

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA**

BAMA GAMING, LLC,

Plaintiff,

v.

**INFINITY WARD, INC., NEVERSOFT
ENTERTAINMENT, INC.,
ACTIVISION PUBLISHING, INC.,
ACTIVISION BLIZZARD, INC.,
ACTIVISION BLIZZARD
INTERNATIONAL B.V.,
FREESTYLEGAMES LTD.,
VICARIOUS VISIONS, INC., BUDCAT
CREATIONS, INC.,**

Defendants.

Civil Action No. 1:17-cv-00181

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Bama Gaming, LLC (“Bama” or “Plaintiff”), for its Complaint against Defendants Infinity Ward, Inc., Neversoft Entertainment, Inc., Activision Publishing, Inc., Activision Blizzard, Inc., Activision Blizzard International B.V., FreeStyleGames, Ltd., Vicarious Visions, Inc., Budcat Creations, Inc., (collectively referred to as “Infinity” or “Defendants”), alleges the following:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

THE PARTIES

2. Plaintiff Bama is a limited liability company organized under the laws of the State of Alabama with a place of business at 951 Government Street, Suite B, Mobile, Alabama 36604.

3. Upon information and belief, Infinity Ward, Inc. is a corporation incorporated and existing under the laws of Delaware, with a place of business at 3100 Ocean Park Boulevard, Santa Monica, California, 90405, and can be served at 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808. Upon information and belief, Defendant sells and offers to sell products and services throughout the United States, including in this judicial district, and introduces products and services that perform infringing processes into the stream of commerce knowing that they would be sold in this judicial district and elsewhere in the United States.

4. Upon information and belief, Neversoft Entertainment, Inc. is a corporation incorporated and existing under the laws of Delaware, with a place of business at 6041 Variel Avenue, Woodland Hills, California, 91367, and can be served at 1209 Orange Street, Wilmington, Delaware, 19801. Upon information and belief, Defendant sells and offers to sell products and services throughout the United States, including in this judicial district, and introduces products and services that perform infringing processes into the stream of commerce knowing that they would be sold in this judicial district and elsewhere in the United States.

5. Upon information and belief, Activision Publishing, Inc. is a corporation incorporated and existing under the laws of Delaware, with a place of business at 3100 Ocean Park Boulevard, Santa Monica, California, 90405, and can be served at 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808. Upon information and belief, Defendant sells and offers to sell products and services throughout the United States, including in this judicial district, and introduces products and services that perform infringing processes into the stream of commerce knowing that they would be sold in this judicial district and elsewhere in the United States.

6. Upon information and belief, Activision Blizzard, Inc. is a corporation incorporated and existing under the laws of Delaware, with a place of business at 3100 Ocean Park Boulevard, Santa Monica, California, 90405, and can be served at 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808. Upon information and belief, Defendant sells and offers to sell products and services throughout the United States, including in this judicial district, and introduces products and services that perform infringing processes into the stream of commerce knowing that they would be sold in this judicial district and elsewhere in the United States.

7. Upon information and belief, Activision Blizzard International B.V. is a corporation incorporated and existing under the laws of the Netherlands, with a place of business at Beechavenue 131-D, Schiphol-Rijk, Haarlemmermeer, NL-NH 1119 RB, Netherlands, and can be served there. Upon information and belief, Defendant sells and offers to sell products and services throughout the United States, including in this judicial district, and introduces products and services that perform infringing processes into the stream of commerce knowing that they would be sold in this judicial district and elsewhere in the United States.

8. Upon information and belief, FreeStyleGames Limited is a corporation incorporated and existing under the laws of the United Kingdom, with a place of business at Ditton Park, Riding Court Road, Datchet, Berkshire, SL3 9LL, United Kingdom, and can be served there. Upon information and belief, Defendant sells and offers to sell products and services throughout the United States, including in this judicial district, and introduces products and services that perform infringing processes into the stream of commerce knowing that they would be sold in this judicial district and elsewhere in the United States.

9. Upon information and belief, Vicarious Visions is a corporation incorporated and existing under the laws of New York, with a place of business at 150 Broadway, Suite 205, Albany, New York, 12204, and can be served at 80 State Street, Albany, New York, 12207. Upon information and belief, Defendant sells and offers to sell products and services throughout the United States, including in this judicial district, and introduces products and services that perform infringing processes into the stream of commerce knowing that they would be sold in this judicial district and elsewhere in the United States.

10. Upon information and belief, Budcat Creations, Inc. is a corporation incorporated and existing under the laws of Delaware, with a place of business at 3100 Ocean Park Boulevard, Santa Monica, California, 90405, and can be served at 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808. Upon information and belief, Defendant sells and offers to sell products and services throughout the United States, including in this judicial district, and introduces products and services that perform infringing processes into the stream of commerce knowing that they would be sold in this judicial district and elsewhere in the United States.

JURISDICTION AND VENUE

11. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

12. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

13. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and 1400(b). Upon information and belief, each Defendant conducted substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Alabama.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,084,168

14. The allegations set forth in the foregoing paragraphs 1 through 13 are incorporated into this First Claim for Relief.

15. On July 4, 2000, U.S. Patent No. 6,084,168 (“the ’168”), entitled *Musical Compositions Communication System, Architecture and Methodology*, was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’168 is attached as Exhibit 1. Upon information and belief, Defendants infringed at least claims 1, 7-11, 16, 21-27, 30-34, 36-46, 48-50, and 53-54 of the ’168 patent by making, using, selling, offering for sale, importing into the United States, and/or providing products that fall within the scope of the claims of the ’168 patent in violation of 35 U.S.C. § 271(a), (b), and (c).

16. The inventions of the ’168 patent resolved technical problems related to synchronized music performance by multiple performers, for example performers at various locations. For example, the inventions allowed parties to play the same, or various instruments following a common musical score adapted to the various instrument input types.

17. The claims of the ’168 patent did not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claims of the ’168 patent recited one or more inventive concepts that were rooted in computerized musical performance technology, and overcame problems specifically arising in the realm of computerized musical performance technologies.

18. The claims of the ’168 patent recited an invention that is not merely the routine or conventional use of a video display to show a musical performance. Instead, the invention embodied synchronized performance by users performing locally, or at a remote location, wherein the performance of the score could be viewed on a display showing a single or various users performances relative to properties of the musical composition to be performed. The ’168

patent claims thus specified how data related to musical composition performance in a computerized environment is manipulated to yield a desired result.

19. The technology claimed in the '168 patent did not preempt all electronic means of musical performance, nor preempt the use of all computerized musical performance technology, nor preempt any other well-known or prior art technology. Moreover, the claims were directed to technology that was considered an improvement in the field of electronically displayed musical performances at the time of the invention.

20. The music workstation system and methods claimed in the '168 patent were patent eligible subject matter under 35 U.S.C. § 101 as they were not directed to an abstract idea.

21. An exemplary figure showing one embodiment of a musical workstation system is included below:

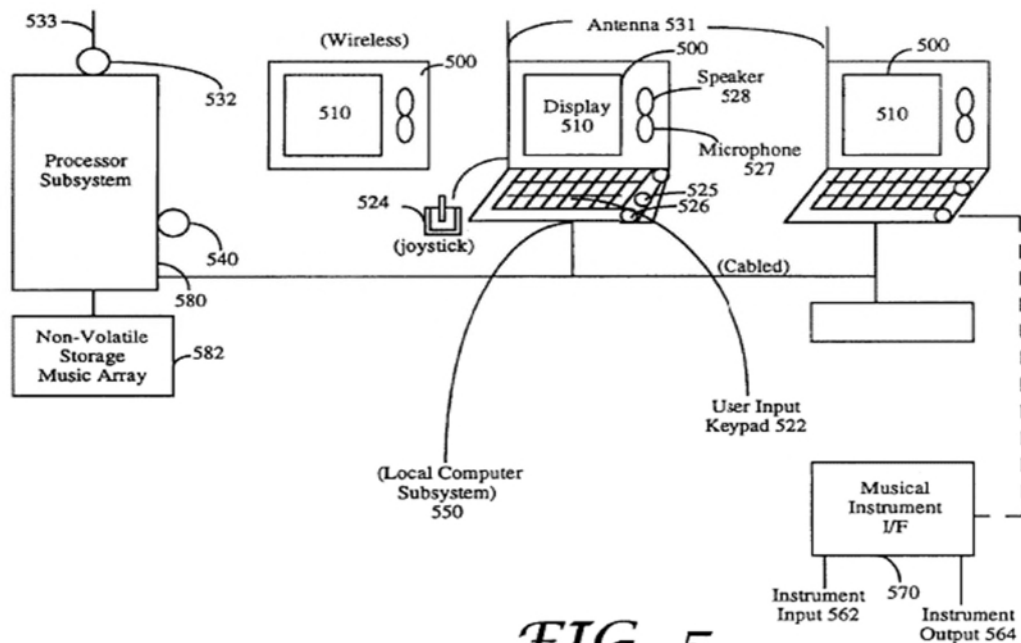


FIG. 5

22. Upon information and belief, each Defendant has directly infringed one or more claims of the '168 patent by making, using, selling, importing and/or providing, or causing to be used, products that comprise a musical workstation system and methods, which products by way

of example include interactive musical video games including Guitar Hero 5, Guitar Hero Live, DJ Hero, DJ Hero 2, and Band Hero; which may be used with gaming systems such as Nintendo Wii, Microsoft Xbox, and Sony Play Station along with appropriate video screens and/or monitors (collectively, the “Accused Instrumentalities”).

23. Claim 1 of the ’168 patent generally recited a musical workstation system comprising a displayed video presentation of a selected musical composition, storage means for storing composition data representing the selected musical composition, display means for displaying the video display presentation responsive to the composition data, input means, responsive to the performance by the user, for providing user performance data output, analysis means for comparing the user performance data to the respective associated composition data, and control means for modifying the display of the composition data responsive to the analysis means.

24. The Infringing Instrumentalities comprised a musical workstation system including a displayed video presentation of a selected musical composition (evidenced at least by *Figures 1-5*), storage means for storing composition data representing the selected musical composition (evidenced at least by *Figures 6-7*), display means for displaying the video display presentation responsive to the composition data (evidenced at least by *Figures 1-5*), input means, responsive to the performance by the user, for providing user performance data output (evidenced at least by *Figures 8-13*), analysis means for comparing the user performance data to the respective associated composition data (evidenced at least by *Figures 14-16*), and control means for modifying the display of the composition data responsive to the analysis means

(evidenced at least by *Figures 17-22*).



