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Attorneys for Activision Publishing, Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

ACTIVISION PUBLISHING INC., a Delaware corporation, Plaintiff, vs. GIBSON GUITAR CORPORATION, a Delaware corporation, Defendant.	CASE NO. CV08-01653 PSG (SHx) COMPLAINT FOR DECLARATORY RELIEF DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff Activision Publishing, Inc. ("Activision"), for its complaint against Defendant Gibson Guitar Corp. ("Gibson") alleges as follows:

THE PARTIES

1. Activision is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California, located at 3100 Ocean Park Boulevard, Santa Monica, California 90405.

2. On information and belief, Gibson is a corporation organized and existing under the laws of the State of Delaware and maintains a place of business located at 309 Plus Park Blvd., Nashville, Tennessee, 37217.

JURISDICTION AND VENUE

3. This is a complaint for declaratory relief under the patent laws of the United States, 35 U.S.C. §§ 1, *et sec.*

4. Activision seeks declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

6. On information and belief, Gibson has systematic and continuous contacts in this judicial district. On information and belief Gibson has in the past and is currently engaged in regular business activities within this judicial district. This Court therefore has personal jurisdiction over Gibson.

7. Venue in this district is proper under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

THE SUBSTANTIAL CONTROVERSY BETWEEN THE PARTIES

8. Activision is a leading international publisher of interactive entertainment software. Activision distributes certain video games and controllers marketed under the trademark "Guitar Hero" (the "Guitar Hero game").

9. On information and belief Gibson purports to be the owner of all right, title and interest in and to United States Letters Patent No. 5,990,405 ("the '405 Patent"), titled "System and Method for Generating and Controlling a Simulated Musical Concert Experience." A copy of the '405 Patent is attached at Exhibit A.

10. On January 7, 2008, counsel for Gibson notified Activision by letter that Activision's Guitar Hero game was allegedly covered by the claims of the '405 patent (a copy of this letter is attached at Exhibit B):

> based on our preliminary analysis, the Guitar Hero software (including any expansion packs) and the guitar controller provided by Activision being used as a musical instrument (packaged with the software or sold standalone) are covered by the '405 patent. By continuing to sell any version of the Guitar Hero game software and/or instrument controllers for use with the Guitar Hero game software (packaged or sold standalone), Activision is taking advantage of Gibson's patented technology without properly compensating Gibson.

11. Gibson further demanded that Activision either halt all sales of any version of the Guitar Hero game or enter into a license under the '405 patent:

> In summary, Gibson requests that Activision ***obtain a license under Gibson's '405 patent or halt sales of any version of the Guitar Hero game software*** (including expansion packs) and/or instrument controllers for use with the Guitar Hero game software (packaged or sold standalone). Gibson takes this threat to its intellectual property seriously and is prepared to discuss any reasonable resolution to the matter. (emphasis added)

12. Activision responded to this letter on January 17, 2008, requesting additional information from Gibson to assess Gibson's demands.

13. Gibson responded by letter on February 18, 2008 (a copy of this letter is attached at Exhibit C). In this letter, Gibson attached a "Preliminary Claim

Chart Relating to Gibson's USPN 5,990,405 and Activision's Guitar Hero System," which allegedly compared the elements of claims 1, 13, 14, 15, 25, and 28 of the '405 patent to the Guitar Hero game.

14. Gibson again reiterated its demand that Activision enter into a license or halt all sales of the Guitar Hero game. Gibson demanded a response within a week of its February 18 letter:

> Again, Gibson requests that Activision obtain a license under Gibson's '405 patent or halt sales of any version of the Guitar Hero Product, including game software (and expansion packs) and/or instrument controllers for use with the guitar Hero game software (packaged or sold standalone). Gibson has not previously licensed the '405 patent, but takes this threat to its intellectual property seriously and remains prepared to discuss any reasonable resolution to the matter.
>
> Please respond by **February 22, 2008**

15. Prior to the February 22 deadline, Activision requested additional time to consider Gibson's allegations.

16. Activision thereafter decided that it did not want or need a license under Gibson's '405 patent. Activision informed Gibson in a letter dated March 10 that it did not infringe any valid claim of the '405 patent. Activision therefore declined to enter into a license under the '405 patent (a copy of this letter is attached at Exhibit D).

17. By virtue of the foregoing, there is a substantial controversy between Activision and Gibson. Furthermore, Activision and Gibson have adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment Of Noninfringement Of The '405 Patent)

18. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 17 of this Complaint with the same force and effect as if fully set forth herein.

19. By virtue of Gibson's allegations that Activision's Guitar Hero game is covered by the '405 patent, and by virtue of Gibson's demands that Activision either take a license under the '405 patent or "halt sales of any version of the Guitar Hero Product," a substantial controversy exists between Activision and Gibson as to whether Activision and/or its Guitar Hero game infringes the '405 patent.

20. Activision has not and does not infringe, literally or under the doctrine of equivalents, either directly, indirectly or willfully, any claim of the '405 patent.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment Of Invalidity Of the '405 Patent)

21. Plaintiff repeats and realleges each and every allegation in Paragraphs 1 through 17 of this Complaint with the same force and effect as if fully set forth herein.

22. By virtue of Gibson's allegations that Activision's Guitar Hero game is covered by the '405 patent, and by virtue of Gibson's demands that Activision either take a license under the '405 patent or "halt sales of any version of the Guitar Hero Product," a substantial controversy exists between Activision and Gibson as to the validity of the '405 patent.

23. Each claim of the '405 patent is invalid for failure to meet one or more of the conditions of patentability specified in 35 U.S.C. §§ 102, 103, and/or 112.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment Of Equitable Estoppel)

24. Plaintiff repeats and realleges each and every allegation in Paragraphs 1 through 17 of this Complaint with the same force and effect as if fully set forth herein.

25. By virtue of Gibson's allegations that Activision's Guitar Hero game is covered by the '405 patent, and by virtue of Gibson's demands that Activision either take a license under the '405 patent or "halt sales of any version of the Guitar Hero Product," a substantial controversy exists between Activision and Gibson as to whether Activision and/or its Guitar Hero game infringes the '405 patent.

26. On information and belief, Gibson has been aware of the Guitar Hero Game for many years.

27. On information and belief, despite being aware of the Guitar Hero Game for many years, Gibson has encouraged Activision to manufacture and sell devices it now alleges infringe the '405 patent.

28. Based on Gibson's actions, along with other aspects of the parties' business relationship, Gibson is barred under the doctrine of equitable estoppel from asserting that Activision infringes the '405 patent.

FOURTH CLAIM FOR RELIEF

(Declaratory Judgment That Activision Has An Implied License Under The '405 Patent)

29. Plaintiff repeats and realleges each and every allegation in Paragraphs 1 through 17 of this Complaint with the same force and effect as if fully set forth herein.

30. By virtue of Gibson's allegations that Activision's Guitar Hero game is covered by the '405 patent, and by virtue of Gibson's demands that Activision either take a license under the '405 patent or "halt sales of any version of the Guitar Hero Product," a substantial controversy exists between Activision and Gibson as to whether Activision and/or its Guitar Hero game infringes the '405 patent.

31. On information and belief, Gibson has been aware of the Guitar Hero Game for many years.

32. On information and belief, despite being aware of the Guitar Hero Game for many years, Gibson has encouraged Activision to manufacture and sell devices it now alleges infringe the '405 patent.

33. Based on Gibson's actions, along with other aspects of the parties' business relationship, Activision has an implied license under the '405 patent and Gibson cannot therefore claim that Activision infringes the '405 patent.

FIFTH CLAIM FOR RELIEF

(Declaratory Judgment of Laches)

34. Plaintiff repeats and realleges each and every allegation in Paragraphs 1 through 17 of this Complaint with the same force and effect as if fully set forth herein.

35. By virtue of Gibson's allegations that Activision's Guitar Hero game is covered by the '405 patent, and by virtue of Gibson's demands that Activision either take a license under the '405 patent or "halt sales of any version of the Guitar Hero Product," a substantial controversy exists between Activision and Gibson as to whether Activision and/or its Guitar Hero game infringes the '405 patent.

36. On information and belief, Gibson has been aware of the Guitar Hero Game for many years.

37. On information and belief, Gibson has delayed in bringing a patent infringement lawsuit against Activision.

38. On information and belief, this delay is unreasonable and unexcused.

39. Gibson's delay has materially prejudiced Activision.

40. Any damages that Gibson claims are barred in whole or in part by the doctrine of laches.

PRAYER FOR RELIEF

WHEREFORE, Activision requests entry of judgment in its favor and against Gibson as follows:

A. Declaring that Activision and its products sold under the "Guitar Hero" name, including all versions, peripherals, controllers, and expansion packs, do not infringe, literally or under the doctrine of equivalents, either directly, indirectly or willfully, any claim of the '405 patent;

B. Declaring that Gibson is barred under the doctrine of equitable estoppel from asserting that Activision and its products sold under the "Guitar Hero" name, including all versions,

peripherals, controllers, and expansion packs infringe the '405 patent;

C. Declaring that Activision has an implied license under the '405 patent;

D. Declaring that any damages Gibson claims are barred in whole or in part by the doctrine of laches;

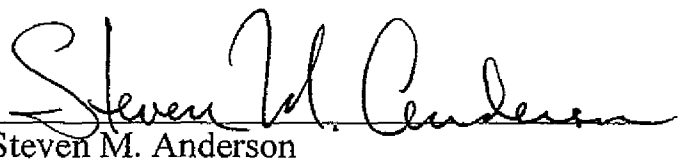
E. Declaring that all claims of the '405 patent are invalid;

F. Declaring this case an "exceptional case" within the meaning of 35 U.S.C. § 285 and awarding reasonable attorneys' fees to Activision; and

G. Awarding Activision other costs and further relief as the Court deems just and proper.

DATED: March 11, 2008

QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP

By 
Steven M. Anderson
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

DATED: March 11, 2008

QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP

By _____
Steven M. Anderson
Attorneys for Plaintiff

EXHIBIT

A

US005990405A

United States Patent [19]

Auten et al.

