

ORIGINAL  
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FEB 15 1983

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

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The Magnavox Company and  
10 Sanders Associates, Inc.

11  
12 United States District Court for the  
13 Northern District of California  
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15 \_\_\_\_\_ )  
16 THE MAGNAVOX COMPANY, a Corpora- )  
tion, and SANDERS ASSOCIATES, )  
17 INC., a Corporation, )

18 Plaintiffs, )

19 vs. )

20 ACTIVISION, INC., a Corporation, )  
21 Defendant. )  
\_\_\_\_\_ )

No. C 82 5270 TEH

MEMORANDUM IN SUPPORT OF  
RECONSIDERATION OF PLAIN-  
TIFFS' MOTION TO DISMISS  
SECOND COUNTERCLAIM

No Hearing Requested

22  
23 On February 7, 1983, this Court entered an Order  
24 denying the motion of plaintiffs to dismiss defendant's  
25 second counterclaim. That counterclaim purported to raise  
26 issues with respect to a patent (the Baer patent) which was  
27 not sued upon by plaintiffs. In permitting the counterclaim  
28 to stand, the Court expressly noted that:

1 served its counterclaim upon plaintiffs" (Surreply  
2 Memo., p. 4-5).\*

3 This representation means that if the counterclaim  
4 is dismissed, defendant cannot be liable for infringement of  
5 the Baer patent for any device now on the market. It gives  
6 the defendant the equivalent of a stipulation of invalidity,  
7 save only that it preserves for the future the option of  
8 asserting the Baer patent in the event that some device, not  
9 presently foreseeable, is placed on the market by defendant.  
10 Accordingly, plaintiffs have effectively removed by this  
11 stipulation any vestige of "real or reasonable apprehension"  
12 of liability from defendant with respect to any device that  
13 could possibly be the subject matter of this proceeding.  
14 Plaintiffs respectfully request that the Court reconsider

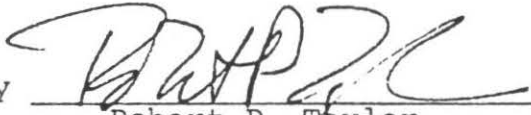
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24 \_\_\_\_\_  
25 \* This same stipulation is repeated almost verbatim and  
26 under oath in Plaintiffs' Response to Defendants' First Set  
27 of Interrogatories filed February 15, 1983. See response to  
28 Interrogatory No. 28.

1 its Order of February 7, 1983 and grant the motion to  
2 dismiss.

3 Dated: February 15, 1983.

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7 By   
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