Figure 1



Figure 2



Figure 3



Figure 4



Figure 5



Figure 6



Game disc as source of musical data

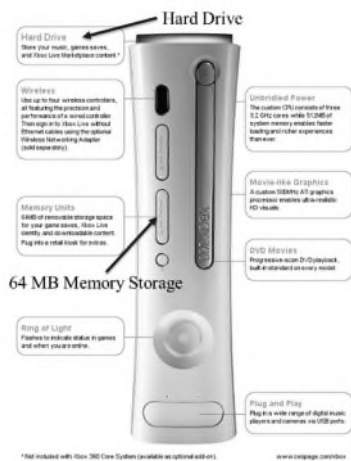
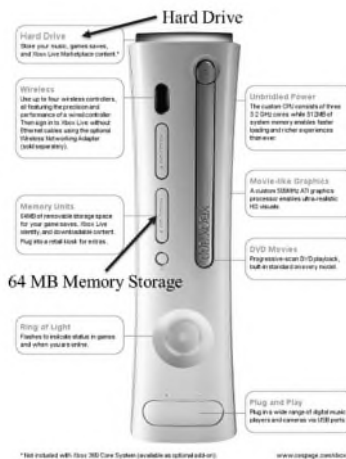


Figure 7



Game disc as source of musical data



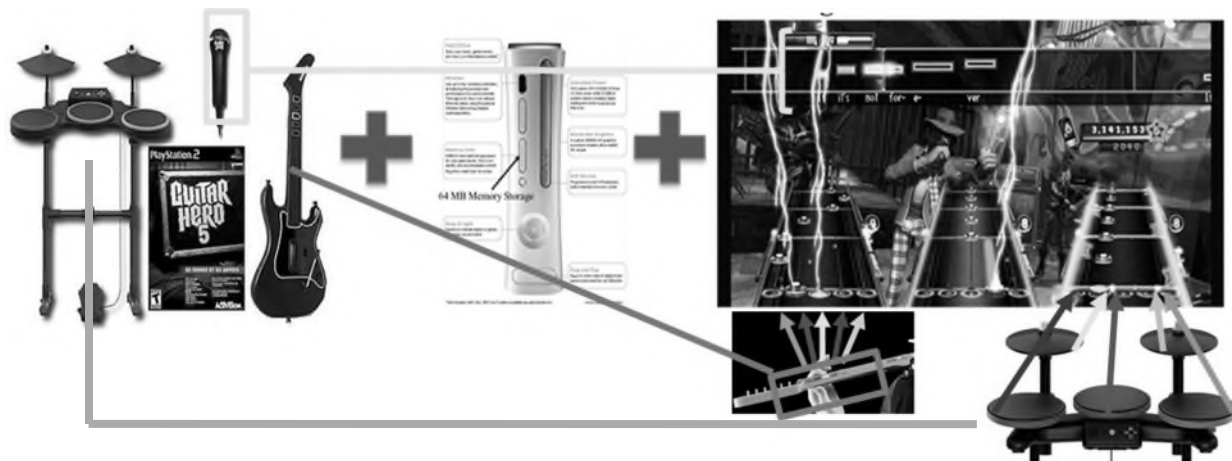
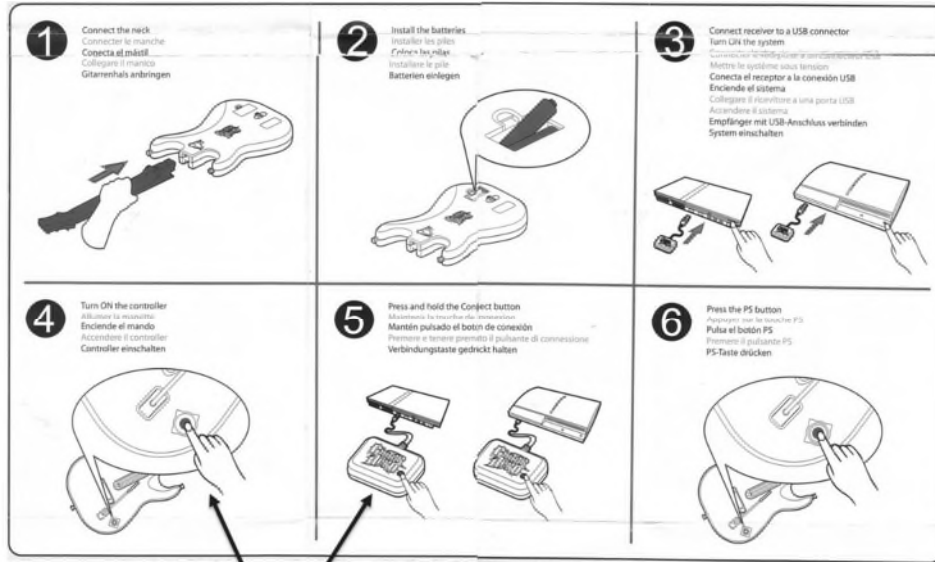