[11] Patent Number: 5,990,405

[45] Date of Patent: Nov. 23, 1999

[54] **SYSTEM AND METHOD FOR GENERATING AND CONTROLLING A SIMULATED MUSICAL CONCERT EXPERIENCE**

[75] Inventors: **Don R. Auten**, Nashville; **Richard T. Akers**, Antioch; **Richard Gembar**, Mt. Juliet, all of Tenn.

[73] Assignee: **Gibson Guitar Corp.**, Nashville, Tenn.

[21] Appl. No.: **09/112,050**

[22] Filed: **Jul. 8, 1998**

[51] **Int. Cl.**[6] **G10H 1/36**

[52] **U.S. Cl.** **84/609**; 84/610; 84/634; 84/649; 84/650

[58] **Field of Search** ..... 84/600–602, 609–612, 84/622–625, 626, 633–636, 649–652, 712–714, 477 R, 478

[56] **References Cited**

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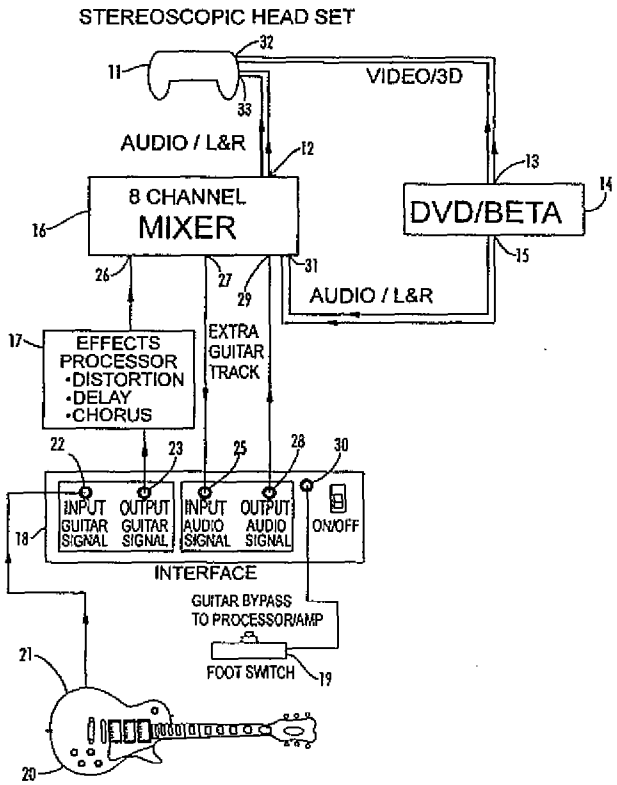
Primary Examiner—William M. Shoop, Jr.
Assistant Examiner—Marlon Fletcher
Attorney, Agent, or Firm—Waddey & Patterson

[57] **ABSTRACT**

A musician can simulate participation in a concert by playing a musical instrument and wearing a head-mounted 3D display that includes stereo speakers. Audio and video portions of a musical concert are pre-recorded, along with a separate sound track corresponding to the musical instrument played by the musician. Playback of the instrument sound track is controlled by signals generated in the musical instrument and transmitted to a system interface box connected to the audio-video play back device, an audio mixer, and the head-mounted display. An external bypass switch allows the musician to suppress the instrument sound track so that the sounds created by actual playing of the musical instrument are heard along with the pre-recorded audio and video portions.

30 Claims, 2 Drawing Sheets



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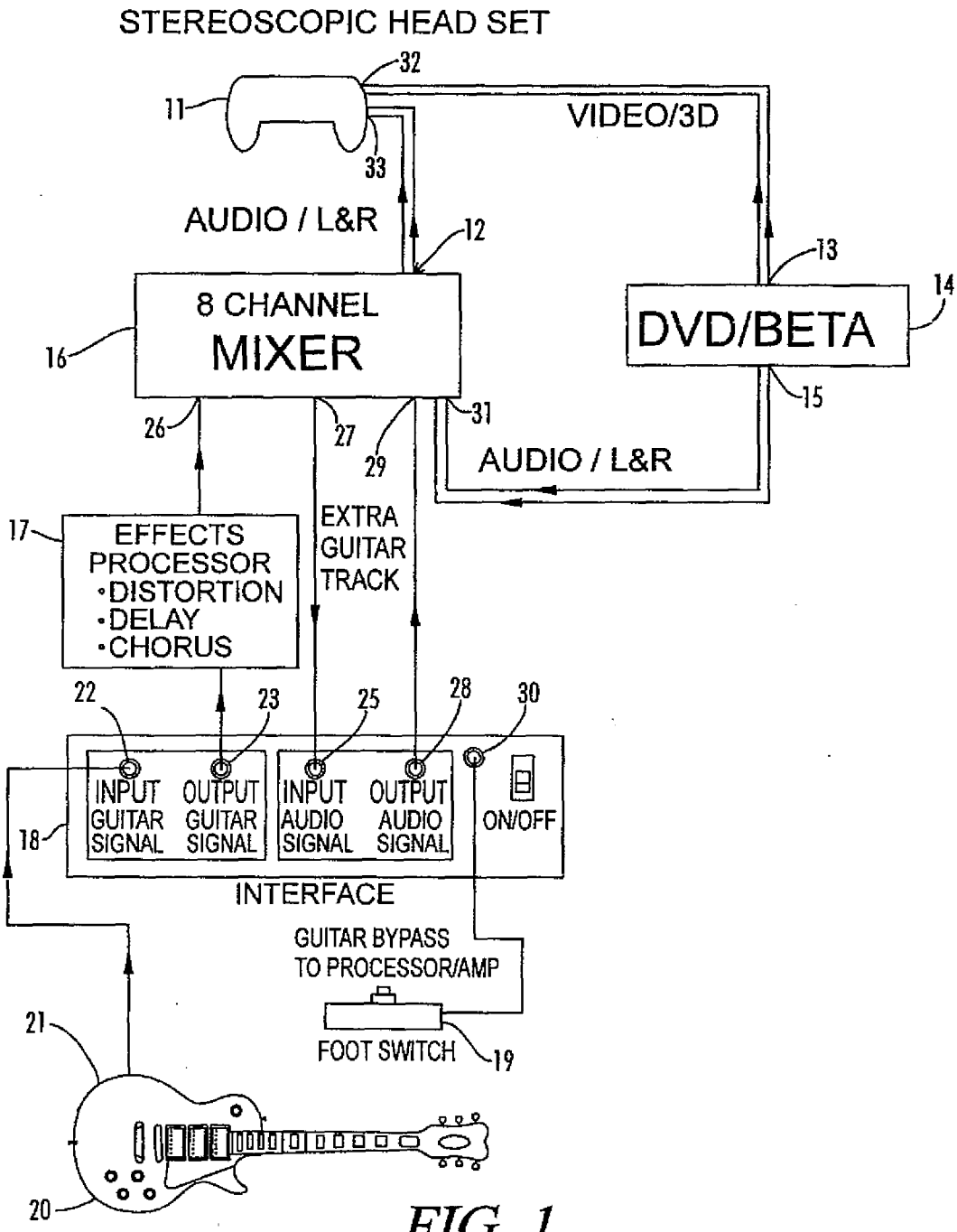

FIG. 1

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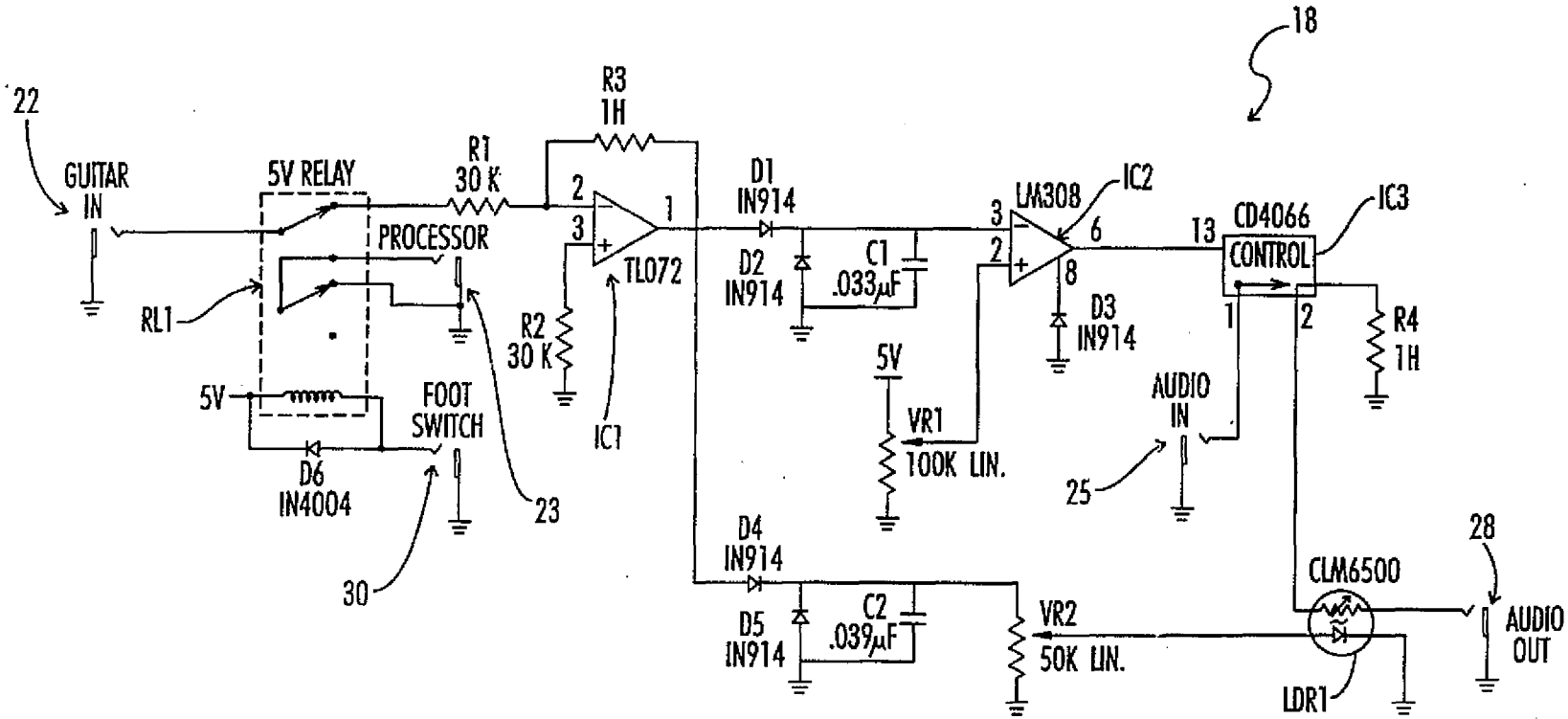

FIG. 2

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SYSTEM AND METHOD FOR GENERATING AND CONTROLLING A SIMULATED MUSICAL CONCERT EXPERIENCE

BACKGROUND OF THE INVENTION

The present invention relates generally to audio and video simulations of a pre-recorded musical performance.

