered into an agreement under which Magnavox received an option for an exclusive license under the pending United States patent application which eventually resulted in the '507 patent, other Sanders United States patent applications relating to television games, and corresponding applications in foreign countries.

41. During the Summer of 1972 Atari was formed and some time after June 26, 1972, Allen Alcorn became an employee of Atari and Bushnell gave Alcorn the assignment of developing a video game which would simulate a tennis game.

42. The arcade video game Pong resulted from the efforts at Atari and was first manufactured and sold by Atari in 1973.

43. In the Pong television game, the display shown on the picture tube screen included a white rectangular symbol on the right side of the screen representing a first player, a white rectangular symbol on the left side of the screen representing a second player, and a symbol which moved across the screen representing a ball. Player controls were provided so that each human player could move his corresponding player symbol on the face of the screen. Each human player manipulated his corresponding symbol to intercept the path of the ball as it moved across the screen. When the player symbol intercepted the ball symbol, i.e., two symbols appeared to be coincident on the screen, the motion of the ball was changed and, in particular, the horizontal motion of the ball was reversed so that it traveled back toward the other player. Games of this general type subsequently became known as "ball and paddle" games irrespective of what the symbols were to represent or the number of player symbols involved.

44. Following the commercial introduction of the Atari arcade Pong game, many other manufacturers commercially introduced similar "ball and paddle" arcade games having a display substantially the same as Pong. Those games included the games TV Ping Pong, TV Tennis, Olympic TV Hockey, and TV Goalee by Chicago

Dynamic Industries, Inc., the games Paddle Ball, Pro Hockey, Pro Tennis, and Olympic Tennis by Seeburg Industries, Inc., Paddle Battle and Tennis Tourney by Allied Leisure Industries, Inc., and Winner and Playtime by Midway Mfg. Co.

45. The Atari arcade Pong game was the first arcade television game to be sold in large quantities.

46. The Atari arcade Pong game and games like it were responsible for the creation of the arcade television game industry.

47. In 1975, Atari commercially introduced a Pong game for use by consumers in the home which was intended to be attached to a broadcast television receiver; it was a ball and paddle game.

48. In 1975, Magnavox commercially introduced the ODYSSEY 100 and ODYSSEY 200 home television games, the Models YF7010 and 7015, respectively.

49. In 1976, General Instrument Corporation, New York, New York (hereinafter "General Instrument") commercially introduced an electronic integrated circuit component which included in a single integrated circuit device the great majority of electrical components previously needed to manufacture a television game. That integrated circuit component was designated by General Instrument as the AY-3-8500 component.

50. The presence on the market of the General Instrument AY-3-8500 integrated circuit component permitted the manufacture of television games with many fewer components, and, thus, at a much lower cost, than was previously possible.

51. The General Instrument AY-3-8500 integrated circuit component included within it a read only memory. The read only memory was used in part to define the size and shape of the symbols which were displayed on the television screen. A read only memory is generally referred to as a ROM.

52. The television games which could be constructed using the General Instrument AY-3-8500 integrated circuit component were capable of playing multiple ball and paddle games.

53. In 1976, Magnavox commercially introduced the ODYSSEY 300, ODYSSEY 400, ODYSSEY 500, and ODYSSEY 3000 television games, the Models BG 7500, BG 7516, BG 7520, BH 7514, respectively, and the Model BG 4305, a television receiver having a built-in television game. Each were capable of playing multiple ball and paddle games.

54. In 1977, Magnavox commercially introduced the ODYSSEY 2000 and ODYSSEY 4000 television games, the Models BG 7510 and BH 7511, respectively. Each were capable of playing multiple ball and paddle games.

55. The Magnavox ODYSSEY 300, ODYSSEY 2000, ODYSSEY 3000, and ODYSSEY 4000 television games utilized the General Instrument AY-3-8500 component. The Magnavox ODYSSEY 300 is a typical one of the games using that component.

56. Prior to the commercial introduction of television games including microprocessors, most of the television games sold for use in the home were of the type known as "ball and paddle" games. The 1972 ODYSSEY, ODYSSEY 100, ODYSSEY 200, ODYSSEY 300,

ODYSSEY 400, ODYSSEY 500, ODYSSEY 2000, ODYSSEY 3000, ODYSSEY 4000, and Atari's consumer Pong television games are examples of such games.

57. Ball and paddle television games formed the basis for the establishment of the home television game industry and this occurred prior to the commercial introduction of home television games incorporating microprocessors.

