



## "GUITAR HERO": LICENSED RIGHTS IN HARMONY?

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GUITAR HERO is a very popular video game with teens and music fans. This game is played with a game pad in the shape of a guitar which is plugged directly into a console (PLAY STATION or other equivalents) and the goal is to reproduce the notes and chords presented on the screen. Moreover, the game enthusiasts choose their characters and perform in different virtual concert halls.

The different guitars which act as game pads are replicas of the Gibson guitar models. To use these models and the GIBSON trademarks, the company responsible for the marketing of the game, Activision (hereinafter "Guitar Hero") had to obtain licence rights from Gibson Guitar Inc. (hereinafter "Gibson").

Regardless of these granted rights, last January, in the United States, Gibson alleged that the making and marketing of the video game GUITAR HERO infringes one of its patents issued in 1999. As such, Guitar Hero would be contravening the rights of Gibson by exploiting a right that is not covered by the contractual relationship between the two parties. Consequently, Gibson provided Guitar Hero with a formal notice urging Guitar Hero to legally obtain the licence rights for exploiting the patent. If the notice was not complied with, Gibson would summon Guitar Hero to cease all sales of the video game.

In response to this formal notice, Guitar Hero directly addressed the Court (in California) in order to claim invalidation of the Gibson patent. Moreover, Guitar Hero claimed that by having waited more than three years after the licence on other aspects of the game (models and trademarks) had been granted, an implicit licence was conferred by Gibson to Guitar Hero for use of the patent.

In turn, Gibson instituted proceedings against some of the most important retailers of the video game, including WAL-MART, TARGET, K-MART and TOYS "R" US (to name only a few) alleging that these retailers sold products which violated their patent. Gibson did not stop there. It also filed suit against Harmonix which had

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originally developed the game GUITAR HERO and had sold its rights to Guitar Hero. This suit is currently being settled.

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