More particularly, this invention pertains to the generation and control of a simulated musical concert experience and participation by a musician in a pre-recorded musical performance using a musical instrument as the control device.

Virtual reality systems are generally recognized to be a combination of computer hardware, software, and peripherals which recreate a virtual world or virtual environment using a video display, often in combination with an audio sound system. Conventional virtual reality systems are quite complex, combining the hardware, software, and peripheral devices in a specific manner to immerse or subject the user of the system to visual and sound stimuli which simulate a real world experience. Typically, a virtual reality system further includes one or more input devices and interface software so that the user of the system can interact with the virtual environment that is being recreated, such as to simulate the user movement in the environment or manipulation of virtual objects reproduced in the virtual environment.

Virtual reality systems in the prior art have been used for entertainment purposes, to conduct scientific experiments, or to allow a user to indirectly carry out tasks which would otherwise be too difficult or dangerous when conducted in a real environment.

To a lesser extent, virtual reality systems have been used to create and control a virtual world that responds to music signals or to pre-recorded control tracks corresponding to music signals. Such a system is disclosed in U.S. Pat. No. 5,513,129, which describes a virtual reality in which a music source is connected to an electronic interface and to a virtual reality processor. The system is further controlled by one or more input devices, such as a head tracker and manipulator glove. The pre-recorded music, along with an optional pre-recorded control track, controls and manipulates objects within the virtual environment such that the music effectively drives the display of an animated graphical scene. However, the system described in U.S. Pat. No. 5,513,129 does not provide a simple and effective method for allowing a musician to participate in and control a "virtual environment" through the actual operation of a musical instrument, such as an electric guitar. Such a system would provide a source of entertainment to professional and amateur musicians alike. It also would assist musical instrument manufacturers in promoting the sale of their instruments by allowing a prospective purchaser to recreate a musical concert, to simulate the musician's participation in the concert, and to control the sound portion of the concert through operation of the guitar or other instrument. Preferably, such a simulation system would minimize the use of complex and expensive hardware and software so that the system would be easy to set up and affordable even at the retail store level. Such a system is lacking in the prior art.

SUMMARY OF THE INVENTION

In the simulation and control system of the present invention, the video and sound portions of a musical performance or concert is pre-recorded on a video tape, digital disc, or other media containing audio and video tracks. The sound portion of the concert will include a separate instrument track representing musical sounds that would be made during the pre-recorded concert by a specific musical instrument. The tape or disc containing the prerecorded video and sound tracks is loaded into a conventional video disc or video tape player. The video output from the video player is connected to a video display, such as a stereoscopic headset. The audio output of the video player is connected to left and right audio inputs on a multi-channel audio mixer. Means are provided in the mixer or in a decoder to separate the pre-recorded instrument sound track from the left and right concert sound tracks containing music from the other concert instruments as well as ambient crowd and backstage noise. The separated instrument sound track is then available for control by other system hardware.

A musical instrument corresponding to the specific musical instrument represented by the pre-recorded instrument sound track has its audio output connected to an instrument input on a system interface box. The interface box also includes an instrument track audio input connected to an output on the mixer, with a controlled instrument track audio output from the interface box connected to a separate audio input on the mixer.

The interface box includes an instrument track control circuit which electronically varies an electrical characteristic or parameter of the instrument track audio, such as the audio level. The instrument track control circuit in the interface box is responsive to the instrument audio signals received at the instrument audio input on the interface box. Accordingly, the playing of the musical instrument by the musician will control or vary the sound level of the instrument track provided to the mixer. The mixer combines the controlled instrument soundtrack with the left and right concert sound tracks, and provides the mixed audio to a mixer output connected to the speakers on the headset. The musician can then cause the system to vary the volume level of the instrument track in response to playing of the musical instrument.

In a further embodiment of the system, the interface box includes a bypass circuit controlled by an external switch. For a normal system mode, only the controlled instrument sound track is provided to the mixer and therefore to the headset. In a bypass mode, as selected by the switch, the bypass circuit causes the interface box to suppress the instrument sound track and to provide the audio signals produced by the instrument directly to the mixer. In this bypass mode, then, the musician can hear himself play the instrument in synchronization with the concert video track and the left and right concert sound tracks, thereby enhancing the level of simulated participation. Preferably, the video portion of the pre-recorded concert is filmed as if "through the eyes" of an onstage musician so that the user of the system can assume that role while playing the instrument.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a block diagram of the simulation control system of the present invention.

FIG. 2 is a schematic diagram of the system interface box used in the system of FIG. 1.

DESCRIPTION OF THE PREFERRED EMBODIMENTS

The concert simulation and control system 10 is shown generally in FIG. 1. A musical instrument, such as a guitar 20, having one or more pick-ups or other transducers that will generate electrical audio signals, when the guitar is played, at an instrument audio output 21. Instrument audio

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output 21 is electrically connected to an instrument input 22 on a system interface box 18. Interface box 18 includes an instrument audio output 23 which, as will be described below, can be switched to provide a direct electrical connection to instrument input 22.

In one embodiment of system 10, where the musical instrument is guitar 20, a musical effects processor 17 is electrically connected between instrument audio output 23 on interface box 18 and a corresponding mixer instrument input 26 on a multi-channel audio mixer 16. Effects processor 17 is of conventional design and will typically include electronically induced distortion, delay, and other special effects which electrically modify the audio signals generated by guitar 20.

The audio mixer 16 is also of conventional design and in one embodiment, will have eight audio channels. A pair of left and right source audio inputs 31 on mixer 16 are electrically connected to corresponding left and right source audio outputs 15 on an audio video ("AV") playback device 14. AV playback device 14 is also of conventional design, and can be a video tape player or DVD player. Accordingly, AV player 14 will also have a source video output 13 electrically connected to a video input 32 on a video display device, such as the video stereoscopic headset 11. Preferably, headset 11 will be a conventional head mounted display wearable by the player of guitar 20. Headset 11 will include left and right speakers driven by a pair of left and right headset audio inputs 33 which are electrically connected to corresponding left and right mixer audio outputs 12 on mixer 16. Three-dimensional viewing of the concert video is enabled by conventional 3D shutter glasses (not shown) inside the headset. A commercially available headset usable in this application is the Model CE200-W Cyber Eye headset from General Reality Company, San Jose, Calif.

The audio portion of the pre-recorded musical concert to be played back by AV player 14 will include left and right concert sound tracks and a separable instrument sound track, all of which are electrically transmitted to mixer 16. Mixer 16 can include conventional circuits capable of electronically separating the instrument sound track from the left and right concert sound tracks. Otherwise, the tracks are separated externally by AV player 14 or by an external decoder and provided to mixer 16 through discrete inputs. Accordingly, mixer 16 will further include an instrument track mixer output 27 electrically connected to an instrument track interface input 25 on interface box 18. In accordance with the novel control system and method of this invention, and as will be described further below, interface box 18 will preferably include a controlled instrument track audio output 28 electrically connected to input 29 on mixer 16. Mixer 16 can then, in conventional fashion well known to those of skill in the art, combine and mix the left and right concert sound tracks provided at input 31 by AV player 14 with the controlled instrument sound track provided at input 29, and output the mixed audio signal to the headset 11 at mixer audio output 12.

Interface box 18 can also include a switch input 30 electrically connected to an external switch 19 operable by the musician playing guitar 20. In conjunction with the bypass and control circuits of system interface box 18 as illustrated in FIG. 2 and described below, switch 19 will place interface box 18 in either a normal or bypass mode, allowing the musician to select from at least two different simulation modes available on system 10.

One embodiment of the system interface box 18 is shown schematically in FIG. 2. The instrument input 22 is electrically connected to a relay RL1. Relay RL1 has a "normal" position in which it will cause the instrument audio output 21 to be electrically connected to the inverting input (pin 2) of operation amplifier IC1, through resistor R1. Relay RL1 can be switched to a "bypass" mode whereby the instrument audio output 21 is electrically connected directly to instrument audio output 23 on interface box 18. Relay RL1 is caused to switch from the normal mode to the bypass mode by activation of switch 19 connected to interface box 18 at switch input 30. Preferably, switch 19 is a foot operated switch so that the musician can change the system mode while simultaneously playing guitar 20 with both hands.

When the system 10 and bypass circuit 18 are in the normal mode, the instrument audio signals are amplified by IC1 in a conventional manner, with the gain set by resistors R3 and R1. The audio signals at the output of amplifier IC1 are rectified by diodes D1 and D2. The ripple in the output signal from amplifier IC1 is reduced by capacitor C1, so that the output is a substantially DC voltage having a magnitude that corresponds to variations in the average peak magnitude of the audio signals from guitar 20. The rectified signal is applied to one input of an analog comparator IC2. The output of comparator IC2 is either "high" or "low" depending upon the relationship between the voltage at terminal 3 of IC2 and the voltage at terminal 2. The voltage at terminal 2 of IC2 is a comparator threshold set in conventional manner by potentiometer VR1 connected to a nominal five volt supply voltage. The output of comparator IC2 controls an electronic switch IC3, which can be a conventional CMOS switch, such as a type CD4066 available from National Semiconductor.

