

NEUMAN, WILLIAMS, ANDERSON & OLSON

77 WEST WASHINGTON STREET

CHICAGO, ILLINOIS 60602

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COPY

September 26, 1984

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

Re: Napcec v. Activision

Dear Algy:

Enclosed is a copy of the reply brief which was filed in further support of plaintiffs' motion to compel a response to interrogatory 9. This interrogatory relates to information concerning expected expert witnesses. Bob Ebe in the McCutchen, Doyle firm appeared before Magistrate Langford on this motion last week. The Magistrate granted the motion, but required that plaintiffs' also provide Activision with the same information concerning their expert witnesses.

We will be working with Bill Ribbons to prepare an appropriate response.

Very truly yours,

NEUMAN, WILLIAMS, ANDERSON & OLSON

By

[Signature]
James T. Williams

JTW/krs
Enclosure

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

OLD COPY

FREE

COPY

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

ORIGINAL
FILED

SEP 14 1984

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

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

14	THE MAGNAVOX COMPANY, a corporation,)	No. C 82 5270 JPV
	and SANDERS ASSOCIATES, INC.,)	
15	a corporation,)	REPLY MEMORANDUM IN
)	SUPPORT OF PLAINTIFFS'
16	Plaintiffs,)	MOTION TO COMPEL RESPONSES
)	<u>TO INTERROGATORIES</u>
17	vs.)	
)	Date: September 21, 1984
18	ACTIVISION, INC., a corporation,)	Time: 1:30 p.m.
)	
19	Defendant.)	
)	

21 Plaintiffs' interrogatory 9 is the only
22 interrogatory remaining for consideration on this motion.
23 Letters from Activision's counsel setting forth supplemental
24 responses to plaintiffs' interrogatories 2, 3, 7(xii), and 8
25 received after plaintiffs' motion was filed supplied answers
26 ///

REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION TO COMPEL RESPONSES TO INTERROGATORIES

1 to those interrogatories. Thus, plaintiffs withdraw their
2 motion as to those interrogatories.

3 Interrogatory 9 requests information as to the
4 expert witness(es) Activision will use at trial. It seeks
5 exactly that information permitted by Rule 26(b)(4)(A)(i),
6 F.R.Civ.P. Defendant does not dispute that plaintiff is
7 entitled to the information sought in this interrogatory.

8 Defendant argues that its pretrial statement will
9 supply the information. It may, but it may not. Local Rule
10 235-5 requires only that the parties list each witness
11 likely to be called with a description of the "substance of
12 the testimony to be given." The Federal Rule (and the
13 interrogatory) is much more specific, requiring a party:

14 "to state the subject matter on which the
15 expert is expected to testify, and to state the
16 substance of the facts and opinions to which
the expert is expected to testify and a summary
of the grounds for each opinion."

17 Clearly, plaintiffs are entitled to all the
18 information sought by the interrogatory and permitted by the
19 Federal Rules, not the limited information set forth in the
20 Local Rule.

21 It is also readily apparent that plaintiffs are
22 entitled to that information regardless of whether they have
23 any intent to depose defendant's expert(s). Plaintiffs
24 should have the information to prepare their own case for
25 trial, and for possible use in cross-examination of

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-2-

REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS'
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REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS'
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1 defendant's expert(s) at trial. But plaintiffs should also
2 have the information so that they can determine whether to
3 seek leave to depose the expert(s).

4 Moreover, waiting until the filing of defendant's
5 pretrial statement to receive the information requested is
6 not sufficient. On September 13, Judge Vukasin reset the
7 trial date in this case for January 14, 1985, with a
8 pretrial conference on December 13, 1984. Thus, the
9 pretrial statements are not due until December 3, 1984.
10 Plaintiffs should not be required to wait until December to
11 learn of the case they must meet and prepare their own case
12 for trial.

13 Activision cannot complain of the timeliness of
14 plaintiffs' motion. If there is any issue of timeliness, it
15 is a failure of defendant to seasonably update its response
16 to interrogatory 9 as is specifically required by Rule
17 26(e)(1)(B), F.R.Civ.P. This close to trial, defendant
18 should have long ago determined who its expert witness(es)
19 will be, and it should have fully responded to interrogatory
20 9. If, per chance, defendant has not selected its
21 expert(s), plaintiffs can hardly be criticized for not
22 pursuing an interrogatory to which they would receive no
23 useful response.

24 ///

25 ///

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1 Activision should be required to immediately answer
2 interrogatory 9 fully and fairly.

3 Date: September 14, 1984.

4 

5 _____
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