Figure 8



Figure 9 - DJ Hero



Input means from User using the Infringing Instrumentalities

Figure 10 – Guitar Hero



Figure 11 - Input Means DJ Hero

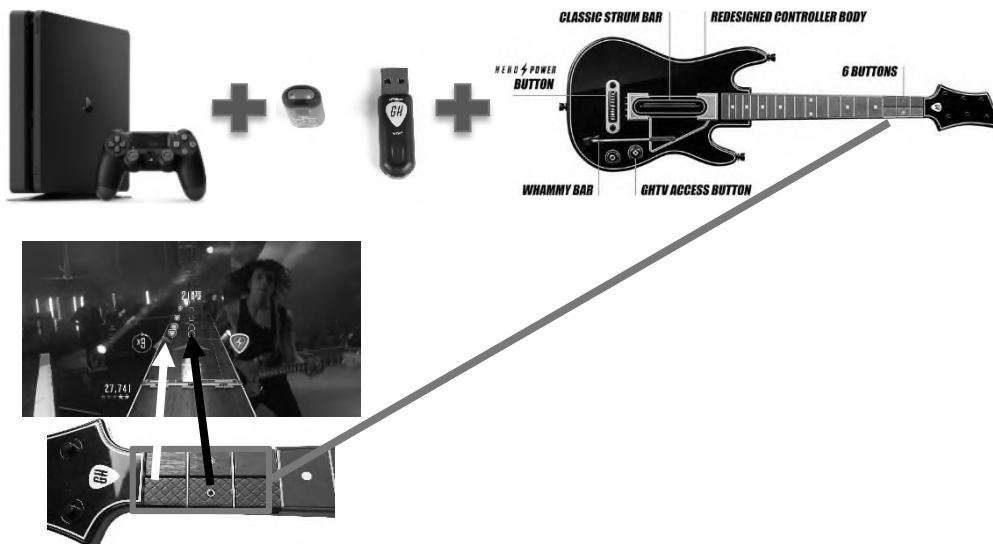


Figure 12 – Guitar Hero Live

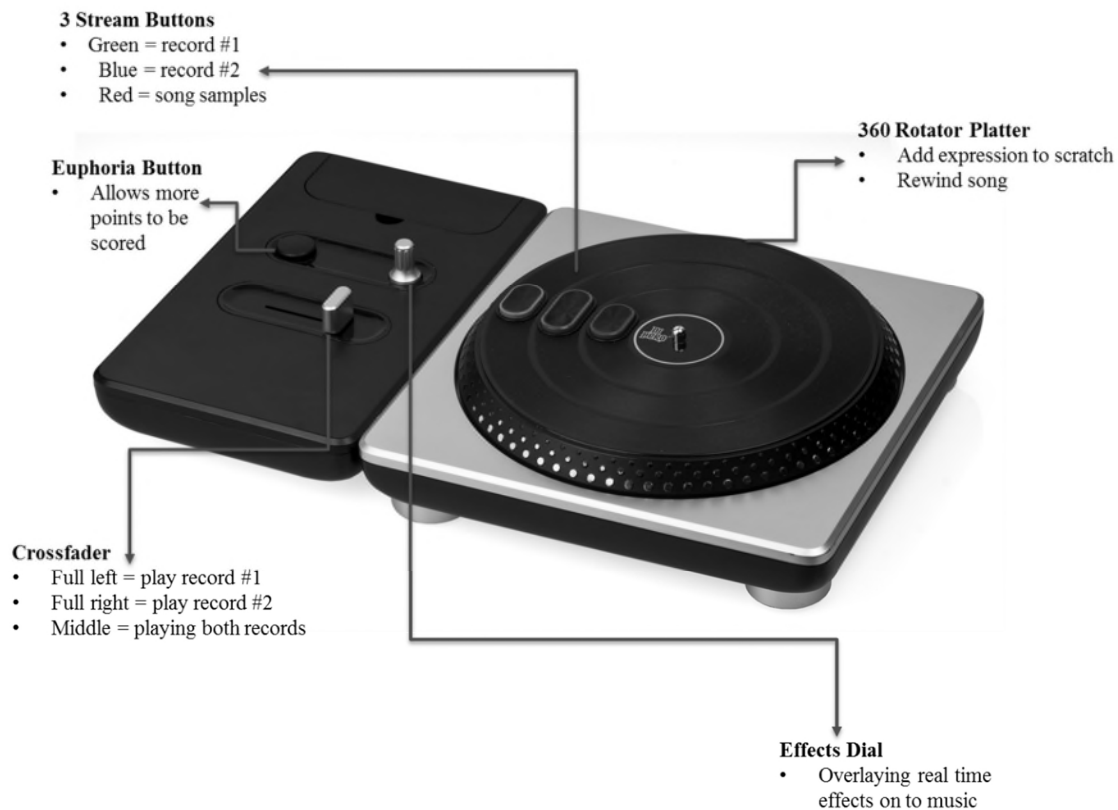


Figure 13 - Input Means DJ Hero

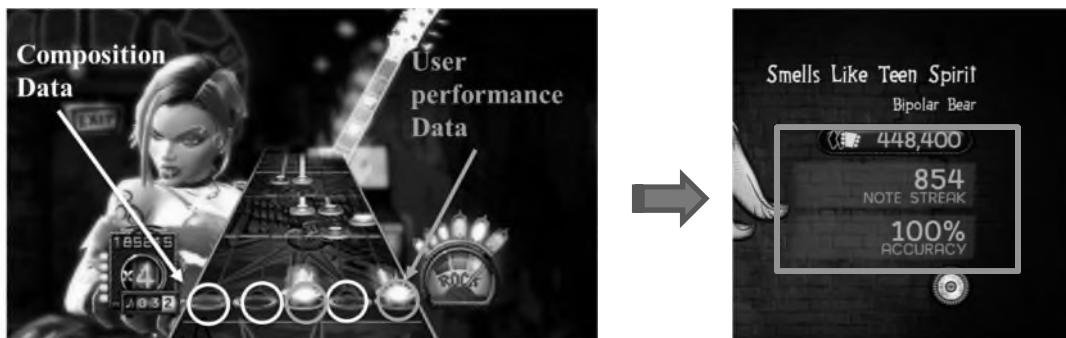


Figure 14 – Guitar Hero 5

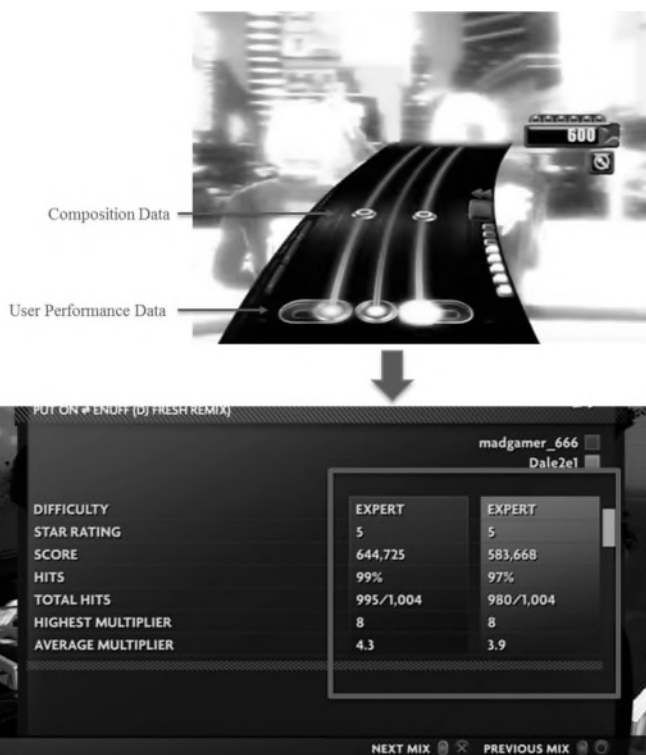


Figure 15 – DJ Hero

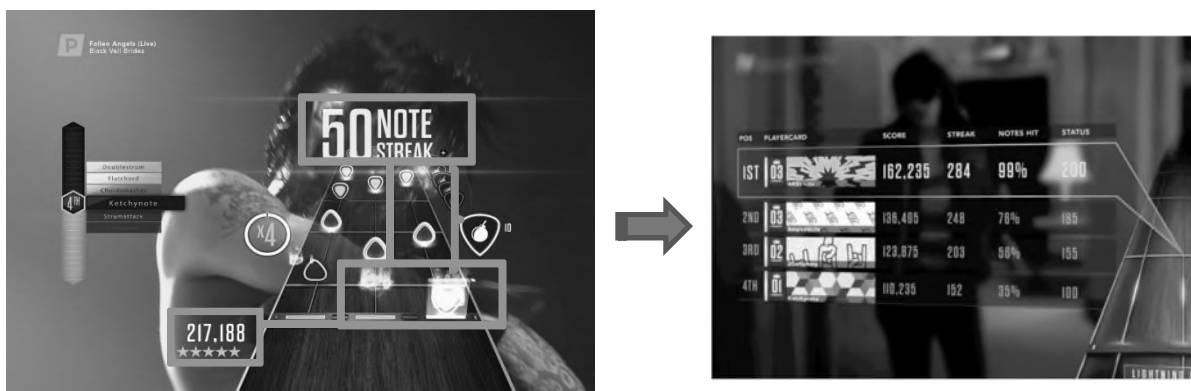


Figure 16 – Guitar Hero Live



Figure 17 – Guitar Hero 5

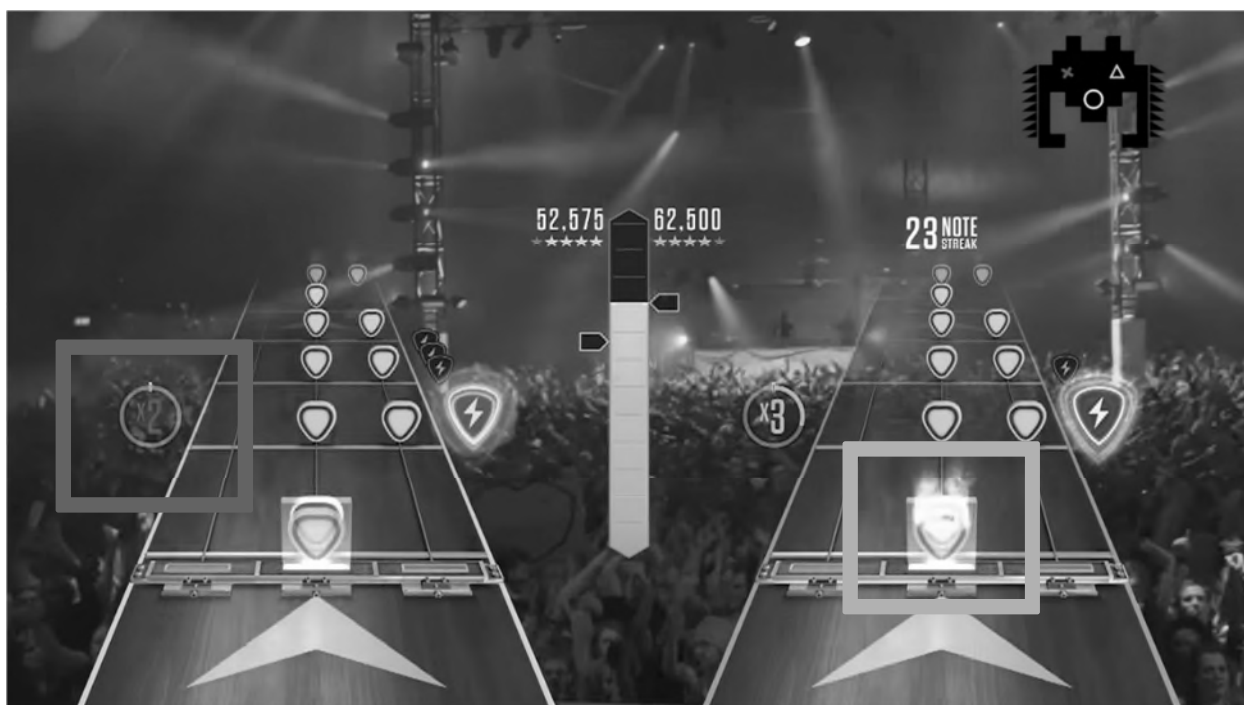


Figure 18 – Guitar Hero Live



Figure 19 – Guitar Hero Live



Figure 20 – DJ Hero



Figure 21 – DJ Hero 2



Figure 22 – Band Hero

25. Claim 7 of the '168 patent recited the system, as in claim 1, further comprising: processor means for generating a video display output responsive to the composition data in the storage means for the selected musical composition; wherein the display means provides the video display presentation responsive to the video display output; wherein the input means is further comprised of storage for storing user performance data concurrent with the corresponding display presentation; and wherein the control means modifies the video display presentation to reflect the result of the comparing the user performance data, and the composition data.

26. The Infringing Instrumentalities comprised a musical workstation system, as recited in claim 1 of the '168 patent, further comprising: processor means for generating a video display output responsive to the composition data in the storage means for the selected musical composition; wherein the display means provides the video display presentation responsive to the video display output; wherein the input means is further comprised of storage for storing user performance data concurrent with the corresponding display presentation (evidenced at least by *Figures 1-7*); and wherein the control means modifies the video display comprising a displayed

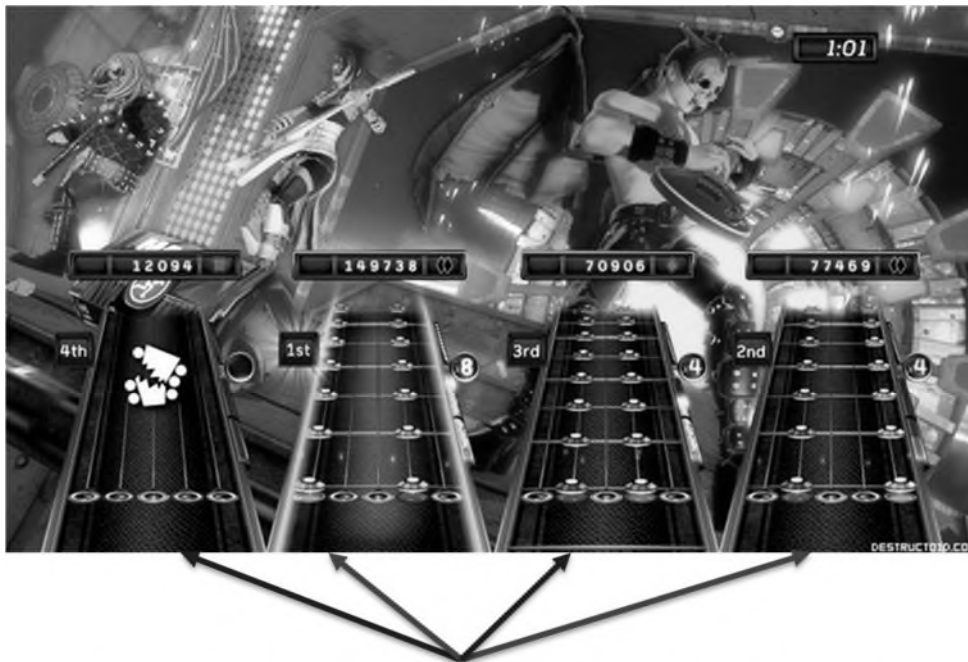
video presentation of a selected musical composition, storage means for storing composition data representing the selected musical composition, display means for displaying the video display presentation responsive to the composition data, input means, responsive to the performance by the user, for providing user performance data output, analysis means for comparing the user performance data to the respective associated composition data, and control means for modifying the display of the composition data responsive to the analysis means (evidenced at least by *Figures 14-22*).

27. Claim 8 of the '168 patent recited the system as in claim 1, wherein the user performance data is comprised of at least one of audible performance data, visual performance data, and control data.

28. The Infringing Instrumentalities comprised a system, as recited in claim 1 of the '168 patent, wherein the user performance data is comprised of audible performance data, visual performance data, and control data (evidenced at least by *Figures 17-22*).