58. Commencing in 1977, various manufacturers commercially introduced television games which included microprocessors. Those manufacturers included Atari, Fairchild, and Bally.

59. The use of a microprocessor in conjunction with plug-in ROM cartridges in a television game permitted construction of a television game console which could be readily made to play a wider variety of television games. Cartridges are provided which can be plugged into the television game console and thereby connected to the circuitry within the console. Different cartridges are provided for different games. Each cartridge contains a ROM.

60. The ROM included within a television game cartridge includes a particular configuration and information used by the circuitry of the television game console to define the game to be played when that cartridge is plugged into the console. The cartridge manufacturer defines the game to be played when using a particular cartridge by the configuration and information placed into the ROM used in that cartridge when the cartridge is manufactured.

61. The consumer user of a television game console is unable to alter the configuration of or the information stored in the read only memory of the game cartridge and thus is unable to alter the definition of the game which is played when that cartridge is placed in use.

62. Atari was a party in the Chicago Dynamic Industries action which came to trial in 1976 and 1977 and has taken a license under the '507 patent.

63. Bally and Fairchild were defendants in the Mattel action but settled out prior to trial. Fairchild took a license under the '507 patent. Bally, having stopped manufacturing and/or selling the television games which formed the basis for the charge of infringement of the '507 patent, settled for its past infringements and took an option for a license under the '507 patent if it should resume those activities. Judgments on consent of the parties thereto were entered as to both Fairchild and Bally that television games that they manufactured and that included a microprocessor infringed the '507 patent, and that the patent was valid.

64. In 1978, Magnavox commercially introduced the ODYSSEY^2 television game which included a microprocessor.

65. Activision was incorporated in October, 1979 to design, manufacture, and market video game cartridges. Activision was founded by Mr. James H. Levy and Messrs. David Crane, Alan Miller, and Bob Whitehead; Messrs. Crane, Miller and Whitehead had previously been employed as video game designers by Atari, Inc. where they had designed and programmed video game cartridges.

66. From October, 1979 through at least June 1, 1984, Activision was represented in patent matters by the law firm of Flehr, Hohbach, Test, Albritton and Herbert, San Francisco, California; in the fall of 1979 Activision consulted with the Flehr, Hohbach, et al. firm concerning patents in the area of video games. In 1979, the Flehr, Hohbach, et al. firm informed Activision of the Magnavox television game patents.

67. During 1974-76 the Flehr, Hohbach, et al. firm represented Atari, Inc. in litigation relating to the assertion by Magnavox and Sanders that Atari had infringed the '507 patent.

68. During May, 1980 through December, 1981 Activision was involved in litigation with Atari, Inc. relating to allegations by Atari of theft of trade secrets, copyright infringement, and unfair competition by Activision. That litigation was settled in December, 1981. As a part of that settlement, Activision was given access to the files of the Flehr, Hohbach firm relating to the '507 patent.

69. At least as early as the period November, 1980 - January, 1981 Activision was aware of the litigation between Magnavox and other members of the television game industry on its television game patents. By letter dated March 23, 1981, Magnavox specifically advised Activision of the '507 patent and the Magnavox position that video game cartridges Activision had marketed used the subject matter of that patent.

70. During discovery in this action, Activision took the position that any opinions it obtained from counsel regarding the '507 patent were subject to the attorney/client privilege, and no such opinions were disclosed to plaintiffs.

71. The 13 Activision television game cartridges alleged to be covered by the '507 patent have no substantial use other than to be combined with a television game console and a television receiver to play the television game for which that cartridge is programmed and configured. Activision knew this throughout the period it designed, used, manufactured, and/or sold each of such television game cartridges.

72. Each of the 13 Activision television game cartridges alleged to be covered by the '507 patent is especially made and configured and especially adapted by Activision to be combined with a television game console and a television receiver to play the television game for which that cartridge is programmed and configured. Activision knew this throughout the period it designed, used, manufactured, and/or sold each of such television game cartridges.

73. None of the 13 Activision television game cartridges alleged to be covered by the '507 patent is a staple article or commodity of commerce. Activision knew this throughout the period it designed, used, manufactured, and/or sold each of such television game cartridges.

apparatus. When the player controlled symbol and the game controlled symbol become coincident, the motion of the game controlled symbol is changed.

