APPENDIX E

SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF KING

THE PEOPLE OF THE STATE OF WASHINGTON, PLAINTIFF, v. EMANUEL FAIR, DEFENDANT.	Case No. 10-1-09274-5 SEA DECLARATION OF BRIAN E. FERGUSON IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL DISCOVERY OF TRUEALLELE SOURCE CODE

DECLARATION OF BRIAN E. FERGUSON IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL DISCOVERY OF TRUEALLELE SOURCE CODE

I, Brian E. Ferguson, declare I have personal knowledge of the following, and if called upon to do so, could and would testify competently to the matters herein.

1. I am a partner in the law firm Weil, Gotshal & Manges LLP. My office address is 1300 Eye Street, N.W., Washington, D.C. 20005.

2. I am the co-chair of our firm's Patent Litigation Practice Group. I have been practicing intellectual property law continuously for over 24 years. My practice involves representing parties in patent disputes in federal district courts and the International Trade Commission. Over the course of my career I have been involved in dozens of cases involving computer technology, both hardware and software. I have represented clients such as Apple Inc., General Electric Company, MapMyFitness, Inc. (a subsidiary of Under Armour), National

Semiconductor Corporation (now a subsidiary of Texas Instruments), Nuance Communications, and Seagate Technology, to name a few.

3. Throughout my career, I have dealt with the issue of the production of source code in response to discovery requests in litigation on numerous occasions. This issue comes up very frequently in patent cases. I will provide some basic information about patent cases generally in order to better understand why.

4. Patent law is governed by federal statute – Title 35 of the United States Code. Patents give their owners the right to exclude others from practicing the patented invention for as long as the patent is in force. 35 U.S.C. § 154. The United States Patent and Trademark Office ("PTO") is responsible for determining whether an application for a patent qualifies to receive patent protection. If the PTO decides to award a U.S. patent, the term of the patent begins on the day the patent issues from the PTO and normally expires 20 years from the date that the patent application was filed with the PTO. 35 U.S.C. § 154(a).

5. A person or company that makes, uses, sells, offers for sale, or imports into the U.S. the patented invention, without the patent owner's permission, during the term of the patent, is said to "infringe" upon the patent owner's rights. 35 U.S.C. § 271. A patent owner may bring a lawsuit in federal district court seeking remedies for the infringement. These remedies may include monetary damages for the infringement and/or an injunction preventing further infringement. 35 U.S.C. §§ 283, 284.

6. A determination of whether an accused product or method infringes a patented invention requires a comparison of the "claims" of the patent against the accused product/method. Almost 50 years ago, the Court of Federal Claims explained the importance of claims as follows: "The claims of the patent provide the concise formal definition of the

invention. They are the numbered paragraphs 'which particularly [point] out and distinctly claim the subject matter which the applicant regards as his invention.' 35 U.S.C. § 112. It is to these wordings that one must look to determine whether there has been infringement." *Autogiro Co. of Am. v. United States*, 384 F.2d 391, 395-96 (Ct. Cl. 1967). Accordingly, it has often been said that the claims are like the deed to a piece of property in that the claims provide the metes and bounds of the invention protected by the patent. *See, e.g., In re Vamco Mach. & Tool, Inc.*, 752 F.2d 1564, 1577 n.5 (Fed. Cir. 1985).[1]

7. In order to determine infringement, the accused product or method must be compared against one or more of the claims of the asserted patent. Each and every element or limitation in the claim must be found in the accused product or method. If even a single limitation in the claim is missing from the accused product or method, there is no infringement. *See Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*), *aff'd*, 517 U.S. 370 (1996); *Becton Dickinson & Co. v. C.R. Bard, Inc.*, 922 F.2d 792, 798 (Fed. Cir. 1990). It is the patent holder that has the burden of showing infringement by the preponderance of the evidence. *See Enercon GmbH v. Int'l Trade Comm'n*, 151 F.3d 1376, 1384 (Fed. Cir. 1998).

8. Attached hereto as Exhibit A is a true and correct copy of a sample U.S. patent. This patent has the number 5,184,830 in the upper-right hand corner (the PTO has issued patents

[1] Congress created the Court of Appeals for the Federal Circuit in 1982 with the goal of promoting greater uniformity in the interpretation and application of the nation's patent laws. *See Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 390 (1996) ("Congress created the Court of Appeals for the Federal Circuit as an exclusive appellate court for patent cases, observing that increased uniformity would strengthen the United States patent system in such a way as to foster technological growth and industrial innovation"). As such, the Federal Circuit has "exclusive appellate jurisdiction over patent cases pursuant to 28 U.S.C. § 1295(a)(1)." *Larson v. Correct Craft, Inc.*, 569 F.3d 1319, 1323 (Fed. Cir. 2009). With regard to substantive issues involving patent law, the Federal Circuit thus creates and applies its own law. *See Braun Inc. v. Dynamics Corp. of Am.*, 975 F.2d 815, 819 (Fed. Cir. 1992).

with sequential numbers since it was founded). The patent is entitled "Compact Hand-Held Video Game System" and issued on February 9, 1993. The named inventors are Satoru Okada and Shin Kojo. The patent is assigned to (*i.e.*, owned by) Nintendo Company Ltd. of Japan. This patent covers Nintendo's popular "Game Boy" hand-held video game player. The patent expired in 2010.

9. As can be seen from a review of Exhibit A, the patent contains a cover page with information regarding the patent number, issue date, application filing date(s), inventors, assignee, and other information. Following the cover page are 12 sheets of drawings or figures depicting aspects of the invention. After the figures is the text, or "written description," of the invention, divided into numbered columns. At the end of the patent are the numbered claims, which, as described above, delineate the precise boundaries of the invention. The figures, written description, and claims are collectively referred to as the "specification" of the patent.

10. Claim 1 of the patent (Exhibit A) starts at column 11. The individual limitations of the claim, include, among other things, a "case of a size which may be held by hand," a "first operation switch," a "second operation switch," a "dot-matrix liquid crystal display panel," and so on. In order for the patentee to prove infringement, it must show that each one of the limitations in the claim is present in the accused product or method.

11. In the patent attached as Exhibit A, the claim limitations are generally of a mechanical or electrical variety, and infringement may be determined by analyzing the accused product and taking it apart. But today, patents are increasingly directed to specific aspects of computer ***functionality***, as opposed to assembly. For example, a patent may cover how a computer (*e.g.*, a desktop, laptop, or other mobile device, such as a smartphone) collects, processes, and displays data to an end-user. Or a patent may be directed to how an end-user

computer and a remote server communicate with each other. Another example is a patent covering how a website is designed and functions in order to interact with an end-user.

12. In cases involving patents such as the ones described above, infringement typically turns on the "software" that controls the computer functionality. Attached hereto as Exhibit B is a true and correct copy of excerpts from the book *Computer Dictionary*, 2d. Ed. (Microsoft Press 1994), which defines "software" in relevant part as "[c]omputer programs; instructions that cause the hardware – the machines – to do work.... The two primary software categories are operating systems (system software), which control the workings of the computer, and application software, which addresses the multitude of tasks for which people use computers."

13. The functionality of the software, in turn, is determined by its "source code." "Source code" is human-readable text written in a computer programming language. *See* Exhibit B (*Computer Dictionary* at 367, defining "source code"). The source code is translated into machine-readable code called "object code," which is the instructions that the computer's processor understands and "reads," or "executes," in order to carry out the tasks of the software. *See id.* at 276 (defining "object code"). Because humans cannot readily read object code, we look to the source code in order to understand the steps and functionality carried out by the software.

14. In patent cases involving patents directed to computer functionality, therefore, the production of source code by the defendant in response to discovery requests is almost always required. The reason why the production of source code is required is simple: it is only the source code that determines the instructions present in software that a computer will execute in order to carry out a particular function. Manuals, white papers, or tutorials may be helpful in

describing what the software does, but they often are not detailed enough to describe the exact steps the software takes to arrive at a certain result. Worse, manuals often contain errors. The source code, in contrast, contains *all* of the *exact* steps and instructions executed by the computer. The source code, therefore, is frequently the single most critical piece of evidence in patent cases.

15. Because of this, Courts routinely order production of source code in such cases because the source code is relevant to the issues in the case, and is adequately secured by protective orders. There are numerous reported decisions from district courts addressing the issue of source code production. Just a handful of illustrative cases include:

- *Audatex N. Am. Inc. v. Mitchell Int'l, Inc.*, 2014 U.S. Dist. LEXIS 141426 (S.D. Cal. (Oct. 3, 2014) ("In its responses to Interrogatory No. 1, Defendant denied infringement of the patents-in-suit and provided several narrative explanations as to why particular claim elements are not found in the accused products.... While many of the narrative responses identify the specific patent claim Defendant is challenging and the basis for that challenge, Defendant does not identify any source code to support its contentions. The Court finds this omission to be improper and requires Defendant to identify the relevant source code");
- *EDirect Publ., Inc. v. LiveCareer, Ltd.*, 2014 U.S. Dist. LEXIS 77490 (N.D. Cal. June 4, 2014) (rejecting the argument that source code is proprietary and that an expert could misuse the source code because a protective order was in place, and ordering defendant to produce the source code for the accused product);

- *EPL Holdings, LLC v. Apple Inc.*, 2013 U.S. Dist. LEXIS 71301 (N.D. Cal. May 20, 2013) (discussing procedure for Apple's production of source code in discovery);
- *Forterra Sys. v. Avatar Factory*, 2006 U.S. Dist. LEXIS 63100 (N.D. Cal. Aug. 22, 2006) (ordering production of the entire source code for the accused product: "because the source code is at the heart of the dispute, Forterra's expert must have access to the entire source code").

16. Source code production has become so commonplace in patent litigation that several jurisdictions have adopted local rules expressly requiring it as part of routine discovery. Attached hereto and incorporated by reference herein as Exhibit C is a true and correct copy of the Patent Rules established as part of the United States District Court for the Eastern District of Texas's Local Rules, *see* Appendix B (Patent Rules) 3-4(a) ("[T]he party opposing a claim of patent infringement ***must produce or make available for inspection and copying: (a) Source code.***") (emphasis added).

17. Attached hereto and incorporated by reference herein as Exhibit D is a true and correct copy of the Patent Rules established as part of United States District Court for the Southern District of California's Local Rules, *see* Patent Local Rules 3-4(a) ("[T]he party opposing a claim of patent infringement must produce or make available for inspection and copying: (a) Source code.").

18. Attached hereto and incorporated by reference herein as Exhibit E is a true and correct copy of the United States District Court for the District of Delaware's Default Standard for Access to Source Code in Patent Cases, *see* Default Standard for Access to Source Code

("Absent agreement among the parties, the following procedures shall *apply to ensure secure access to source code*") (emphasis added).

19. When source code is produced in response to discovery requests, its confidentiality and trade secret status (if any) is protected through entry of an appropriate protective order by the Court. I have been personally been involved in the negotiation and entry of numerous protective orders in district courts that contain specific provisions providing additional protections for source code.

20. Attached hereto and incorporated by reference herein as Exhibit F is a true and correct copy of a Protective Order entered by the United States District Court of the Eastern District of Texas in the case *Mobile Telecommunications Technologies, LLC v. Apple Inc.*, Case No. 2:13-cv-258-JRG-RSP, ECF No. 85. I was counsel for Apple in this matter. The Protective Order contains explicit provisions concerning the production and protection of source code. *See* pp. 5-8.

21. Attached hereto and incorporated by reference herein as Exhibit G is a true and correct copy of a Protective Order entered by the United States District Court of the Eastern District of Virginia in the case *Hill-Rom Co., Inc. v. General Electric Co.*, Case No. 2:14-cv-00187-RGD-LRL, ECF 74. I was counsel for General Electric in this matter. The Protective Order contains explicit provisions concerning the production and protection of source code. *See* pp. 15-25.

22. The use of such protective orders, which contain heightened protection for source code production, is sufficient to ensure that the source code is adequately protected during the pendency of the litigation. I am not personally aware of any instance wherein a party's claim to

trade secret protection for source code was lost as a result of either an intentional or inadvertent violation of a protective order.

I declare that the above is true and correct under penalty of perjury pursuant to the laws of the State of Washington, executed this 24th day of February, 2016, at Washington, D.C.

/s/ Brian E. Ferguson
Brian E. Ferguson

Partner, Washington, DC

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Brian E. Ferguson is co-chair of Weil's Patent Litigation practice nationally. He specializes in high technology patent disputes involving a wide array of technologies.

Mr. Ferguson is a nationally recognized leader in patent law. He was named one of the "top 50 under 45" IP practitioners in the U.S. by *IP Law & Business* and was recognized as an "IP Star" in the District of Columbia by *Managing Intellectual Property IP Stars* 2013-2015. He has been repeatedly recognized by *The Best Lawyers in America* and *Super Lawyers*, and was named to the 2010 *Lawdragon* Top 3000. In addition to his recognition in *Legal 500* 2013, he has also been recognized as a "BTI Client Service All-Star" and named to the *IAM Patent 1000* as one of the World's Leading Patent Practitioners.

Mr. Ferguson represents clients in patent infringement and validity disputes before district courts, Section 337 investigations before the U.S. International Trade Commission, and adversarial matters before the U.S. Patent and Trademark Office, including *inter partes* review proceedings. He has substantial experience in handling patent-related appellate matters, having handled dozens of appeals and successfully argued numerous appeals before the U.S. Court of Appeals for the Federal Circuit and the Board of Patent Appeals and Interferences in the U.S. Patent and Trademark Office. He also has a broad range of trial and pre-trial experience presenting evidence and arguing case-dispositive motions in both district courts and at the ITC.

With a degree in electrical engineering, Mr. Ferguson is well-versed in matters pertaining to analog and digital integrated circuit designs, communication circuitry and protocols, computer source code and software design, wearable fitness technology, semiconductor processes, medical devices, Internet technology, telecommunications hardware and software, digital half toning and printing technology, digital cameras, and model train technology.

In addition to his practice, Mr. Ferguson taught patent litigation as an adjunct professor at the George Washington University School of Law, and is a leading expert commentator, regularly authoring pieces on patent litigation and technology topics. He authors the "Discovery and Privilege" chapter in the book *Patent Litigation* (PLI Press).
Mr. Ferguson is a member of the Federal Circuit Bar Association and the ITC Trial Lawyers Association. He previously served on the Board of Directors of Give an Hour, a non-profit organization devoted to providing mental health services to U.S. veterans and their families.

Mr. Ferguson is admitted to practice in New York, the District of Columbia, the U.S. Patent and Trademark Office, the U.S. Supreme Court, the Court of Federal Claims, numerous U.S. District Courts, and the U.S. Court of Appeals for the Federal Circuit. He graduated from Union College in 1988 with a B.S.E.E. *(magna cum laude)* and in 1991 from Albany Law School.

- *Adidas v. Under Armour* – Counsel for Under Armour in 13-patent case involving wearable fitness technology.
- *In re Certain RF Capable Integrated Circuits and Products Containing Same* – Counsel for Apple in International Trade Commission Section 337 investigation involving radio frequency integrated circuitry.
- *FastVDO v. Apple* – Counsel for Apple in case involving communication protocol technology.
- *Inter Partes Review* Proceedings – Counsel for General Electric in seven pending IPRs involving jet turbine engine technology; counsel for BASF in IPRs involving catalysts and rechargeable battery (lithium ion) technology.
- *Mobile Telecommunications v. Apple* – Counsel for Apple in 7-patent case involving telecommunications technology.
- *Hill-Rom v. General Electric Co.* – Counsel for GE in 3-patent case involving hand-hygiene monitoring systems.
- *Eastman Kodak Co. v. Apple* – Counsel for Apple in district court and International Trade Commission litigations involving numerous patents directed to digital imaging and computer software architecture.
- *Motorola v. Apple* – Counsel for Apple in multiple cases in district courts and the International Trade Commission.
- *In re Seagate Technology LLC* – Successfully argued before an *en banc* panel of the Court of Appeals for the Federal Circuit in the case *In re Seagate Technology LLC*, in which the Federal Circuit changed the standard for proving willful infringement and clarified the scope of attorney-client privilege waiver in patent cases. 497 F.3d 1360 (Fed. Cir. 2007) (*en banc*).
- *Boston Scientific Scimed v. Medtronic Vascular, Inc.* – Successfully argued appeal before the Federal Circuit in a case of first impression concerning the statutory construction of 35 U.S.C. § 119. 497 F.3d 1293 (Fed. Cir. 2007).
- *Certain Semiconductor Integrated Circuits Using Tungsten Metallization* – Lead counsel for National Semiconductor Corporation in International Trade Commission Section 337 investigation involving semiconductor processing technology.
- *Quantum World Corp. v. National Semiconductor Corp. et al.* – Lead counsel for National Semiconductor Corporation in patent case involving random number generator technology.
- *Ronald A. Katz Technology Licensing v. American Int'l Group, Inc.* – Lead counsel for American International Group, Inc. and 17 subsidiaries in patent case involving interactive voice processing technology.
- *Optivus v. Ion Beams Applications SA* – Successfully argued Federal Circuit appeal on behalf of Ion Beam Applications, SA. The Court affirmed the lower court's ruling that two patents asserted against Ion Beam were invalid. 469 F.3d 978 (Fed. Cir. 2006).
- *Research Corporation Technologies v. Lexmark Int'l* – Counsel for Research Corporation Technologies in six patent case involving printer software technology.
- *Edwards Lifesciences v. Medtronic, Inc.* – Counsel for Medtronic in multi-patent litigation involving artificial heart valve and annuloplasty products.
- *NeoMagic Corp. v. Trident Microsystems, Inc.* – Successfully argued Federal Circuit appeal vacating a grant of summary judgment against NeoMagic Corporation. 287 F.3d 1062 (Fed. Cir. 2002).

District of Columbia; New York State; US Supreme Court; US Court of Appeals for the Federal Circuit; Court of Federal Claims; District Court of Colorado; District Court of Maryland; District Court of Eastern District of Texas; District Court Eastern District of Michigan; District Court Southern District of New York; District Court Western District of New York

Albany Law School (J.D., 1991)
Union College (B.S.E.E., *magna cum laude*, 1988)

US005184830A

United States Patent [19]

Okada et al.

[11] Patent Number: 5,184,830

[45] Date of Patent: Feb. 9, 1993

[54] COMPACT HAND-HELD VIDEO GAME SYSTEM

[75] Inventors: Satoru Okada; Shin Kojo, both of Kyoto, Japan

[73] Assignee: Nintendo Company Limited, Kyoto, Japan

[21] Appl. No.: 899,179

[22] Filed: Jun. 15, 1992

Related U.S. Application Data

[63] Continuation of Ser. No. 462,400, Jan. 8, 1990, abandoned.