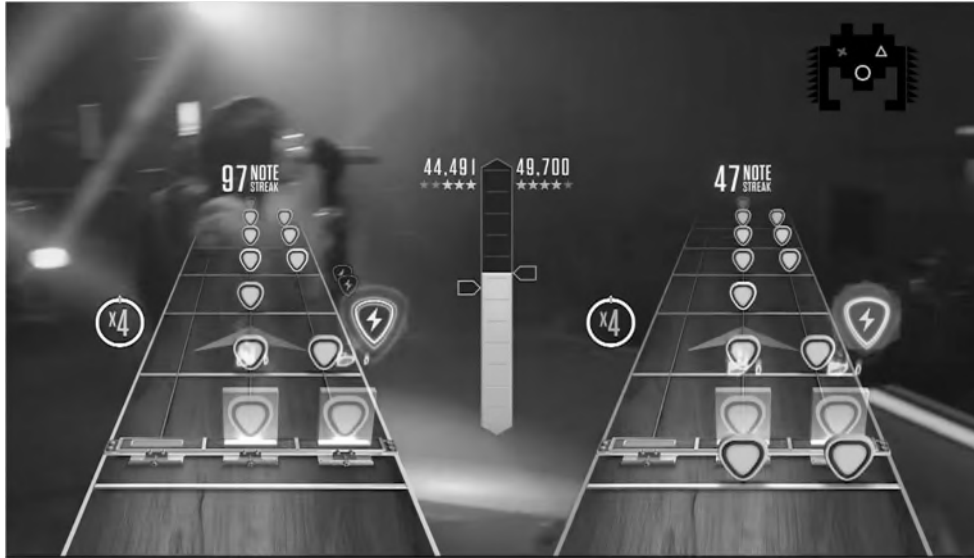
29. Claim 9 of the '168 patent recited a music display presentation system for use by a user in viewing a selected musical composition, said system comprising: a workstation apparatus, comprising: storage means for storing musical composition data representative of musical notation and display presentation corresponding thereto; display means for providing a display presentation responsive to the musical composition data; means for progressing the display presentation responsive to the musical composition data; mode controller means for managing the operation of the workstation in at least one selected automated operational mode to provide for automated progression of the display presentation of the musical composition; wherein the selected automatic operational mode is comprised of at least one of marching band mode, conductor mode, orchestra mode and networked virtual performance mode.

30. The Infringing Instrumentalities comprised a music display presentation system for use by a user in viewing a selected musical composition, said system comprising: a workstation apparatus, comprising: storage means for storing musical composition data representative of musical notation and display presentation corresponding thereto; display means for providing a display presentation responsive to the musical composition data; means for progressing the display presentation responsive to the musical composition data (evidenced at least by *Figures 1-7*); mode controller means for managing the operation of the workstation in at least one selected automated operational mode to provide for automated progression of the display presentation of the musical composition (evidenced at least by *Figures 23-27*); wherein the selected automatic operational mode is comprised of networked virtual performance mode.



Progression display of the presentation in response to upcoming musical composition data.

Figure 23 – Guitar Hero 5



Progression display of the presentation in response to upcoming musical composition data

Figure 24 – Guitar Hero Live



Figure 25 – DJ Hero Progression of the display presentation in response to upcoming musical composition data



Figure 26 - DJ Hero 2 Progression of the display presentation in response to upcoming musical composition data



Figure 27 - Band Hero Progression of the display presentation in response to upcoming musical composition data

31. Claim 10 of the '168 patent recited the system as in claim 9 further comprising: input means, for providing an output of user performance data responsive to performance by the user, analysis means for analyzing at least one of the user performance data, the musical composition data, and control means for providing an output of individual workstation data responsive to the analysis means.

32. The Infringing Instrumentalities comprised a system, as recited in claim 9 of the '168 patent, further comprising: input means, for providing an output of user performance data responsive to performance by the user (evidenced at least by *Figures 8-13*) and analysis means for analyzing at least one of the user performance data, musical composition data (evidenced at least by *Figures 14-17*), and control means for providing an output of individual workstation data responsive to the analysis means (evidenced at least by *Figures 17-22*).

33. Claim 11 of the '168 patent recited the system as in claim 9 wherein the musical composition data is further comprised of temporal data, wherein the display presentation is logically sequenced responsive to the temporal data.

34. The Infringing Instrumentalities comprised a system, as recited in claim 9 of the '168 patent, wherein the musical composition data is further comprised of temporal data, wherein the display presentation is logically sequenced responsive to the temporal data (evidenced at least by *Figures 28-32*).



Figure 28 – Guitar Hero 5



Figure 29 – Guitar Hero Live



Figure 30 - DJ Hero



Figure 31 - DJ Hero 2



Figure 32 - Band Hero

35. Claim 16 of the '168 patent recited the system as in claim 9 wherein the workstation is coupled for communication with at least one other one of the workstations to form a network of workstations.

36. The Infringing Instrumentalities comprised a system, as recited in claim 9 of the '168 patent, wherein the workstation is coupled for communication with at least one other one of the workstations to form a network of workstations (evidenced at least by *Figures 33-37*).

Assemble Your Band and Rock Any Way You Want

Guitar Hero 5 allows fans to play alone, as a full band or, for the first time, with any combination of multiple guitarists, bassists, drummers or vocalists, to customize their musical experience. Players now have the control to rock any way they want whether it is with two guitars and two drummers, four guitarists, or three guitarists and a vocalist, any combination is possible. This freedom is available in all modes of play: online, Party Play, Quickplay, RockFest and even Career.

Become the Best. Shred the Rest

In *Guitar Hero 5* players can test their skills against others with four-player local and up to eight-player online battles in the all-new competitive RockFest Mode. Within RockFest Mode, players can choose from various head-to-head gameplay types, including Momentum, Perfectionist, Elimination, Do-or-Die, Streakers, and Pro Face Off.

Figure 33 – Guitar Hero 5



Figure 34 – Guitar Hero Live

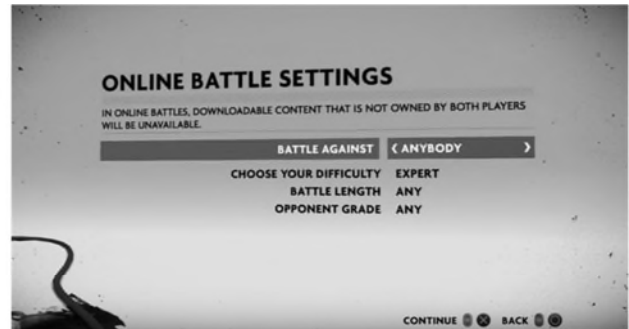


Figure 35 – DJ Hero

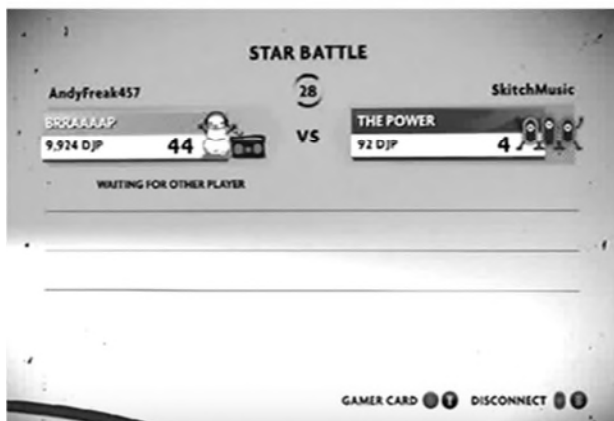


Figure 36 - DJ Hero 2

Features

• JOIN THE PARTY AT ANY TIME

In Party Play mode you can jump in/jump out of a song at any time with the click of a button

• ALL NEW SING-ALONG MODE

Sing together karaoke style on any song you choose

• ROADIE BATTLE MODE

Team up with a partner on a Nintendo DS Lite for an all new level of competition

• CREATE YOUR OWN BAND

Your band is as unique as you are. Play with any combination of instruments you want, even 4 lead singers

• EXPAND YOUR MUSIC COLLECTION

Import your favorite Guitar Hero World Tour and Guitar Hero 5 Add-On Content straight into Band Hero

As of May 20, 2014, the Nintendo Wi-Fi Connection service for Nintendo DSi and Wii systems has been retired. Online features of this game are no longer available after this date but this game still provides an entertaining experience in offline mode.

About the Product

- Supports all Guitar Hero instrument controllers within the same gaming platform, as well as other music/rhythm game controllers.
- Play with any combination of instruments you want, even with four lead singers.
- In Party Play mode, you can jump in/jump out of a song at any time with the click of a button, while Sing Along Mode lets you sing any song you choose.
- Expand your music collection by import your favorite Guitar Hero World Tour and Guitar Hero downloadable content straight into Band Hero.
- Enjoy 2-4 player local multiplayer support in co-op and competitive modes and 2-8 player support online.

Figure 37 - Band Hero

37. Claim 21 of the '168 patent recited a virtual music performance system for use by a plurality of users in providing a plurality of display presentations of a selected musical composition, said system comprising: a plurality of individual music workstation (IMW), each IMW comprising a communication interface providing for communications of musical composition data of the selected musical composition with the respective IMW; a computing subsystem providing processing and memory for locally storing the musical composition data responsive to the communications interface; and a music display apparatus for providing a local visual display presentation of the selected musical composition responsive to the computing subsystem; wherein the system further comprises means for controlling a plurality of the IMWs

to concurrently provide a plurality of local display presentations of the selected musical composition.

38. The Infringing Instrumentalities comprised a virtual music performance system for use by a plurality of users in providing a plurality of display presentations of a selected musical composition (evidenced at least by *Figures 1-5, 28-32*), said system comprising: a plurality of individual music workstations, each comprising a communication interface providing for communications of musical composition data of the selected musical composition with the respective individual music workstation (evidenced at least by *Figures 38-42*); a computing subsystem providing processing and memory for locally storing the musical composition data responsive to the communications interface (evidenced at least by *Figures 1-7*); and a music display apparatus for providing a local visual display presentation of the selected musical composition responsive to the computing subsystem; wherein the system further comprises means for controlling a plurality of the individual music workstations to concurrently provide a plurality of local display presentations of the selected musical composition (evidenced at least by *Figures 1-5*).