79. The accused Activision television game cartridges are used primarily with the VCS Model 2600 television game console manufactured by Atari, Inc. and other television game consoles which, for the purposes of this action, are virtually identical to the Atari VCS Model 2600. Those other television game consoles include the Sears Tele-Game Video Arcade manufactured by Atari, Inc., the combination of the Model 5200 television game console and the Model 2600 adapter both manufactured by Atari, Inc., the Gemini television game console manufactured by Coleco, Inc., and the combination of the Colecovision television game console and the Expansion Model 1 both manufactured by Coleco, Inc. No differences significant to the issues of this action exist between the Model 2600 console and the other consoles referred to. Only the Model 2600 console will be dealt with hereafter.

80. The Model 2600 television game console includes three principal components, a microprocessor, a peripheral interface adapter, and a television interface adapter. It also includes an oscillator circuit, a radio frequency modulator circuit, and a socket or connector to receive a television game cartridge. The Model 2600 is incapable of playing any television game without an appropriate cartridge being plugged into the cartridge connector. Hand controllers or "joysticks" are connected to the console to permit human players to manipulate the symbols shown on the television screen.

81. In principal, the microprocessor in the Model 2600, acting under control of the program in the television game cartridge, determines the location on the television screen at which the various symbols involved in a particular television game are to be displayed.

82. In principal, the peripheral interface adapter includes circuitry permitting the microprocessor to "read" the joysticks, i.e., to determine in what direction, if any, the player has moved the hand controller. The peripheral interface adapter also includes a timer which is typically used to time the vertical blanking interval and the time period between vertical blanking signals.

83. In principal, the television interface adapter places symbols on the television screen at horizontal and vertical locations determined by the microprocessor, it generates the horizontal blanking and synchronization signals at times determined by its own internal counting circuitry, and it generates the vertical blanking and synchronization signals under command of signals from the microprocessor. The television interface adapter additionally includes a set of collision detection registers. The collision detection registers provide signals to the microprocessor indicating when two symbols on the screen have collided or become coincident. The collision detection registers additionally indicate which symbols have collided. The information provided by the collision detection registers is utilized in some of the accused Activision television game cartridges.

84. The oscillator circuit in the Model 2600 provides the basic timing information for the operation of the other components. The oscillator output signal is used to generate the "clock" signal for the microprocessor without which the microprocessor would not operate. The oscillator output signal is used by the television interface adapter to generate the horizontal synchronization and blanking signals. The oscillator output signal is used by the peripheral interface adapter and, although somewhat indirectly, the microprocessor, to generate the vertical synchronization and blanking signals.

85. The apparatus described in the '507 patent are basically analog circuits for games of the type there described. In contrast, the combination of the Model 2600 television game console and one of the accused television game cartridges is basically a microprocessor controlled digital circuit.

86. As to claims 25, 26, 51 and 52 and television game cartridge combinations accused of embodying those claims, the result of the apparatus described in the '507 patent is to permit the playing on a television receiver or monitor games in which play is achieved by a human player manipulating a player controlled or hitting symbol on the face of the television screen so as to intercept, catch, hit, or come into coincidence with a hit symbol which is under control of the game in an attempt to cause a change in the motion of the hit symbol.

87. In each of the Activision television games Tennis, Ice Hockey, Boxing, Fishing Derby, Stampede, Pressure Cooker, and Dolphin, the result of the combination of the television cartridge

and game console is to permit the playing on a television receiver of a game in which play is achieved by a human player manipulating a player controlled or hitting symbol on the face of the television screen so as to intercept, catch, hit, or come into coincidence with a hit symbol which is under control of the game in an attempt to cause a change in the motion of the hit symbol.

88. As to claims 25, 26, 51 and 52 and the television game cartridge combinations accused of embodying those claims, the function of the apparatus described in the '507 patent is to generate the electrical signals necessary for application to a television receiver or monitor to permit playing on the television receiver or monitor of games in which play is achieved by a human player manipulating a player controlled or hitting symbol on the face of the television screen so as to intercept, catch, hit, or come into coincidence with a hit symbol which is under control of the game in an attempt to cause a change in the motion of the hit symbol.

89. In each of the Activision television games Tennis, Ice Hockey, Boxing, Fishing Derby, Stampede, Pressure Cooker, and Dolphin, the function of the combination of the television game cartridge and console is to generate the electrical signals necessary for application to a television receiver or monitor to permit playing on the television receiver or monitor of games in which play is achieved by a human player manipulating a player controlled or hitting symbol on the face of the television screen

so as to intercept, catch, hit, or come into coincidence with a hit symbol which is under control of the game in an attempt to cause a change in the motion of the hit symbol.