[30] Foreign Application Priority Data

Apr. 20, 1989 [JP] Japan 1-101028
Oct. 1, 1989 [JP] Japan 1-4452

[51] Int. Cl.[5] A63F 9/22

[52] U.S. Cl. ..... 273/433; 273/434; 273/435; 273/85 G

[58] Field of Search ..... 273/433, 434, 435, 437, 273/85 R, 85 G, DIG. 28, 364/410

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8302566	8/1983	World Int. Prop. O.	273/85 G

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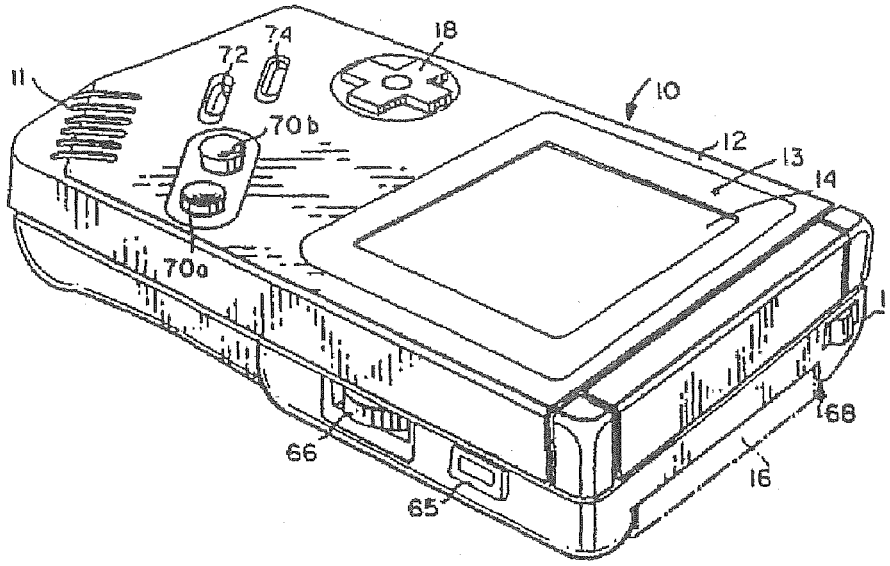
Primary Examiner—Jessica J. Harrison
Attorney, Agent, or Firm—Nixon & Vanderhye

[57] ABSTRACT

A hand-held electronic game machine for use with attachable/detachable memory game packs wherein the game machine includes a case of a size which may be held by a hand and capable of being sandwiched by both hands with a first switch disposed at a position such that during a game it can be operated by one thumb on a front surface of the case, a second switch disposed at a position such that during a game it can be operated by the other thumb on the first surface of the case and a third operation switch means provided in a region of said front surface where imaginary loci of both thumbs intersect with each other on the front surface, and wherein the game machine can be connected with others for simultaneous multiple player competition.

21 Claims, 12 Drawing Sheets



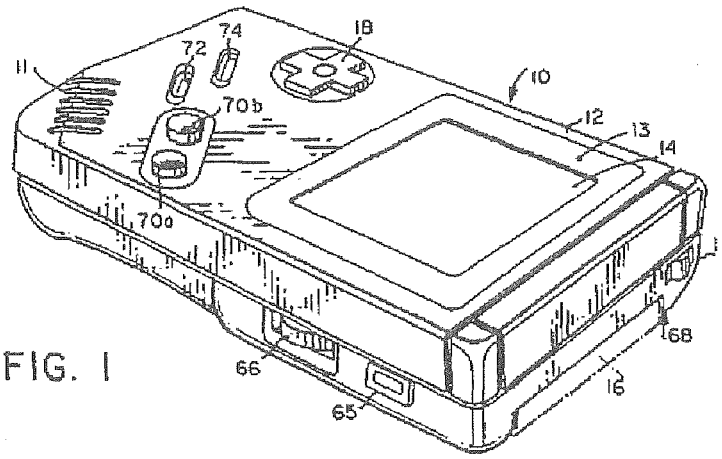
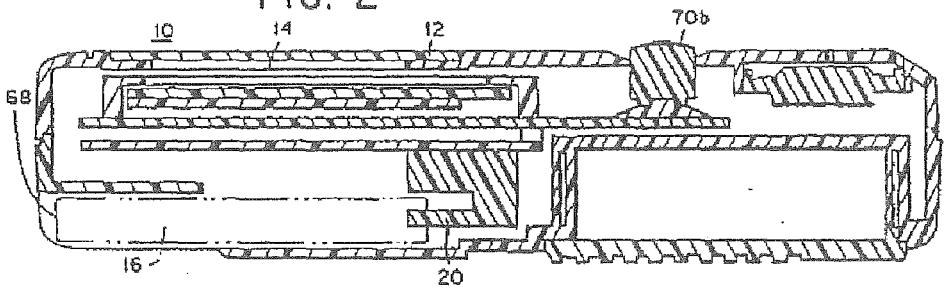


FIG. 1

FIG. 2



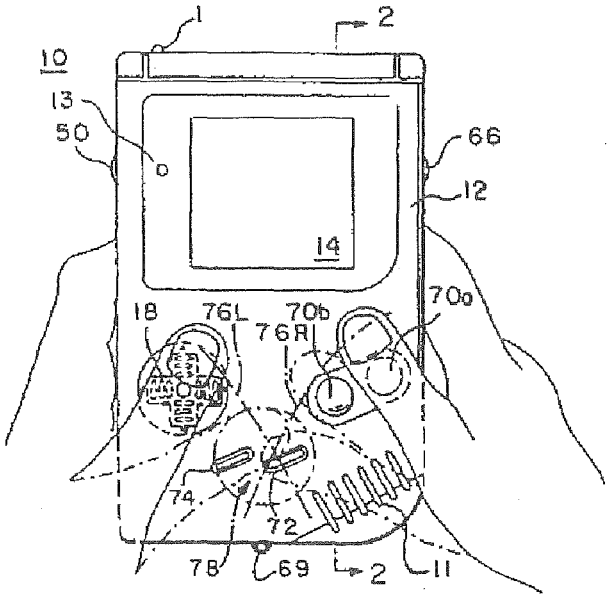


FIG. 3

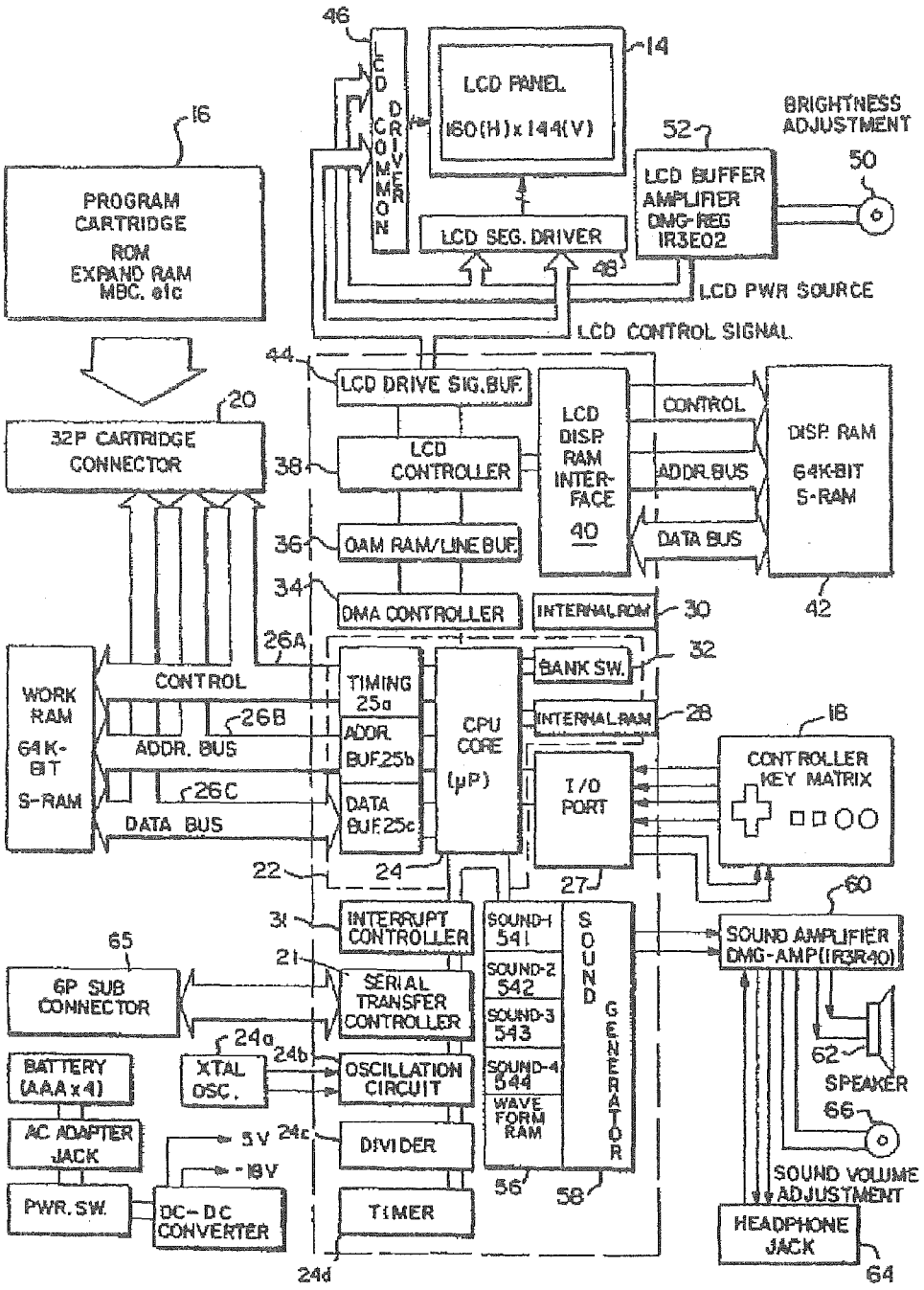
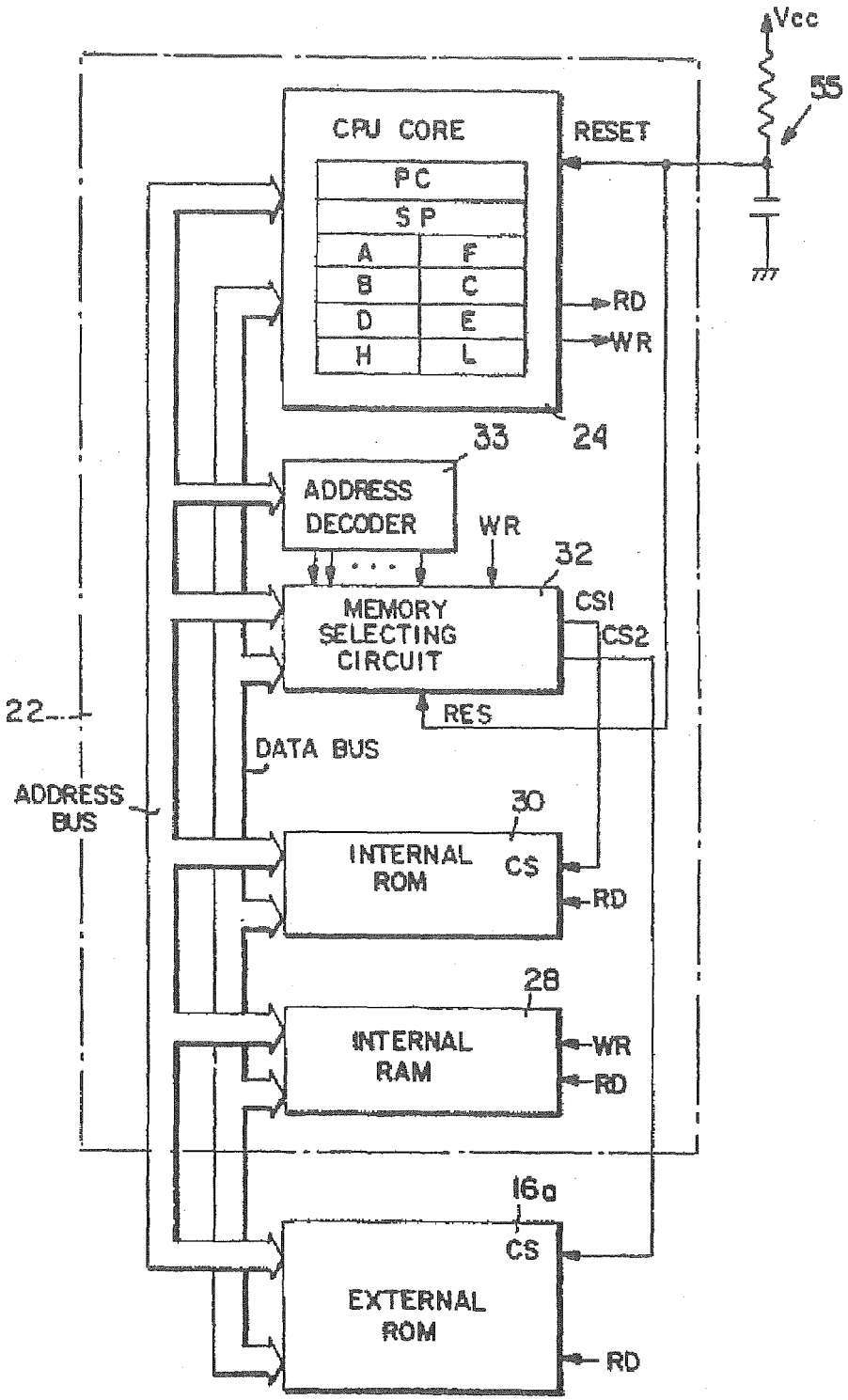

46
LCD COMMON DRIVER
LCD PANEL
160(H)x144(V)
14
BRIGHTNESS ADJUSTMENT
16
52
LCD BUFFER AMPLIFIER DMG-REG IR3E02
50
PROGRAM CARTRIDGE ROM EXPAND RAM MBC. etc
LCD SEG. DRIVER
48
LCD PWR SOURCE
LCD CONTROL SIGNAL
44
LCD DRIVE SIG.BUF.
20
32P CARTRIDGE CONNECTOR
38
LCD CONTROLLER
LCD DISP. RAM INTER-FACE 40
CONTROL
ADDR.BUS
DATA BUS
DISP. RAM 64K-BIT S-RAM
42
36
OAM RAM/LINE BUF.
34
DMA CONTROLLER
INTERNAL ROM
30
26A
32
BANK SW.
WORK RAM 64K-BIT S-RAM
CONTROL
26B
ADDR. BUS
26C
DATA BUS
TIMING 25a
ADDR. BUF.25b
DATA BUF.25c
CPU CORE (μP)
INTERNAL RAM
28
18
I/O PORT
CONTROLLER KEY MATRIX
22
24
27
60
31
INTERRUPT CONTROLLER
SOUND-1 541
SOUND-2 542
SOUND-3 543
SOUND-4 544
WAVE FORM RAM
SOUND GENERATOR
SOUND AMPLIFIER DMG-AMP(IR3R40)
65
21
6P SUB CONNECTOR
SERIAL TRANSFER CONTROLLER
62
SPEAKER
24a
24b
BATTERY (AAAx4)
XTAL OSC.
OSCILLATION CIRCUIT
66
AC ADAPTER JACK
5V
24c
DIVIDER
-18V
SOUND VOLUME ADJUSTMENT
PWR. SW.
DC-DC CONVERTER
TIMER
56
58
HEADPHONE JACK
64
24d

FIG. 4

FIG. 5


Vcc
55
CPU CORE
RESET
PC
SP
A
F
B
C
D
E
H
L
RD
WR
33
24
ADDRESS DECODER
WR
32
MEMORY SELECTING CIRCUIT
CS1
CS2
RES
22
DATA BUS
ADDRESS BUS
30
INTERNAL ROM
CS
RD
28
INTERNAL RAM
WR
RD
16a
CS
EXTERNAL ROM
RD

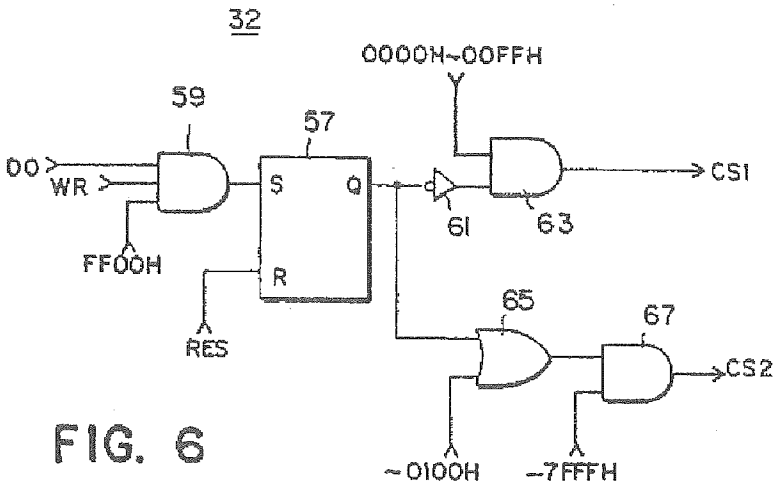


FIG. 6

FIG. 8(A)

FIG. 8(B)

FIG. 7A

FIG. 7B

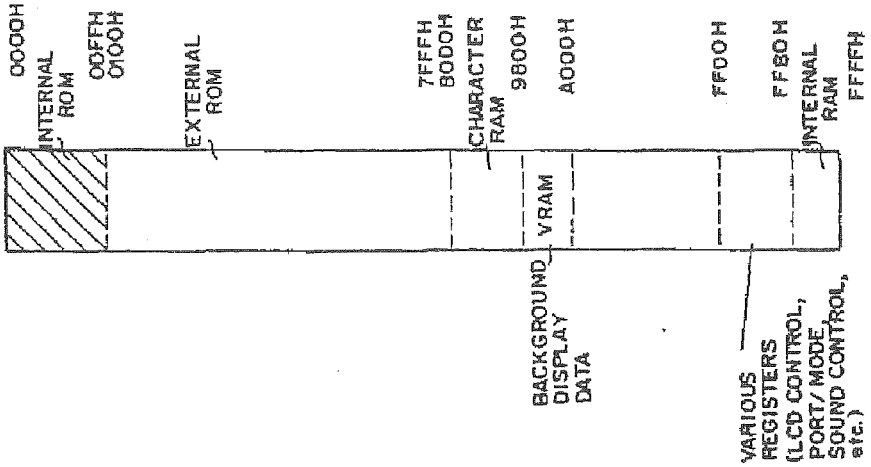


FIG. 7C

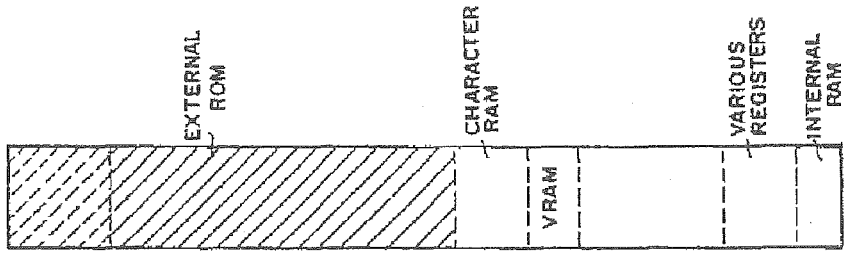
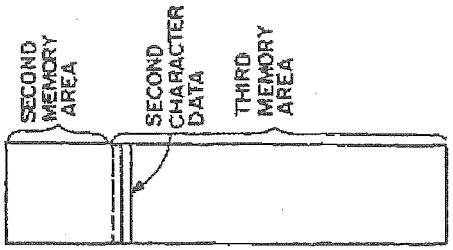