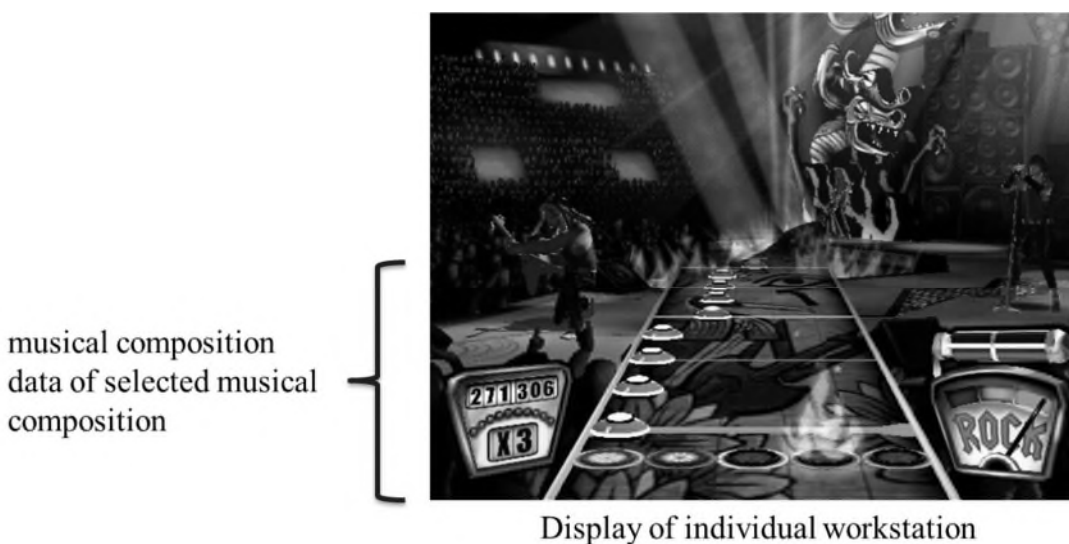
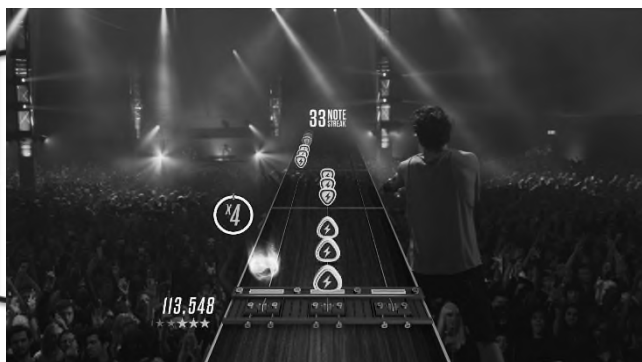


Figure 38 – Guitar Hero 5

musical composition
data of selected musical
composition



Display of individual workstation

Figure 39 - Guitar Hero Live



Musical
composition data of
selected musical
composition

Display of Individual Workstation

Figure 40 - DJ Hero

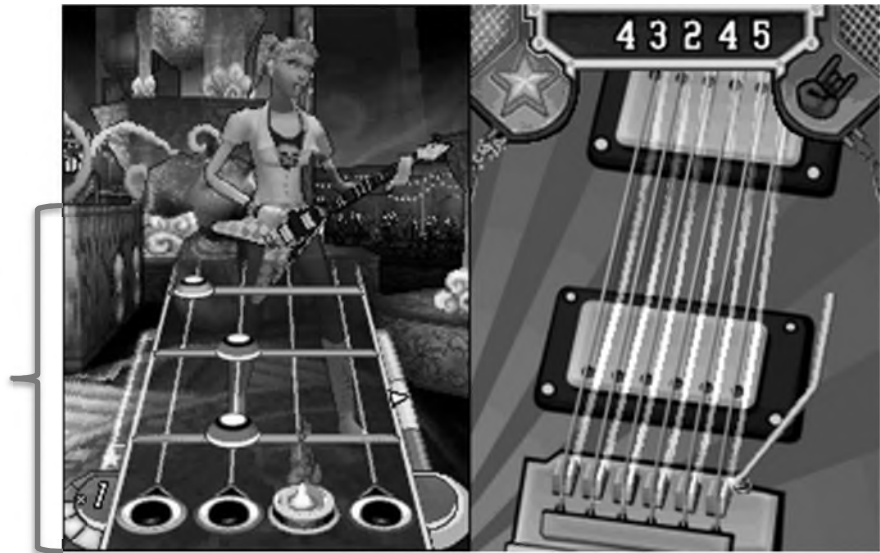


Musical composition
data of selected musical
composition

Display of individual music workstation

Figure 41 - DJ Hero 2

Musical composition data
of selected musical
composition



Display of individual music workstation

Figure 42 - Band Hero

39. Claim 22 of the '168 patent recited the system as in claim 21, further comprising: an input device responsive to a performance by the user of the displayed musical composition for providing an output of user performance data.

40. The Infringing Instrumentalities comprised a system, as recited in claim 21 of the '168 patent, further comprising: an input device responsive to a performance by the user of the displayed musical composition for providing an output of user performance data (evidenced at least by *Figures 1-5, 8-13*).

41. Claim 23 of the '168 patent recited the system as in claim 22, wherein the computing subsystem provides processing means responsive to said user performance data for providing an output of individual performance data out.

42. The Infringing Instrumentalities comprised a system, as recited in claim 22 of the '168 patent, wherein the computing subsystem provides processing means responsive to said user performance data for providing an output of individual performance data out (evidenced at least by *Figures 1-13*).

43. Claim 24 of the '168 patent recited a musical data communication system which enables a presentation of a selected musical composition for use by a plurality of users, said system comprising: a plurality of individual workstations each providing means for independently capturing the musical performance of a respective user and communicating individual performance data; control means for synchronizing and combining the individual performance data from the individual workstations to provide an output of combined performance data; means for communicating said combined performance data to the plurality of individual workstations; wherein at least one of the individual workstations provide at least one of an audio, video, and audiovisual output representative of the combined musical performances for all of the communicating plurality of individual workstations.

44. The Infringing Instrumentalities comprised a musical data communication system which enables a presentation of a selected musical composition for use by a plurality of users, said system comprising: a plurality of individual workstations each providing means for independently capturing the musical performance of a respective user and communicating individual performance data (evidenced at least by *Figure 10, 43-49*); control means for synchronizing and combining the individual performance data from the individual workstations to provide an output of combined performance data; means for communicating said combined performance data to the plurality of individual workstations (evidenced at least by *Figure 50*); wherein at least one of the individual workstations provide at least one of an audio, video, and audiovisual output representative of the combined musical performances for all of the communicating plurality of individual workstations (evidenced at least by *Figures 33-37, 43-49*).



Figure 43



Figure 44



Independent captures of the individual music performance data communicated via audio visual output means.

Figure 45



Independent captures of the individual music performance data combined and communicated via audio visual output means.

Figure 46 - Guitar Hero Live



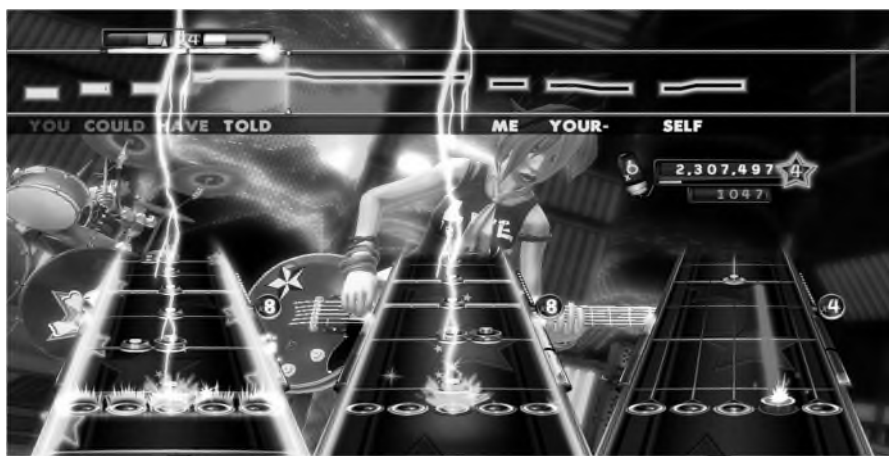
Independent captures of the individual music performance data communicated via audio visual output means.

Figure 47 - DJ Hero



Independent captures of the individual music performance data

Figure 48 - DJ Hero 2



Independent captures of the individual music performance data communicated via audio visual output means.

Figure 49 - Band Hero



Figure 50

45. Claim 25 of the '168 patent recited the system as in claim 24 wherein the plurality of individual workstations provide for synchronized display presentation.

46. The Infringing Instrumentalities comprised a system, as recited in claim 24 of the '168 patent, wherein the plurality of individual workstations provide for synchronized display presentation (evidenced at least by *Figures 33-37*).

47. Claim 26 of the '168 patent recited the system as in claim 25, wherein each of the individual workstations provide for output of individual performance data representative of the musical performance by the user corresponding to the display presentation.

48. The Infringing Instrumentalities comprised a system, as recited in claim 25 of the '168 patent, wherein each of the individual workstations provide for output of individual performance data representative of the musical performance by the user corresponding to the display presentation (evidenced at least by *Figures 3-5, 9, 43-44*).

49. Claim 27 of the '168 patent recited the system as in claim 25 wherein the individual performance data is further comprised of timing synchronization data.

50. The Infringing Instrumentalities comprised a system, as recited in claim 25 of the '168 patent, wherein the individual performance data is further comprised of timing

synchronization data (evidenced at least by *Figures 47-49, 51-52*).



Virtual music performance by a plurality of users providing a plurality of display presentations of a selected musical composition where the individual performance data is shown as timed, synchronization data.

Figure 51



Virtual music performance by a plurality of users providing a plurality of display presentations of a selected musical composition where the individual performance data is shown as timed, synchronization data.

Figure 52

51. Claim 30 of the '168 patent recited the system as in claim 24, wherein a plurality of the individual workstations provide at least one of an audio, video, and audiovisual output representative of the combined musical performance.

52. The Infringing Instrumentalities comprised a system, as recited in claim 24 of the '168 patent, wherein a plurality of the individual workstations provide at least one of an audio, video, and audiovisual output representative of the combined musical performance (evidenced at least by *Figures 3-5, 9, 33-37, 43-44*).

53. Claim 31 of the '168 patent recited a musical display system comprising: a memory, for selectively storing musical composition data representative of a selected musical composition; means for producing a display presentation responsive to the respective musical composition data; selection means for determining a selected display format; data processing means responsive to the selection means for selectively processing the stored musical composition data responsive to the selected display format to produce a corresponding particular display presentation format responsive to the musical composition data; and at least one display subsystem, responsive to the selected music composition data and the selected display format, for displaying a video presentation of the musical composition in the selected display format.

54. The Infringing Instrumentalities comprise a musical display system comprising: a memory, for selectively storing musical composition data representative of a selected musical composition (evidenced at least by *Figures 53-57*); means for producing a display presentation responsive to the respective musical composition data (evidenced at least by *Figures 3-5, 9, 43-33*); selection means for determining a selected display format (evidenced at least by *Figures 58-65*); data processing means responsive to the selection means for selectively processing the stored musical composition data responsive to the selected display format to produce a corresponding particular display presentation format responsive to the musical composition data; and at least one display subsystem, responsive to the selected music composition data and the selected display format, for displaying a video presentation of the musical composition in the selected display format.