90. As to claims 25, 26, 51 and 52 and the television game cartridges accused of embodying those claims, the way in which the apparatus described in the '507 patent performs the stated function is to generate signals representing the hit and hitting game symbols in timed relationship to the horizontal and vertical synchronization signals, determine when signals representing the hit and hitting game symbols appear coincidentally in time, and alter the time relationship of the signals representing the hit symbol and the synchronization signals in response to such determination.

91. In each of the Activision television games Tennis, Ice Hockey, Boxing, Fishing Derby, Stampede, Pressure Cooker, and Dolphin, the way in which the combination of the television game cartridge and console perform the stated function is to generate signals representing the hit and hitting game symbols in timed relationship to the horizontal and vertical synchronization signals, determine when the signals representing hit and hitting game symbols appear coincidentally in time, and alter the time relationship of the signals representing the hit symbol and the synchronization signals in response to such determination. In Stampede, Pressure Cooker, and Dolphin, the television interface adapter collision detection registers are used to determine when signals representing the hit and hitting game symbols appear coincidentally in time; in Tennis, Ice Hockey, Boxing and Fishing

Derby, the microprocessor itself determines when signals representing the hit and hitting game symbols appear approximately coincident in time without use of the television interface adapter collision detection registers. This difference is irrelevant for determining infringement of the '507 patent claims.

92. As to claims 60, 61 and 62 and the accused television game-cartridge combinations, the result of the apparatus described in the '507 patent is to permit the playing on a television receiver or monitor of games in which a human player controls the position at which a first symbol is displayed, the game circuitry substantially controls the position at which a second and movable symbol is displayed, and when the first and second symbol come into coincidence, the motion on the screen of the second symbol is changed.

93. In each of the accused Activision television games, the result of the combination of the television game cartridge and console is to permit playing on a television receiver or monitor of games in which a human player controls the position at which a first symbol is displayed, the game circuit substantially controls the position at which a second and movable symbol is displayed, and when the first and second symbols come into coincidence, the motion on the screen of the second symbol is changed.

94. As to claims 60, 61 and 62 and the accused television game cartridge-combinations, the function of the apparatus disclosed in the '507 patent is to generate the electrical signals necessary for application to a television receiver or monitor to permit playing on a television receiver or monitor games in which

a human player controls the position at which a first symbol is displayed, the game circuit substantially controls the position at which a second and movable symbol is displayed, and, when the first and second symbols come into coincidence the motion of the second symbol is changed.

95. In each of the accused Activision television games, the function of the combination of the television game cartridge and console is to generate the electrical signals necessary for application to a television receiver to permit playing on a television receiver a game in which a human player controls the position at which a first symbol is displayed, the game circuit substantially controls the position at which a second and movable symbol is displayed, and when the first and second symbols come into coincidence, the motion on the screen of the second symbol is changed.

96. As to claims 60-62 and the accused television game cartridge-combinations, the way in which the apparatus disclosed in the '507 patent performs the stated function is to generate signals representing the first and second game symbols in timed relationship to the horizontal and vertical synchronization signals, determine when the signals representing the first and second game symbols appear coincidentally in time, and alter the time relationship of the signals representing the second signal and the synchronization signals in response to such determination.

97. In each of the accused Activision television games, the way in which the combination of the television game cartridge and console performs the stated function is to generate signals representing the first and second symbols in timed relationship to the horizontal and vertical synchronization signals, determine when the signals representing the first and second symbols appear approximately coincident in time, and alter the time relationship of the signals representing the second signal and the synchronization signals in response to such determination. In Stampede, Pressure Cooker, Dolphin, Grand Prix, Barnstorming, Sky Jinks, Enduro, Decathlon, and Keystone Kapers, the television interface adapter collision detection registers are used to determine when signals representing the first and second game symbols appear coincidentally in time; whereas in Tennis, Ice Hockey, Boxing, and Fishing Derby, the microprocessor itself determines when signals representing the hit and hitting game symbols appear approximately coincident in time without use of the television interface adapter collision detection registers. This difference is irrelevant for determining infringement of the '507 patent claims.

98. Because of the advances in technology which have occurred since Rusch invented the subject matter of the '507 patent in 1967 and filed his original patent application in 1969, it is now possible to achieve at relatively low cost games of much greater complexity and variety than those achieved by the apparatus disclosed in the '507 patent. The technology available today for the manufacture of television games was simply not

available in the 1967 time frame. However, the use of current available technology to implement television games does not alter the basic nature of those games or avoid the Rusch '507 patent.