Electronic switch IC3 performs the function of switching instrument track input 25 on interface box 18 into the control circuit of interface box 18 such that the instrument sound track audio is electrically connected to controlled instrument track output 28 through a control device LDR1. Control device LDR1 can be any conventional signal conditioning device, such as an amplifier or an active or passive attenuator. In the embodiment of FIG. 2, control device LDR1 is a light dependent resistor, such as the type CLM5500 available from Javenco Electronics Supply. Accordingly, the instrument sound track audio signals are attenuated by a resistive portion of control device LDR1, which is varied by the output from a light emitting portion. Thus, control device LDR1 includes a light emitting diode having a control input driven by the output of amplifier IC1. Again, the output of amplifier IC1 is rectified by diodes D4 and D5, with the rectified signal further smoothed by capacitor C2, such that the variable DC voltage is applied across potentiometer VR2. Accordingly, as the RMS or average signal level or magnitude of the instrument audio signal increases, the voltage across potentiometer VR2 will proportionally increase, thereby increasing the current through the LED portion of control device LDR1. This decreases the attenuation provided by control device LDR1 of the instrument sound track audio between instrument sound track audio input 25 and controlled instrument sound track audio output 28. Using such a control circuit, then, and when the system 10 is in the normal mode, the musician will hear the pre-recorded instrument sound track on the headset at a volume that varies in proportion to how hard or how soft the musician is striking the strings of guitar 20. This control effect provides a simulation of the musician actually participating as a player of the instrument in the pre-recorded musical concert.

In a further embodiment of system 10, an additional switch output can be provided on switch IC3 and connected

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to a control input on AV player **14**, such that generation of instrument audio signals by playing of the guitar **20** will activate playback of the pre-recorded musical concert from AV player **14**.

In yet another embodiment of the system **10** in which AV player **14** is a DVD player, having a conventional PCM/AC-3 digital audio output at source audio output **15**, a Dolby Digital Decoder can be placed in the audio circuit between source audio output **15** and mixer source audio input **31**, to digitally separate the pre-recorded instrument sound track from the pre-recorded left and right concert sound tracks.

Although system **10** is shown and described for use with an electric or amplified acoustic guitar, it can be used with a variety of other musical instruments which either directly, or indirectly through an interface device, will produce electrical audio signals representative of the sounds made by the instrument.

Also, in the embodiment of system **10** as described and shown, the characteristic of the pre-recorded instrument sound track that is controlled by the control circuit in interface box **18** is the signal level or magnitude of the audio. However, by changing the nature of the control circuit, different parameters of the instrument sound track audio can be varied in response to operation of the musical instrument. For example, a controllable analog or digital audio filter could be substituted for the light dependent resistor shown in FIG. **2**, whereby the frequency response of the filter will vary in accordance with the voltage across potentiometer VR2, thereby changing the frequency or tonal characteristics of the instrument audio track as the guitar **20** is played.

In many applications, a wearable stereoscopic headset with left and right speakers is an ideal combination of a video display and audio transducer to be used with system **10**. However, in other applications, a two dimensional video display can be used, either wearable or not, in conjunction with floor or wall mounted audio speakers. Or, multiple audio and video playback and display systems can be used in parallel.

Generally, the pre-recorded musical concert will be recorded on video using a stereoscopic camera to produce a "3D" playback effect, with simultaneous audio recording of the concert sound tracks and, usually, the instrument sound track. Other backstage footage can be included to simulate the musician's participation in pre-concert preparation and build-up. To further create the virtual concert experience, additional backstage and onstage audio can be recorded, either during filming of the actual musical performance or later in the studio. The separate instrument sound track can be recorded live in conjunction with the video and other audio portions of the musical concert or can be added later or re-mixed in the studio. If the system **10** is to be used by an instrument manufacturer to promote the sale of its products, suitable marketing and promotional logos and messages can be superimposed over the concert video and/or audio while the system is in operation. To this end, the pre-recorded video can include a segment where the musician is shown selecting a specific manufacturer's instrument to play on stage.

One advantage of this system is that no computer is needed to operate or control it. If a DVD player is used for AV player **14**, multiple pre-recorded concert segments can be placed on the disc, allowing the user of the system to easily switch to other programs (a jazz club, a country music festival, etc.), representing a favorite experience, venue or band.

Thus, although there have been described particular embodiments of the present invention of a new System and Method for Generating and Controlling a Simulated Musical Concert Experience, it is not intended that such references be construed as limitations upon the scope of this invention except as set forth in the following claims.

What is claimed is:

1. A system for electronically simulating participation by a user in a pre-recorded musical performance comprising:

a. a musical instrument, the musical instrument generating an instrument audio signal at an instrument audio output, the instrument audio signal varying in response to operation of the instrument by the user of the system;

b. a video source providing a source video signal at a source video output, the source video signal representing a video portion of the pre-recorded musical performance;

c. a video display responsive to the source video signal whereby the user can view the video portion of the pre-recorded musical performance on the video display;

d. an audio source providing a source audio signal at a source audio output, the source audio signal representing an audio portion of the pre-recorded musical performance, the audio portion including an instrument sound track containing pre-recorded musical sounds that would be generated by the musical instrument in the pre-recorded musical performance;

e. a system interface device having a first audio input electrically connected to the instrument audio output, a second audio input electrically connected to the source audio output, and a first interface audio output;

f. the system interface device including a source audio control circuit responsive to the instrument audio signal, whereby a characteristic of the source audio signal is controlled in response to operation of the musical instrument by the user to provide a controlled source audio signal at the first interface audio output; and

g. an audio playback transducer responsive to the controlled source audio signal such that the user can listen to the audio portion of the pre-recorded musical performance on the transducer, in synchronization with the video portion.

2. The system of claim **1** whereby the characteristic of the source audio signal controlled by the source audio control circuit is a source audio signal level.

3. The system of claim **2** wherein the musical instrument is a guitar whereby variations in striking of strings on the guitar by the user produces changes in level of the audio portion of the pre-recorded musical performance on the audio playback transducer.

4. The system of claim **1** wherein the system interface device further comprises an instrument audio switch responsive to the instrument audio signal level to connect the controlled source audio signal to the interface audio output only when the instrument audio signal level reaches a pre-determined threshold generated by operation of the musical instrument.

5. The system of claim **4** further comprising a bypass switch operable when switched to a bypass position to connect the instrument audio signal to the audio transducer such that the user can listen to the instrument audio signal while operating the musical instrument and while viewing the video portion of the musical performance.

6. The system of claim **5** wherein the system interface device is further operable to suppress the instrument audio track when the bypass switch is in the bypass position.

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7. The system of claim 1 further comprising an audio mixer operably connected between the interface audio output and the audio transducer.

8. The system of claim 7 wherein the audio mixer is further operably connected between the source audio output and the first audio input on the interface device.

9. The system of claim 8 further comprising an audio effects processor operably connected between the system interface device and the audio mixer.

10. The system of claim 1 wherein the audio source and the video source are combined in a video tape machine.

11. The system of claim 1 wherein the audio source and the video source are combined in a video disc machine.

12. The system of either claim 10 or claim 11 wherein the video display and the audio playback transducer are combined in a stereoscopic head set wearable by the user.

13. A system for simulating participation of a user playing a musical instrument in a pre-recorded musical performance having audio and video portions, the musical instrument producing instrument audio signals at an instrument audio output when the instrument is played, comprising:

a. a source playback device for playback of the audio and video portions of the pre-recorded musical performance through corresponding source audio and source video outputs;

b. a source audio control device for controlling one or more characteristics of the audio portion of the pre-recorded musical performance during playback, the source audio control means operably connected to the source audio output and to the instrument audio output and having a controlled audio output; and

c. the source audio control device is responsive to the instrument audio signals whereby at least one characteristic of the audio portion of the pre-recorded musical performance is controlled by playing of the musical instrument by the user.

14. The system of claim 13 wherein the audio portion of the pre-recorded musical performance comprises a separate instrument sound track and whereby the characteristic of the audio portion controlled by the source audio control circuit is a volume level of the instrument sound track played by the system.

15. The system of claim 14 wherein the musical instrument is a guitar and wherein the instrument sound track comprises pre-recorded guitar music such that the volume level of the pre-recorded guitar music played by the system is controlled by playing of the guitar by the user.

16. The system of claim 15 further comprising a bypass switch operable by the user to suppress the instrument audio track and to cause the instrument audio signals to be played by the system when the user plays the guitar in synchronization with video portion of the pre-recorded musical performance.

17. The system of claim 16 wherein the audio portion of the pre-recorded musical performance further comprises a performance audio track separable from the instrument audio track such that the volume level of the pre-recorded guitar music is controlled independently of the performance audio track.

18. The system of claim 13 further wherein the source audio control device is further operable to cause initial activation of the source playback device in response to playing of the guitar by the user.

19. The system of claim 13 further comprising a headset wearable by the user, the headset having left and right audio speakers and a stereoscopic video display, the left and right speakers operably connected to left and right channels on the source audio output and to the controlled audio output, and the video display operably connected to the source video output.

20. The system of claim 13 further comprising an audio mixer, the mixer operably connected between the source audio, instrument audio, and controlled audio outputs and the left and right speakers.