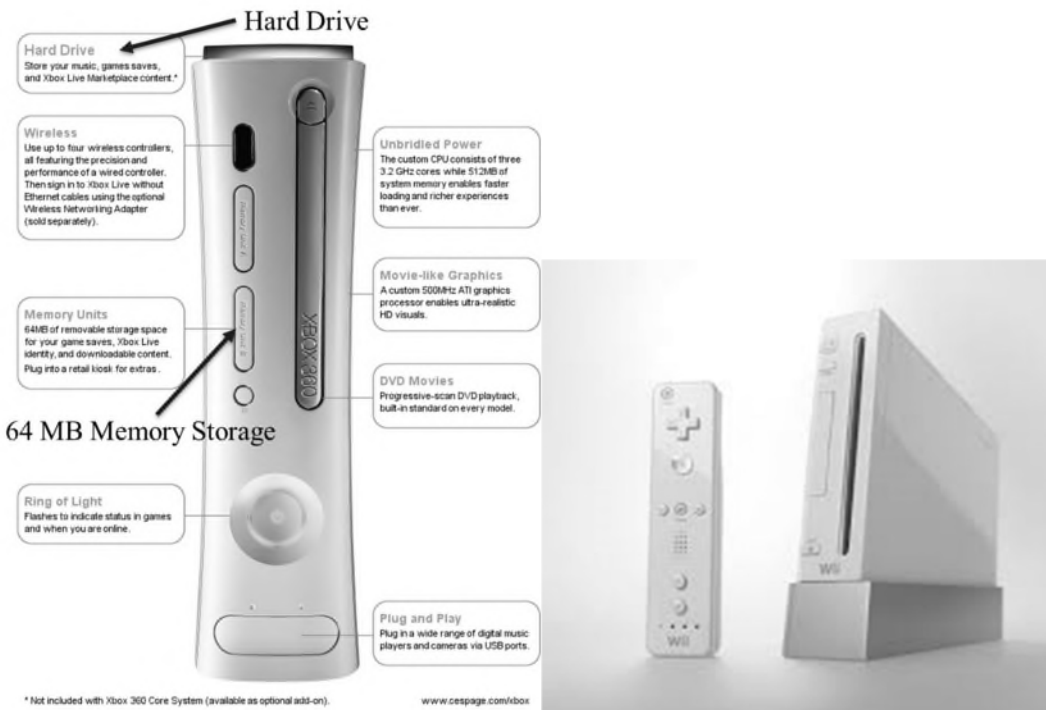


Figure 53



Figure 54



Figure 55 - DJ Hero



Figure 56 - DJ Hero

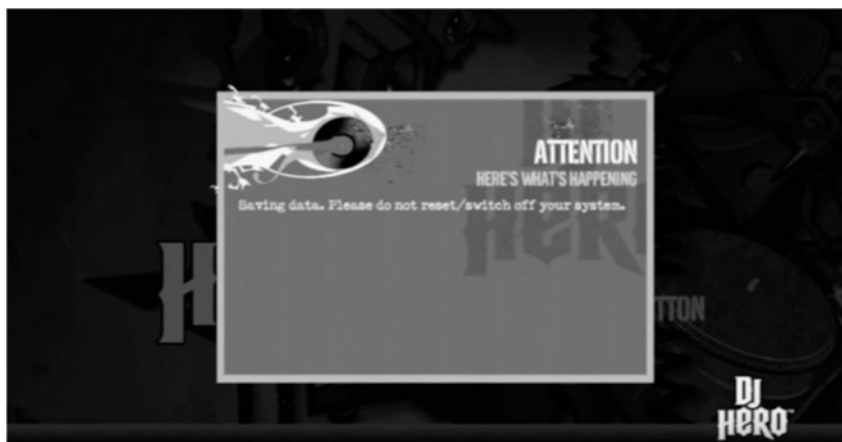


Figure 57 - DJ Hero



Figure 58- Guitar Hero 5

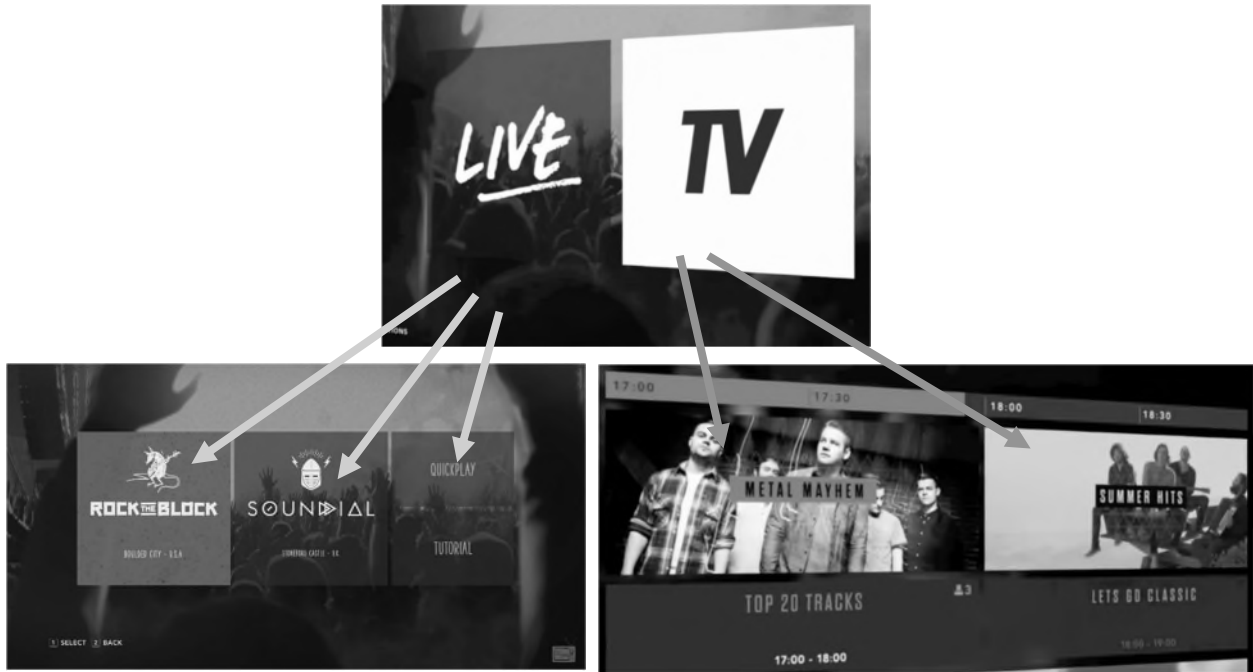


Figure 59 – Guitar Hero Live



Figure 60 - DJ Hero



Figure 61 - DJ Hero



Figure 62 - DJ Hero 2



Figure 63 - Band Hero



Figure 64 - Band Hero



Figure 65 - Band Hero

55. Claim 32 of the '168 patent recited the system as in claim 31, wherein said processing comprises at least one of transposing and communicating external to the musical display system.

56. The Infringing Instrumentalities comprised a system, as recited in claim 31 of the '168 patent, wherein said processing comprises at least one of transposing and communicating external to the musical display system (evidenced at least by *Figures 3-5, 9, 43-44*).

57. Claim 33 of the '168 patent recited the system as in claim 29, further comprising: operational selection means for determining a selecting operating mode wherein the data processing means is responsive to the selected operating mode for controlling progression of the video presentation.

58. The Infringing Instrumentalities comprised a system, as recited in claim 29 of the '168 patent, further comprising: operational selection means for determining a selecting operating mode wherein the data processing means is responsive to the selected operating mode for controlling progression of the video presentation (evidenced at least by *Figures 58-65*).

59. Claim 34 of the '168 patent recited the system as in claim 31, wherein responsive to the selection of the display format, the data processing means provides for additionally

displaying at least one of user fingering and user motions.

60. The Infringing Instrumentalities comprised a system, as recited in claim 31 of the '168 patent, further comprising: operational selection means for determining a selecting operating mode wherein the data processing means is responsive to the selected operating mode for controlling progression of the video presentation (evidenced at least by *Figures 66-71*).



User fingering and User motions displayed.

Figure 66 – Guitar Hero 5



User fingering and User motions displayed.

Figure 67 – Guitar Hero Live



Figure 68 - DJ Hero



Figure 69 - DJ Hero



Figure 70 - DJ Hero 2



Figure 71 - Band Hero - using finger motions

61. Claim 36 of the '168 patent recited the system as in claim 1, wherein the local presentation is a video display.

62. The Infringing Instrumentalities or multiple users, comprised a system, as recited in claim 1 of the '168 patent, wherein the local presentation is a video display (evidenced at least by *Figures 3-5, 9, 43-44*).

63. Claim 37 of the '168 patent recited a communications system comprising: a plurality of individual music workstations, each comprising a music display apparatus for providing a local visual display presentation of a selected musical composition and a music input for selectively providing a performance data output, responsive to a performance by a user of that respective individual music subsystem; wherein the system further comprises means, responsive to the performance data output from each of the plurality of individual music workstations, to provide a combined output of composite virtual performance data.

64. The Infringing Instrumentalities comprised a communications system comprising: a plurality of individual music workstations, each comprising a music display apparatus for providing a local visual display presentation of a selected musical composition and a music input for selectively providing a performance data output, responsive to a performance by a user of

that respective individual music subsystem (evidenced at least by *Figures 3-5, 9, 43-44*); wherein the system further comprised means, responsive to the performance data output from each of the plurality of individual music workstations, to provide a combined output of composite virtual performance data (evidenced at least by *Figures 72-76*).



Figure 72 – Guitar Hero 5



Figure 73 – Guitar Hero Live



Figure 74 - DJ Hero



Figure 75 - DJ Hero 2



Figure 76 - Band Hero

65. Claim 38 of the of the '168 patent recited the communications system as in claim 37, wherein the plurality of individual music subsystems each provide means for independently capturing the musical performance of the respective user and generate respective individual performance data; wherein the means responsive to the performance data is further comprised of means for synchronizing and combining the individual performance data from the plurality of individual music subsystems to generate combined performance data; and means for communicating said combined performance data to the plurality of individual music subsystems; wherein at least one of the individual music subsystems provide a local presentation representative of the combined musical performances for all of the communicating plurality of individual music subsystems responsive to the combined performance data.