FIG. 7D



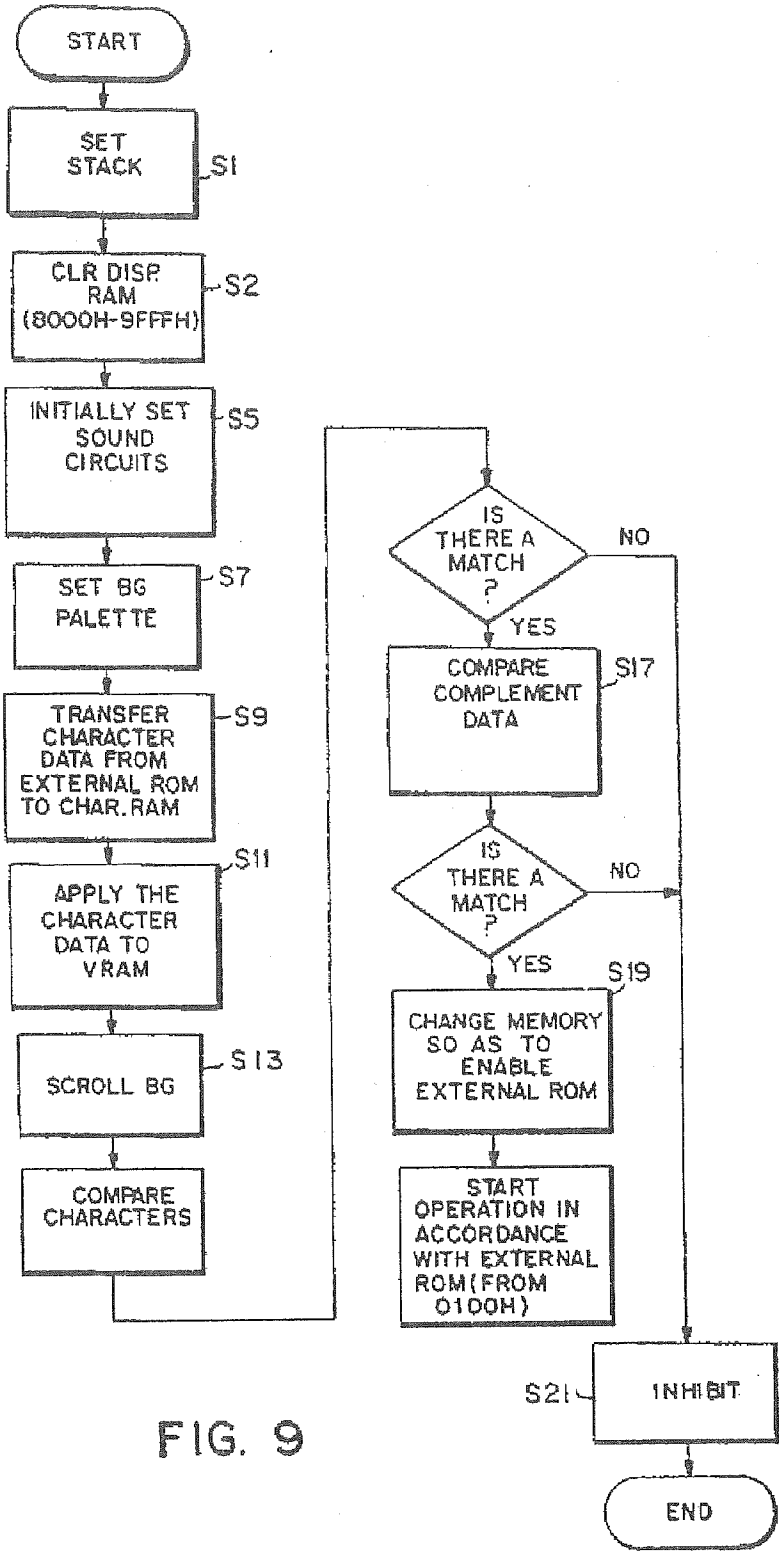

START
SET STACK
S1
CLR DISP RAM (8000H-9FFFH)
S2
INITIALLY SET SOUND CIRCUITS
S5
SET BG PALETTE
S7
TRANSFER CHARACTER DATA FROM EXTERNAL ROM TO CHAR. RAM
S9
APPLY THE CHARACTER DATA TO VRAM
S11
SCROLL BG
S13
COMPARE CHARACTERS
IS THERE A MATCH ?
NO
YES
COMPARE COMPLEMENT DATA
S17
IS THERE A MATCH ?
NO
YES
S19
CHANGE MEMORY SO AS TO ENABLE EXTERNAL ROM
START OPERATION IN ACCORDANCE WITH EXTERNAL ROM (FROM 0100H)
S21
INHIBIT
END

FIG. 9

FIG. 10

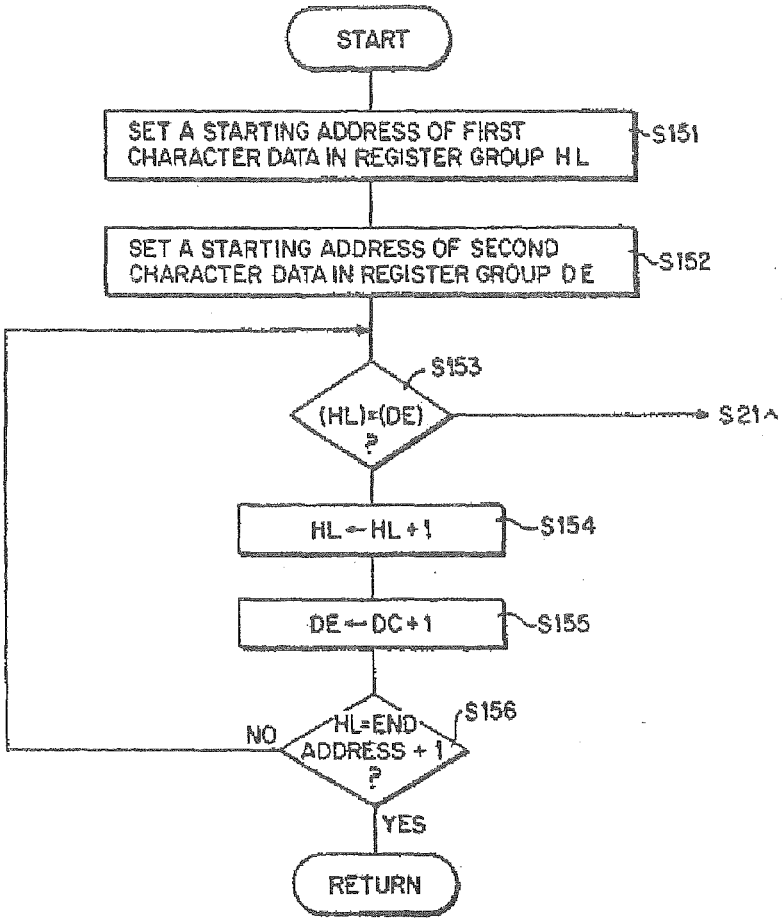

START
SET A STARTING ADDRESS OF FIRST CHARACTER DATA IN REGISTER GROUP HL
S151
SET A STARTING ADDRESS OF SECOND CHARACTER DATA IN REGISTER GROUP DE
S152
S153
(HL)=(DE) ?
S21
HL←HL+1
S154
DE←DC+1
S155
HL=END ADDRESS + 1 ?
S156
NO
YES
RETURN

FIG. 11

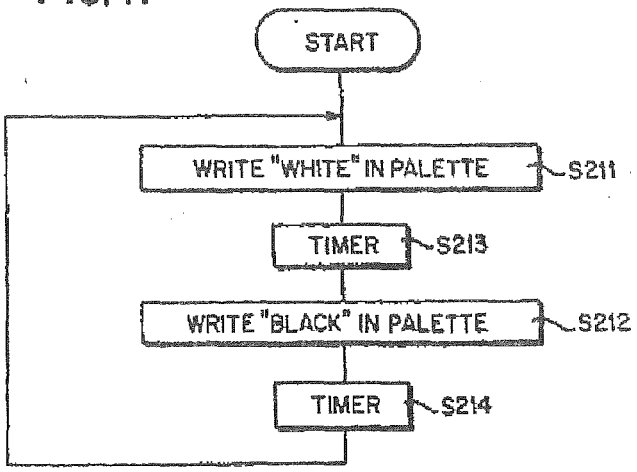

START
WRITE "WHITE" IN PALETTE
S211
TIMER
S213
WRITE "BLACK" IN PALETTE
S212
TIMER
S214

FIG. 12

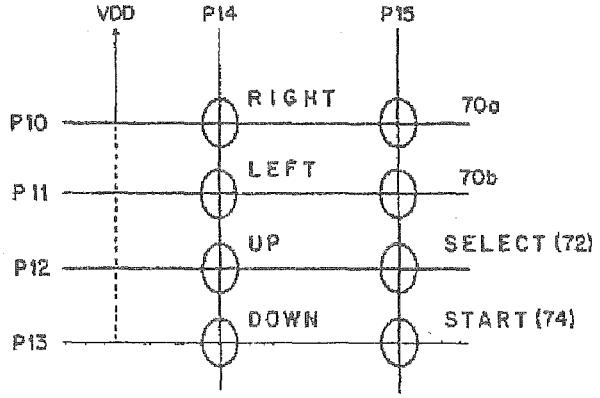


FIG. 14 BACKGROUND (BG) DISPLAY

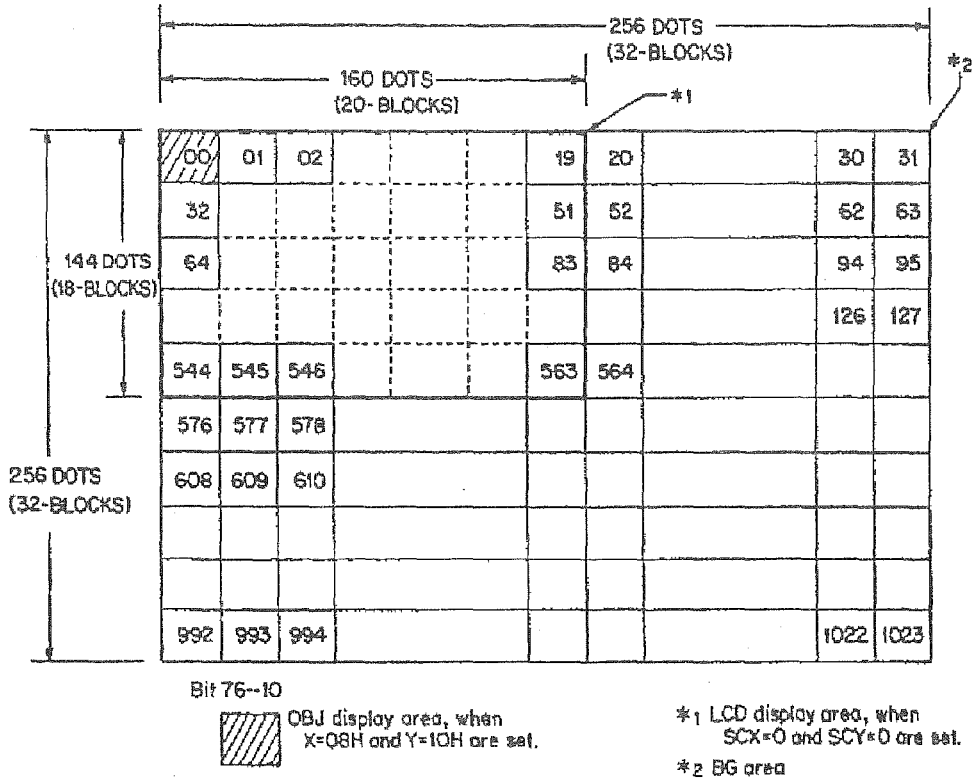


FIG. 13 CHARACTER RAM

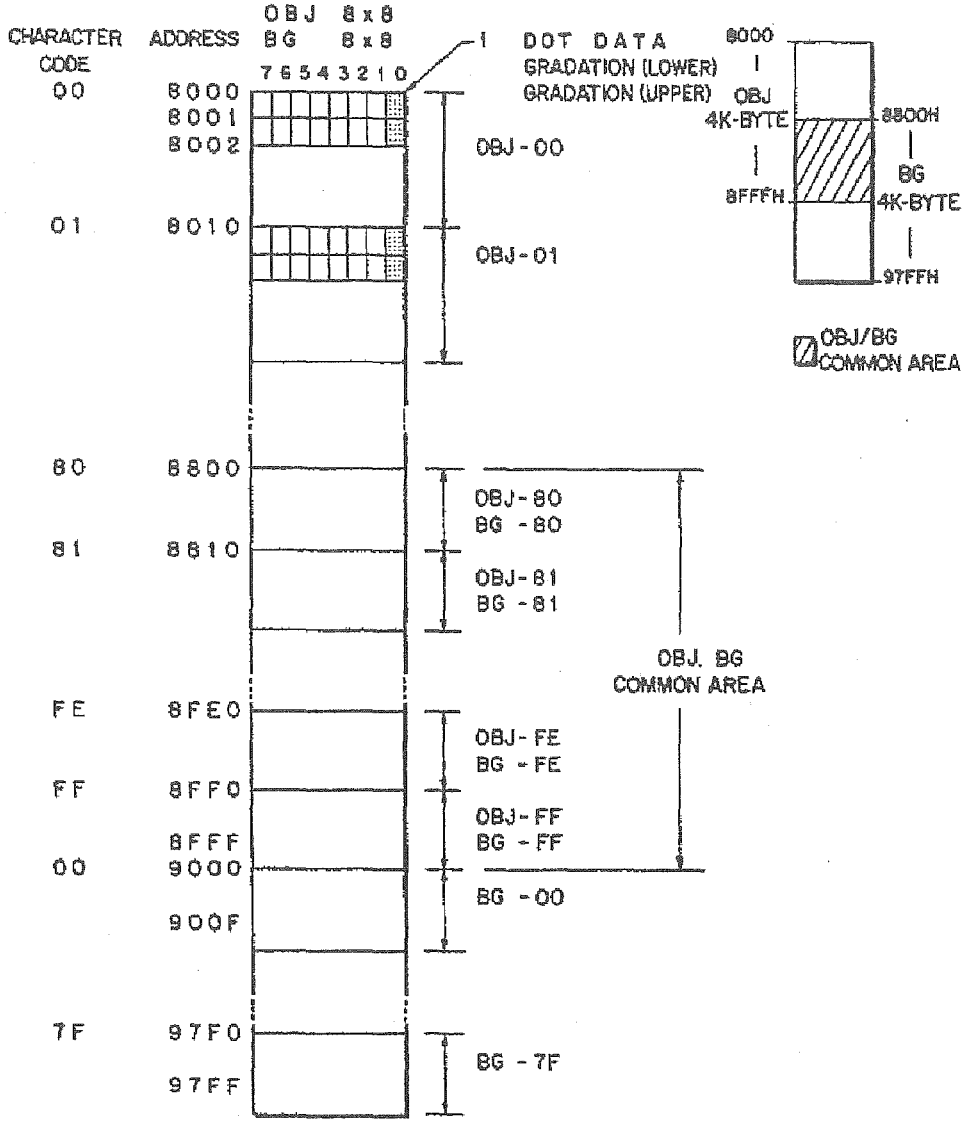


FIG. 15A LCD DISPLAY REGISTER

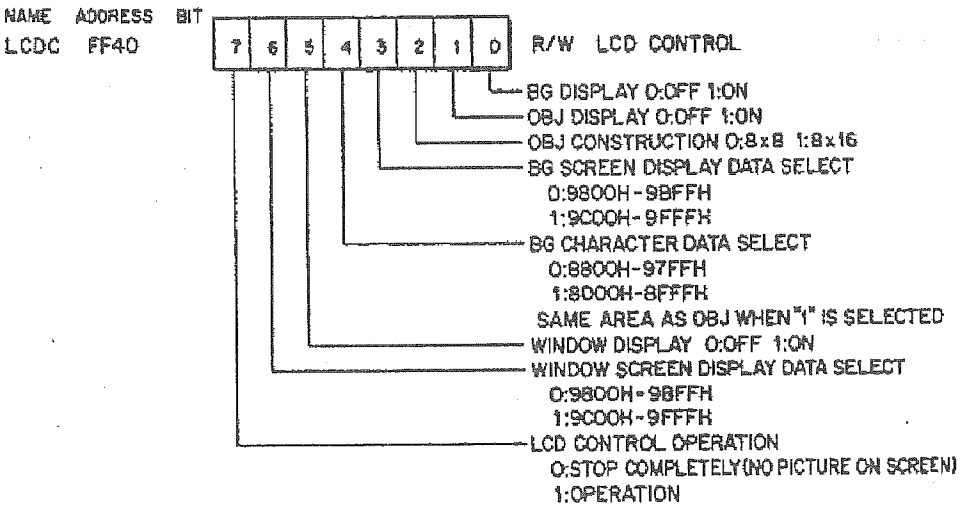


FIG. 15B

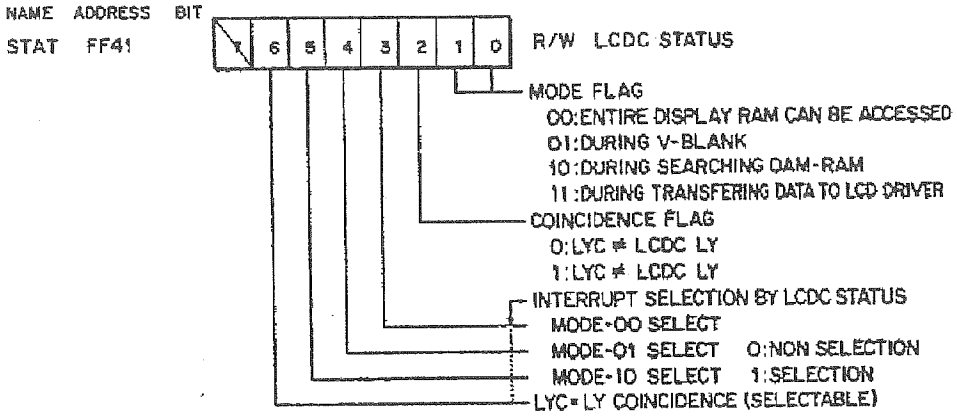


FIG. 15C

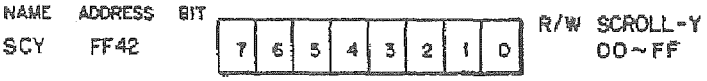


FIG. 15D

FIG. 15E

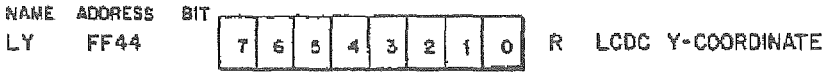


FIG. 15F

FIG. 15G

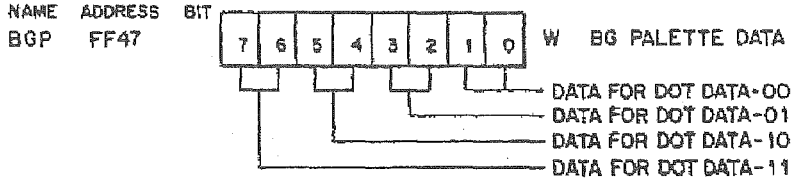


FIG. 15H

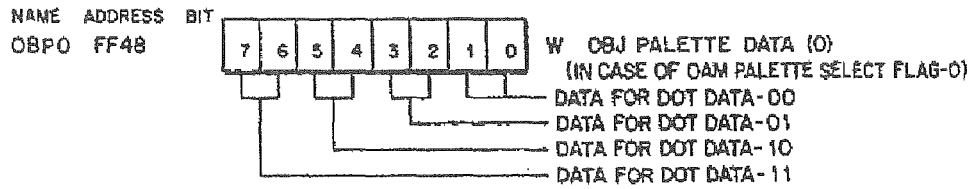


FIG. 15I

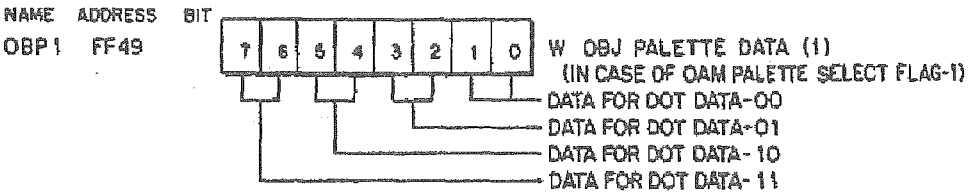


FIG. 15J

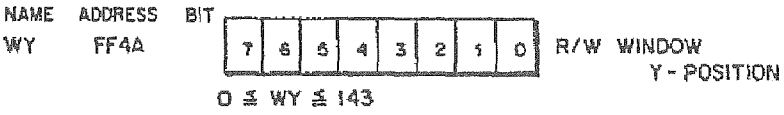
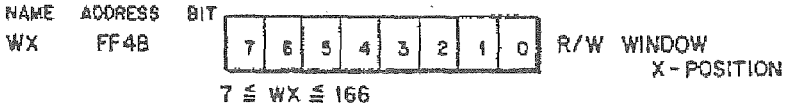


FIG. 15K



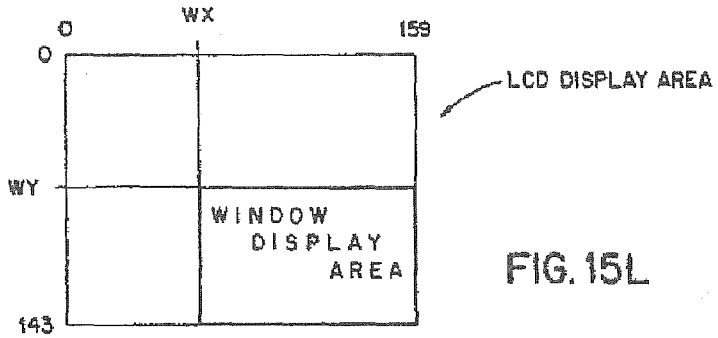


FIG. 15L

COMPACT HAND-HELD VIDEO GAME SYSTEM

This is a continuation of application Ser. No. 07/462,400, filed Jan. 8, 1990, now abandoned.

