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WILLIAM L. WHITTAKER  
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SAN FRANCISCO

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8 Attorneys for Plaintiff

9 IN THE UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 ATARI, INC.  
12 a corporation,

C 75 1442 REE

13 Plaintiff )

Civil Action No.

14 v. )

15 THE MAGNAVOX COMPANY,  
16 a corporation and  
17 SANDERS ASSOCIATES, INC.,  
18 a corporation

) COMPLAINT FOR DECLARATORY  
) JUDGMENT OF PATENT  
) INVALIDITY AND  
) NON-INFRINGEMENT

19 Defendants )

20 COMES NOW, plaintiff, Atari, Inc. and for  
21 its cause of action against defendants alleges;

22 1. That plaintiff, Atari, Inc., is a California  
23 corporation having a place of business at Los Gatos, California,  
24 within this judicial district.

25 2. That defendant, The Magnavox Company, is  
26 a Delaware corporation having a place of business at San  
27 Francisco, California, within this judicial district.

28 3. That defendant, Sanders Associates, Inc.,  
29 is a Delaware corporation having a place of business at  
30 Burlingame, California within this judicial district.  
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1           4. This is an action under the Patent Laws of  
2 the United States, Title 35 U.S.C., for declaratory judgment  
3 of patent invalidity and non-infringement. Jurisdiction  
4 rests under 28 U.S.C. §§1338, 2201 and venue rests under  
5 28 U.S.C. §1391.

6           5. Plaintiff, in this judicial district, manufac-  
7 tures, uses and/or sells a variety of gaming apparatus  
8 utilizing cathode ray tube displays (hereinafter referred to  
9 as Video Games). Said Video Games include, but are not  
10 limited to, those known by the following specific designations:

- |    |                |                |
|----|----------------|----------------|
| 11 | "Pong"         | "Pong Doubles" |
| 12 | "Space Race"   | "Gotcha"       |
| 13 | "World Cup"    | "Quadrapong"   |
| 14 | "Gram Trak 10" | "Rebound"      |
| 15 | "Superpong"    | "Spike It"     |
| 16 | "Elimination"  | "Formula K"    |
| 17 | "Twin Racer"   |                |

18           6. Plaintiff is continuously designing still  
19 additional Video Games and fully intends to manufacture, use  
20 and/or sell such additional games.

21           7. Defendant, Sanders Associates Inc., has asserted  
22 that it is the owner of United States Letters Patent  
23 No. 3,659,284, issued on April 25, 1972 for an alleged  
24 invention of William T. Rusch, entitled "Television Gaming  
25 Apparatus".

26           8. Defendant, Sanders Associates, Inc., has  
27 asserted that it is the owner of United States Letters  
28 Patent No. 3,659,285, issued on April 25, 1972 for an  
29 alleged invention of Ralph H. Baer, William T. Rusch and  
30 William L. Harrison, entitled "Television Gaming Apparatus  
31 and Method".  
32

1           9. Defendant, The Magnavox Company, has asserted  
2 that it is the exclusive licensee of said United States  
3 Letters Patent Nos. 3,659,284 and 3,659,285.

4           10. Defendant, The Magnavox Company, has asserted  
5 that it has the right to bring actions for infringement of  
6 said Letters Patent Nos. 3,659,284 and 3,659,285.

7           11. On April 15, 1974 defendant, The Magnavox  
8 Company, brought suit against plaintiff herein, and others,  
9 alleging infringement of said United States Letters Patent  
10 Nos. 3,659,284 and 3,659,285 by reason of Atari, Inc.'s  
11 "making, using and/or selling gaming apparatus" covered by  
12 said Letters Patent. That said suit was filed in the United  
13 States District Court for the Northern District of Illinois,  
14 Eastern Division and was captioned The Magnavox Company v.  
15 Bally Manufacturing Corporation et al, Civil Action No.  
16 74 C 1030 (hereinafter referred to as the Chicago Suit).

17           12. On motion filed in the Chicago Suit on or  
18 about May 21, 1974 and granted May 22, 1974, a First Amended  
19 Complaint was filed therein whereby defendant, Sanders  
20 Associates, Inc., joined in with The Magnavox Company as  
21 co-plaintiff. By said First Amended Complaint in the Chicago  
22 Suit both The Magnavox Company and Sanders Associates,  
23 Inc. charged Atari, Inc. with infringement of said United  
24 States Letters Patent Nos. 3,659,284 and 3,659,285.

25           13. On or about May 1, 1974 Atari, Inc. moved  
26 to dismiss the Chicago Suit for improper venue. The Magnavox  
27 Company and Sanders Associates, Inc. acquiesced to that  
28 motion.

29           14. On July 29, 1974 the Chicago Suit was dismissed  
30 with respect to Atari, Inc. without prejudice.

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1                   15. The Chicago Suit has continued as to other  
2 defendants therein and in that suit The Magnavox Company  
3 and Sanders Associates, Inc. have specifically alleged  
4 that certain ones of plaintiff's Video Games infringe said  
5 Letters Patent No. 3,659,284 and 3,659,285.

6                   16. Plaintiff's manufacture, use and/or sale  
7 of its Video Games or any of them is not an infringement  
8 of said United States Letters Patent Nos. 3,654,284 or  
9 3,659,285.

10                   17. That both of said Letters Patent No.  
11 3,654,284 and 3,654,285 are invalid.

12                   18. Defendants have brought no action against  
13 plaintiff based upon the alleged infringement other than  
14 the dismissed Chicago Suit.

15                   19. By reason of the foregoing a genuine and  
16 justiciable controversy exists.

17                   WHEREFORE, plaintiff prays,

18                   I. For a declaratory judgment that United States  
19 Letters Patent Nos. 3,659,284 and 3,659,285 are not  
20 infringed by plaintiff.

21                   II. For a declaratory judgment that United States  
22 Letters Patent No. 3,659,284 and 3,659,285 are invalid and  
23 unenforceable.

24                   III. For costs, reasonable attorneys' fees and  
25 for such other relief as to the Court may seem just and  
26 proper.

27                   \* Respectfully submitted,  
28                   FLEHR, HOEBACH, TEST,  
29                   ALBRITTON & HERBERT  
30                   Attorneys for Atari, Inc.

31                   By Thomas O. Herbert  
32                   Thomas O. Herbert