21. A system for allowing a player using a guitar to control simulated participation in a musical concert during synchronous playback of a pre-recorded concert video track, pre-recorded left and right concert sound tracks, and a separate pre-recorded guitar track, the system comprising:

a. an audio/video playback device adapted to play the pre-recorded video track through a video source output in synchronization with playback of the pre-recorded left and right concert sound tracks through left and right channel source outputs and the pre-recorded guitar track through a guitar track source output;

b. a video display connected to the video source output;

c. an audio interface box having an instrument input connected to an instrument output on the guitar, an instrument audio output, a guitar track input, and a controlled guitar track output;

d. an audio mixer having a mixer source input connected to the left and right channel source outputs and to the guitar track source output, a mixer instrument input connected to the instrument audio output, a guitar track output connected to the guitar track input on the interface box and adapted to output the pre-recorded guitar track, a controlled guitar track input connected to the controlled guitar track output; and a mixer audio output having right and left channels, the mixer audio output providing a system audio signal responsive to instrument audio signals at the mixer instrument input, to the guitar track, and to the left and right sound tracks;

e. left and right audio speakers connected to respective left and right channels of the mixer audio output;

f. the interface box further comprising a guitar channel control circuit operable to control a signal level of the guitar track at the controlled guitar track output in response to variation in instrument audio signals generated at the instrument audio output when the guitar is played; and

g. whereby the player can hear the left and right pre-recorded concert sound tracks and the guitar track while viewing the video track and can control a sound volume of the guitar track by playing the guitar.

22. The system of claim 21 further comprising a bypass switch connected to a switch input on the interface box, the interface box further including a bypass circuit responsive to the bypass switch and operable to inhibit output of instrument audio signals to the mixer when the bypass switch is in a normal position, and operable to inhibit output of the pre-recorded guitar track to the mixer when the bypass switch is in a bypass position, whereby the player can selectably play and hear the guitar in synchronization with the left and right concert sound tracks and with the concert video track.

23. The system of claim 21 further comprising an effects processor connected between the instrument audio output and the mixer instrument input.

24. The system of claim 21 wherein the left and right audio speakers and the video display are combined in a headset wearable by the guitar player.

25. A method of a simulating participation by a musician in a recorded concert comprising the steps of

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a. playing on a playback device a pre-recorded concert video track in synchronization with a pre-recorded concert sound track and a pre-recorded instrument sound track;

b. separating the instrument sound track from the concert sound track and providing the separated instrument sound track to a control device;

c. varying in the control circuit at least one parameter of the instrument sound track in response to audio signals generated by a musical instrument when played by the musician, thereby generating a controlled instrument sound track; and

d. providing a normal simulation mode in which the controlled instrument sound track and the concert sound track are played on a sound system in synchronization with display of the concert video track.

26. The method of claim **25** further comprising the step of providing a bypass simulation mode in which the pre-recorded instrument track is suppressed and the audio signals generated by the musical instrument while the musician plays the instrument are played on the sound system in synchronization with the concert sound track and with display of the concert video.

27. The method of claim **26** wherein the musical instrument is a guitar.

28. An apparatus for controlling playback from a playback device of a pre-recorded instrument sound track in synchronization with a pre-recorded concert sound track and a pre-recorded concert video track comprising:

a. a musical instrument having an instrument audio output;

b. a control circuit connected to the instrument audio output and to the playback device; and

c. the control circuit comprising an instrument track input connected to an instrument track output through a signal conditioning circuit, the signal conditioning circuit responsive to audio signals generated by the musical instrument when the instrument is played whereby the control circuit generates a controlled instrument track signal at the instrument track output.

29. The apparatus of claim **28** further comprising a bypass circuit controlled by a bypass switch and operatively connected to the control circuit, the switch having a bypass position in which the bypass circuit inhibits generation of the controlled instrument track signal and allows audio reproduction of the audio signals generated by the musical instrument during playback of video track and the concert sound track.

30. The apparatus of claim **29** wherein the musical instrument is a guitar and wherein the pre-recorded instrument track comprises guitar music.

* * * * *

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B

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January 7, 2008

Greg Deutch
Vice President, Business & Legal Affairs
Activision, Inc.
3100 Ocean Park Boulevard
Santa Monica, CA 90405

Via Facsimile &
Federal Express

License Offer
U.S. Patent No. 5,990,405

Dear Mr. Deutch:

Our firm represents Gibson Guitar Corporation ("Gibson") of Memphis, Tennessee, in connection with intellectual property matters. Gibson is the owner of U.S. Patent No. 5,990,405 ("the '405 patent") (see enclosure), which relates to systems and methods for generating and controlling a simulated musical concert experience.

Activision, Inc. ("Activision") provides the Guitar Hero game software franchise, such as Guitar Hero III Legends of Rock, and guitar controllers, such as the Gibson Les Paul branded wireless guitar controller. The Guitar Hero game software has been marketed and sold in different versions and for use with a variety of game console platforms. Like the '405 patent claims, the Guitar Hero game and/or its guitar controllers are focused and specifically made to generate and control a simulated musical concert experience.

Instructions for the Guitar Hero game suggest operating the game by inserting the game disk into a game console, such as a Sony Playstation®3 game console. (See attached Guitar Hero III Legends of Rock Instruction Manual, p. 2.) Once operating on the game console, the Guitar Hero game enables the guitar controller to be used as a musical instrument within a simulated musical concert experience. For example, the Guitar Hero Instruction Manual for the Guitar Hero III game explains that the user can use the whammy bar on the guitar controller to "press in and out on Long Notes to add your own style to each song." (Manual, p. 5.) The Instruction Manual further states "that when you are playing Long Notes, the sound of the note will actually change and bend to reflect how much you're pressing on the Whammy Bar." (Manual, p. 8.) As such, Activision's written instructions suggest and describe using the guitar controller as a musical instrument when playing the Guitar Hero game.

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During operation, the Guitar Hero game enables control of a characteristic of the audio for the simulated musical concert as required by the claims of the '405 patent. In one example using the Guitar Hero III game, aspects of the guitar track for a selected song can be separately controlled when compared to the rest of a selected song's audio (*e.g.*, drums, vocals, etc.) heard and shown in a simulated concert venue. This controls or varies signals from the guitar controller and responsively changes a characteristic of the audio portion of the musical performance of the selected song (*e.g.*, changes the sound of the guitar track when compared to rest of the audio for the selected song). (See Manual, p. 8-9.)

Accordingly, based on our preliminary analysis, the Guitar Hero software (including any expansion packs) and the guitar controller provided by Activision being used as a musical instrument (packaged with the software or sold standalone) are covered by the '405 patent. By continuing to sell any version of the Guitar Hero game software and/or instrument controllers for use with the Guitar Hero game software (packaged or sold standalone), Activision is taking advantage of Gibson's patented technology without properly compensating Gibson. Gibson respects the intellectual property of others and expects others to respect its intellectual property as well. Activision already licenses Gibson's trademark rights in association with the Guitar Hero Les Paul Controller. We believe Activision will further benefit from a license to this additional intellectual property owned by Gibson.

In summary, Gibson requests that Activision obtain a license under Gibson's '405 patent or halt sales of any version of the Guitar Hero game software (including expansion packs) and/or instrument controllers for use with the Guitar Hero game software (packaged or sold standalone). Gibson takes this threat to its intellectual property seriously and is prepared to discuss any reasonable resolution to the matter.

We look forward to hearing from you.

Sincerely,

F. Leslie Bessenger III

Enclosures

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FINNEGAN HENDERSON FARABOW GARRETT & DUNNER LLP

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February 18, 2008

Mary A. Tuck
Senior Litigation Counsel
Activision, Inc.
3100 Ocean Park Boulevard
Santa Monica, CA 90405

Via Facsimile &
Federal Express

License Offer
U.S. Patent No. 5,990,405

Dear Ms. Tuck:

We acknowledge receipt of your letter of January 17, 2008. As an initial matter, the referenced Activision and Gibson agreements involve strictly trademark rights, and do not imply a license to any other Gibson intellectual property, such as Gibson's U.S. Patent No. 5,990,405 ("the '405 patent"). Indeed, the course of conduct only generally referenced provides no nexus to any patent rights owned by Gibson.

To assist you in further assessing Gibson's license offer, we attach a claim chart comparing at least claims 1, 13-15, 25 and 28 of the '405 patent to Activision's Guitar Hero Product. As reflected in the chart, Activision's Guitar Hero Product is covered by the '405 patent.

Again, Gibson requests that Activision obtain a license under Gibson's '405 patent or halt sales of any version of the Guitar Hero Product, including game software (and expansion packs) and/or instrument controllers for use with the Guitar Hero game software (packaged or sold standalone). Gibson has not previously licensed the '405 patent, but takes this threat to its intellectual property seriously and remains prepared to discuss any reasonable resolution to the matter.

Please respond by **February 22, 2008**.

Sincerely,

Leslie Bessenger GKA

F. Leslie Bessenger III

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Enclosures: Preliminary Claim Chart
cc: Max C. Marx, Gibson Guitar Corp.