CROSS-REFERENCES TO RELATED APPLICATIONS

The subject application is related to the following copending commonly-assigned U.S. patent applications filed concurrently herewith:

U.S. Ser. No. 07/462,491, now U.S. Pat. No. 5,095,798 entitled "METHOD AND APPARATUS FOR GENERATING PSEUDO-STEREO SOUND"

U.S. Ser. No. 07/462,397 entitled "SYSTEM FOR PREVENTING THE USE OF AN UNAUTHORIZED EXTERNAL MEMORY"

FIELD OF THE INVENTION

The present invention generally relates to a hand-held electronic game which utilizes a pluggable external memory and includes several operational control switches disposed in such a manner that the game can be conveniently held in both hands with the switches being operated by the thumbs. More specifically, the invention relates to a compact, hand-held video game system of the above noted nature wherein attachable/detachable game pack external memories can be utilized for individual play or simultaneous multiple player competition via linking cable.

BACKGROUND AND SUMMARY OF THE INVENTION

As evidenced by Japanese Utility Model No. 57989/1986 laid-open on Apr. 18, 1986, games using a liquid crystal display are known. In this game, a game cartridge, attachable to a main body, incorporates a game program and an operating system program to be executed by a central processing unit within the body. The main body also includes a liquid crystal display ("LCD") system.

The present invention provides a uniquely compact video game system for portable hand-held video action involving interchangeable game packs. The game packs are in the form of pluggable memory devices including game programs involving one or more players. Where the game involves two players, for example, a linking cable is pluggably connected between two game machines with identical game program memory packs attached to each machine. Each machine case additionally includes uniquely placed operation switches allowing the machine to be sandwiched by the player's hands and operated by the thumbs.

In one exemplary embodiment, the information processing apparatus is constructed as a hand-held electronic game machine which is intended to be operated while the machine is sandwiched by the player's hands'. Such a hand-held electronic game machine includes a hand-held case; a first operation switch disposed at a position where it can be operated by the thumb of the left hand on a front surface of the case; a second operation switch disposed at a position where it can be operated by the thumb of the right hand on the front surface of the case; and a third operation switch provided in a region where an imaginary loci of the thumbs of the left hand and right hand intersect with each other on the front surface of the case.

A direction designating switch (specifically, a cross-key switch) which is utilized for designating a moving direction of a game character is arranged as the above described first operation switch, and an action key (specifically, a push-button switch) for designating one of various kinds of action or motion of the game character. For example, the depression of such a push-button switch may cause a game character to jump, use a weapon, throw a ball or the like. These first and second operation switches are usually operated during the game. The first and second operation switches are arranged at positions where they can be easily operated during game play.

The above-described third operation switch, may, for example, be a start switch for designating the start of the game and/or a select switch for selecting a mode of operation of the game. Such a third operation switch is arranged in a region where the imaginary loci of the thumbs of the both hands intersect each other. Therefore, the third operation switch is disposed to be readily operated by the thumb on either hand. Thus, the third switch may be operated during game play without requiring the user to change the position of the hands during the game.

These and other objects, features, aspects and advantages of the present invention will become more apparent from the following detailed description of the embodiments of the present invention when taken in conjunction with the accompanying drawings.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a perspective view showing an exemplary exterior housing of a game machine in accordance with an exemplary embodiment of the present invention;

FIG. 2 is an illustrative view showing a cross-section along a line II—II in FIG. 3;

FIG. 3 is an illustrative view showing an arrangement of switches or keys such as a start switch, select switch, and so on in the FIG. 1 embodiment;

FIG. 4 is a block diagram showing the electronic components of the FIG. 1 embodiment;

FIG. 5 is a block diagram showing a major portion of FIG. 4 in further detail;

FIG. 6 is a circuit diagram showing an exemplary memory selecting circuit such as shown generally in FIG. 5;

FIGS. 7(A) through 7(D) are a memory map showing address spaces to which CPU core can access;

FIGS. 8(A) and 8(B) are illustrative views showing examples of character data to be displayed;

FIG. 9 is a flowchart showing a sequence of authenticating operations controlled by the processing system shown in FIG. 4;

FIG. 10 is a flowchart showing a sequence of operations for comparing first character data with second character data;

FIG. 11 is a flowchart showing a sequence of operations in an inhibiting process when a first character data and a second character data are inconsistent with each other;

FIG. 12 illustrates a key-matrix for detecting a key or switch input;

FIG. 13 is an exemplary character RAM memory map;

FIG. 14 is an exemplary VRAM memory map; and

FIGS. 15(A) through 15(L) are exemplary embodiments of various addressable registers associated with the LCD controller.

DETAILED DESCRIPTION OF THE DRAWINGS

FIG. 1 is a perspective view showing the exterior housing of an exemplary hand-held liquid crystal game machine in accordance with an exemplary embodiment of the present invention. This hand-held liquid crystal game machine (hereinafter referred to as "game machine") 10 includes a- case 12 which is provided with an LCD panel 14 including dot display segments being arranged in accordance with a dot-matrix system on a front or upper surface thereof.

On a rear or lower surface of the case 12, an insertion port 68 (which is more clearly shown in FIG. 2) is formed at a portion opposite to the LCD panel 14. An external ROM cartridge 16 is pluggably inserted in the insertion port 68. More specifically, a 32-pin connector 20 is provided in the insertion port 68. By inserting the external ROM cartridge 16 into the insertion port 68, a connector (not shown) formed at an edge of a printed circuit board of the external ROM cartridge 16 is inserted and connected to the connector 20. Thus, the external ROM cartridge 16 can be attachably/detachably connected to the game machine 10. An external ROM 16*a* (FIG. 5) is incorporated in the external ROM cartridge 16. A game program is stored in the external ROM 16*a*. When the external ROM cartridge 16 is loaded in the game machine 10, the game program is executed such that an image is displayed on the LCD panel 14 and music for the game is generated at speaker 11 or through ear phones connected at jack 69.

A six-pin connector 65 is also provided in the case 12, whereby the game machine can be linked to other machines by an appropriate cable so that multiple player competition is possible when the external cartridges include multiple-player game programs.

A cross-key switch 18, which is used when a game character being displayed on the LCD panel 14 is to be moved, is provided on the front or upper surface of the case 12 at a left side portion below the LCD panel 14, as shown in FIGS. 1 and 3. The cross-key switch 18 has four direction designating portions and, by depressing any one of the same, it is possible to move the game character upward or downward or leftward or rightward. In addition, as shown in FIGS. 1 and 3, two push-button switches 70*a* and 70*b* are provided on the front or upper surface of the case 12 at a right side portion below the LCD panel 14. These push-button switches 70*a* and 70*b* are operated when it is necessary to control the game character being displayed on the LCD panel 14 to perform various predetermined actions. For example, when the push-button switch 70*a* is depressed, the displayed character may appear to jump, or when the push-button switch 70*b* is depressed, the character may appear to throw a stone, or a ball, or launch various other objects. Thus, the cross-key switch 18 is disposed to be operated by the thumb of the left hand, which sandwiches the case 12 in cooperation with the right hand, and the push-button switches 70*a* and 70*b* are disposed to be operated by the thumb of the right hand.

Furthermore, a start switch 72 and a select switch 74 are provided on the front or upper surface of the case 12 of the game machine 10. As seen from FIG. 3, the start switch 72 and the select switch 74 are arranged in a region 78 below the cross-key switch 18 and the push-button switches 70*a* and 70*b*. In this region, imaginary loci 76L and 76R of the thumbs of both hands intersect each other. Therefore, these switches 72 and 74 are centrally disposed so as to be operated by the thumbs of any one of the left hand and the right hand (while the left hand and the right hand hold the case 12 of the game machine 10). In other words, the switches 72 and 74 may be operated without significantly changing the positioning of the hands. The select switch 74 is used, for example, to select the mode of operation of the game being displayed through the use of a menu screen. In this regard, the select switch 74 may be used to select one of a number of levels of game play. In addition, a function for selecting a "weapon" usable by a game character can be assigned to the select switch 74.

The start switch 72 is operated to start the game as selected. Therefore, it is not typically necessary to operate the start switch 72 and the select switch 74 during the game. However, since a pause (PAUSE) function is also assigned to the start switch 72 the start switch 72 may be depressed when it is desired for the game to be temporarily stopped. To start the game after such a pause, the start switch 72 must be depressed again. Furthermore, it is possible to make the start switch 72 and the select switch 74 possess many other functions.

The case 12 is additionally provided with on/off switch 1, battery power level light 13, contrast adjustment 50, and volume adjustment 66.

With reference to FIG. 4, the above described external ROM cartridge 16 is connected to a CPU 22 housed in the case 12 by a 32-pin connector 20.

The CPU 22 includes a CPU core 24, which may, by way of example only, be implemented with a commercially available microprocessor such as a Z80. The CPU core 24 is connected to the 32-pin connector 20 via timing unit 25*a* and control bus 26*a*, address buffer 25*b* and address bus 26*b* and data buffer 25*c* and data bus 26*c* as well as a working RAM or scratch pad memory 23. Therefore, when the external ROM cartridge 16 is loaded in the game machine 10, the CPU core 24 is connected to the external ROM cartridge 16.

As shown in further detail in FIG. 5, the above described CPU core 24 includes registers A, F, B, C, D, E, H and L each of which is a register of 8 bits, except for program counter PC and stack pointer SP which are 16 bit registers. The register A is an accumulator and the register F is a flag register. By using 4 bits of the 8 bits of the register F, it is possible to indicate F1 (carry), F2 (half carry), F3 (negative), or F4 (zero flag). The registers B and C, D and E, and H and L may be combined and used as a register of 16 bits. The CPU 22 preferably has an associated instruction set permitting a variety of 8 and 16 bit transfers between registers or register pairs, a variety of 8 and/or 16 bit arithmetic operations (e.g., ADD, SUB, AND/OR, INC. DEC, etc.), a variety of rotate/shift operations (e.g., rotate specified register contents left/right), a variety of bit control operations (e.g., setting a specified bit in a specified register), conditional and unconditional branch operations, subroutine call and return operations and a variety of program control operations (e.g., start, stop, no operation, etc.).

Turning back to FIG. 4, a key-matrix for detecting a key input from cross-key switch 18 is connected to the CPU core 24 via a port 27. An exemplary key-matrix is shown in FIG. 12. Lines P10–P13 in FIG. 12 corresponds to the four inputs to port 27 and lines P14 and P15 correspond to the two output lines emanating from port 27. The four inputs P10–P13 are coupled to a predetermined bias voltage Vdd. The presence or absence of a signal on lines P10–P15 is registered in a CPU

addressable port register (not shown). As will be readily apparent to those skilled in the art, the state of the port register may be used to determine the control function desired by the game player. In this fashion, the depression of cross-key switch 18 may be detected by the CPU thereby resulting in character motion in the right, left, up or down directions. Also, the depression of control switches 70*a*, 70*b*, 72 or 74 may be detected and input to CPU core 24 via port 27 for implementation of the appropriate control functions. Still further depression of the control switches shown in FIG. 12 can be used to cause the transfer of data among game machines by way of 6-pin connector 65, a cable and a conventional serial register transfer port, under control of CPU core 24, serial transfer controller 21, interrupt controller 31 and external ROM cartridge 16. Such transfer of data is for the purpose of providing simultaneous multiple player competition in accordance with particular game programs stored in external cartridge 16.

The CPU core 24 is also coupled to an internal RAM 28 and an internal ROM 30. The internal ROM 30 can be accessed by the CPU core 24 only when the internal ROM 30 is selected by a memory selecting circuit 32 as is explained in detail below. Clock pulses are supplied by oscillation circuit 24*b* in response to crystal generator 24*a*. Clock pulse divider 24*c* provides one or more pulse rates under control of timer 24*d*.

Now, with reference to FIGS. 7A–7D, an exemplary CPU core address space and the nature of the data stored in internal memory 30 and the external memory cartridge 16 will be described in detail. As shown in FIGS. 7A and 7B, the internal ROM 30 has a first memory area which is designated by the addresses "OOOOH-OOFFH" which corresponds to a first relatively small address space. The "H" indicates that these addresses are represented as a hexadecimal number. In the first memory area, first character data for displaying, for example, a trademark "Nintendo", and an external memory authenticity determining program shown by a flowchart of FIG. 9 are stored.

The external ROM cartridge 16 includes the external ROM 16*a*. As shown in FIGS. 7C and 7D, the memory space of the external ROM 16*a* is divided into a second memory area which is designated by the addresses "OOOOH-OOFFH" (which correspond identically to the addresses defining the above-described first address space) and a third memory area (second address space) which is designated by the addresses "0100H-7FFFH". In an authorized external memory cartridge, in a region starting at the address "0100H" in the third memory area, second character data (which is the same as the first character data) is stored. A game program is stored in the remaining region of the third memory area. Preferably, in a few bytes after the second character data storing region, auxiliary data such as a code identifying a manufacturer, the name of the game, the cartridge type, the memory size, etc., are stored. Additionally, complement data relating to the auxiliary data (e.g., the complement of the sum of such data) is also stored. The complement data is used during step S17 described below in conjunction with FIG. 9. In addition, in the case where the required capacity of a game program is large, the second memory area ("OOOOH-OOFFH") of the external ROM 16*a* may be used to store such a program data for the game.

Returning to FIG. 4, the CPU core 24 outputs display data to an LCD controller 38 via a line buffer 36 under the control of a DMA controller 34. The LCD controller 38 is connected to a display RAM 42 via an LCD display RAM interface 40 and control, address and data busses. Although not shown, the display RAM 42 includes a character RAM and VRAM of the nature generally shown in FIG. 7. Detailed exemplary memory maps of the character RAM and the VRAM memory areas are found FIGS. 13 and 14, respectively. The exemplary map of the VRAM as illustrated in FIG. 14 includes 1024 blocks (32 ×32) of character code representing background display data. Although only 360 (18 ×20) of the 1024 blocks are displayed on the LCD screen at any particular time, the selected area to be displayed can be changed by changing the data in the vertical and horizontal scroll registers (SCY and SCX) of the LCD controller 38.

The LCD controller 38 operates under the control of CPU 22 via various addressable control/status registers which are located in the CPU address space as shown generally in FIG. 7. These registers include an LCD display register, LCD controller status register, horizontal and vertical scroll registers, LCDC vertical line identification register, and moving object and background palette (e.g., 2 bits identifying 1 of 4 gradations of shaded color) data. The LCD display register controls the nature of the display, and the status register indicates the current status of the LCD controller. Every dot of the background display data is available by changing the data of the horizontal vertical scroll registers. The LY and LYC registers indicate and control the vertical line of the display to which data is presently being transferred by way of the display drivers. The X and Y window position registers control that portion or window of the LCD display area in which the OBJ character as well as the BG character data appears. Further details regarding these registers and their functions may be found in FIGS. 15(A) through 15(L).

The LCD control 38 converts display related data output from the CPU core 24 into an LCD drive signal which is output from the display RAM 42. More specifically, the display data from the CPU core 24 designates addresses of the character RAM and the VRAM (video RAM) such that a character (or object) signal and a background signal are output from the character RAM and the VRAM. Respective LDC drive signals are composed by the LCD controller 38.

The LCD drive signals are applied to an LCD common driver 46 and an LCD segment driver 48 through an LCD drive signal buffer 44. Therefore, by means of the LCD common driver 46 and the LCD segment driver 48, an image in accordance with the display related data from the CPU core 24 can be displayed on the LCD panel 14. More specifically, the LCD panel may, for example, define a 144×160 matrix of pixels or dots, each having a corresponding unique "intersecting" common electrode/segment electrode combination. The LCD common driver 46, Which drives the lines connected to the common electrodes, may for example, be a Sharp LH 5076 F. The LCD segment driver 48, may for example be a Sharp LH 5077 F. These display drivers receive data from the LCD drive signal buffer 44, which receives data indirectly from the CPU via the display RAM 42, the LCD RAM interface 40 and the LCD controller 38.

In addition, there is an intensity level control 50 which is connected to an LCD buffer amplifier 52 such that the intensity of the LCD panel 14 can be adjusted by operating the intensity level control.

In addition, as shown in FIG. 5, a chip select signal CS1 or CS2 is output from the memory selecting circuit 32. A reset signal from a reset circuit 55 is applied to the CPU core 24 and the memory selecting circuit 32. The reset signal is output when a power switch (not shown) of the game machine 10 is turned on, and therefore, the CPU core 24 and the memory selecting circuit 32 are initially reset at that time. Then, a read signal RD and write signal WR are output from the CPU core 24, which are suitably input to the external ROM cartridge 16, internal RAM 28, internal ROM 30 and the memory selecting circuit 32. In addition, as will be described further below an address decode signal is given to the memory selecting circuit 32 via an address decoder 33.

As shown in FIG. 6, the memory selecting circuit 32 includes an RS flip-flop 57. A set input S of the RS flip-flop 57 receives an output of an AND gate 59 which receives three inputs including a signal DO, the write signal WR and a detecting signal, i.e., indicated the decoding of the address data "FFOOH". The signal DO is the least significant bit of the data is stored in location "FFOOH". The decoded signal of the address data "FFOOH" is output from the address decoder 33 when an output of an AND gate (not shown) which detects that all bits AO–A7 of the address data are "0", that is, the least significant two digits in the hexadecimal representation are "00" and an output of an AND gate (not shown) which detects that all bits A8–A15 of the address data are "1", that is, the most significant two digits in the hexadecimal representation are "FF" are both output. The reset input R of the RS flip-flop 57 is coupled to the reset signal RES from the reset circuit 55 (FIG. 4). Then, the non-inverted output Q of the RS flip-flop 57 is applied to one input of an AND gate 63 through an inverter 61 and to one input of an OR gate 65. A decoded signal indicating address data "OOOO-H–OOFFH" is applied to the other input of the AND gate 63. A decoded signal which corresponds to the few bytes (wherein the second character data is stored) starting at the address data "0100H" is applied to the other input of the OR gate 65. The decoded signal of the address data "OOOOH - OOFFH" is the inversion of the bits A8–A15 of the address data being OR'ed. The decoded signal of the addresses from the address data "0100H" to the address corresponding to the number of bytes storing the second character data is the bits A8–A14 of the address data which are OR'ed. Then, an output of the OR gate 65 is used as an input to an AND gate 67 together with a decoded signal of the address "—7FFFH" which is the inversion of the bit A15 of the address data. The outputs of the two AND gates 63 and 67 become the aforementioned chip select signals CS1 and CS2, respectively.

In operation, when the power switch (not shown) is turned on, the reset signal is output from the reset circuit 55 and therefore, the RS flip-flop 57 is reset. Therefore, the non-inverted output Q becomes "0". At this time, if the address data from the CPU core 24 is before "00FFH", the chip select signal CS1 is output from the AND gate 63. The chip select signal CS2 from the AND gate 67 is output as "1" when the address data is "0100H" or greater but not above "7FFFH". Therefore, in the state where the chip select signal CS1 is output, the memory space which is represented by oblique lines rising rightward in FIG. 7(B) may be accessed by the CPU core 24 and thus it becomes possible to read the first character data from the internal ROM 30. When the chip select signal CS2 is output, a memory space which is represented by oblique lines lowering rightward in FIG. 7(C) may be accessed by the CPU core 24 and thus it is possible to read the second character data which is stored after the address "0100H" in the external ROM cartridge 16.

