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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 JPV PLAINTIFFS' STATEMENT OF FACTUAL ISSUES

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

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

screen. Each human player manipulated his corresponding player 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.

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.

26. Magnavox made a limited number of television games and market tested them at a few locations around the country following the March, 1971 agreement. After these market tests, Magnavox commercially introduced the product.

27. By an agreement effective January 27, 1972, Magnavox exercised its option and became the exclusive licensee of Sanders under the United States patent application which eventually resulted in the '507 patent, other Sanders United States patent applications relating to television games, corresponding applications in foreign countries, and the patents to issue therefrom.

28. Since entering into the exclusive license agreement referred to in paragraph 27 hereof, Magnavox has manufactured and sold television games in the United States under the trademark "ODYSSEY." The ODYSSEY television games are intended for use by consumers with their home television receivers.

29. The first model ODYSSEY television game commercially introduced by Magnavox was the Model 1TL 200; the Model 1TL 200 ODYSSEY television game was first placed on sale by Magnavox in the Spring of 1972.

30. In the 1972 Magnavox ODYSSEY television game, the display shown on the television 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 playing piece such as a ball, which for convenience will be called the "ball symbol". Player controls were provided so that each human player could move his corresponding player symbol on the face of the television screen both horizontally and vertically. Each human player manipulated his corresponding player 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. Each player had an "English" control which permitted him to alter the vertical motion of the ball after he had intercepted it.

31. The 1972 Magnavox ODYSSEY television game could be made to play one of several different games by inserting a game card for the particular game selected into the game unit. Thus, it was a programmable game.

38. Prior to August 21, 1969, Bushnell had no knowledge of the existence of any apparatus using a cathode ray tube display for simulating the playing of the game table tennis or ping pong.

39. On May 24, 1972, while employed by Nutting Associates, Inc., Mountain View, California, Bushnell attended the demonstration of the Magnavox ODYSSEY television game in Burlingame, California, and saw a demonstration of the game. Bushnell went to that show for the specific purpose of seeing the Magnavox ODYSSEY television game.

40. At the May 24, 1972 show, Bushnell saw the ODYSSEY television game in use to play a game simulating ping pong and actually played that game.

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

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. 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.

66. 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.

67. 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.

68. Activision has used each of the 13 Activision television game cartridges alleged to be covered by the '507 patent in combination with a television game console and a television receiver to play the game programmed into that cartridge within the United States.

69. Activision has demonstrated each of the 13 Activision television game cartridges alleged to be covered by the '507 patent in combination with a television game console and a television receiver to prospective customers within the United States.

70. Activision has demonstrated and shown each of the 13 Activision television game cartridges alleged to be covered by the '507 patent both in combination with a television game console and a television receiver to prospective customers at Consumer Electronic Shows held in Las Vegas, Nevada and Chicago, Illinois.

71. In each of the Activision television games Tennis, Ice Hockey, Boxing, Fishing Derby, Stampede, Pressure Cooker and Dolphin, a human player manipulates a symbol on the television