99. There are many differences between the electrical circuits disclosed in the '507 patent and the electrical circuitry of the Model 2600 in combination with each of the accused Activision television game cartridges. The most evident difference is referred to above, that the circuitry described in the '507 patent was basically analog circuitry while the Mattel television game uses basically digital circuitry including a microprocessor.

100. In the Chicago Dynamic Industries case, it was held that the claims of the '507 patent could not be avoided by utilizing digital circuitry in the accused apparatus.

101. In the Mattel case, it was held that the claims of the '507 patent could not be avoided by utilizing microprocessor circuitry and a cartridge in the accused apparatus.

102. In the Mattel case, it was held that the manufacture, use, and sale of a television game cartridge can be an act of contributory infringement, and/or inducement to infringe, the '507 patent.

103. The accused Activision television game cartridge combinations fall within the literal terms of the claims of the '507 patent.

104. The accused Activision television game cartridge combinations and the apparatus described in the '507 patent perform substantially the same function in substantially the same

way to obtain substantially the same result; they are equivalent to each other in the context of claims 25, 26, 51, 52, 60, 61, and 62 of the '507 both when considering the claimed subject matter as a whole and when considering the individual claim elements.

105. In the Chicago Dynamic Industries case, Judge Grady specifically considered the Baer '480 patent, the Michigan pool demonstration, Space War, and the RCA pool demonstration as potential prior art against the '507 patent.

106. In the Chicago Dynamic Industries case, the Baer '480 patent, the Althouse patent, the Higgenbotham tennis demonstration, Space War, the NASA scene generator, the Rand Corporation handball or jai alai game, the Michigan pool demonstration, the Mullarky pool demonstration, the Rand Corporation and MIT "bouncing ball" demonstration, the Control Data Corporation baseball demonstration, the alleged offer for sale to Teleprompter, the 1964 and 1967 sales by General Electric to NASA, and the RCA pool demonstration were all identified as potential items of prior art prior to trial.

107. In the Mattel case, Judge Leighton specifically considered the Spiegel patent, Space War, and the RCA pool demonstration as potential prior art against the '507 patent.

108. The items of prior art identified in the Chicago Dynamic Industries case were available to the defendants in the Mattel case.

109. The prior art against the '507 patent relied upon by Activision in this action is not different in any material way from the prior art of record in the Chicago Dynamic Industries and Mattel cases.

110. Activision has not presented any persuasive new evidence of patent invalidity not present in the Chicago Dynamic Industries and Mattel cases.

111. Activision has not demonstrated that there is a material distinction on the issue of validity of the '507 patent between this case and the Chicago Dynamic Industries and Mattel cases.

112. Magnavox has extensively licensed the '507 patent and its foreign counterpart patents throughout the world. Approximately 65 parties have entered into such licenses.

113. Magnavox has received large amounts of royalty income under the '507 patent and its foreign counterpart patents. Magnavox has collected approximately $25,000,000 in royalty payments from sublicensees under the '507 patent and in settlement of infringement charges of the '507 patent from 1976 to the time of trial of this action.

114. The subject matter of the '507 patent has been very successful commercially.

115. The Re. 28,507 patent is infringed by the use, in combination, of a television receiver, a television game console, and each of the Activision television game cartridges Tennis, Ice

Hockey, Boxing, Fishing Derby, Stampede, Pressure Cooker, Dolphin, Grand Prix, Barnstorming, Sky Jinks, Enduro, Keystone Kapers, and Decathlon.

116. Activision has contributed to the infringement, and induced infringement, of the Re. 28,507 Patent by the manufacture and sale of its Tennis, Ice Hockey, Boxing, Fishing Derby, Stampede, Pressure Cooker, Dolphin, Grand Prix, Barnstorming, Sky Jinks, Enduro, Keystone Kapers, and Decathlon television game cartridges. Activision has directly infringed the Re. 28,507 patent by the use and display of those game cartridges.

117. Activision's infringement of the Re. 28,507 patent has been willful; the damages which this Court ultimately determines is due to plaintiffs because of that infringement shall be trebled pursuant to 35 U.S.C. §284.

Theodore W. Anderson
James T. Williams
NEUMAN, WILLIAMS, ANDERSON & OLSON
77 West Washington Street
Chicago, Illinois 60602
(312) 346-1200

Thomas J. Rosch
Robert L. Ebe
Daniel M. Wall
McCUTCHEN, DOYLE, BROWN & ENERSEN
Three Embarcadero Center
San Francisco, California 94111
Telephone: (415) 393-2000

Attorneys for The Magnavox Company and Sanders Associates, Inc.