On the other hand, in the case of memory changing or selecting, if the write signal WR is output from the CPU core 24 and "1" is stored in the data bit DO in the address "FFOOH", the output from the AND gate 59 becomes "1" and thus RS flip-flop 59 is set. Therefore, the non-inverted output Q becomes "0", AND gate 63 is disabled, if the address data exceeds "OOFFH" and if so the chip select signal CS1 becomes "0" and the chip select signal CS2 from the AND gate 67 becomes "1". However, if the address data exceeds "8000H", the chip select signal CS2 becomes "0". Therefore, at times before or after the memory chips are changed or selected by the memory selecting circuit 32, the memory for the CPU core 24 is constructed as shown by the oblique lines in FIG. 7. That is, when the chip select signal CS2 is output, it is possible to execute the program data stored in the addresses "0100H–7FFFH" of the external ROM cartridges 16.

In addition, the character RAM, VRAM, various control and status registers and internal RAM, are always accessible to the CPU core 24 since the chip select signals CS1 and CS2 are not required to access these location.

Next, with reference to FIG. 8–11, the operation of the external memory unit authentication technique in accordance with an exemplary embodiment of the present invention will be described.

As reflected by steps S1, S3, S5, and S7 of FIG. 9, the system is initialized. More specifically, in the step S1, a predetermined value is set in the stack pointer register SP (FIG. 5) of the CPU core 24 and, in the step S3, the memory area designated by the addresses "8000H–9FFFH", that is, the display RAM 42 is cleared. Then, in the step S5, the various registers utilized by sound circuits 541–544, 56, 58, 60, 62, 64 and 66 are initially set. These registers are described in the applicant's copending application Ser. No. 07/462,491, now U.S. Pat. No. 5,095,798 and entitled "Electronic Gaming Device with Pseudo-Stereophonic Sound Generating Capabilities", which application is hereby expressly incorporated by reference herein. Additionally, in step S7, BG (background) pallet data is loaded in a pallet register (not shown) included in the LCD controller 38 by the CPU core in accordance with program data stored in the internal ROM 30. The pallet data defines 2 bits of gradation data to be associated with the character data to enable 4 different gradations of shaded color data to be output to the LCD.

In the following step S9, when the address data "0100H -" is output by the CPU core 24 in accordance with the program data stored in the internal ROM 30, the chip select signal CS2 is output by the above described memory selecting circuit 32. In response thereto, the second character data is read from the external ROM cartridge 16 and is transferred to the character RAM area included in the display RAM 42. At this time, preferably, in order to create a display which can be easily seen with fewer character data, the second character data is transferred while being processed to enlarge the character, for example, twice in length and breadth on the LCD panel 14. Then, in order to display a desired character at a predetermined coordinate position, in step S11 the character code of the desired char-

acter is applied to the VRAM area of the display RAM 42 such that the display position thereof corresponds to a predetermined position in the VRAM. Then, in the step S13, the second character read from the external ROM cartridge 16 is displayed on the LCD panel 14 for a predetermined time period while the same is scrolled. For example, the character "Nintendo" representative of the registered trademark as shown in FIG. 8(A) can be enlarged twice in length and breadth and displayed as shown in FIG. 8(B). Since such an enlargement process is readily implemented by controlling the character RAM, a detailed description thereof will be omitted here. Although enlargement processing is preferred, if desired the character data as shown in FIG. 8(A) may be displayed as it is without enlargement processing.

Next, in the step S15, after the character data has been displayed the first character data "Nintendo" which is stored in the predetermined area of the internal ROM 30 and the second character data "Nintendo" are compared with each other. More specifically, in the step S151 of FIG. 10, the starting address of the first character data of the internal ROM 30 is set in the register group HL of the CPU core 24. In step S152, the starting address of the second character data of the external ROM cartridge 16 is set in the register group DE of the CPU core 24. Then, as shown in the step S153, it is determined whether the character data which are designated by the address data loaded in the two register groups HL and DE are wholly or completely coincident with each other or not. If the both character data are coincident with each other, in the steps S154 and S155, the address data in respective register groups HL and DE are incremented and thereafter, the same comparison operation is repeated until the value of the register group HL becomes "the end address +1" in the step S156. Then, if there is not a match, an inhibiting process in the step S21 is entered.

When the comparison of the first and second character data in the step S15 is terminated, as previously noted, a checking operation is executed in step S17 based upon the complement data of the auxiliary data stored in external ROM 16a, such as the ROM size or the like, the code of a manufacturer, the name of the game, the nature of the cartridge memory (ROM only, or ROM plus RAM), et cetera. In this regard, all the auxiliary data may, for example, be summed, and the complement of such a sum computed and stored as a complement number. Then, if the comparison between calculated complement number and the stored complement number results in a mismatch, the inhibiting process of the step S21 is entered.

In the case where the first and second character data become coincident with each other and the complement data are also coincident in the comparison processes in the step S15 and S17, the CPU core 24 in step S19 outputs the write signal WR. In response, as previously described with reference to FIG. 6 and FIG. 7, the RS flip-flop 57 of the memory selecting circuit 32 is set and thus the chip select signal CS2 is output. Therefore, after step S19, the game program data stored in the addresses "0100H-8000H" of the external ROM cartridge 16 can be read and executed. Thereafter, the internal ROM 30 is not selected and, therefore, it is not possible to access the same by way of CPU core 24.

In the following step 20, a game processing operation in accordance with the program data of the external ROM 16a is started. More specifically, the CPU core 24, in accordance with the program data stored in the third memory area of the external ROM 16a, transfers a background character data (dot data) to the character RAM area included in the display RAM 42. At the same time, the BG pallet data and the character code, which designates the background character to be displayed and its display position on the LCD panel 14, are transferred to the VRAM area. Furthermore, the CPU core 24 reads the character codes of the object character to be displayed on a single screen the display coordinate data and the attribute data from the third memory area of the external ROM 16a and applies them to the LCD controller 38 through the DMA controller 34 and the line buffer 36. In response thereto, the LCD controller 38 executes a process for displaying the image in which the background character and object characters are combined with each other on the LCD panel 14. More specifically, the composite data in which the character data of the objects of one line and the background character data stored in the VRAM area are combined and are temporarily stored in the LCD drive signal buffer 44 by the LCD controller 38. Then the LCD controller 38 sequentially applies the dot data to the drivers corresponding to the dot positions in a direction of line, i.e., row selecting data to the LCD segment driver 48 and the data for sequentially selecting the columns of the respective lines to the LCD common driver 46. The dots where both the row and column are selected are driven for a short time period. In other words, data representative of whether or not the respective dots of the object characters and the background character are to be driven to display are applied to the LCD segment driver 48 and the common driver 46 by the LCD controller 38, whereby the composite image can be displayed on the LCD panel 14. By repeating such operations in a high speed, sequential manner, the driven dots are "displayed" by the density or contrast being different from that of other dots. Moreover, in accordance with a selected combination of driven dots, an arbitrary character can be displayed on the LCD panel 14.

In addition, preferably, if inconsistency is detected in either one of the two comparison steps S15 and S17, the CPU core 24 executes the inhibiting process of the step S21. More specifically, as shown in FIG. 11, in the steps S211 and S212, the CPU 24 writes "white" and "black" in the BG palette, and the LCD panel 14 is driven for a predetermined time period that is controlled by a timer as indicated by steps S213 and S214. In other words, in this embodiment, if the first and second character data are not coincident with each other, the LCD panel 14 is wholly turned on or off or flashed, whereby the operator or user is notified that the external ROM cartridge which is loaded at that time is not an authorized one.

At this time, since the second character data of the external ROM 16a in the external ROM cartridge 16 has been displayed in the previous step S9, the operator or user will know the reason is that the external ROM cartridge is an unauthorized cartridge.

In addition, as seen from FIG. 11, the inhibiting process routine cannot return to the main routine of FIG. 9, the memory blank changing step done in the step S19 is inhibited thereafter and thus, the unauthorized external ROM cartridge can not be used.

In addition, in the above described embodiment, a trademark such as "Nintendo" is displayed as the second character data. In the case of an external ROM cartridge which is copied such that the both character data are coincident with each other, the manufacturer's

trademark will have been used in an unauthorized manner.

In addition, in the above described embodiment, it was determined whether or not the first and second character data is wholly coincident with each other. However, alternatively, a check need only be made to determine whether the first and second character data have a predetermined relationship.

Furthermore, in the inhibiting process routine as shown in FIG. 11, as described the flashing of the LCD panel is repeated. However, if desired, a sentence warning that the external ROM cartridge being attached at that time cannot be used in this game machine may be displayed.

While the invention has been described in connection with what is presently considered to be the most practical and preferred embodiment, it is to be understood that the invention is not to be limited to the disclosed embodiment, but on the contrary, is intended to cover various modifications and equivalent arrangements included within the spirit and scope of the appended claims.

What is claimed is:

1. A hand-held electronic game machine, comprising:

a case of a size which may be held by hand and having a subsonically rectangularly shape defined by a front surface, a rear surface, two latitudinal side surfaces, a lower side surface and an upper side surface, each of said two longitudinal side surfaces being of greater length than each of said lower side surface and said upper side surface, said case being sandwiched by both hands during game play, said front surface having an upper front surface portion bounded by an upper portion of each of said longitudinal side surfaces and a lower front surfaced portion bounded by a lower portion of each of said longitudinal side surfaces;

a first operation switch disposed on a right portion of said lower front surface portion of said case such that during game play it can be operated by a thumb of a player's right hand sandwiching said case;

a second operation switch disposed on a left portion of said lower front surface portion of said case such that during game play it can be operated by a thumb of a player's left hand sandwiching said case;

a dot-matrix liquid crystal display panel including a display screen defining a matrix of rows and columns of dots disposed on said upper front surface portion such that in use said display shown is positioned above said first operation switch and said second operation switch;

an insertion portion formed on said upper side surface of said case and extending, in use, behind said dot-matrix liquid crystal display panel in said case;

an external memory attachably and detachably insertable into said insertion portion from said upper side surface of said case for storing a game program and background character data and moving object character data with which images for a game are displayed on said display screen;

game processing means housed in said case for reading said game program and said background character data and moving object character data from said external memory and controlling the display of moving objects on said display screen in response to the actuation of said first operation switch and said second operation switch and for controlling the display of background characters on said display screen;

a connector housed in said case for connecting said external memory being inserted in said insertion portion to said game processing means;

a memory housed in said case and associated with said game processing means for storing said background character data and said moving object character data read from said external memory by said game processing means and transferred through said connector;

display signal generating means housed in said case for generating display signals for displaying background characters and moving objects on the basis of said background character data and said moving object character data stored in said memory;

a driver for driving said dot-matrix liquid crystal display panel in response to said display signals generated by said display signal generating means to display said background characters and said moving objects on said display screen, said driver including a first driver for driving said dot-matrix liquid crystal display panel in columns and a second driver for driving said liquid crystal display panel in rows.

2. A hand-held electronic game machine in accordance with claim 1, further comprising third operation switch means disposed in a central region of said lower front surface portion, such that in use the third operation switch means is disposed where loci of the thumbs of both hands intersect each other on the front surface of said case,

said game processing means being responsive to said third operation switch means to start a game, cause the operation of the game to pause, or to select the kind of game to be played.

3. A hand-held electronic game machine in accordance with claim 2, wherein said third operation switch means includes two switches one of which is included in a locus of the thumb of said right hand and with said first operation switch and the other of which is included in a locus of the thumb of said left hand and said second operation switch.

4. A hand-held electronic game machine in accordance with claim 1, wherein said display panel is disposed above and between said first operation switch and said second operation switch.

5. A hand-held electronic game machine in accordance with claim 4, further comprising a rotational knob provided in the vicinity of said liquid crystal display panel at one of said longitudinal side surfaces of said case to control the display contrast.

6. A hand-held electronic game machine in accordance with claim 1, wherein said game processing means includes means responsive to a connected external memory for detecting whether said connected memory is an authorized or unauthorized memory.

7. A hand-held electronic game machine in accordance with claim 6 wherein the game processing means includes further means responsive to said detecting means for preventing an unauthorized external memory from being used for executing a game program.

8. A hand-held electronic game machine in accordance with claim 1, further comprising a contrast knob arranged at said upper portion of one of said longitudinal side surfaces of said case and means for changing

contrast on said display screen in response to operation of said contrast knob.

9. A hand-held electronic game machine, comprising:

a case of a size which may be held by hand;

said case having a substantially rectangularly front surface having a game display related first half portion and game control related second half portion;

a dot-matrix liquid crystal display having a display screen mounted in said game display related first half portion for displaying moving objects and background characters during game play, said display means including a display panel mounted in said display related first half portion;

first and second game control switches mounted in said game control related second half portion of said substantially rectangular front surface for controlling the position of displayed moving objects on said display screen;

a removable external memory for storing a game program and moving object character data and background character data with which images for a game are displayed, said case including an insertion port for receiving said removable external memory;

memory means, disposed within said case and being coupled to said removable external memory means, for receiving background character data and moving object data from said external memory and for storing said background character data and moving object data; and

processing means, coupled to said removable external memory and said memory means, for executing said game program stored in said external memory for controlling the display of moving objects on said display screen of said dot-matrix liquid crystal display in response to the actuation of said first and second game control switches and for controlling the display of background characters on said display screen.

10. A hand-held electronic game machine in accordance with claim 9, further comprising third game control switch means disposed in a central region of said game control related second half portion such that, in use, the third game control switch means is disposed where loci of a player's thumbs of both hands intersect each other on the front surface of said case,

said processing means being responsive to said third game control switch means to start a game, cause the operation of the game to pause, or to select the kind of game to be played.

11. A hand-held electronic game machine in accordance with claim 9, wherein said display screen is disposed, in use, above and between said first game control switch and said second game control switch.

12. A hand-held electronic game machine in accordance with claim 9, further comprising contrast control means, provided on a side surface of said case, for controlling the display screen contrast and means for changing the contrast of said display panel in response to the operation of said contrast control means, is disposed above and said first operation switch and said second operation switch.

13. A hand-held electronic game machine according to claim 9, further comprising

display signal generating means housed in said case and coupled to said processing means, for generating display signals on the basis of said background character data and said moving object character data stored in said memory means; and

a driver for driving said dot-matrix liquid crystal display screen in response to said display signals generated by said display signal generating means to display background characters and moving objects for a game on said display screen of said dot-matrix liquid crystal display screen.

14. A hand-held electronic game machine in accordance with claim 9, wherein said processing means includes detecting means responsive to a connected external memory for detecting whether said connected external memory is an authorized or unauthorized memory.

15. A hand-held electronic game machine in accordance with claim 14 wherein the processing means includes further means responsive to said detecting means for preventing an unauthorized external memory from being used for executing a game program.

16. A hand-held electronic game machine in accordance with claim 9, wherein said insertion portion is disposed beneath said dot-matrix liquid crystal display screen.

17. A hand-held electronic game machine, comprising:

a case of a size which may be held by hand, said case having a front surface and side surfaces;

a dot-matrix liquid crystal display panel having a display screen mounted on said front surface;

a removable external memory for storing a game program and moving object character data and background character data with which images for a game are displayed;

an insertion portion for receiving said removable external memory;

first and second game control switches for controlling the position of moving objects displayed on said display screen of said dot-matrix liquid crystal display screen;

processing means coupled to said first and second game control switches and to said removable external memory for accessing said game program and said moving object character data and background character data to execute said game program;

display memory means for receiving and storing moving object character data and background character data, indicative of character data to be displayed on said display screen of said dot-matrix liquid crystal display screen from said removable external memory, said display memory means including video memory means for storing data corresponding to a plurality of display screens;

register means addressable by said processing means, for selecting the portion of said video memory means to be accessed for display; and

display control means coupled to said dot-matrix liquid crystal display screen and said display memory means for displaying data on said display screen corresponding to the portion of said video memory means selected by said register means.

18. A hand-held electronic game machine according to claim 17, wherein said insertion port is disposed in one of said side surfaces.

19. A hand-held electronic game machine according to claim 17, wherein said display panel is mounted in an upper half portion of said front surface and said first and second game control switches are mounted in a lower half portion of said front surface.

20. A hand-held electronic game machine in accordance with claim 17, further including a control knob disposed on one of said side surfaces and means for adjusting the display panel intensity in response to said control knob.

21. A hand-held electronic game machine according to claim 17, further including an internal ROM, coupled

to said processing means, for storing security related data, means for accessing said security related data immediately after power is turned on, said processing means including means for executing an authentication routine using said security related data to determine if said external memory is authentic.

* * * * *

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 5,184,830

DATED : February 9, 1993

INVENTOR(S) : Okada et al

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Column 1, line 58, delete "hands'" and insert -- hands --.
Column 2, line 21, delete "on" and insert -- of --;
line 39, delete "i;:" and insert -- in --.
Column 8, line 50, delete "pellet" and insert -- pallet --.
Column 11, line 26, delete "subsonically rectangularly" and insert -- substantially rectangular --.
line 27, delete "latitudinal" and insert -- longitudinal --;
line 51, delete "shown" and insert -- screen --.
Column 13, line 13, delete "means";
line 61, delete "is dis-";
lines 62 and 63, delete entirely.

Signed and Sealed this

Seventeenth Day of August, 1993

Bruce Lehman

Attest:

BRUCE LEHMAN

Attesting Officer

Commissioner of Patents and Trademarks

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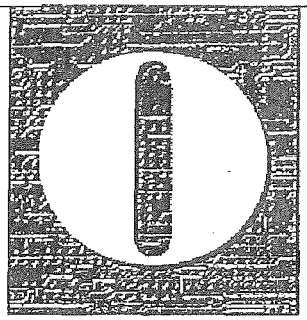


object A shorthand term for object code (machine-readable code); in object-oriented programming, a variable comprising both routines and data that is treated as a discrete entity. *See also* abstract data type, module, object code, object-oriented programming.

In graphics, a distinct entity. For example, a bouncing ball might be an object in a graphics program.

object code The code, generated by a compiler or an assembler, that was translated from the source code of a program. The term most commonly refers to machine code that can be directly executed by the system's central processing unit (CPU), but it can also be assembly language source code or a variation of machine code. *Compare* source code; *see also* assembly language, compiler.

object computer The computer that is the target of a specific communications attempt.

object file A file containing object code, usually the output of a compiler or an assembler and the input for a linker. *See also* object code.

Objective-C An object-oriented version of the C language developed in 1984 by Brad Cox. It is most widely known for being the standard development language for the NeXT system. *See also* object-oriented programming.

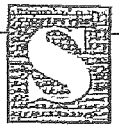
object linking and embedding *See* OLE.

object module In programming, the object-code (compiled) version of a source-code file, which is usually a collection of routines, ready to be linked with other object modules. *See also* linker, module, object code.

object-oriented An adjective applied to any system or language that supports the use of objects. *See also* object.

object-oriented graphics Also called structured graphics. Computer graphics that are based on the use of "construction elements" (graphics primitives), such as lines, curves, circles, and squares. Object-oriented graphics, used in applications such as computer-aided design and drawing and illustration programs, describe an image mathematically as a set of instructions for creating the objects in the image. This approach contrasts with bit-mapped graphics, the other widely used approach to creating images, which represents a graphic as a group of black and white or colored dots arranged in a certain pattern. Object-oriented graphics enable the user to manipulate objects as entire units—for example, to change the length of a line or enlarge a circle—whereas bit-mapped graphics require repainting individual dots in the line or circle. Because objects are described mathematically, object-oriented graphics can also be layered, rotated, and magnified relatively easily. *Compare* bit-mapped graphics, paint program; *see also* graphics primitive.

object-oriented interface A type of user interface in which elements of the system are represented by visible screen entities such as icons (pictorial representations), which are used to manipulate the system elements. For example, the Macintosh Finder presents an object-oriented interface to the file system, representing it by using images of documents, file folders, and disk devices. Object-oriented display interfaces do not necessarily imply any relation to object-oriented programming. *See also* object-oriented graphics.



soft In computing, an adjective meaning temporary or changeable. For example, a soft error is a problem from which the system can recover; a soft-sectored disk is one on which storage units (sectors) are defined by the operating system; a soft return is a character inserted by a word processor to end a line but not the paragraph (also called a newline character, ASCII 10); and a soft patch is a temporary program fix that remains only while the program is running. *Soft* is the opposite of *hard*, meaning permanent, fixed, or defined by physical boundaries.