Preliminary Claim Chart Relating to Gibson's USPN 5,990,405 and Activision's Guitar Hero System

U.S. Patent No. 5,990,405	Activision's Guitar Hero Product
1. A system for electronically simulating participation by a user in a pre-recorded musical performance comprising:	Activision's Guitar Hero Product, when operating on its intended game console, e.g., Xbox®, Wii™, or PLAYSTATION®, is a system for electronically simulating participation by a user in a pre-recorded musical performance. For example, Activision's online information on the Guitar Hero III Legends of Rock Product describes how use of the product provides a "Fully Immersive Concert Experience" by allowing a user to "realize a true rock concert experience with all new venues, incredible lighting effects, authentic instruments and sick character moves." Activision.com (Guitar Hero III page) (http://www.activision.com/index.html#gamepage|en_US|gameId:GHIIILegends&brandId:GuitarHero). The Guitar Hero III Legends of Rock Product lets a user "shred lead, rhythm, or bass guitar tracks in over 6 modes of play on over 55 licensed rock and roll songs all on a custom guitar-shaped controller." Activision.com (Guitar Hero III page) (http://www.activision.com/index.html#gamepage|en_US|gameId:GHII&brandId:GuitarHero).
a a musical instrument, the musical instrument generating an instrument audio signal at an instrument audio output, the instrument audio signal varying in response to operation of the instrument by the user of the system;	Activision's Guitar Hero Product includes and is specifically designed to be used with a "Guitar Controller," which the Guitar Hero Product refers to as a guitar. *See e.g.,* Guitar Hero III Legends of Rock Product in-game Basic Tutorial ("Here is your guitar. On the neck of the guitar ....") When operating with the Guitar Hero Product software on its intended game console, the Guitar Controller operates as a musical instrument generating an instrument audio signal at an instrument audio output varying in response to operation of the instrument by the user of the system. For example, the Guitar Hero Guitar Controller generates an electronic signal representing audio being played at an output of the controller in response to the user pressing a "Fret Button," strumming a "Strum Bar," and pressing the "Whammy Bar." *See e.g.,* Guitar Hero III Legends of Rock Product in-game tutorials referring to playing notes and chords with the Guitar Controller; Guitar Hero III Legends of Rock Product Manual, p. 5 ("Green Fret Button - Activates Green Note"); p. 8 ("Press the Whammy Bar in and out on Long Notes to add your own style to each song. You'll notice that when you are playing Long Notes, the sound of the note will actually change and bend to reflect how much you're pressing on the whammy bar.")
b. a video source providing a source video signal at a source video output, the source video signal representing a video portion of the pre-recorded musical performance;	Activision's Guitar Hero Product, when operating on its intended game console, is a video source of a video portion of a pre-recorded musical performance. When operating under the control of the Guitar Hero Product software, a video output signal is provided for viewing on a video display, *e.g.,* a television, where the signal represents an animated character performing a video portion of the selected pre-recorded musical performance. For example, Activision's online information on the Guitar Hero III Legends of Rock Product

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U.S. Patent No. 5,990,405	Activision's Guitar Hero Product
	describes how use of the product provides a "Fully Immersive Concert Experience" by allowing a user to "realize a true rock concert experience with all new venues, incredible lighting effects, authentic instruments and sick character moves." Activision.com (Guitar Hero III page) (http://www.activision.com/index.html#gamepage|en_US|gameId:GHIIILegends&brandId:GuitarHero). *See also* Getting Started page in Guitar Hero III Legends of Rock Product Manual instructing user to insert game with video data into the intended game console's media drive.
c. a video display responsive to the source video signal whereby the user can view the video portion of the pre-recorded musical performance on the video display;	Activision's Guitar Hero Product is specifically and intentionally made to be used with a video display, *e.g.*, a television, responsive to the source video signal from the intended game console operating under control of the Guitar Hero Product whereby the user can view the video portion of the pre-recorded musical performance on the video display. For example, Activision's Guitar Hero Product manual states "Use the smallest television screen possible." (Guitar Hero III Legends of Rock Product Manual, Warning Page).
d. an audio source providing a source audio signal at a source audio output, the source audio signal representing an audio portion of the pre-recorded musical performance, the audio portion including an instrument sound track containing pre-recorded musical sounds that would be generated by the musical instrument in the pre-recorded musical performance;	Activision's Guitar Hero Product software, when operating on its intended game console, is an audio source of the audio portion of the pre-recorded musical performance. When operating under the control of the Guitar Hero Product software, a source audio signal is provided from the console's media or hard drive representing the audio portion of the performance (*e.g.*, vocals, guitar tracks, and other song elements), which includes an instrument sound track containing pre-recorded musical sounds that would be generated by the musical instrument in the pre-recorded musical performance. For example, the Guitar Hero Product has an audio portion including the musical guitar sounds that would be generated by a guitar in the pre-recorded tracks. *See e.g.*, Activision.com (Guitar Hero II page) ("Guitar Hero II® features over 55 jaw-dropping tracks.") (http://www.activision.com/index.html#gamepage|en_US|gameId:GHII&brandId:GuitarHero).
e. a system interface device having a first audio input electrically connected to the instrument audio output, a second audio input electrically connected to the source audio output, and a first interface audio output;	Activision's Guitar Hero Product is specifically and intentionally made to be used with game consoles, e.g., Xbox®, Wii™, and PLAYSTATION®, that operate as a system interface electrically connected (e.g., wired or wireless) to the instrument audio output from the Guitar Controller output, electrically connected to the output of the audio portion of the pre-recorded musical performance from the hard drive or media drive during operation of the game, and provide an audio output. For example, Activision's Guitar Hero Product Manual shows USB connectors used to connect to the Guitar Controller. *See, e.g.*, Guitar Hero III Legends of Rock Product Manual, p. 5.

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U.S. Patent No. 5,990,405	Activision's Guitar Hero Product
f the system interface device including a source audio control circuit responsive to the instrument audio signal, whereby a characteristic of the source audio signal is controlled in response to operation of the musical instrument by the user to provide a controlled source audio signal at the first interface audio output; and	Activision's Guitar Hero Product is specifically and intentionally made to be used with game consoles, e.g., Xbox®, Wii™, and PLAYSTATION®. Such game consoles, when executing the Guitar Hero Product game software, operate as a source audio control circuit responsive to instrument audio signals from the Guitar Controller, whereby a characteristic of the source audio signal (*e.g.*, the pre-recorded guitar track) is controlled in response to the operation of the Guitar Controller by the user. The resulting audio, based upon the user's operation of the Guitar Controller, is provided as a controlled source audio signal on the audio output for the television. For example, the intended game console processor, when operating the Guitar Hero Product game software, responds to electrical signals from the Guitar Controller representing audio being played by, e.g., altering the pitch of the pre-recorded note or responding to user inaction or a misplayed note by suppressing the volume of the pre-recorded guitar track note. *See, e.g.,* Guitar Hero III Legends of Rock Product Manual at p. 8 ("Press the Whammy Bar in and out on Long Notes to add your own style to each song. You'll notice that when you are playing Long Notes, the sound of the note will actually change and bend to reflect how much you're pressing on the Whammy Bar.")
g. an audio playback transducer responsive to the controlled source audio signal such that the user can listen to the audio portion of the pre-recorded musical performance on the transducer, in synchronization with the video portion.	Activision's Guitar Hero Product is specifically and intentionally made to be used with speakers, *e.g.*, television speakers, responsive to the controlled source audio signal from the intended game console operating under control of the Guitar Hero Product game software such that the user can listen to the audio portion of the pre-recorded musical performance on the speakers in synchronization with the video portion of the performance. For example, Activision's Guitar Hero Product manual states "Use the smallest television screen possible." (Guitar Hero III Legends of Rock Product Manual, Warning Page). *See also* Activision's online information on the Guitar Hero III Legends of Rock Product describing how use of the product provides a "Fully Immersive Concert Experience" by allowing a user to "realize a true rock concert experience with all new venues, incredible lighting effects, authentic instruments and sick character moves." Activision.com (Guitar Hero III page) (http://www.activision.com/index.html#gamepage|en_US|gameId:GHIIILegends&brandId:GuitarHero).
13. A system for simulating participation of a user playing a musical instrument in a pre-recorded musical performance having audio and video portions, the musical instrument producing instrument audio signals at an instrument audio output when the instrument is played, comprising:	Activision's Guitar Hero Product, when operating on its intended game console, e.g., Xbox®, Wii™, or PLAYSTATION®, is a system for simulating participation of a user playing a musical instrument in a pre-recorded musical performance having audio and video portions. For example, Activision's online information on the Guitar Hero III Legends of Rock Product describes how use of the product provides a "Fully Immersive Concert Experience" by allowing a user to "realize a true rock concert experience with all new venues, incredible lighting effects, authentic instruments and sick character moves." Activision.com (Guitar Hero III page)

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U.S. Patent No. 5,990,405	Activision's Guitar Hero Product
	(http://www.activision.com/index.html#gamepage|en_US|gameId:GHIIILegends&brandId:GuitarHero). The Guitar Hero III Legends of Rock Product lets a user "shred lead, rhythm, or bass guitar tracks in over 6 modes of play on over 55 licensed rock and roll songs all on a custom guitar-shaped controller." Activision.com (Guitar Hero III page) (http://www.activision.com/index.html#gamepage|en_US|gameId:GHII&brandId:GuitarHero). Activision's Guitar Hero Product includes and is specifically designed to be used with a "Guitar Controller", which the Guitar Hero Product characterizes as a guitar. *See e.g.,* Guitar Hero III Legends of Rock Product in-game Basic Tutorial ("Here is your guitar. On the neck of the guitar ..."). When operating with the Guitar Hero Product software on its intended game console, the Guitar Controller operates as a musical instrument producing instrument audio signals at an instrument audio output when the Guitar Controller is played. For example, the Guitar Hero Guitar Controller generates an electronic signal representing audio being played at an output of the controller in response to the user pressing a "Fret Button," strumming a "Strum Bar," and pressing the "Whammy Bar." *See e.g.,* Guitar Hero III Legends of Rock Product in-game tutorials referring to playing notes and chords with the Guitar Controller; Guitar Hero III Legends of Rock Product Manual, p. 5 ("Green Fret Button - Activates Green Note"); p. 8 ("Press the Whammy Bar in and out on Long Notes to add your own style to each song. You'll notice that when you are playing Long Notes, the sound of the note will actually change and bend to reflect how much you're pressing on the whammy bar.") The pre-recorded musical performances include a sound track portion (e.g., "over 70 of the biggest and loudest songs ever compiled in a game") and a video portion (e.g., "venues, incredible lighting effects, authentic instruments and sick character moves.") *See* Activision.com (Guitar Hero III page) (http://www.activision.com/index.html#gamepage|en_US|gameId:GHIIILegends&brandId:GuitarHero).
a. a source playback device for playback of the audio and video portions of the pre-recorded musical performance through corresponding source audio and source video outputs;	Activision's Guitar Hero Product is specifically and intentionally made to be operated on a compatible game console, e.g., Xbox®, Wii™, or PLAYSTATION®, as a source playback device for playback of the audio and video portions of the pre-recorded musical performance through corresponding source audio and source video outputs. During operation, the Guitar Hero Product software enables playback of the musical performance audio portion and video portion, which are provided from the game console's media or hard drive to the game console's processor.
b. a source audio control device for controlling one or more characteristics of the audio portion of the pre-recorded musical performance during playback, the	Activision's Guitar Hero Product is specifically and intentionally made to operate on compatible game console, e.g., Xbox®, Wii™, or PLAYSTATION®, as a source audio control device for controlling one or more characteristics of the audio portion (e.g., the guitar track) of a pre-recorded musical performance during playback. The game console's processor operating the Guitar Hero Product

