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Activision, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THE MAGNAVOX COMPANY, a corporation, and SANDERS ASSOCIATES, INC., a corporation, Plaintiffs, vs. ACTIVISION, INC., a corporation, Defendant. AND RELATED CROSS-ACTION.	No. C 82 5270 CAL PRETRIAL STATEMENT OF ACTIVISION, INC. REGARDING UNDISPUTED POINTS OF LAW (Local Rule 235-7) Pretrial Conference: Dec. 13, 1984

Defendant and Counterclaimant Activision, Inc. ("Activision") submits the following concise statement of points of law

which have been determined to be without substantial controversy and appropriate for stipulation prior to the pretrial conference, pursuant to Local Rule 235-7. Magnavox and Activision each have submitted a concise statement of disputed points of law with reference to authorities relied on in a timely fashion prior to the pretrial conference, pursuant to Local Rule 235-7(g).

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1. Entire claim must read on accused device. In determining whether there is literal infringement, the words in the patent claims must be compared with the accused device to determine if the claim reads directly on the accused device. If the entire claim reads directly on the accused device, literal infringement is established.

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2. The claims of a patent are to be construed in the light of the specification, and both are to be read with a view to ascertaining the invention.

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3. No contributory infringement unless underlying direct infringement. There is no contributory or induced infringement of a valid patent unless a direct infringement is established.

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4. Scope of equivalents broadened. A broader range of equivalents is accorded to a pioneer patent in a field.

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5. Scope of equivalents narrowed. The scope of equivalents to which a patentee may be entitled is less when the patent-in-suit is not a pioneer patent. A narrower range of equivalents is accorded to an improvement patent than to a pioneer patent.

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6. Burden of persuasion--infringement. Plaintiffs have the burden of persuasion on the issue of infringement of the patent in suit.

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7. Patent invalid if "invention" already known. A person is not entitled to a patent for an invention or process if it was known or used by others in the country before the invention by the person seeking the patent.

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8. Patent invalid if publicly disclosed by patentee prior to filing. A person is not entitled to a patent for an invention or process if it was patented or described in a printed publication in this or a foreign country before the invention by the person seeking the patent.

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10. Patent invalid if another inventor. A person is not entitled to a patent if, before the applicant's invention, the invention was made in this country by another who had not abandoned, suppressed, or concealed it.

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11. Patent limited to inventor. A person is not entitled to a patent if he did not himself invent the subject matter sought to be patented.

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13. Patent reissue defined. Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid (by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent), the applicant may surrender such patent and ask the Patent Office to reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue.

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14. Patent reissue. No reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent.

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15. Invalidity--obviousness. In determining whether a patent is invalid for obviousness, the test is whether the claimed invention as a whole would have been obvious to one of ordinary skill in the art at the time the claimed invention was made.

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16. Ordinary skill in the art--relevant factors. Some of the factors which have been considered in evaluating the level of ordinary skill in the art are as follows:

(i) the various prior art approaches;

(ii) the types of problems encountered in the art;

(iii) the rapidity with which innovations are made;

(iv) the sophistication of the technology involved;

(v) the educational background of those actively working in the field.

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18. The statutory provisions of 35 U.S.C. §103 require that the invention as claimed be considered "as a whole" when considering whether the invention would have been obvious.

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19 Whoever actively induces infringement of a patent shall be liable as an infringer.

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