In electronics, an adjective referring to magnetic materials that do not retain their magnetism when a magnetic field is removed or eliminated.

soft copy The temporary images presented on a computer display screen; the opposite of *hard* (printed) *copy*.

soft error An error from which a program or an operating system is able to recover, as opposed to a hard error, which causes program or operating system failure, requiring the user to reboot the system.

soft font *See* downloadable font.

soft hyphen *See* hyphen.

soft patch A patch (fix or modification) that is performed only while the code being patched is loaded into memory; thus, the executable file or object file is not modified in any way. *See also* patch.

soft return A line break inserted in a document by a word processor whenever the next word in the current line of text would cause the line to overflow into the page margin. A soft return creates a movable line break—that is, the program will break the line at a new location if text is inserted or deleted or if page margins are changed. In contrast, a hard return, which is inserted when the user presses the Enter key or the Return key, produces a line break that always appears in the same place, regardless of inserted or deleted text or changes in margin width. The term can also refer to a newline character, which in many word-processing programs can be entered to force a line break without ending the paragraph. *Compare* hard return.

soft-sectored disk A disk whose data sectors have been marked with recorded data marks rather than punched holes. *Soft-sectored* can refer to either a floppy disk or a hard disk but is generally used in reference to the former. A soft-sectored floppy disk has one punched hole, called an index hole, that marks the first sector. Most floppy disks in use are soft-sectored. *Compare* hard-sectored disk; *see also* index hole.

software Computer programs; instructions that cause the hardware—the machines—to do work. Software as a whole can be divided into a number of categories based on the types of work done by programs. The two primary software categories are operating systems (system software), which control the workings of the computer, and application software, which addresses the multitude of tasks for which people use computers. System software thus handles such essential, but often invisible, chores as maintaining disk files and managing the screen, whereas application software performs word processing, database management, and the like. Two additional categories that are neither system nor application software, although they contain elements of both, are network software, which enables groups of computers to communicate, and language software, which provides programmers with the tools they need to write programs.

In addition to these task-based categories, several types of software are described based on their method of distribution. These include the so-called canned programs or packaged software developed and sold primarily through retail outlets; freeware and public-domain software, which are made available without cost by their developers; shareware, which is similar to freeware but usually carries a small fee for those who like the program; and the infamous vaporware, which is software that either does not reach the market or appears much later than promised. *See also* firmware, hardware.

software-dependent An adjective describing a computer or an allied device that is tied to a particular program or set of programs developed for it.

software engineering The design and develop-

sort field *See* sort key.

sort key A field (commonly called a key) whose entries are sorted to produce a desired arrangement of the records containing the field. *See also* primary key.

SOS *See* silicon-on-sapphire.

sound buffer A region of memory used to store the bit image of a sequence of sounds to be sent to a computer's speaker.

sound generator A chip or chip-level circuit that can produce electronic signals that can drive a speaker and synthesize sound.

sound hood A five-sided box, lined with soundproofing material, that is placed over a dot-matrix or other impact printer to muffle the noise it makes.

source In information processing, a disk, file, document, or other "collection" of information from which data is taken or moved.

In electronics, one of three regions (source, drain, and gate) on a MOS transistor that causes the device to be either conducting or nonconducting (to be on or off). Electric current flows from the source to the drain region when voltage is applied to the transistor via the gate. A MOS source is comparable to the emitter lead on a bipolar transistor. *See also* CMOS, emitter, FET, NMOS, PMOS, transistor.

source code Human-readable program statements written in a high-level or assembly language, as opposed to object code, which is derived from the source code and designed to be machine-readable. *Compare* object code.

source computer A computer on which a program is compiled, as opposed to an object computer, the computer on which a program is run. Sometimes *source computer* is also used to refer to the computer from which data is transferred to another computer (the target computer).

source data The original data on which a computer application is based; for example, employee job applications and performance reports might be the source data for a company's employee database.

source data acquisition The process of sensing (as with a bar-code reader or other scanning device) or receiving source data.

source data capture *See* source data acquisition.

source disk Usually, the disk from which data will be read during a copy operation. However, the term can also refer to any disk from which data will be read, as when an application is loaded from a disk into memory. *Compare* target disk.

source document The original document from which data is taken.

source language The programming language in which the source code for a program is written. *See also* programming language, source code.

source program The source-code version of a program. *Compare* executable program; *see also* source code.

source statement A single statement in the source code of a program. *See also* source code, statement.

Spacebar A long key occupying much of the bottom row of most keyboards that sends a space character to the computer. *See also* space character.

space character Most commonly, a character entered by pressing the Spacebar on the keyboard. Although a space is not visible, other than as a gap between printable characters, it is as real to the computer as a letter, number, or any other symbol. In the standard ASCII character set, a space has the decimal value 32; it is not the same as either the null character (ASCII 0) or a nonbreaking space character, which is assigned a different ASCII value.

space-division multiplexing Abbreviated SDM. The first automated form of communications "multiplexing," which replaced the human-operated switchboard. Space-division multiplexing relied on the use of space-division switches, each of which had several input lines and several output lines; communications between sender and receiver were facilitated by a single, exclusive path formed by the switches and the lines between them. The advantage of space-division multiplexing was speed (automated connection between caller and sender without human intervention); the disadvantage of space-division multiplexing, especially in light of current multiplexing methods, was that while a line was in use it could

- Current as of May 6, 2015 (General Order 15-12)

APPENDIX B
PATENT RULES

1. SCOPE OF RULES

1-1. Title.

These are the Rules of Practice for Patent Cases before the Eastern District of Texas. They should be cited as "P. R. __."

1-2. Scope and Construction.

These rules apply to all civil actions filed in or transferred to this Court which allege infringement of a utility patent in a complaint, counterclaim, cross-claim or third party claim, or which seek a declaratory judgment that a utility patent is not infringed, is invalid or is unenforceable. The Court may accelerate, extend, eliminate, or modify the obligations or deadlines set forth in these Patent Rules based on the circumstances of any particular case, including, without limitation, the complexity of the case or the number of patents, claims, products, or parties involved. If any motion filed prior to the Claim Construction Hearing provided for in P. R. 4-6 raises claim construction issues, the Court may, for good cause shown, defer the motion until after completion of the disclosures, filings, or ruling following the Claim Construction Hearing. The Civil Local Rules of this Court shall also apply to these actions, except to the extent that they are inconsistent with these Patent Rules. The deadlines set forth in these rules may be modified by Docket Control Order issued in specific cases.

1-3. Effective Date.

These Patent Rules shall take effect on February 22, 2005 and shall apply to any case filed thereafter and to any pending case in which more than 9 days remain before the Initial Disclosure of Asserted Claims is made. The parties to any other pending civil action shall meet and confer promptly after February 22, 2005, for the purpose of determining whether any

provision in these Patent Rules should be made applicable to that case. No later than 7 days after the parties meet and confer, the parties shall file a stipulation setting forth a proposed order that relates to the application of these Patent Rules. Unless and until an order is entered applying these Patent Local Rules to any pending case, the Rules previously applicable to pending patent cases shall govern.

2. GENERAL PROVISIONS

2-1. Governing Procedure.

(a) **Initial Case Management Conference.** Prior to the Initial Case Management Conference with the Court, when the parties confer with each other pursuant to Fed.R.Civ.P. 26(f), in addition to the matters covered by Fed.R.Civ.P. 26, the parties must discuss and address in the Case Management Statement filed pursuant to Fed.R.Civ.P. 26(f), the following topics:

(1) Proposed modification of the deadlines provided for in the Patent Rules, and the effect of any such modification on the date and time of the Claim Construction Hearing, if any;

(2) Whether the Court will hear live testimony at the Claim Construction Hearing;

(3) The need for and any specific limits on discovery relating to claim construction, including depositions of witnesses, including expert witnesses;

(4) The order of presentation at the Claim Construction Hearing; and

(5) The scheduling of a Claim Construction Prehearing Conference to be held after the Joint Claim Construction and Prehearing Statement provided for in P. R. 4-3 has been filed.

(6) Whether the court should authorize the filing under seal of any documents containing confidential information.

(b) Further Case Management Conferences. To the extent that some or all of the matters provided for in P. R. 2-1 (a)(1)-(5) are not resolved or decided at the Initial Case Management Conference, the parties shall propose dates for further Case Management Conferences at which such matters shall be decided.

(c) **Electronic Filings.** All patents attached as exhibits to any filing submitted electronically shall be in searchable PDF format. Any other documents attached as exhibits to any filing submitted electronically should be in searchable PDF format whenever possible.

2-2. Confidentiality.

If any document or information produced under these Patent Local Rules is deemed confidential by the producing party and if the Court has not entered a protective order, until a protective order is issued by the Court, the document shall be marked "confidential" or with some other confidential designation (such as "Confidential – Outside Attorneys Eyes Only") by the disclosing party and disclosure of the confidential document or information shall be limited to each party's outside attorney(s) of record and the employees of such outside attorney(s).

If a party is not represented by an outside attorney, disclosure of the confidential document or information shall be limited to one designated "in house" attorney, whose identity and job functions shall be disclosed to the producing party 5 days prior to any such disclosure, in order to permit any motion for protective order or other relief regarding such disclosure. The person(s) to whom disclosure of a confidential document or information is made under this local rule shall keep it confidential and use it only for purposes of litigating the case.

2-3. Certification of Initial Disclosures.

All statements, disclosures, or charts filed or served in accordance with these Patent Rules must be dated and signed by counsel of record. Counsel's signature shall constitute a certification that to the best of his or her knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the information contained in the statement, disclosure, or chart is complete and correct at the time it is made.

2-4. Admissibility of Disclosures.

Statements, disclosures, or charts governed by these Patent Rules are admissible to the extent permitted by the Federal Rules of Evidence or Procedure. However, the statements or disclosures provided for in P. R. 4-1 and 4-2 are not admissible for any purpose other than in connection with motions seeking an extension or modification of the time periods within which actions contemplated by these Patent Rules must be taken.

2-5. Relationship to Federal Rules of Civil Procedure.

Except as provided in this paragraph or as otherwise ordered, it shall not be a legitimate ground for objecting to an opposing party's discovery request (e.g., interrogatory, document request, request for admission, deposition question) or declining to provide information otherwise required to be disclosed pursuant to Fed.R.Civ.P. 26(a)(1) that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, these Patent Rules. A party may object, however, to responding to the following categories of discovery requests (or decline to provide information in its initial disclosures under Fed.R.Civ.P. 26(a)(1)) on the ground that they are premature in light of the timetable provided in the Patent Rules:

(a) Requests seeking to elicit a party's claim construction position:

(b) Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, or other instrumentality;

(c) Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and

(d) Requests seeking to elicit from an accused infringer the identification of any opinions of counsel, and related documents, that it intends to rely upon as a defense to an allegation of willful infringement.

Where a party properly objects to a discovery request (or declines to provide information in its initial disclosures under Fed.R.Civ.P. 26(a)(1)) as set forth above, that party shall provide the requested information on the date on which it is required to provide the requested information to an opposing party under these Patent Rules, unless there exists another legitimate ground for objection.

2-6. Assignment of Related Cases. Separately filed cases related to the same patent shall be assigned to the same judge, i.e., the judge assigned to the first related case.

3. PATENT INITIAL DISCLOSURES

3-1. Disclosure of Asserted Claims and Infringement Contentions.

Not later than 10 days before the Initial Case Management Conference with the Court, a party claiming patent infringement must serve on all parties a "Disclosure of Asserted Claims and Infringement Contentions." Separately for each opposing party, the "Disclosure of Asserted Claims and Infringement Contentions" shall contain the following information:

(a) Each claim of each patent in suit that is allegedly infringed by each opposing party;

(b) Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each opposing party of which the party is aware. This identification shall be as specific as possible. Each product, device, and apparatus must be identified by name or model number, if known. Each method or process must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

(c) A chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

(d) Whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents in the Accused Instrumentality;

(e) For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled; and

(f) If a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim.

3-2. Document Production Accompanying Disclosure.

With the "Disclosure of Asserted Claims and Infringement Contentions," the party claiming patent infringement must produce to each opposing party or make available for inspection and

copying:

(a) Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, the claimed invention prior to the date of application for the patent in suit. A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;

(b) All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or the priority date identified pursuant to P. R. 3-1(e), whichever is earlier; and

(c) A copy of the file history for each patent in suit.

The producing party shall separately identify by production number which documents correspond to each category.

3-3. Invalidity Contentions.

Not later than 45 days after service upon it of the "Disclosure of Asserted Claims and Infringement Contentions," each party opposing a claim of patent infringement, shall serve on all parties its "Invalidity Contentions" which must contain the following information:

(a) The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took

place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

(b) Whether each item of prior art anticipates each asserted claim or renders it obvious. If a combination of items of prior art makes a claim obvious, each such combination, and the motivation to combine such items, must be identified;

(c) A chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and

(d) Any grounds of invalidity based on indefiniteness under 35 U.S.C. § 112(2) or enablement or written description under 35 U.S.C. § 112(1) of any of the asserted claims.

3-4. Document Production Accompanying Invalidity Contentions.

With the "Invalidity Contentions," the party opposing a claim of patent infringement must produce or make available for inspection and copying:

(a) Source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its P. R. 3-1(c) chart; and

(b) A copy of each item of prior art identified pursuant to P. R. 3-3(a) which does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon must be produced.

3-5. Disclosure Requirement in Patent Cases for Declaratory Judgment.

(a) Invalidity Contentions If No Claim of Infringement. In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, P. R. 3-1 and 3-2 shall not apply unless and until a claim for patent infringement is made by a party. If the defendant does not assert a claim for patent infringement in its answer to the complaint, no later than 10 days after the defendant serves its answer, or 10 days after the Initial Case Management Conference, whichever is later, the party seeking a declaratory judgment must serve upon each opposing party its Invalidity Contentions that conform to P. R. 3-3 and produce or make available for inspection and copying the documents described in P. R. 3-4. The parties shall meet and confer within 10 days of the service of the Invalidity Contentions for the purpose of determining the date on which the plaintiff will file its Final Invalidity Contentions which shall be no later than 50 days after service by the Court of its Claim Construction Ruling.

(b) Applications of Rules When No Specified Triggering Event. If the filings or actions in a case do not trigger the application of these Patent Rules under the terms set forth herein, the parties shall, as soon as such circumstances become known, meet and confer for the purpose of agreeing on the application of these Patent Rules to the case.

(c) Inapplicability of Rule. This P. R. 3-5 shall not apply to cases in which a request for a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable is filed in response to a complaint for infringement of the same patent.

3-6. Amending Contentions.

(a) Leave not required. Each party's "Infringement Contentions" and "Invalidity Contentions" shall be deemed to be that party's final contentions, except as set forth below.

(1) If a party claiming patent infringement believes in good faith that the Court's Claim Construction Ruling so requires, not later than 30 days after service by the Court of its Claim Construction Ruling, that party may serve "Amended Infringement Contentions" without leave of court that amend its "Infringement Contentions" with respect to the information required by Patent R. 3-1(c) and (d).

(2) Not later than 50 days after service by the Court of its Claim Construction Ruling, each party opposing a claim of patent infringement may serve "Amended Invalidity Contentions" without leave of court that amend its "Invalidity Contentions" with respect to the information required by P. R. 3-3 if:

(A) a party claiming patent infringement has served "Infringement Contentions" pursuant to P. R. 3-6(a), or

(B) the party opposing a claim of patent infringement believes in good faith that the Court's Claim Construction Ruling so requires.

(b) Leave required. Amendment or supplementation any Infringement Contentions or Invalidity Contentions, other than as expressly permitted in P. R. 3-6(a), may be made only by order of the Court, which shall be entered only upon a showing of good cause.

3-7 Opinion of Counsel Defenses.

By the date set forth in the Docket Control Order, each party opposing a claim of patent

infringement that will rely on an opinion of counsel as part of a defense shall:

(a) Produce or make available for inspection and copying the opinion(s) and any other documents relating to the opinion(s) as to which that party agrees the attorney-client or work product protection has been waived; and

(b) Serve a privilege log identifying any other documents, except those authored by counsel acting solely as trial counsel, relating to the subject matter of the opinion(s) which the party is withholding on the grounds of attorney-client privilege or work product protection.

A party opposing a claim of patent infringement who does not comply with the requirements of this P. R. 3-7 shall not be permitted to rely on an opinion of counsel as part of a defense absent a stipulation of all parties or by order of the Court, which shall be entered only upon a showing of good cause.

3-8. Disclosure Requirements for Patent Cases Arising Under 21 U.S.C. § 355 (Hatch-Waxman Act).

The following provision applies to all patents subject to a Paragraph IV certification in cases arising under 21 U.S.C. § 355 (commonly referred to as "the Hatch-Waxman Act"). This provision takes precedence over any conflicting provisions in P.R. 3-1 to 3-5 for all cases arising under 21 U.S.C. § 355.

(a) Upon the filing of a responsive pleading to the complaint, the Defendant(s) shall produce to Plaintiff(s) the entire Abbreviated New Drug Application or New Drug Application that is the basis of the case in question.

(b) Not more than 7 days after the Initial Case Management Conference, Plaintiff(s) must identify the asserted claims.

(c) Not more than 14 days after the Initial Case Management Conference, the Defendant(s) shall provide to Plaintiff(s) the written basis for their "Invalidity Contentions" for any patents referred to in Defendant(s) Paragraph IV Certification. This written basis shall contain all disclosures required by P.R. 3-3 and shall be accompanied by the production of documents required by P.R. 3-4.

(d) Not more than 14 days after the Initial Case Management Conference, the Defendant(s) shall provide to Plaintiff(s) the written basis for any defense of non-infringement for any patent referred to in Defendant(s) Paragraph IV Certification. This written basis shall include a claim chart identifying each claim at issue in the case and each limitation of each claim at issue. The claim chart shall specifically identify for each claim those claim limitation(s) that are literally absent from the Defendant(s) allegedly infringing Abbreviated New Drug Application or New Drug Application. The written basis for any defense of non-infringement shall also be accompanied by the production of any document or thing that the Defendant(s) intend to rely upon in defense of any infringement allegations by Plaintiff(s).

(e) Not more than 45 days after the disclosure of the written basis for any defense of non-infringement as required by P.R. 3-8(c), Plaintiff(s) shall provide Defendant(s) with a "Disclosure of Asserted Claims and Infringement Contentions," for all patents referred to in Defendant(s) Paragraph IV Certification, which shall contain all disclosures required by P.R. 3-1 and shall be accompanied by the production of documents required by P.R. 3-2.

(f) Each party that has an ANDA application pending with the Food and Drug Administration ("FDA") that is the basis of the pending case shall: (1) notify the FDA of any and all motions for injunctive relief no later than three business days after the date on which such a motion is filed; and (2) provide a copy of all correspondence between itself and the FDA pertaining to the ANDA application to each party asserting infringement, or set forth the basis of any claim of privilege for such correspondence, no later than seven days after the date it sends or receives any such correspondence.

(g) Unless informed of special circumstances, the Court intends to set all Hatch-Waxman cases for final pretrial hearing at or near 24 months from the date of the filing of the complaint.

4. CLAIM CONSTRUCTION PROCEEDINGS

4-1. Exchange of Proposed Terms and Claim Elements for Construction.