66. The Infringing Instrumentalities comprised a system, as recited in claim 37 of the '168 patent, wherein the plurality of individual music subsystems each provide means for independently capturing the musical performance of the respective user and generate respective individual performance data (evidenced at least by *Figures 3-5, 9, 43-44*); wherein the means

responsive to the performance data is further comprised of means for synchronizing and combining the individual performance data from the plurality of individual music subsystems to generate combined performance data; and means for communicating said combined performance data to the plurality of individual music subsystems; wherein at least one of the individual music subsystems provide a local presentation representative of the combined musical performances for all of the communicating plurality of individual music subsystems responsive to the combined performance data (evidenced at least by *Figures 77-83*).



Figure 77 – Guitar Hero 5



Figure 78 – Guitar Hero 5



Figure 79 – Guitar Hero Live



Figure 80 – Guitar Hero Live



Figure 81 - DJ Hero



Figure 82 - DJ Hero 2



Figure 83 - Band Hero

67. Claim 39 of the '168 patent recited the system as in claim 38 wherein the plurality of individual music subsystems provide for synchronized display presentation of the musical composition.

68. The Infringing Instrumentalities comprised a system, as recited in claim 38 of the '168 patent, wherein the plurality of individual music subsystems provide for synchronized display presentation of the musical composition.

69. Claim 40 of the '168 patent recited the system as in claim 38, wherein each of the individual music subsystems provide for output of individual performance data representative of the musical performance by the user corresponding to the display presentation.

70. The Infringing Instrumentalities comprised a system, as recited in claim 38 of the '168 patent, wherein the plurality of individual music subsystems provide for synchronized display presentation of the musical composition (evidenced at least by *Figures 84-88*).



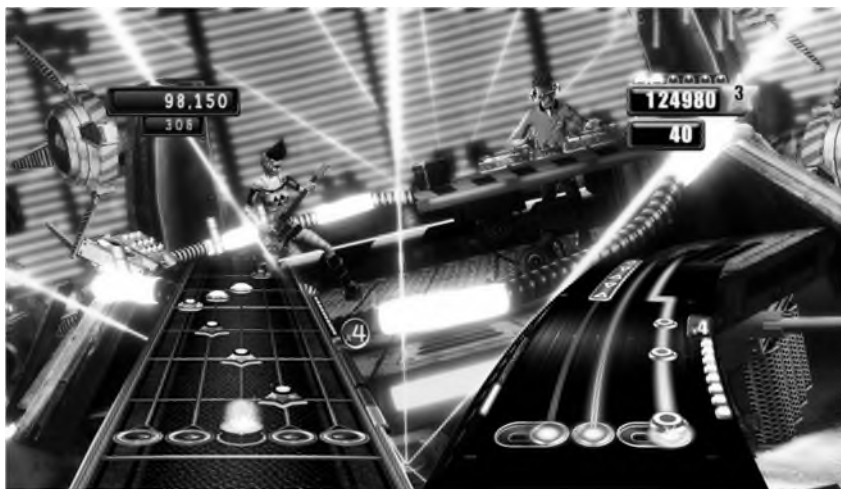
The four note highways provide for synchronized display presentation of the musical composition as it applies to each type of music input (i.e., guitar, bass, drums, or vocals)

Figure 84 – Guitar Hero 5



The note highways and vocal highway provide for synchronized display presentation of the musical composition as it applies to each type of music input (i.e., guitar, vocals)

Figure 85 – Guitar Hero Live



The note highways provide for synchronized display presentation of the musical composition as it applies to each type of music input (i.e., turntable, vocals)

Figure 86 - DJ Hero



Figure 87 - DJ Hero 2

The note highways and vocal highway provide for synchronized display presentation of the musical composition as it applies to each type of music input (i.e., turntable, vocals)



Figure 88 - Band Hero

The note highways and vocal highway provide for synchronized display presentation of the musical composition as it applies to each type of music input (i.e., guitar, bass, drums, or vocals)

71. Claim 41 of the '168 patent recited the system as in claim 38, wherein the selected musical composition is performed in discrete time segments, wherein the means responsive to the performance data generates a synchronization signal for start of performance, and each of the time segments is synchronized relative to the synchronization signal from the master means responsive to the performance data.

72. The Infringing Instrumentalities comprised a system, as recited in claim 38 of the '168 patent, wherein the selected musical composition is performed in discrete time segments, wherein the means responsive to the performance data generates a synchronization signal for

start of performance, and each of the time segments is synchronized relative to the synchronization signal from the master means responsive to the performance data (evidenced at least by *Figures 45-49*).

73. Claim 42 of the '168 patent recited the system as in claim 37, wherein the composite virtual performance data is communicated back to the individual music subsystems.

74. The Infringing Instrumentalities comprised a system, as recited in claim 37 of the '168 patent, wherein the composite virtual performance data is communicated back to the individual music subsystems (evidenced at least by *Figures 89-94*).



Figure 89 – Guitar Hero 5



Figure 90 – Guitar Hero Live

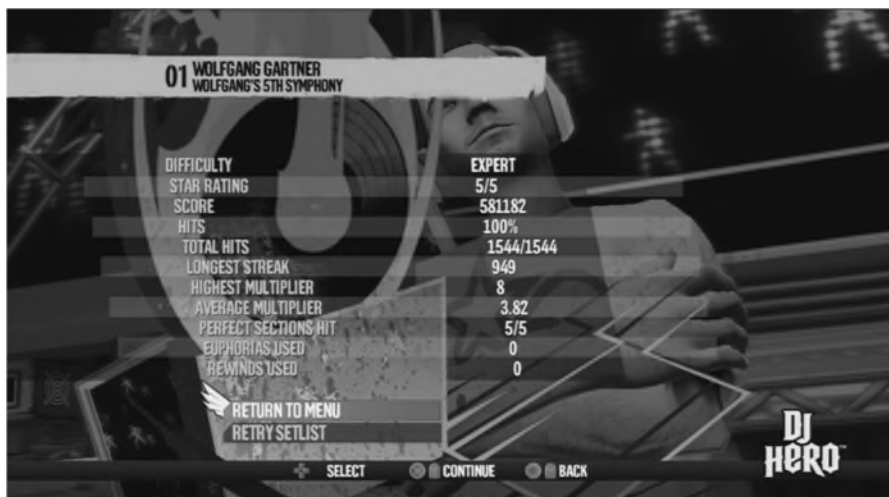


Figure 91 - DJ Hero



Figure 92 - DJ Hero 2

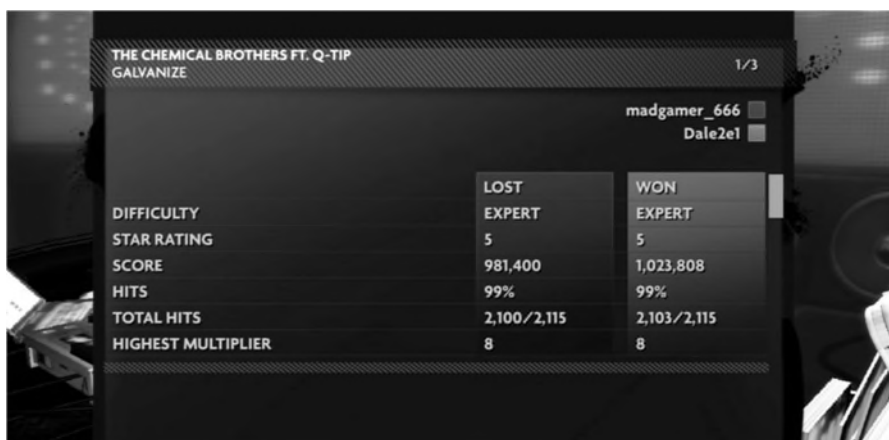


Figure 93 - DJ Hero 2



Figure 94 - Band Hero

75. Claim 43 of the '168 patent recited the system as in claim 37 wherein the individual workstations provide at least one of an audio output and a visual presentation, responsive to the composite virtual performance data.

76. The Infringing Instrumentalities comprised a system, as recited in claim 37 of the '168 patent, wherein the individual workstations provide at least one of an audio output and a visual presentation, responsive to the composite virtual performance data (evidenced at least by *Figures 19-22 and 78*).

77. Claim 44 of the '168 patent recited the system as in claim 37 wherein each of the individual workstations is further comprised of a network interface subsystem and a music data processor.

78. The Infringing Instrumentalities comprised a system, as recited in claim 37 of the '168 patent, wherein each of the individual workstations is further comprised of a network

interface subsystem and a music data processor (evidenced at least by *Figure 95*).



Figure 95

79. Claim 45 of the '168 patent recited the system as in claim 37, wherein the processor is responsive to the composite virtual performance data to generate a presentation on the local display.

80. The Infringing Instrumentalities comprised a system, as recited in claim 37 of the '168 patent, wherein the processor is responsive to the composite virtual performance data to generate a presentation on the local display (evidenced at least by *Figures 77-83*).

81. Claim 46 of the '168 patent recited a method for communication with a source of distribution of musical data representative of a musical score in a computer-usable form to a music workstation for video presentation of musical notation for the respective musical score, the

method comprising: accepting at least a part of the musical data from the source; evaluating the at least a part of the musical data to determine if the musical data is to be downloaded to the respective music workstation; selectively storing in local storage the musical data responsive to the evaluating; and locally displaying a video presentation of the musical score responsive to the selectively stored musical data.

82. The Infringing Instrumentalities performed a method for communication with a source of distribution of musical data representative of a musical score in a computer-usable form to a music workstation for video presentation of musical notation for the respective musical score (evidenced at least by *Figures 38-42*), the method comprising: accepting at least a part of the musical data from the source; evaluating the at least a part of the musical data to determine if the musical data is to be downloaded to the respective music workstation; selectively storing in local storage the musical data responsive to the evaluating (evidenced at least by *Figures 6-7, 96-98*); and locally displaying a video presentation of the musical score responsive to the selectively stored musical data (evidenced at least by *Figures 28-32*).



Figure 96 – Guitar Hero Live



Figure 97 - DJ Hero



Figure 98 - DJ Hero

83. Claim 48 of the '168 patent recited a method for music via performance, for integrating simultaneous musical performances from a plurality of locations of music display workstations into a cohesive whole, the method comprising: accepting performance data from each of the plurality of music display workstations; processing the live performance data into discrete time samples; communicating the discrete time samples for combination into combined virtual performance data; communicating the combined virtual performance data to at least one of the plurality of music display workstations; and providing at least one of an audio and a video presentation responsive to the combined virtual performance data.

84. The Infringing Instrumentalities performed a method for music via performance, for integrating simultaneous musical performances from a plurality of locations of music display workstations into a cohesive whole, the method comprising: accepting performance data from each of the plurality of music display workstations; processing the live performance data into discrete time samples; communicating the discrete time samples for combination into combined virtual performance data; communicating the combined virtual performance data to at least one of the plurality of music display workstations; and providing at least one of an audio and a video presentation responsive to the combined virtual performance data (evidenced at least by *Figures 33-37, 66-67, 74-76, 99*).

