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September 1, 1983

Edward S. Wright, Esquire
Flehr, Hohbach, Test,
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Suite 3400
Four Embarcadero Center
San Francisco, California 94111

Re: Magnavox et al. v. Activision

Dear Ted:

As you know, during our conference in March we agreed that it would be necessary for plaintiffs to supplement their prior responses to at least some of defendant's interrogatories 1-125 due to Judge Henderson's denial of plaintiffs' motion to dismiss the second counterclaim. A copy of the unexecuted supplemental responses is being delivered herewith. The original is now being circulated for execution and we should be able to serve you with a copy showing execution shortly.

It seems appropriate to deal with certain ones of the points made in your letter of February 16 concerning the original responses which were not mentioned in our letter to you of March 9.

As to many of the responses you have objected to the sufficiency of the identification of documents to be produced pursuant to Rule 33(c). We expressed our belief in our March 9 letter. If as to any individual such responses you can state what additional information you believe you need, we will be happy to consider supplying you with it.

Interrogatories 2D and 2E

Some 27 U.S. patents and 108 foreign patents are identified in response to interrogatory 1. We fail to see how ownership of the vast majority of those patents or standing to sue on them can have any conceivable bearing on any issues of this case including those purportedly raised in paragraphs 13-15 of Activision's Affirmative Defense. While this is true as to many of the U.S. patents also, it is particularly true as to the foreign patents. Is there any real issue as to the ownership of the patents? If you would care to narrow the interrogatory to a few specific patents, we will consider further responding to it.

Interrogatories 4D and F

Plaintiffs' responses to these paragraphs were inadvertently omitted. They are included in the supplemental responses.

Interrogatories 9 and 12

We have supplemented the responses as to these interrogatories.

Interrogatory 13

We have supplemented the response to this interrogatory to include '480 and foreign corresponding patents. Your February 16 letter implies that the response to this interrogatory is relevant to the issue of patent ownership. As stated above, we do not believe that there is any genuine ownership issue, but we will consider responding further if you care to narrow the interrogatory to a few specific patents.

Interrogatory 14

We have supplemented the response to this interrogatory.

Interrogatories 15-17

We have supplemented the responses to these interrogatories.

Interrogatory 18

Since no grounds of invalidity and/or unenforceability are identified in plaintiffs' response to Interrogatory 17F, there is no requirement that Interrogatory 18 be answered because it is not complete. The documents from which Activision can ascertain the information requested in 17F, i.e., the grounds on which validity has been challenged in prior lawsuits, will be produced. However, we rely on the stated objection as to which of the various grounds "were of the greatest concern to Magnavox and Sanders."

Interrogatories 21 and 23

We fail to see the relevance of the information requested in these interrogatories beyond what was supplied in plaintiffs' original responses. However, we will endeavor to supply you with copies of those portions of Sanders' and North American Philips Corporation's recent S.E.C. filings identifying related corporations.

Interrogatory 24

We do not believe that Interrogatory 24 requires any further response, and your letter does not contend otherwise. In the absence of such a contention, discussion of the objection appears rather pointless.

Interrogatory 26 and 27

Plaintiffs stand on their previously stated objection. We fail to see any relevance to the issues purportedly raised by Paragraphs 13-15 of Activision's pleading, and you have not identified any such relevance.

Interrogatories 28 and 29

We have supplemented the responses to these interrogatories.

Interrogatory 31

As we understand Interrogatory 31D, it asks for identification of each and every person having knowledge of the findings of invalidity or unenforceability. As stated in the original response, the finding was published in a publicly available reporter series. How could plaintiffs possibly identify everyone who has any knowledge of that finding?

As to 31E and F, we know of no such documents prior to the invalidity holding. We fail to see the relevance of any subsequent documents, and you have not pointed to any such relevance. Documents concerning any attempts at licensing the '598 patent will be among those to be produced for your inspection.

Interrogatories 32-37

These interrogatories relate to all the patents identified in interrogatories 1 and 3 which include many foreign patents and patents which plaintiffs have made no effort to license or assert. The requested information on those patents is simply not relevant.

If you would care to narrow the scope of the interrogatories, we will deal with them further. Additionally, much of the information requested is available from documents being supplied in response to other interrogatories, particularly the licensing documents. The file history of the '480 reissue application also includes information responsive to these interrogatories.

Interrogatory 39E

Certainly many employees of both Magnavox and Sanders are generally familiar with the sales of television game cartridges by Activision. We see no use or relevance in trying to ascertain the identity of all such persons. However, the principal persons having knowledge of the infringing nature of those activities are plaintiffs' counsel as stated in the interrogatory response. If you would like to more specifically state what it is you seek to learn through this interrogatory, we will be happy to consider responding further.

Interrogatories 40 and 41

The responses to both these interrogatories reference the response to interrogatory 38. That interrogatory gives the extent of the information requested that plaintiffs were able to provide. Any further tentative identification is not appropriate. We see no reason why plaintiffs should supply reasons why a game does not infringe the patent; where no assertion of infringement is made with respect to specific games, there is simply no issue between the parties.

Interrogatories 42 and 43

The only possible relevance these interrogatories could have relates to the good faith of plaintiffs in bringing this action. Despite the allegations of the complaint to the contrary, in view of the previous litigation and licensing history of the '507 patent, we do not see how there can be any doubt that this action was filed in good faith. Moreover, the interrogatories are simply not limited to any time period, and otherwise request substantially more information than could conceivably be relevant. We note that interrogatory 176 of Activision's second set of interrogatories also relates to this subject.