(a) Not later than 10 days after service of the "Invalidity Contentions" pursuant to P. R. 3-3, each party shall simultaneously exchange a list of claim terms, phrases, or clauses which that party contends should be construed by the Court, and identify any claim element which that party contends should be governed by 35 U.S.C. § 112(6).

(b) The parties shall thereafter meet and confer for the purposes of finalizing this list, narrowing or resolving differences, and facilitating the ultimate preparation of a Joint Claim Construction and Prehearing Statement.

4-2. Exchange of Preliminary Claim Constructions and Extrinsic Evidence.

(a) Not later than 20 days after the exchange of "Proposed Terms and Claim Elements for Construction" pursuant to P. R. 4-1, the parties shall simultaneously exchange a preliminary proposed construction of each claim term, phrase, or clause which the parties collectively have identified for claim construction purposes. Each such "Preliminary Claim Construction" shall also, for each element which any party contends is governed by 35 U.S.C. § 112(6), identify the structure(s), act(s), or material(s) corresponding to that element.

(b) At the same time the parties exchange their respective "Preliminary Claim Constructions," they shall each also provide a preliminary identification of extrinsic evidence, including without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of

percipient and expert witnesses they contend support their respective claim constructions. The parties shall identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, percipient or expert, the parties shall also provide a brief description of the substance of that witness' proposed testimony.

(c) The parties shall thereafter meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction and Prehearing Statement.

4-3. Joint Claim Construction and Prehearing Statement.

Not later than 60 days after service of the "Invalidity Contentions," the parties shall complete and file a Joint Claim Construction and Prehearing Statement, which shall contain the following information:

(a) The construction of those claim terms, phrases, or clauses on which the parties agree;

(b) Each party's proposed construction of each disputed claim term, phrase, or clause, together with an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction of the claim or to oppose any other party's proposed construction of the claim, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses;

(c) The anticipated length of time necessary for the Claim Construction Hearing;

(d) Whether any party proposes to call one or more witnesses, including experts, at the Claim Construction Hearing, the identity of each such witness, and for each expert, a summary of each

opinion to be offered in sufficient detail to permit a meaningful deposition of that expert; and

(e) A list of any other issues which might appropriately be taken up at a prehearing conference prior to the Claim Construction Hearing, and proposed dates, if not previously set, for any such prehearing conference.

4-4. Completion of Claim Construction Discovery.

Not later than 30 days after service and filing of the Joint Claim Construction and Prehearing Statement, the parties shall complete all discovery relating to claim construction, including any depositions with respect to claim construction of any witnesses, including experts, identified in the Joint Claim Construction and Prehearing Statement.

4-5. Claim Construction Briefs.

(a) Not later than 45 days after serving and filing the Joint Claim Construction and Prehearing Statement, the party claiming patent infringement shall serve and file an opening brief and any evidence supporting its claim construction. All asserted patents shall be attached as exhibits to the opening claim construction brief in searchable PDF form.

(b) Not later than 14 days after service upon it of an opening brief, each opposing party shall serve and file its responsive brief and supporting evidence.

(c) Not later than 7 days after service upon it of a responsive brief, the party claiming patent infringement shall serve and file any reply brief and any evidence directly rebutting the supporting evidence contained in an opposing party's response.

(d) At least 10 days before the Claim Construction Hearing held pursuant to P.R. 4-6, the parties shall jointly file a claim construction chart.

(1) Said chart shall have a column listing complete language of disputed claims with disputed terms in bold type and separate columns for each party's proposed construction of each disputed term. The chart shall also include a fourth column entitled "Court's Construction" and otherwise left blank. Additionally, the chart shall also direct the Court's attention to the patent and claim number(s) where the disputed term(s) appear(s).

(2) The parties may also include constructions for claim terms to which they have agreed. If the parties choose to include agreed constructions, each party's proposed construction columns shall state "[**AGREED**]" and the agreed construction shall be inserted in the "Court's Construction" column.

(3) The purpose of this claim construction chart is to assist the Court and the parties in tracking and resolving disputed terms. Accordingly, aside from the requirements set forth in this rule, the parties are afforded substantial latitude in the chart's format so that they may fashion a chart that most clearly and efficiently outlines the disputed terms and proposed constructions. Appendices to the Court's prior published and unpublished claim construction opinions may provide helpful guidelines for parties fashioning claim construction charts.

(e) Unless otherwise ordered by the Court, the page limitations governing dispositive motions pursuant to Local Rule CV-7(a) shall apply to claim construction briefing.

4-6. Claim Construction Hearing.

Subject to the convenience of the Court's calendar, two weeks following submission of the reply brief specified in P.R. 4-5(c), the Court shall conduct a Claim Construction Hearing, to the extent the parties or the Court believe a hearing is necessary for construction of the claims at issue.

United States District Court
Southern District
of California

LOCAL RULES

Revised as of:

February 2, 2015

TABLE OF CONTENTS

PATENT LOCAL RULES

1. Scope of Rules

1.1 Title.

These are the Local Rules of Practice for Patent Cases before the United States District Court for the Southern District of California. They should be cited as "Patent L.R. ___."

1.2 Effective Date.

These Patent Local Rules take effect on December 1, 2009, and will apply to any case filed thereafter.

1.3 Scope and Construction.

These Patent Local Rules apply to all civil actions filed in or transferred to this court which allege infringement of a utility patent in a complaint, counterclaim, cross-claim or third party claim, or which seek a declaratory judgment that a utility patent is not infringed, is invalid or is unenforceable. The court may accelerate, extend, eliminate, or modify the obligations or deadlines set forth in these Patent Local Rules based on the court's schedule or the circumstances of any particular case, including, without limitation, the complexity of the case or the number of patents, claims, products, or parties involved. If any motion filed prior to the Claim Construction Hearing provided for in Patent L.R. 4.5 raises claim construction issues, the court may, for good cause shown, defer the motion until after completion of the disclosures, filings, or ruling following the Claim Construction Hearing. The Civil Local Rules of this court also apply to these actions, except to the extent they are inconsistent with these Patent Local Rules.

1.4 Application of Rules When No Specified Triggering Event.

If the filings or actions in a case do not trigger the application of these Patent Local Rules, as soon as any party ascertains that circumstances exist to make application of these Patent Local Rules appropriate to the case, that party should notify the assigned magistrate judge so the matter may be scheduled for a Case Management Conference.

2. General Provisions

2.1 Governing Procedure.

a. **Early Neutral Evaluation ("ENE") Conference.** Within sixty (60) days of a defendant making its first appearance in the case, counsel and the parties will appear before the assigned magistrate judge for an ENE conference pursuant to Civ. L.R. 16.1.c.1. No later than twenty-one (21) days before the ENE, the parties will meet and confer pursuant to Fed.R.Civ.P. 26(f).

If no settlement is reached at the ENE Conference, the magistrate judge will proceed with the Initial Case Management Conference. At the end of the conference, the magistrate judge must prepare a case management order which will include:

1. A discovery schedule, including an initial date for the substantial completion of document discovery including electronically stored information ("ESI"), and a later date for the completion of all fact discovery;

2. A date for the Claim Construction Hearing within nine(9) months of the date of a defendant's first appearance;

3. A trial date within eighteen (18) months of the date the complaint was filed, if practicable, for "standard" cases (defined as typically having one or two defendants and one or two patents); and, within twenty-four (24) months for complex cases, if practicable;

4. A dispositive motion filing cutoff date to include any motions addressing any Daubert issues;

5. A date for the Mandatory Settlement Conference; and

6. All other pretrial dates, as required in Civ. L.R. 16.1.d.2, as appropriate.

b. **Initial Case Management Conference.** When the parties confer with each other pursuant to Fed. R. Civ.P. 26(f), in addition to the matters covered by Fed. R. Civ.P. 26, the parties must discuss and address in the Joint Discovery Plan filed pursuant to Fed. R. Civ.P. 26(f), the following topics:

1. Proposed modification of the deadlines provided for in these Patent Local Rules, and the effect of any such modification on the date and time of the Claim Construction Hearing, if any;

2. The need for and specific limits on discovery relating to claim construction, including depositions of percipient and expert witnesses; and

3. The need, if any, to phase damage discovery.

c. **Settlement Conferences**

1. The judge conducting the settlement conference may require the parties or representatives of a party other than counsel, who have authority to negotiate and enter into a binding settlement, be present at the settlement conference.

2. When ordered to appear, each party, claims adjusters for insured defendants, in addition to any other representatives with "full authority" to enter into a binding settlement, as well as the principal attorney(s) responsible for the litigation, must be present and legally and factually prepared to discuss and resolve the case at the Settlement Conference. Any variation from this Rule or special arrangements

desired in cases must be proposed no later than twenty-one (21) days in advance of the settlement conference to the settlement judge.

3. "Full authority" means that the individuals at the settlement conference be authorized to fully negotiate settlement terms and to agree at that time to any settlement terms acceptable to the parties, and to bind the party, without the need to call others not present at the conference for authority or approval.

4. No later than fourteen (14) days before the settlement conference, each party will designate in writing to all other parties, the person(s) and their title(s) or position(s) with the party who will attend and have settlement authority at the conference.

2.2 Confidentiality.

If any document or information produced under these Patent Local Rules is deemed confidential by the producing party and if the court has not entered a protective order, until a protective order is issued by the court, the document will be marked "Confidential" or with some other confidential designation (such as "Confidential – Outside Attorneys Eyes Only") by the disclosing party and disclosure of the confidential document or information will be limited to each party's outside attorney(s) of record and the employees of such outside attorney(s). An approved model form of protective order is available on the Court's website (www.casd.uscourts.gov) and may be amended by the Court over time as deemed appropriate.

If a party is not represented by an outside attorney, disclosure of the confidential document or information will be limited to a designated "in house" attorney, whose identity and job functions will be disclosed to the producing party five court days prior to any such disclosure, in order to permit any motion for protective order or other relief regarding such disclosure. The person(s) to whom disclosure of a confidential document or information is made under this Patent Local Rule will keep it confidential and use it only for purposes of litigating the case.

A document may not be filed under seal unless authorized by an order entered by the judge before whom the hearing or proceeding related to the proposed sealed document will take place.

2.3 Certification of Initial Disclosures.

All statements, disclosures, or charts filed or served in accordance with these Patent Local Rules must be dated and signed by counsel of record. Counsel's signature will constitute a certification that to the best of his or her knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, that information contained in the statement, disclosure, or chart is complete and correct at the time it is made.

2.4 Admissibility of Disclosures.

Statements, disclosures, or charts governed by these Patent Local Rules are admissible to the extent permitted by the Federal Rules of Evidence or Federal Rules of Civil Procedure. However, the statements or disclosures provided for in Patent Local Rules 4.1 and 4.2 are not admissible for any purpose other than in connection with motions seeking an extension or modification of the time periods within which actions contemplated by these Patent Local Rules must be taken.

2.5 Relationship to Federal Rules of Civil Procedure.

Except as provided in this paragraph or as otherwise ordered, it will not be a legitimate ground for objecting to an opposing party's discovery request (*e.g.*, interrogatory, document request, request for admission, deposition question), or declining to provide information otherwise required to be disclosed pursuant to Fed.R.Civ.P. 26(a)(1), that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, these Patent Local Rules. A party may object, however, to responding to the following categories of discovery requests on the ground that they are premature in light of the timetable provided in the Patent Local Rules:

a. Requests seeking to elicit a party's claim construction position;

b. Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, or other instrumentality;

c. Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and

d. Requests seeking to elicit an opinion of counsel, and related documents, upon which a party intends to rely for any patent-related claim or defense.

Where a party properly objects to a discovery request as set forth above, that party must provide the requested information on the date on which it is required to provide, the requested information to an opposing party under these Patent Local Rules, unless another legitimate ground for objection exists.

2.6 Model Order for Electronically Stored Information ("ESI")

The Court has approved a Model Order for ESI that applies to all Patent Cases in this District as defined in Patent L.R. 1.3 unless otherwise ordered by a judge assigned to the case. The Model Order is available on the Court's website, and may be amended by the Court over time as deemed appropriate.

3. Patent Disclosures

3.1 Disclosure of Asserted Claims and Infringement Contentions.

Not later than fourteen (14) days after the Initial Case Management Conference, a party claiming patent infringement must serve on all parties a "Disclosure of Asserted Claims and Infringement Contentions." Separately for each opposing party, the "Disclosure of Asserted Claims and Infringement Contentions" must contain the following information:

a. Each claim of each patent in suit that is allegedly infringed by each opposing party;

b. Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each opposing party of which the party is aware. This identification must be as specific as possible. Each product, device and apparatus must be identified by name or model number, if known. Each method or

process must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

c. A chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

d. For each claim which is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. Insofar as alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described.

e. Whether each element of each asserted claim is claimed to be literally present and/or present under the doctrine of equivalents in the Accused Instrumentality;

f. For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;

g. If a party claiming patent infringement asserts or wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim; and

h. If a party claiming infringement alleges willful infringement, the basis for such allegation.

3.2 Document Production Accompanying Disclosure.

With the "Disclosure of Asserted Claims and Infringement Contentions," the party claiming patent infringement must produce to each opposing party or make available for inspection and copying, the following documents in the possession, custody or control of that party:

a. Documents (*e.g.*, contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, the claimed invention prior to the date of application for the patent in suit. A party's production of a document as required within these rules does not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;

b. All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or the priority date identified pursuant to Patent L.R. 3.1.e, whichever is earlier;

c. A copy of the file history for each patent in suit and each application to which a claim for priority is made under Patent L.R. 3.1.e.

d. Documents sufficient to evidence ownership of the patent rights by the party asserting patent infringement; and

e. If a party identifies instrumentalities pursuant to Patent L.R. 3.1.g, documents sufficient to show the operation of any aspects of elements of such instrumentalities the patent claimant relies upon as embodying any asserted claims.

The producing party must separately identify by production number which documents correspond to each category. If the documents identified above are not in the possession, custody or control of the party charged with production, that party must use its best efforts to obtain all responsive documents and make a timely disclosure.

3.3 Invalidity Contentions.

Not later than sixty (60) days after service upon it of the "Disclosure of Asserted Claims and Infringement Contentions," each party opposing a claim of patent infringement must serve on all parties its " Invalidity Contentions," which must contain the following information:

a. The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. This includes information about any alleged knowledge or use of the invention in this country prior to the date of invention of the patent. Each prior art patent must be identified by its number, country of origin, and date of issue. Each prior art publication must be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) must be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity that made the use or that made and received the offer, or the person or entity that made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) must be identified by providing the name of the person(s) from whom and the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(g) must be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

b. Whether each item of prior art anticipates each asserted claim or renders it obvious. If obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness;

c. A chart identifying where specifically in each alleged item of prior art each element of each asserted claim is found, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function;

d. Any grounds of invalidity based on indefiniteness under 35 U.S.C. § 112(2) of any of the asserted claims; and

e. Any grounds of invalidity based on lack of written description, lack of enabling disclosure, or failure to describe the best mode under 35 U.S.C. § 112(1).

3.4 Document Production Accompanying Invalidity Contentions.

With the "Invalidity Contentions," the party opposing a claim of patent infringement must produce or make available for inspection and copying:

a. Source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of any Accused Instrumentality identified by the patent claimant in its Patent L.R. 3.1.c chart; and

b. A copy of each item of prior art identified pursuant to Patent L.R. 3.3.a which does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon must be produced.

3.5 Disclosure Requirements in Patent Cases for Declaratory Relief.

a. **Invalidity Contentions if No Claim of Infringement.** In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, Patent Local Rules 3.1 and 3.2 will not apply unless and until a claim for patent infringement is made by a party. If the defendant does not assert a claim for patent infringement in answer to the complaint, no later than fourteen (14) days after the Initial Case Management Conference the party seeking a declaratory judgment must serve upon each opposing party Invalidity Contentions that conform to Patent L.R. 3.3 and produce or make available for inspection and copying the documents described in Patent L.R. 3.4.

b. **Inapplicability of Rule.** This Patent L.R. 3.5 does not apply to cases in which a request for declaratory judgment that a patent is not infringed, is invalid, or is unenforceable, is filed in response to a complaint for infringement of the same patent.

3.6 Amended and Final Contentions.

a. As a matter of right, a party asserting infringement may serve Amended Infringement Contentions no later than the filing of the parties' Joint Claim Construction Chart. Thereafter, absent undue prejudice to the opposing party, a party asserting infringement may only amend its infringement contentions:

   1. if, not later than thirty (30) days after service of the court's Claim Construction Ruling, the party asserting infringement believes in good faith that amendment is necessitated by a claim construction that differs from that proposed by such party; or

   2. upon a timely motion showing good cause.

b. As a matter of right, a party opposing a claim of patent infringement may serve "Amended Invalidity Contentions" no later than the completion of claim construction discovery. Thereafter, absent undue prejudice to the opposing party, a party opposing infringement may only amend its validity contentions:

1. if a party claiming patent infringement has served "Amended Infringement Contentions," and the party opposing a claim of patent infringement believes in good faith that the Amended Infringement Contentions so require;

2. if, not later than fifty (50) days after service of the court's Claim Construction Ruling

3. upon a timely motion showing good cause.

This rule does not relieve any party from its obligations under Fed.R.Civ.P 26 to timely supplement disclosures and discovery responses.

3.7 Advice of Counsel

Not later than thirty (30) days after filing of the Claim Construction Order, each party relying upon advice of counsel as part of a patent-related claim or defense for any reason must:

a. Produce or make available for inspection and copying the opinion(s) and any other documentation relating to the opinion(s) as to which that party agrees the attorney-client or work product protection has been waived; and

b. Provide a written summary of any oral advice and produce or make available for inspection and copying that summary and documents related thereto for which the attorney-client and work product protection have been waived; and

c. Serve a privilege log identifying any other documents, except those authored by counsel acting solely as trial counsel, relating to the subject matter of the opinion(s) which the party is withholding on the grounds of attorney-client privilege or work product protection.

A party who does not comply with the requirements of Patent L.R. 3.7 will not be permitted to rely on advice of counsel for any purpose, absent a stipulation of all parties or by order of the court, which will be entered only upon showing of good cause.

4. Claim Construction Proceedings

4.1 Exchange of Preliminary Claim Construction and Extrinsic Evidence.

a. Not later than fourteen (14) days after the service of the "Invalidity Contentions" pursuant to Patent L.R. 3.3, the parties will simultaneously exchange a preliminary proposed construction of each claim term, phrase, or clause which the parties have identified for claim construction purposes. Each such "Preliminary Claim Constructions" will also, for each element which any party contends is governed by 35 U.S.C. § 112(6), identify the structure(s), act(s), or material(s) described in the specification corresponding to that element.

b. Simultaneously with exchange of the "Preliminary Claim Constructions," the parties must also provide a preliminary identification of extrinsic evidence, including without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient

and expert witnesses they contend support their respective claim constructions. The parties must identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness, percipient or expert, the parties must also provide a brief description of the substance of that witness's proposed testimony.

c. Not later than fourteen (14) days after the service of the "Preliminary Claim Constructions" pursuant to Patent L.R. 4.1.a. the parties will simultaneously exchange "Responsive Claim Constructions" identifying whether the responding party agrees with the other party's proposed construction, or identifying an alternate construction in the responding party's preliminary construction. or setting forth the responding party's alternate construction.

d. Simultaneous with exchange of the "Responsive Claim Constructions" pursuant to Patent L.R. 4.1.c. the parties must also provide a preliminary identification of extrinsic evidence, including without limitation. dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses they contend support any responsive claim constructions. The parties must identify each such item of extrinsic evidence by production number or produce a copy of any such item not previously produced. With respect to any such witness. percipient or expert, the parties must also provide a brief description of the substance of that witness's proposed testimony.

e. The parties must thereafter meet and confer for the purposes of narrowing the issues and finalizing preparation of a Joint Claim Construction Chart, Worksheet and Hearing Statement.