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U.S. Patent No. 5,990,405	Activision's Guitar Hero Product
source audio control means operably connected to the source audio output and to the instrument audio output and having a controlled audio output; and	software is operably connected to the audio portion provided from the media or hard drive and the instrument audio output from the Guitar Controller. Based upon the user's operation of the Guitar Controller, the game console's processor alters a characteristic of the pre-recorded guitar track, which is provided on an audio output as a controlled audio output signal. For example, the intended game console processor, when operating the Guitar Hero Product game software, responds to electrical signals from the Guitar Controller representing audio being played by, e.g., altering the pitch of the pre-recorded note. *See* Guitar Hero III Legends of Rock Product Manual at p. 8 ("Press the Whammy Bar in and out on Long Notes to add your own style to each song. You'll notice that when you are playing Long Notes, the sound of the note will actually change and bend to reflect how much you're pressing on the Whammy Bar.")
c. the source audio control device is responsive to the instrument audio signals whereby at least one characteristic of the audio portion of the pre-recorded musical performance is controlled by playing of the musical instrument by the user.	Activision's Guitar Hero Product is specifically and intentionally made to be used with game consoles, e.g., Xbox®, Wii™, and PLAYSTATION®. Such game consoles, when executing the Guitar Hero Product game software, operate as a source audio control device responsive to instrument audio signals from the Guitar Controller, whereby a characteristic of the audio portion of the pre-recorded musical performance (*e.g.*, the pre-recorded guitar track) is controlled by the user playing the Guitar Controller as a musical instrument. For example, the intended game console processor, when operating the Guitar Hero Product game software, responds to electrical signals from the guitar controller representing audio being played by, e.g., altering the pitch of the pre-recorded note or responding to user inaction or a misplayed note by suppressing the volume of the pre-recorded guitar track note. *See, e.g.,* Guitar Hero III Legends of Rock Product Manual at p. 8 ("Press the Whammy Bar in and out on Long Notes to add your own style to each song. You'll notice that when you are playing Long Notes, the sound of the note will actually change and bend to reflect how much you're pressing on the Whammy Bar.")
14. The system of claim 13 wherein the audio portion of the pre-recorded musical performance comprises a separate instrument sound track and whereby the characteristic of the audio portion controlled by the source audio control circuit is a volume level of the instrument sound track played by the system.	Activision's Guitar Hero Product is specifically and intentionally made to be used with game consoles, e.g., Xbox®, Wii™, and PLAYSTATION®. Such game consoles, when executing the Guitar Hero Product game software, operate as a source audio control device responsive to instrument audio signals from the Guitar Controller, whereby a characteristic of the audio portion of the pre-recorded musical performance (*e.g.*, the pre-recorded guitar sound track) is controlled by the user playing the guitar controller as a musical instrument. The Guitar Hero game software comprises data representing a separate guitar track for each pre-recorded song. *See, e.g.,* Guitar Hero III User Manual p. 7 (Audio Settings allow a user to "change the volume of the band (background music), the guitar (the part you're playing), and sound FX (crowd volume, background noises)"). For example, the intended game console processor, when operating the Guitar Hero Product game

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U.S. Patent No. 5,990,405	Activision's Guitar Hero Product
	software, responds to electrical signals from the Guitar Controller representing audio being played by responding to user inaction or a misplayed note by suppressing the volume level of the pre-recorded guitar sound track for that note.
15. The system of claim 14 wherein the musical instrument is a guitar and wherein the instrument sound track comprises pre-recorded guitar music such that the volume level of the pre-recorded guitar music played by the system is controlled by playing of the guitar by the user	Activision's Guitar Hero Product includes and is specifically designed to be used with a "Guitar Controller", which the Guitar Hero Product characterizes as a guitar. *See e.g.,* Guitar Hero III Legends of Rock Product Manual, p. 6 ("Which guitar are you going to use to shred up the stage."); Guitar Hero III Tutorial ("Get ready to play your Guitar"). *See also* Guitar Hero III Legends of Rock Product in-game Basic Tutorial ("Get ready to play your guitar"; "Here is your guitar"; "On the neck of the guitar ...") The Guitar Hero game software comprises data representing a separate guitar track for each pre-recorded song. *See, e.g.,* Guitar Hero III Legends of Rock Product Manual p. 7 (Audio Settings allow a user to "change the volume of the band (background music), the guitar (the part you're playing), and sound FX (crowd volume, background noises)"). The intended game console processor, when operating the Guitar Hero Product game software, responds to electrical signals from the Guitar Controller representing audio being played by responding to user inaction or a misplayed note by suppressing the volume level of the pre-recorded guitar sound track for that note.
25. A method of a simulating participation by a musician in a recorded concert comprising the steps of	Activision's Guitar Hero Product, when operating on its intended game console, e.g., Xbox®, Wii™, or PLAYSTATION®, provides a method of simulating participation by a musician in a recorded concert. *See, e.g.,* Activision's online information on the Guitar Hero III Legends of Rock Product describes how use of the product provides a "Fully Immersive Concert Experience" by allowing a user to "realize a true rock concert experience with all new venues, incredible lighting effects, authentic instruments and sick character moves." Activision.com (Guitar Hero III page) (http://www.activision.com/index.html#gamepage|en_US|gameId:GHIIILegends&brandId:GuitarHero). The game lets a user "shred lead, rhythm, or bass guitar tracks in over 6 modes of play on over 55 licensed rock and roll songs all on a custom guitar-shaped controller." Activision.com (Guitar Hero III page) (http://www.activision.com/index.html#gamepage|en_US|gameId:GHII&brandId:GuitarHero).
a. playing on a playback device a pre-recorded concert video track in synchronization with a pre-recorded concert sound track and a pre-recorded instrument sound track;	Activision's Guitar Hero Product is specifically and intentionally made to be operated on a compatible game console, e.g., Xbox®, Wii™, or PLAYSTATION®, as a playback device. During operation, the Guitar Hero Product software enables the playback of a pre-recorded concert video track, which depicts an animated character, stage, and lighting effects, in synchronization with a pre-recorded concert sound track (e.g., background music, vocals, and drums) and a pre-recorded instrument sound track (e.g., pre-recorded guitar sound track), which are provided from the game

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U.S. Patent No. 5,990,405	Activision's Guitar Hero Product
	console's media or hard drive to the game console's processor. For example, sound tracks include "over 70 of the biggest and loudest songs ever compiled in a game," and a video track include "venues, incredible lighting effects, authentic instruments and sick character moves.") *See* Activision.com (Guitar Hero III page) (http://www.activision.com/index.html#gamepage|en_US|gameId:GHIIILegends&brandId:GuitarHero)
b. separating the instrument sound track from the concert sound track and providing the separated instrument sound track to a control device;	During operation, the Guitar Hero Product software enables separation of the pre-recorded guitar sound track from the concert sound track and provides the separated pre-recorded guitar track to a control device (e.g., the intended game console processor). For example, the Guitar Hero Product software comprises data representing separate pre-recorded guitar and concert sound tracks for each pre-recorded song. *See, e.g.,* Guitar Hero III User Manual p. 7 (Audio Settings allow a user to "change the volume of the band (background music), the guitar (the part you're playing), and sound FX (crowd volume, background noises)").
c. varying in the control circuit at least one parameter of the instrument sound track in response to audio signals generated by a musical instrument when played by the musician, thereby generating a controlled instrument sound track; and	Activision's Guitar Hero Product software enables varying at least one parameter of the pre-recorded guitar sound track by the intended game console processor, which generates a controlled guitar sound track in response to audio signals generated by the guitar controller when played by the user. For example, the intended game console processor, when operating the Guitar Hero Product game software, responds to electrical signals from the Guitar Controller representing audio being played by, e.g., altering the pitch of the pre-recorded note or responding to user inaction or a misplayed note by suppressing the volume of the pre-recorded guitar track note. *See, e.g.,* Guitar Hero III Legends of Rock Product Manual at p. 8 ("Press the Whammy Bar in and out on Long Notes to add your own style to each song. You'll notice that when you are playing Long Notes, the sound of the note will actually change and bend to reflect how much you're pressing on the Whammy Bar.")
d. providing a normal simulation mode in which the controlled instrument sound track and the concert sound track are played on a sound system in synchronization with display of the concert video track.	Activision's Guitar Hero Product software enables providing a normal simulation mode in which the controlled guitar sound track and the concert sound track are played on a sound system, e.g., television speakers, in synchronization with display of the video animation. For example, the Guitar Hero Product software enables the game console to generate a video output signal for viewing on a television, the video signal representing a stage, lighting effects, and an animated character performing the selected pre-recorded musical performance. *See, e.g.,* Activision's online information on the Guitar Hero III Legends of Rock Product describes how use of the product provides a "Fully Immersive Concert Experience" by allowing a user to "realize a true rock concert experience with all new venues, incredible lighting effects, authentic instruments and sick