Interrogatory 45C

We fail to understand how you can expect plaintiffs to identify all persons having knowledge of Activision's activities in the use and sale of television game cartridges, or even all of their employees having such knowledge. If you care to narrow the interrogatory, we will consider it further.

Interrogatory 46E and F

Our comments are similar to those concerning 45C. Again, if you would like to narrow the information requested, we will consider the matter further.

Interrogatory 47

Our comments are similar to those concerning 45C. It is virtually impossible to identify all persons who have used an Activision cartridge with a television game console. We assume Activision does not contend that its cartridges have any substantial use

other than in combination with the television game consoles they are designed to work with. Again, if Activision's intent is to develop some specific information with this interrogatory, we would be happy to reconsider it in narrowed form.

Interrogatory 48

We have now answered this interrogatory with respect to the '507 and '480 patents. We fail to see how the information sought as to any other patents would be relevant to paragraphs 13-15 of the Affirmative Defenses.

Interrogatory 55

We would obtain the requested information by reviewing the documents identified in the interrogatory response. Incidentally, Activision should already have most of these documents.

Interrogatory 58F and G

We interpret parts F and G as requesting the identification of any employee of plaintiffs having any knowledge of the manufacture of the television games identified in response to part A, and all communications relating in any way to such manufacture. Such a request is clearly overbroad and burdensome and includes within its scope much information of absolutely no relevancy. If you care to narrow the scope of the information requested, we will be happy to reconsider.

Interrogatory 59E

Again, we don't see how we can supply the identification of all people having any knowledge on the stated subject matter. We would be happy to reconsider if the information requested is suitably narrowed.

Interrogatory 60

Since Activision was a party to all the correspondence and communications, we fail to see how it could be any greater burden on Activision to obtain the requested information that it would be on plaintiffs. Further, the answer will presumably include Activision personnel; Activision has much more information about their identity than plaintiffs.

Interrogatory 63

The licensing records of Magnavox are the best and most reliable source of the information sought by this interrogatory. We do not see any substantial difference between the burden of your reviewing those records and our reviewing those records. We do not believe anybody at Magnavox could supply the information you have requested without such a review.

Interrogatory 67

It would be possible to identify plaintiffs' employees having the most knowledge as to the sales by Magnavox under the patent and royalty income and reports under the patent. If this will be sufficient, we will provide it. If further identification is necessary, it can only be obtained from the records to be produced.

Interrogatory 71

We disagree with the assumption stated in your letter as to this interrogatory. We also refer you to the extensive deposition and trial testimony of Sanders personnel relating to the development of television games.

Interrogatory 73

The response is not limited to licensees and Activision. Again, we know of no way to obtain all the requested information other than a thorough review of the relevant files. We have not previously done such a review, and you will be given the opportunity to do so.

Interrogatories 74 and 75

We are not familiar with the Spring, 1983 publication referred to in your letter. That publication, of course, is in no way relevant prior art. While plaintiffs are aware that Mr. Higinbotham contends he developed a game in 1958 and gave deposition testimony to that effect, we do not know that this was "the tennis game" referred to in part E of interrogatory 74.

Interrogatory 76

We disagree with your position. The position taken in prior actions with respect to various items of prior art will be stated in the documents to be produced for your inspection.

Interrogatory 77

As to items B-E of interrogatory 74, we have produced for your inspection deposition testimony and exhibits and other documents which might tend to establish the existence of or describe the alleged prior art.

Interrogatory 78

The interrogatory requests identification of all of plaintiffs employees with knowledge of the references. We don't see the relevance of that information; we would reconsider the interrogatory if suitably narrowed.

Interrogatory 80B

The item referred to is a televised cricket match, the match being played by two teams of eleven human players each, with cricket balls, bats, and wickets.

Interrogatory 81

We have supplemented the response to this interrogatory.

Interrogatories 84-87

We continue to believe that the question of infringement can only be considered in the context of a complete game. To attempt to deal with less than a complete game is not meaningful; at most it can only constitute verbal jousting.

Interrogatory 98

The "counsel" of parts B and E are Richard I. Seligman, Robert A. Cesari of Cesari and McKenna, Boston, Theodore W. Anderson, and myself. Ted and I are the counsel referred to in the response to part C. The circumstances under which the decision to seek a reissue was made are set forth in the reissue oath.

Interrogatory 99

The "counsel" referred to are Louis Etlinger, Richard I. Seligman, Ted Anderson, and me.

Interrogatory 100

The "counsel" referred to in the response to parts A and F are Louis Etlinger, Richard I. Seligman, Ted Anderson, and myself. As to part E, the extent of plaintiffs present knowledge is set forth in the deposition transcripts of Dick Seligman and myself and these transcripts have been produced for you.

Interrogatories 101-123

We have supplemented our responses to these interrogatories.

Interrogatories 124 and 125

We continue to believe that these interrogatories are objectionable. For your information, the answers were prepared almost entirely from information supplied by plaintiffs' counsel.

During our meeting in March, you and I agreed that because it was necessary to supplement plaintiffs prior responses to include information on the '480 patent, we would defer having the conference required by your Local Rule 230-4(a) until after the supplemental responses had been served. If you still believe that any additional responses are necessary, we will be pleased to confer with you as required by the rule.

Very truly yours,

NEUMAN, WILLIAMS, ANDERSON & OLSON

By _____
James T. Williams

JTW/sjm