4/9/82

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IN THE FEDERAL COURT OF CANADA

(TRIAL DIVISION)

B E T W E E N:

ATARI, INC.

Plaintiff -

- and -

VIDEO AMUSEMENTS OF CANADA LIMITED, NICK D'ALLESANDRO AND VERA D'ALLESANDRO

Defendants

AFFIDAVIT OF GEORGE EDWARD LOGG

I, GEORGE EDWARD LOGG, of the City of Los Altos, in the State of California, in the United States of America, Executive, MAKE OATH AND SAY AS FOLLOWS:

1. I have been employed by the Plaintiff, Atari, Inc., (hereinafter "Atari") since March 6, 1978. My present position is Senior Microprocessor Programmer. I have special knowledge in the field of electronics and, in particular, the development of electronic audio visual video games, (hereinafter "video games"). I was the leading project engineer for the video development project for the video game Centipede. I am authorized by the Plaintiff to make this Affidavit, and the facts and matters herein set out are within my own knowledge or derive from Atari's records to which I have access. I believe all such facts and matters to be true.

2. Atari, which is incorporated under the laws of the State of Delaware, and whose principal place of business is 1265 Borregas Avenue, Sunnyvale, California, 94086, in the United States of America, is a corporation whose principal business consists of the design and manufacture of video games.

3. Each of Atari's video games consists of a cabinet containing electronic circuitry and a television picture tube which serves as a screen upon which the visual images related to the game are displayed. The electronic circuitry is in the form of printed circuit boards and other electronic

components which store the information concerning the game, including the field on which the game is played, the design of the playing symbols and their interaction with one another, the images of the game to be seen on the screen and the accompanying musical and sound effects to be heard. On the cabinet is a control panel and coin slot.

4. Prior to the insertion of a coin, all of Atari's coin operated video games operate in a repeating "attract mode" displaying a sample of how the game will operate in order to demonstrate the game to potential players. This sample of the game is "fixed" or stored in the circuitry of the game in the form of a series of images like a "cartoon", including accompanying musical and sound effects. During the attract mode, the potential player cannot affect the screen display.

5. When a coin is deposited and the start button depressed, the game shifts into the "play mode", in which the playing symbols or characters (except for the one controlled by the player) move on the screen in a pre-determined, pre-set sequence according to the information stored in the electronic circuitry, and interact with the symbol or character controlled by the player in a pre-set manner, also according to the stored information in the electronic circuitry.

6. It took Atari approximately ten months to develop and produce the first production version of the video game Centipede, which was conceived by Dona Bailey and myself working under contracts of employment with Atari. The computer program relating thereto took approximately fourteen man months to write and it is estimated that the total development costs of the video game Centipede exceeded U.S. $500,000.00.

7. Centipede is an original game that takes place in a world inhabited by hostile insect images: the centipede, flea, scorpion and spider. Also present are numerous mushroom images distributed across most of the screen; they are obstacles that the player must fire around to hit the centipede. The player manipulates a "shooter" image which he uses to fire at and destroy the other images and thereby gain points. At the same time, the player must avoid being hit and destroyed by the hostile images. The principal enemy is the centipede that moves back and forth across the screen

like a snake, starting at the top and gradually coming closer to the shooter who stays near the bottom. When a centipede is shot, it breaks up into small centipedes. When the scorpion passes over mushrooms, it "poisons" them by changing their colour; the poisoned mushrooms then cause any centipedes that collide with them to head directly toward the bottom of the screen where the shooter is. The centipede becomes more and more difficult for the player as the game proceeds; the hostile insects appear more often and move faster and faster. The player scores points for hitting the insects and the mushrooms and his running score is indicated on the screen.

8. Centipede is completely different in concept from any other game on the market. It takes place in the world of insects, in contrast to most prior video games involving combat against hostile objects where the action takes place instead in outerspace. To my knowledge, there has been no other video game showing images of a centipede, scorpions, fleas or spiders as they are designed and appear on the screen in the game Centipede. Annexed hereto and marked as Exhibit "A" to this my Affidavit is a copy of a brochure describing the game Centipede.

9. The possibility of another designer independently coming up with an identical concept is so remote as to be discounted.

10. It is theoretically possible having seen another manufacturer's game, to write a program without copying the manufacturer's, which would play exactly the same game. However, if the program itself is largely the same, then it is a mathematical certainty that the program is a modified copy of the original.

11. On the 5 day of March, 1982, I received a printed circuit board of the video game Magic Worm from David Bell, a solicitor in the firm of Smith, Lyons, Torrance, Stevenson & Mayer (hereinafter "Smith, Lyons"), the solicitors for the Plaintiff herein. I am advised by David Bell and do verily believe that this circuit board was removed from a Magic Worm game which was purchased on the 29th day of March, 1982 by Stephanie Phillips (hereinafter "Phillips"), an investigator retained by Smith, Lyons. I am also advised by David Bell and do verily believe that Phillips purchased the Magic Worm

game from Video Amusements of Canada Limited, one of the Defendants herein.

12. On the * day of March, 1982, I analyzed the said circuit board and reviewed the computer program of the video game Magic Worm. I found that the Magic Worm, except for minor details, is a copy of the original game Centipede. The central figure of the Magic Worm game, as in the Centipede game, is a centipede like figure which descends from the top of the screen through a maze of objects. There are only a few minor changes in the shapes of the objects and colours, but no changes that alter the play of the game. Most of the alterations were made to disguise the piracy. Albeit the objects forming the maze have been altered, such minor differences would be overlooked by the players of the game who would undoubtedly confuse the two games.

13. When the ~~circuit board~~ program from ~~the~~ Magic Worm was inserted into the Centipede game, the images appeared on the screen in the ~~exact~~ same order as in the Centipede game. The game was identical save for the following changes:

(a) the copyright notice of Atari ("© ~~Atari 1982~~ 1980 ATARI"), which is displayed on the attract mode had been ~~deleted and replaced with the words "Spider 1981",~~ No message.

(b) the images which appear during the "attract mode" and "play mode" have been altered so that the mushroom images are apples, the spider image is a butterfly, the flea image a spider. The scorpion image ~~in both games is identical~~ is a snail.

After analysing the circuit board of the Magic Worm, there is no doubt in my mind that this program was copied from Centipede.

14. Moreover, I determined that the Magic Worm game was an electronic reproduction of the Centipede game. As it was to be feared that individuals or companies would copy our game, but would deny that methods of electronic reproduction were used, Atari built in a "trap" which is almost impossible to discover and, in fact, was not discovered by the manufacturer of the Magic Worm. This trap consists of a particular data pattern which has no function. It does not create any image on the screen or any sound. Only with the help of a special code is it possible to "read" this pattern

and understand the message it contains. The secret message built into the Centipede program must be translated from the international Morse code. Such a translation of the data pattern reads "COPYRIGHT 1980 ATARI". This particular data pattern also appears in the Magic Worm program. Consequently, if one knows our special code, the Magic Worm reproduces our secret message which is unique to Atari. This constitutes conclusive evidence that the manufacturer of this Magic Worm game copied substantial parts of our game by way of electronic reproduction.

15. This Affidavit is sworn in support of an application for the granting of an interlocutory injunction, including an order requiring certain of the Defendants to deliver up to the Plaintiff all games which infringe the Plaintiff's copyright and of which the Plaintiff claims ownership pursuant to the provisions of the Copyright Act, and not for any improper purpose.

SWORN BEFORE ME at the City of in the State of U. S. A. this day of , 1982.

George Edward Logg

Notary Public