

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

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

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

11 United States District Court For The
12 Northern District Of California

13 THE MAGNAVOX COMPANY, a corporation,)
and SANDERS ASSOCIATES, INC.,)
14 a corporation,) No. C 82 5270 JPV
15 Plaintiffs,)
16 v.) PLAINTIFFS' MEMORANDUM
IN OPPOSITION TO MOTION
17 ACTIVISION, INC., a corporation,) FOR CONTINUANCE OF TRIAL
DATE
18 Defendant.) Date: September 13, 1984
19) Time: 10:00 a.m.
20)

21 Over ten months ago, this Court set October 8, 1984 as
22 the date on which to commence trial of this action. Little more
23 than a month before that date, Activision seeks, without any real
24 justification, to continue that date by ninety days. Plaintiffs
25 oppose any continuance.

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27 PLAINTIFF'S MEMORANDUM IN OPPOSITION
TO MOTION FOR CONTINUANCE OF TRIAL DATE
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1 Activision attempts to justify a continuance with two
2 reasons, first, plaintiffs' inability to agree to scheduling a
3 status conference on the date proposed by Activision, and, second,
4 an alleged failure of plaintiffs to fully respond to Activision's
5 interrogatories. Neither reason justifies delaying trial.

6 The first reason has already been disposed of. Although
7 plaintiffs could not agree to going forward with a status
8 conference on the September 13 date Activision proposed for the
9 simple reason that plaintiffs' lead trial counsel, Theodore W.
10 Anderson of Chicago, Illinois, was scheduled to be (and is now)
11 trying an action in the U.S. District Court in Chicago during the
12 entire week of September 13, a status conference has been set by
13 the Court for exactly the date Activision sought.

14 The second reason is equally inadequate. Activision
15 cannot now complain about any insufficiency of plaintiffs'
16 interrogatory responses for at least the following reasons:

- 17 1. This case has been pending since September 28,
18 1982. Activision has had more than sufficient time
19 to pursue the discovery it believes it needs.
- 20 2. The interrogatories Activision now says will reveal
21 plaintiffs' contentions of patent infringement are
22 numbers 39, 126, 127, 130-134, and 184-192.
23 Plaintiffs last responded to interrogatories 39,
24 126, 127 and 130-134 on May 9, 1984, and to

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interrogatories 184-192 on April 24, 1984.

Plaintiffs have had ample opportunity to seek any further responses.

3. Activision filed a motion to compel interrogatory responses on April 12, 1984 which sought further answers to these same interrogatories 39, 126, 127, and 130-134, among others. Plaintiffs then served Activision with supplemental responses to those interrogatories. After receiving the supplemental responses, Activision dropped those interrogatories from its motion, and the order on that motion did not refer to them. Clearly Activision long ago abandoned any contention it had that the responses were inadequate.

4. However, and most importantly, plaintiffs have now given Activision even further responses to the interrogatories concerning their infringement contentions. A copy is attached as Exhibit A. They are being served in ample time to permit Activision to prepare for trial.

Delay in trial will severely prejudice plaintiffs. The television game industry, Activision's business, has fallen on hard times. The sales and income figures Activision has filed

1 with the S.E.C. show that Activision has shared those hard times.
2 The quarterly results reported in Activision's Prospectus, Form
3 10-K, and Form 10-Q filings are as follows:

4 Quarter 5 Ending	Net Sales (Amounts in Thousands)	Net Income (Loss)
6 July 3, 1982	\$30,556	4,351
7 October 2, 1982	32,147	4,405
8 December 31, 1982	50,057	4,696
9 March 31, 1983	44,873	5,731
10 July 2, 1983	26,205	227
11 October 1, 1983	13,247	(4,119)
12 December 31, 1983	10,167	(8,106)
13 March 31, 1984	20,362	(6,012)
14 June 30, 1084	6,214	(3,623)

15 Activision is not the picture of financial health. Its
16 sales have plummeted since this action was filed, and substantial
17 quarterly income figures have turned to substantial quarterly
18 losses. It has lost over \$21,000,000 in its last four quarters.
19 If trial is not held and judgment entered promptly, plaintiffs may
20 well never be able to collect for the damages they have suffered
21 from Activision's infringement, to their irreparable harm.

22 The risk plaintiffs face of being unable to collect on
23 any judgment they may receive against Activision should not be

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CERTIFICATE OF SERVICE

I hereby certify that copies of Plaintiffs' Memorandum In Opposition To Motion For Continuance Of Trial Date, Proposed Order and Declaration of James T. Williams were forward by Federal Express Courier Service on September 10, 1984, to the following:

Thomas O. Herbert, Esq.
Flehr, Hohbach, Test,
Albritton & Herbert
Suite 3400
Four Embarcadero Center
San Francisco, California 94111

Martin R. Glick, Esq.
Howard, Rice, Nemerovski, Canady
Robertson & Falk
A Professional Corporation
Three Embarcadero Center, 7th Floor
San Francisco, California 94111

NEUMAN, WILLIAMS, ANDERSON & OLSON

77 WEST WASHINGTON STREET

CHICAGO, ILLINOIS 60602

COPY



September 10, 1984

Algy Tamoshunas, Esquire
North American Philips Corporation
580 White Plains Road
Tarrytown, New York 10591

Re: Magnavox v. Activision

Dear Algy:

We have prepared and filed responses to Activision's Motion To Compel Further Answers to Interrogatories and Motion For Continuance of Trial Date. Copies of the responses and their supporting papers are enclosed herewith.

Very truly yours,

NEUMAN, WILLIAMS, ANDERSON & OLSON

By

JTW
James T. Williams

JTW:de
Enclosures

cc: T. A. Briody, Esq. - w/o encls.
L. Etlinger, Esq. - w/encls. ←
T. W. Anderson, Esq. - w/o encls.