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U.S. Patent No. 5,990,405	Activision's Guitar Hero Product
	character moves." Activision.com (Guitar Hero III page) (http://www.activision.com/index.html#gamepage|en_US|gameId:GHIIILegends&brandId:GuitarHero). *See also* Getting Started page in Guitar Hero III Legends of Rock Product Manual instructing user to insert game with video data into the intended game console's media drive. In synchronization with this video, the Guitar Hero Product software enables the game console to generate an audio signal comprising the controlled guitar sound track and the concert sound track at an audio output. *See e.g.,* Activision.com (Guitar Hero II page) ("Guitar Hero II® features over 55 jaw-dropping tracks.") (http://www.activision.com/index.html#gamepage|en_US|gameId:GHII&brandId:GuitarHero).
28. An apparatus for controlling playback from a playback device of a pre-recorded instrument sound track in synchronization with a pre-recorded concert sound track and a pre-recorded concert video track comprising:	Activision's Guitar Hero Product, when operating on its intended game console, e.g., Xbox®, Wii™, or PLAYSTATION®, is an apparatus for controlling playback from a playback device, e.g., the intended game console, of a pre-recorded guitar sound track in synchronization with a pre-recorded concert sound and a pre-recorded video animation. *See, e.g.,* Activision's online information on the Guitar Hero III Legends of Rock Product describes how use of the product provides a "Fully Immersive Concert Experience" by allowing a user to "realize a true rock concert experience with all new venues, incredible lighting effects, authentic instruments and sick character moves." Activision.com (Guitar Hero III page) (http://www.activision.com/index.html#gamepage|en_US|gameId:GHIIILegends&brandId:GuitarHero). The game lets a user "shred lead, rhythm, or bass guitar tracks in over 6 modes of play on over 55 licensed rock and roll songs all on a custom guitar-shaped controller." Activision.com (Guitar Hero II page) (http://www.activision.com/index.html#gamepage|en_US|gameId:GHII&brandId:GuitarHero).
a. a musical instrument having an instrument audio output;	Activision's Guitar Hero Product includes and is specifically designed to be used with a "Guitar Controller," which the Guitar Hero Product refers to as a guitar, which is a type of musical instrument. *See e.g.,* Guitar Hero III Legends of Rock Product in-game Basic Tutorial ("Here is your guitar. On the neck of the guitar ....") When operating with the Guitar Hero Product software on its intended game console, the Guitar Controller operates as a musical instrument generating an instrument audio signal at an instrument audio output varying in response to operation of the instrument by the user of the system. For example, the Guitar Hero Guitar Controller generates an electronic signal representing audio being played at an output of the controller in response to the user pressing a "Fret Button," strumming a "Strum Bar," and pressing the "Whammy Bar." *See e.g.,* Guitar Hero III Legends of Rock Product in-game tutorials referring to playing notes and chords with the Guitar Controller; Guitar Hero III Legends of Rock Product Manual, p. 5 ("Green Fret Button - Activates Green Note"); p. 8 ("Press the

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U.S. Patent No. 5,990,405	Activision's Guitar Hero Product
	Whammy Bar in and out on Long Notes to add your own style to each song. You'll notice that when you are playing Long Notes, the sound of the note will actually change and bend to reflect how much you're pressing on the whammy bar.")
b. a control circuit connected to the instrument audio output and to the playback device; and	Activision's Guitar Hero Product is specifically and intentionally made to be used with a game console, e.g., Xbox®, Wii™, and PLAYSTATION®. Such a game console comprises a processor that, when executing the Guitar Hero Product software, operates as a control circuit and is operably connected (e.g., wired or wireless) to the instrument audio output of the Guitar Controller (e.g., electrical signals representing audio being played).
c. the control circuit comprising an instrument track input connected to an instrument track output through a signal conditioning circuit, the signal conditioning circuit responsive to audio signals generated by the musical instrument when the instrument is played whereby the control circuit generates a controlled instrument track signal at the instrument track output.	Activision's Guitar Hero Product is specifically and intentionally made to be used with game consoles, e.g., Xbox®, Wii™, and PLAYSTATION®. Such game consoles comprise a processor that, when executing the Guitar Hero Product software, operates as a signal conditioning circuit. During operation, the intended game console processor accesses the pre-recorded guitar track at an instrument track input, e.g., through the game console's media or hard drive. *See e.g.,* Activision.com (Guitar Hero II page) ("Guitar Hero II® features over 55 jaw-dropping tracks.") (http://www.activision.com/index.html#gamepagelen_US|gameId:GHII&brandId:GuitarHero). The resulting audio, based upon the user's operation of the Guitar Controller, is provided as a controlled source audio signal at an instrument track output, e.g., the game console's audio output. For example, the intended game console processor, when operating the Guitar Hero Product game software, responds to electrical signals representing audio being played from the Guitar Controller by, e.g., altering the pitch of the pre-recorded note or responding to user inaction or a misplayed note by suppressing the volume of the pre-recorded guitar track note. *See, e.g.,* Guitar Hero III Legends of Rock Product Manual at p. 8 ("Press the Whammy Bar in and out on Long Notes to add your own style to each song. You'll notice that when you are playing Long Notes, the sound of the note will actually change and bend to reflect how much you're pressing on the Whammy Bar.")

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EXHIBIT D

ACTIVISION.

Tel. 310.255.2000
Fax. 310.255.2100

Mary A. Tuck
Direct dial: 310/255-2746
Direct fax: 310/255-2152
Email: mtuck@activision.com

March 10, 2008

Via Email and Mail

F. Leslie Bessenger III
3500 SunTrust Plaza
303 Peachtree Street, NE
Atlanta, GA 30308-3263

RE: U.S. Patent No. 5,990,405

Dear Mr. Bessenger:

This responds to your February 18 letter, in which you allege that Activision's Guitar Hero products are covered by Gibson's U.S. Patent No. 5,990,405, and demand that Activision either enter into a license under the '405 patent or "halt sales of any version of the Guitar Hero Product."

As I indicated previously, Gibson knew about the Guitar Hero games for nearly three years, but did not raise its patent until it became clear that Activision was not interesting in renewing the License and Marketing Support Agreement. Gibson's delay suggests that its infringement assertions are not being made in good faith, and it has provided no justification for its conduct.

Based on our analysis of the '405 patent and the claim chart attached to your letter, we do not believe that any of Activision's Guitar Hero products infringe any valid claim of the '405 patent. Activision therefore declines your offer to enter into a license under the '405 patent.

Respectfully yours,

Mary A. Tuck
Senior Litigation Counsel

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Edward J. DeFranco (Bar No. 165596)
Steven M. Anderson (Bar No. 144014)
Quinn Emanuel Urquhart Oliver & Hedges
51 Madison Avenue, 22nd Floor
New York, New York 10010
Tel: (212) 849-7000

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ACTIVISION PUBLISHING INC., a Delaware corporation,

Plaintiff(s)

v.

GIBSON GUITAR CORPORATION, a Delaware corporation,

Defendant(s)

CASE NUMBER:

CV 08-01653 PSG (SHx)

SUMMONS

COPY

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney Edward J. DeFranco, whose address is:

Quinn Emanuel Urquhart Oliver & Hedges LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010

an answer to the [X] complaint [ ] _____ amended complaint [ ] counterclaim [ ] cross-claim which is herewith served upon you within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK, U.S. DISTRICT COURT

Date: MAR 11 2008

By: LA'REE HORN
Deputy Clerk

1192

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Philip S. Gutierrez and the assigned discovery Magistrate Judge is Stephen J. Hillman.

The case number on all documents filed with the Court should read as follows:

CV08- 1653 PSG (SHx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

==========

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
Activision Publishing Inc., a Delaware corporation

DEFENDANTS
Gibson Guitar Corporation, a Delaware Corporation

(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): Los Angeles County, California

County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):

(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
Edward J. DeFranco (Bar No. 165596)
Steven M. Anderson (Bar No. 144014)
Quinn Emanuel Urquhart Oliver & Hedges
51 Madison Avenue, 22nd Floor
New York, New York 10010
Tel: (212) 849-7000

Attorneys (If Known)

CONFORMED

II. BASIS OF JURISDICTION (Place an X in one box only.)

☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No ☐ **MONEY DEMANDED IN COMPLAINT: $** 0.00

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
First Cause of Action: Declaratory Relief (28 U.S.C. § 2201 et seq.); Second Cause of Action: Declaratory Relief (28 U.S.C. § 2201 et seq.); Third Cause of Action: Declaratory Relief (28 U.S.C. § 2201 et seq.); Fourth Cause of Action: Declaratory Relief (28 U.S.C. § 2201 et seq.); Fifth Cause of Action: Declaratory Relief (28 U.S.C. § 2201 et seq.)

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 810 Selective Service
☐ 850 Securities/Commodities/ Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 890 Other Statutory Actions
☐ 891 Agricultural Act
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Info. Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Fed. Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury-Med Malpractice
☐ 365 Personal Injury-Product Liability
☐ 368 Asbestos Personal Injury Product Liability

TORTS PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/Accommodations
☐ 444 Welfare
☐ 445 American with Disabilities - Employment
☐ 446 American with Disabilities - Other
☐ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence Habeas Corpus
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus/ Other
☐ 550 Civil Rights
☐ 555 Prison Condition

FORFEITURE/PENALTY
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs
☐ 660 Occupational Safety/Health
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litig.
☐ 791 Empl. Ret. Inc. Security Act

PROPERTY RIGHTS
☐ 820 Copyrights
☒ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS - Third Party 26 USC 7609

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☒ No ☐ Yes
If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number: _____

CV08-01653

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? [X] No [ ] Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply) [ ] A. Arise from the same or closely related transactions, happenings, or events; or
[ ] B. Call for determination of the same or substantially related or similar questions of law and fact; or
[ ] C. For other reasons would entail substantial duplication of labor if heard by different judges; or
[ ] D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

[ ] Check here if the U.S. government, its agencies or employees is a named plaintiff.

Los Angeles County, California

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

[ ] Check here if the U.S. government, its agencies or employees is a named defendant.

State of Tennessee

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

First Cause of Action: Los Angeles County, California; Second Cause of Action: Los Angeles County, California; Third Cause of Action: Los Angeles County, California; ForthCause of Action: Los Angeles County, California; Fifth Cause of Action: Los Angeles County, California

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ **Date** 3/11/08

Steve M. Anderson

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))