4.2 Joint Claim Construction Chart, Worksheet and Hearing Statement.

Not later than fourteen (14) days after service of the "Responsive Claim Constructions" pursuant to Patent L.R. 4.1.c, the parties must complete and file a Joint Claim Construction Chart, Joint Claim Construction Worksheet and Joint Hearing Statement.

a. The Joint Hearing Statement must include an identification of the terms whose construction will be most significant to the resolution of the case up to a maximum of ten (10) terms. The parties must also identify any term among the ten (10) whose construction will be case or claim dispositive. If the parties cannot agree on the ten (10) most significant terms, the parties must identify the ones which they do agree are most significant and then they may evenly divide the remainder with each party identifying what it believes are the remaining most significant terms. However, the total terms identified by all parties as most significant cannot exceed ten (10). For example, in a case involving two (2) parties, if the parties agree upon the identification of five (5) terms as most significant, each may only identify two (2) additional terms as most significant; if the parties agree upon eight (8) such terms, each party may only identify only one (1) additional term as most significant.

b. The Joint Claim Construction Chart must have a column listing complete language of disputed claims with the disputed terms in bold type and separate columns for each party's proposed construction of each disputed term. Each party's proposed construction of each disputed claim term, phrase, or clause, must identify all references from the specification or prosecution history that support that construction, and identify any extrinsic evidence known

to the party on which it intends to rely either to support its proposed construction of the claim or to oppose any party's proposed construction of the claim, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses. For every claim with a disputed term, each party shall identify with specificity the impact of the proposed constructions on the merits of the case.

c. The parties' Joint Claim Construction Worksheet must be in the format set forth in Appendix A and include any proposed constructions to which the parties agree, as well as those in dispute. The parties must jointly submit the Joint Claim Construction Worksheet on computer disk in both Word and WordPerfect format or in such other format as the court may direct.

d. The Joint Hearing Statement must include:

1. The anticipated length of time necessary for the Claim Construction Hearing;

2. Whether any party proposes to call one or more witnesses, including experts, at the Claim Construction Hearing, the identity of each such witness, and for each expert, a summary of each opinion to be offered in sufficient detail to permit a meaningful deposition of that expert; and

3. The order of presentation at the Claim Construction Hearing.

e. At the court's discretion, within seven (7) days of the submission of the Joint Claim Construction Chart, Joint Claim Construction Worksheet and Joint Hearing Statement, the court will hold a status conference with the parties, in person or by telephone, to discuss scheduling, witnesses and any other matters regarding the Claim Construction Hearing.

4.3 Completion of Claim Construction Discovery.

Not later than twenty-eight (28) days after service and filing of the Joint Claim Construction Chart, Joint Claim Construction Worksheet and Joint Hearing Statement, the parties must complete all discovery, including depositions of any percipient or expert witnesses that they intend to use in the Claim Construction Hearing. Fed.R.Civ.P. 30 applies to depositions taken pursuant to Patent L.R. 4.3, except as to experts. An expert witness identified in a party's Joint Hearing Statement pursuant to Patent L.R. 4.2.c, may be deposed on claim construction issues. The identification of an expert witness in the Joint Hearing Statement may be deemed good cause for a further deposition on all substantive issues.

4.4 Claim Construction Briefs.

a. Not later than fourteen (14) days after close of claim construction discovery, the parties will simultaneously file and serve opening briefs and any evidence supporting their claim construction.

b. Not later than fourteen (14) days after service of the opening briefs, the parties will simultaneously file and serve briefs responsive to the opposing party's opening brief and any evidence directly rebutting the supporting evidence contained in the opposing party's opening brief.

c. Absent leave of Court, the provisions of Civ. L.R. 7.1.h for length of briefs for supporting and reply memoranda shall apply to the length of opening and responsive claim construction briefs.

4.5 Claim Construction Hearing.

Not later than twenty-eight (28) days after service of responsive briefs and subject to the convenience of the court's calendar, the court will conduct a Claim Construction Hearing, if the court believes a hearing is necessary for construction of the claims at issue. The court may also order in its discretion a tutorial hearing, to occur before, or on the date of, the Claim Construction Hearing.

Attached as Appendix B is a time line illustrating the exchange and filing deadlines set forth in these Patent Local Rules.

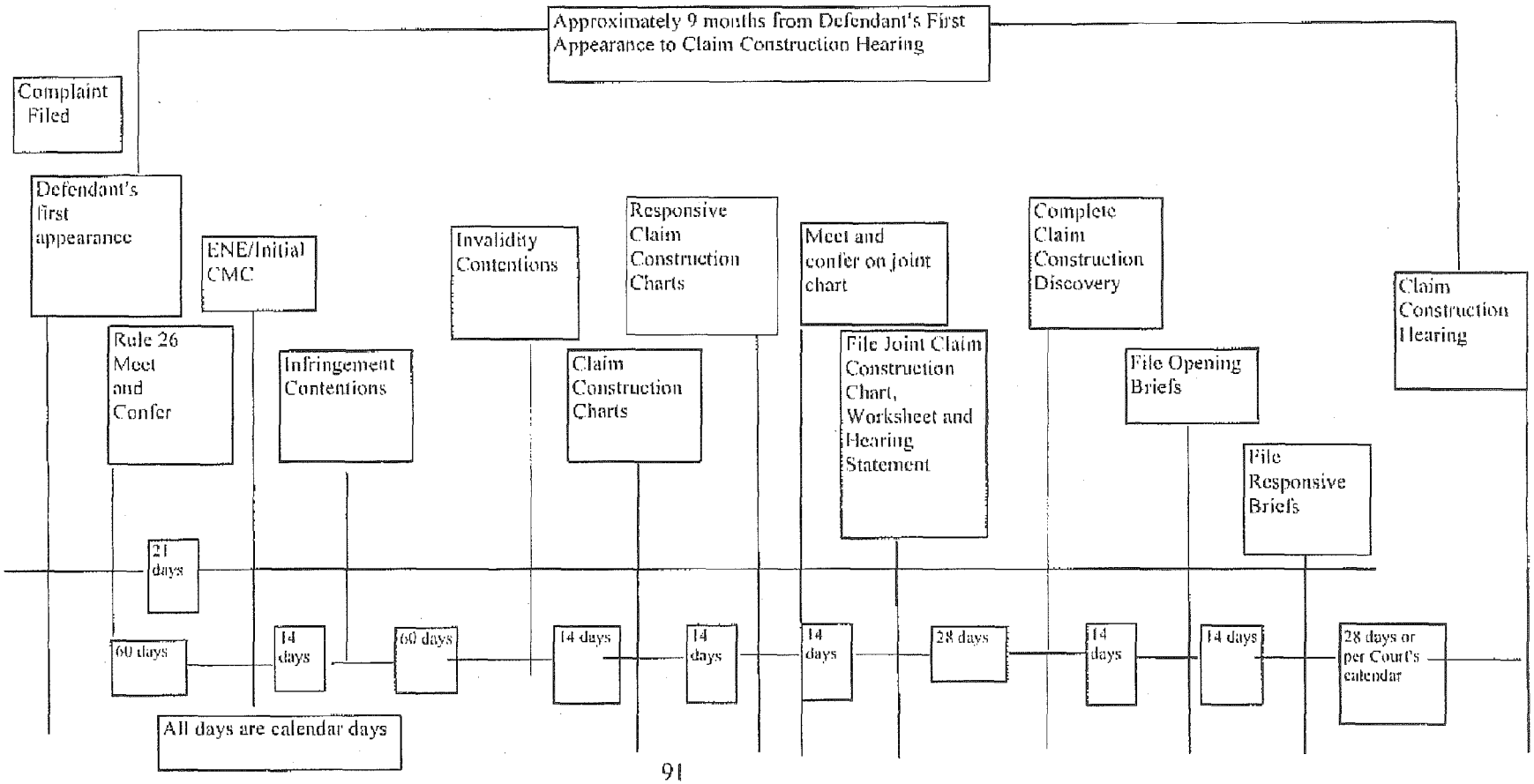
APPENDIX A
APPROVED FORM OF
JOINT CLAIM CONSTRUCTION WORKSHEET

JOINT CLAIM CONSTRUCTION WORKSHEET

PATENT CLAIM	AGREED PROPOSED CONSTRUCTION	PLAINTIFF'S PROPOSED CONSTRUCTION	DEFENDANT'S PROPOSED CONSTRUCTION	COURT'S CONSTRUCTION
1. Claim language as it appears in the patent with terms and phrases to be construed in bold.	Proposed construction if the parties agree.	Plaintiff's proposed construction if parties disagree.	Defendant's proposed construction if parties disagree.	Blank column for Court to enter its construction.
2. Claim language as it appears in the patent with terms and phrases to be construed in bold.	Proposed construction if the parties agree.	Plaintiff's proposed construction if parties disagree.	Defendant's proposed construction if parties disagree.	Blank column for Court to enter its construction.
3. Claim language as it appears in the patent with terms and phrases to be construed in bold.	Proposed construction if the parties agree.	Plaintiff's proposed construction if parties disagree.	Defendant's proposed construction if parties disagree.	Blank column for Court to enter its construction

Appendix B
TIME LINE OF EXCHANGE AND FILING DATES

Timeline for Patent Cases in the United States District Court for the Southern District of California



Doc #53397

MODEL PROTECTIVE ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Plaintiff,	CASE NO. 00cv0000
Plaintiff,	PROTECTIVE ORDER
vs.	
Defendant,	
Defendant.	

The Court recognizes that at least some of the documents and information ("materials") being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order ("Order") in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(7). The purpose of this Order is to protect the confidentiality of such materials as much as practical during the litigation. THEREFORE:

DEFINITIONS

1. The term "Confidential Information" will mean and include information contained or disclosed in any materials, including documents, portions of documents, answers to interrogatories, responses to requests for admissions, trial testimony, deposition testimony, and transcripts of trial testimony and depositions, including data, summaries, and compilations derived therefrom that is

deemed to be Confidential Information by any party to which it belongs.

2. The term "materials" will include, but is not be limited to: documents; correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other material that identify customers or potential customers; price lists or schedules or other matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks; contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk diaries; appointment books; expense accounts; recordings; photographs; motion pictures; compilations from which information can be obtained and translated into reasonably usable form through detection devices; sketches; drawings; notes (including laboratory notebooks and records); reports; instructions; disclosures; other writings; models and prototypes and other physical objects.

3. The term "counsel" will mean outside counsel of record, and other attorneys, paralegals, secretaries, and other support staff employed in the law firms identified below:_____

_____

["Counsel" also includes_____, in-house attorneys for [Plaintiff] and _____, in-house attorneys for [Defendant].]

GENERAL RULES

4. Each party to this litigation that produces or discloses any materials, answers to interrogatories, responses to requests for admission, trial testimony, deposition testimony, and transcripts of trial testimony and depositions, or information that the producing party believes should be subject to this Protective Order may designate the same as "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY."

a. Designation as "CONFIDENTIAL": Any party may designate information as "CONFIDENTIAL" only if, in the good faith belief of such party and its counsel, the unrestricted disclosure of such information could be potentially prejudicial to the business or operations of such party.

b. Designation as "CONFIDENTIAL - FOR COUNSEL ONLY": Any party may

designate information as "CONFIDENTIAL - FOR COUNSEL ONLY" only if, in the good faith belief of such party and its counsel, the information is among that considered to be most sensitive by the party, including but not limited to trade secret or other confidential research, development, financial or other commercial information.

5. In the event the producing party elects to produce materials for inspection, no marking need be made by the producing party in advance of the initial inspection. For purposes of the initial inspection, all materials produced will be considered as "CONFIDENTIAL - FOR COUNSEL ONLY," and must be treated as such pursuant to the terms of this Order. Thereafter, upon selection of specified materials for copying by the inspecting party, the producing party must, within a reasonable time prior to producing those materials to the inspecting party, mark the copies of those materials that contain Confidential Information with the appropriate confidentiality marking.

6. Whenever a deposition taken on behalf of any party involves a disclosure of Confidential Information of any party:

a. the deposition or portions of the deposition must be designated as containing Confidential Information subject to the provisions of this Order; such designation must be made on the record whenever possible, but a party may designate portions of depositions as containing Confidential Information after transcription of the proceedings; [A] party will have until fourteen (14) days after receipt of the deposition transcript to inform the other party or parties to the action of the portions of the transcript to be designated "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY."

b. the disclosing party will have the right to exclude from attendance at the deposition, during such time as the Confidential Information is to be disclosed, any person other than the deponent, counsel (including their staff and associates), the court reporter, and the person(s) agreed upon pursuant to paragraph 8 below; and

c. the originals of the deposition transcripts and all copies of the deposition must bear the legend "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY," as appropriate, and the original or any copy ultimately presented to a court for filing must not be filed unless it can be accomplished under seal, identified as being subject to this Order, and protected from being opened except by order of this Court.

7. All Confidential Information designated as "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY" must not be disclosed by the receiving party to anyone other than those persons designated within this order and must be handled in the manner set forth below and, in any event, must not be used for any purpose other than in connection with this litigation, unless and until such designation is removed either by agreement of the parties, or by order of the Court.

8. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY" must be viewed only by counsel (as defined in paragraph 3) of the receiving party, and by independent experts under the conditions set forth in this Paragraph. The right of any independent expert to receive any Confidential Information will be subject to the advance approval of such expert by the producing party or by permission of the Court. The party seeking approval of an independent expert must provide the producing party with the name and curriculum vitae of the proposed independent expert, and an executed copy of the form attached hereto as Exhibit A, in advance of providing any Confidential Information of the producing party to the expert. Any objection by the producing party to an independent expert receiving Confidential Information must be made in writing within fourteen (14) days following receipt of the identification of the proposed expert. Confidential Information may be disclosed to an independent expert if the fourteen (14) day period has passed and no objection has been made. The approval of independent experts must not be unreasonably withheld.

9. Information designated "CONFIDENTIAL" must be viewed only by counsel (as defined in paragraph 3) of the receiving party, by independent experts (pursuant to the terms of

paragraph 8), and by the additional individuals listed below, provided each such individual has read this Order in advance of disclosure and has agreed in writing to be bound by its terms:

(a) Executives who are required to participate in policy decisions with reference to this action;

(b) Technical personnel of the parties with whom Counsel for the parties find it necessary to consult, in the discretion of such counsel, in preparation for trial of this action; and

(c) Stenographic and clerical employees associated with the individuals identified above.

10. With respect to material designated "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY," any person indicated on the face of the document to be its originator, author or a recipient of a copy of the document, may be shown the same.

11. All information which has been designated as "CONFIDENTIAL" or "CONFIDENTIAL -FOR COUNSEL ONLY" by the producing or disclosing party, and any and all reproductions of that information, must be retained in the custody of the counsel for the receiving party identified in paragraph 3, except that independent experts authorized to view such information under the terms of this Order may retain custody of copies such as are necessary for their participation in this litigation.

12. Before any materials produced in discovery, answers to interrogatories, responses to requests for admissions, deposition transcripts, or other documents which are designated as Confidential Information are filed with the Court for any purpose, the party seeking to file such material must seek permission of the Court to file the material under seal.

13. At any stage of these proceedings, any party may object to a designation of the materials as Confidential Information. The party objecting to confidentiality must notify, in writing, counsel for the designating party of the objected-to materials and the grounds for the objection. If the dispute is not resolved consensually between the parties within seven (7) days of receipt of such a notice of

objections, the objecting party may move the Court for a ruling on the objection. The materials at issue must be treated as Confidential Information, as designated by the designating party, until the Court has ruled on the objection or the matter has been otherwise resolved.

14. All Confidential Information must be held in confidence by those inspecting or receiving it, and must be used only for purposes of this action. Counsel for each party, and each person receiving Confidential Information must take reasonable precautions to prevent the unauthorized or inadvertent disclosure of such information. If Confidential Information is disclosed to any person other than a person authorized by this Order, the party responsible for the unauthorized disclosure must immediately bring all pertinent facts relating to the unauthorized disclosure to the attention of the other parties and, without prejudice to any rights and remedies of the other parties, make every effort to prevent further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

15. No party will be responsible to another party for disclosure of Confidential Information under this Order if the information in question is not labeled or otherwise identified as such in accordance with this Order.

16. If a party, through inadvertence, produces any Confidential Information without labeling or marking or otherwise designating it as such in accordance with this Order, the designating party may give written notice to the receiving party that the document or thing produced is deemed Confidential Information, and that the document or thing produced should be treated as such in accordance with that designation under this Order. The receiving party must treat the materials as confidential, once the designating party so notifies the receiving party. If the receiving party has disclosed the materials before receiving the designation, the receiving party must notify the designating party in writing of each such disclosure. Counsel for the parties will agree on a mutually acceptable manner of labeling or marking the inadvertently produced materials as "CONFIDENTIAL" or "CONFIDENTIAL - FOR COUNSEL ONLY" - SUBJECT TO PROTECTIVE ORDER.

17. Nothing within this order will prejudice the right of any party to object to the production of any discovery material on the grounds that the material is protected as privileged or as attorney work product.

18. Nothing in this Order will bar counsel from rendering advice to their clients with respect to this litigation and, in the course thereof, relying upon any information designated as Confidential Information, provided that the contents of the information must not be disclosed.

19. This Order will be without prejudice to the right of any party to oppose production of any information for lack of relevance or any other ground other than the mere presence of Confidential Information. The existence of this Order must not be used by either party as a basis for discovery that is otherwise improper under the Federal Rules of Civil Procedure.

20. Nothing within this order will be construed to prevent disclosure of Confidential Information if such disclosure is required by law or by order of the Court.

21. Upon final termination of this action, including any and all appeals, counsel for each party must, upon request of the producing party, return all Confidential Information to the party that produced the information, including any copies, excerpts, and summaries of that information, or must destroy same at the option of the receiving party, and must purge all such information from all machine-readable media on which it resides. Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs, memoranda, motions, and other documents filed with the Court that refer to or incorporate Confidential Information, and will continue to be bound by this Order with respect to all such retained information. Further, attorney work product materials that contain Confidential Information need not be destroyed, but, if they are not destroyed, the person in possession of the attorney work product will continue to be bound by this Order with respect to all such retained information.

22. The restrictions and obligations set forth within this order will not apply to any information that: (a) the parties agree should not be designated Confidential Information; (b) the parties agree, or the Court rules, is already public knowledge; (c) the parties agree, or the Court rules,

has become public knowledge other than as a result of disclosure by the receiving party, its employees, or its agents in violation of this Order; or (d) has come or will come into the receiving party's legitimate knowledge independently of the production by the designating party. Prior knowledge must be established by pre-production documentation.

23. The restrictions and obligations within this order will not be deemed to prohibit discussions of any Confidential Information with anyone if that person already has or obtains legitimate possession of that information.

24. Transmission by facsimile is acceptable for all notification purposes within this order.

25. This Order may be modified by agreement of the parties, subject to approval by the Court.

26. The Court may modify the terms and conditions of this Order for good cause, or in the interest of justice, or on its own order at any time in these proceedings. The parties prefer that the Court provide them with notice of the Court's intent to modify the Order and the content of those modifications, prior to entry of such an order.

IT IS SO ORDERED this _____ day of _____, _____

_____

Judge, United States District Court

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

+ Plaintiffs, v. Defendant.	AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____, declare and say that:

1. I am employed as _____ by _____.

2. I have read the Protective Order entered in _____ v. _____, Case No. _____, and have received a copy of the Protective Order.

3. I promise that I will use any and all "Confidential" or "Confidential - For Counsel Only" information, as defined in the Protective Order, given to me only in a manner authorized by the Protective Order, and only to assist counsel in the litigation of this matter.

4. I promise that I will not disclose or discuss such "Confidential" or "Confidential - For Counsel Only" information with anyone other than the persons described in paragraphs 3, 8 and 9 of the Protective Order.

5. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction of the United States District Court for the Southern District of California with respect to enforcement of the Protective Order.

6. I understand that any disclosure or use of "Confidential" or "Confidential - For Counsel Only" information in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of court.

I declare under penalty of perjury that the foregoing is true and correct.

Date:_____

_____