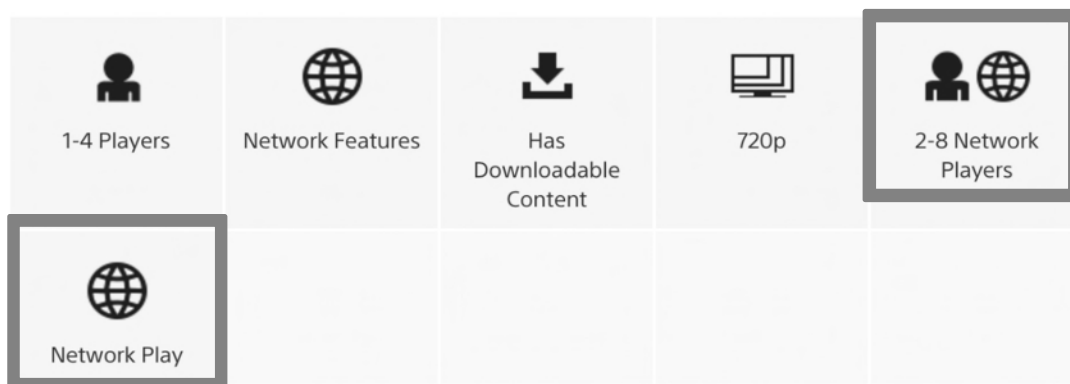


Figure 99

85. Claim 49 of the '168 patent recited a method of providing a video display presentation of a selected musical composition and of a user's performance, said method comprising: storing composition data representative of the selected musical composition; generating a video display output responsive to the composition data for the selected musical composition; displaying the video display presentation responsive to the video display output; storing user performance data concurrent with the corresponding display presentation responsive to the performance by the user; comparing the user performance data to the respective associated

composition data; and modifying the display presentation to reflect the result of the comparing concurrent with the performance of the composition data.

86. The Infringing Instrumentalities performed a method of providing a video display presentation of a selected musical composition and of a user's performance (evidenced at least by *Figures 100-101*), said method comprising: storing composition data representative of the selected musical composition (evidenced at least by *Figures 102-103*); generating a video display output responsive to the composition data for the selected musical composition (evidenced at least by *Figures 104-105*); displaying the video display presentation responsive to the video display output; storing user performance data concurrent with the corresponding display presentation responsive to the performance by the user (evidenced at least by *Figures 106-107*); comparing the user performance data to the respective associated composition data; and modifying the display presentation to reflect the result of the comparing concurrent with the performance of the composition data (evidenced at least by *Figures 14-22, 66-67, 74-76*).

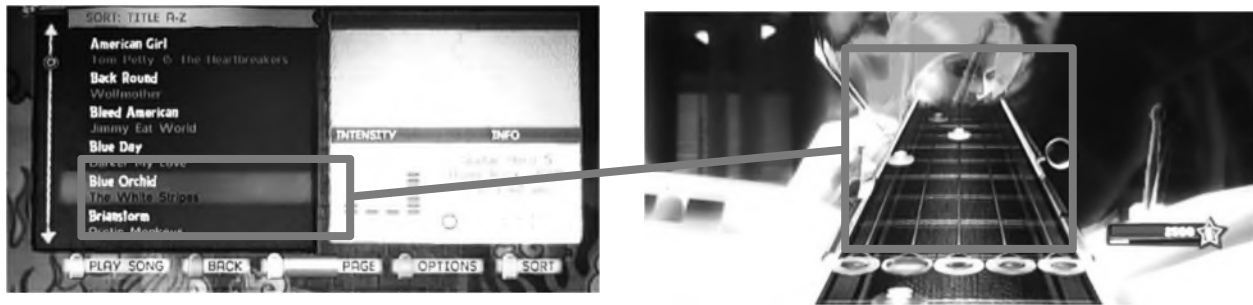


Figure 100 –Guitar Hero 5



Figure 101



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 F I G. 3

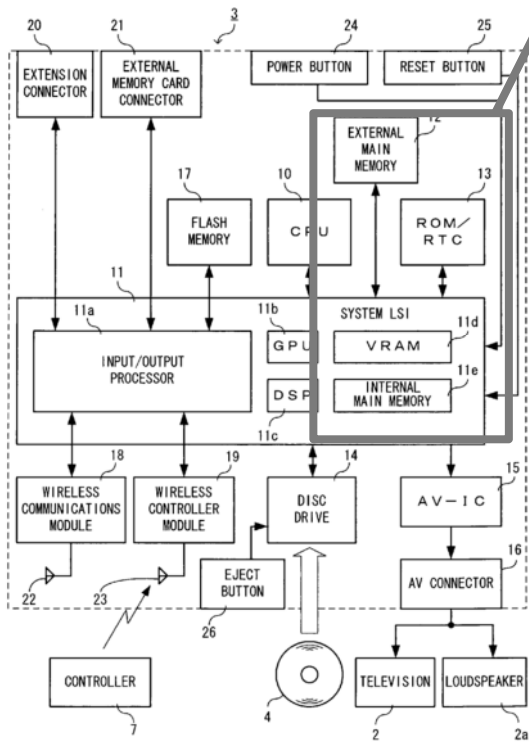


Figure 102 - Guitar Hero 5



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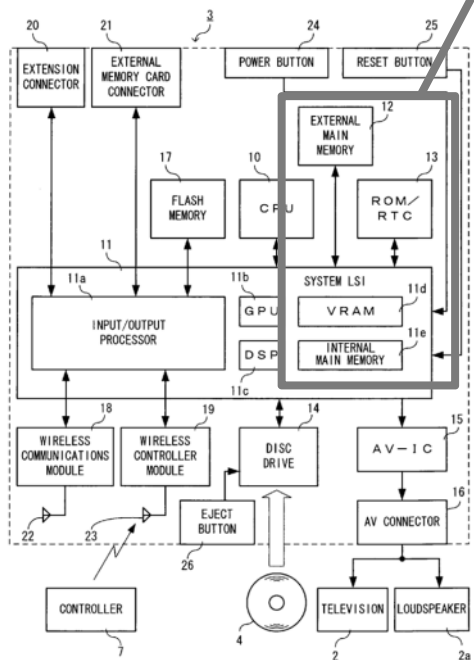


Figure 103 – Guitar Hero 5

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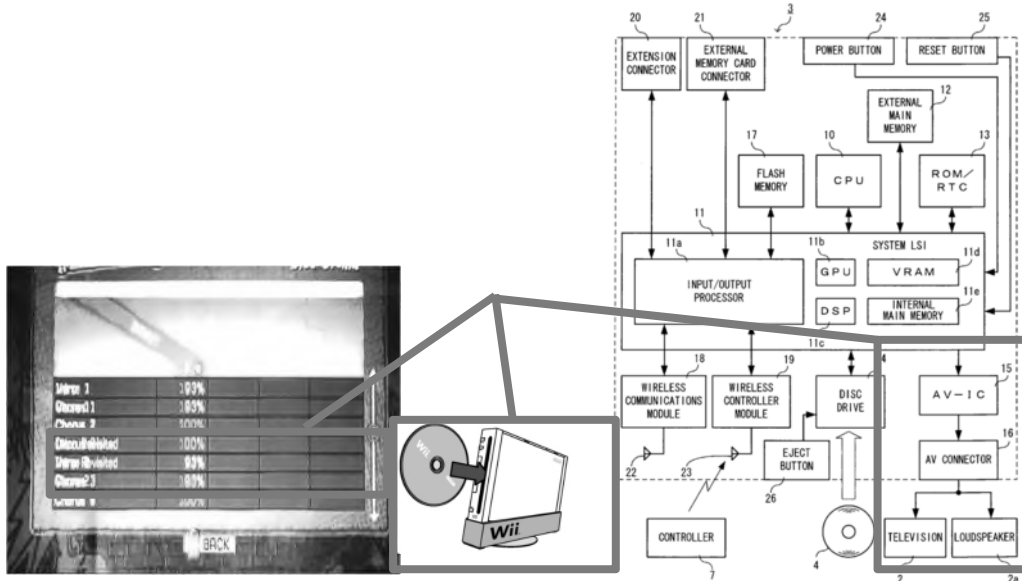


Figure 104 – Guitar Hero 5

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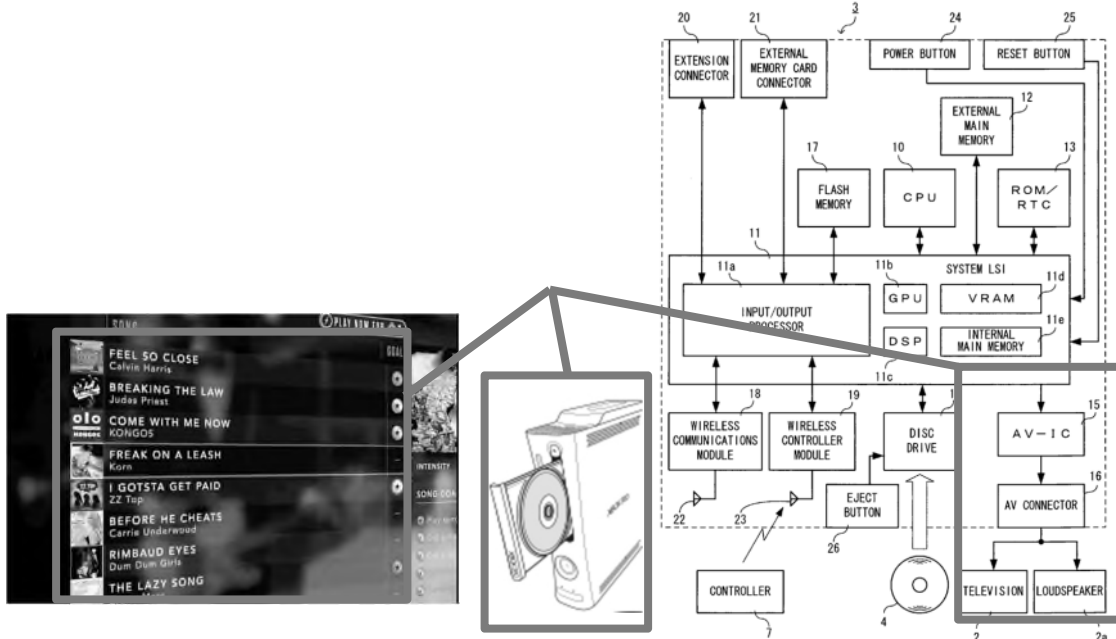


Figure 105 – Guitar Hero 5

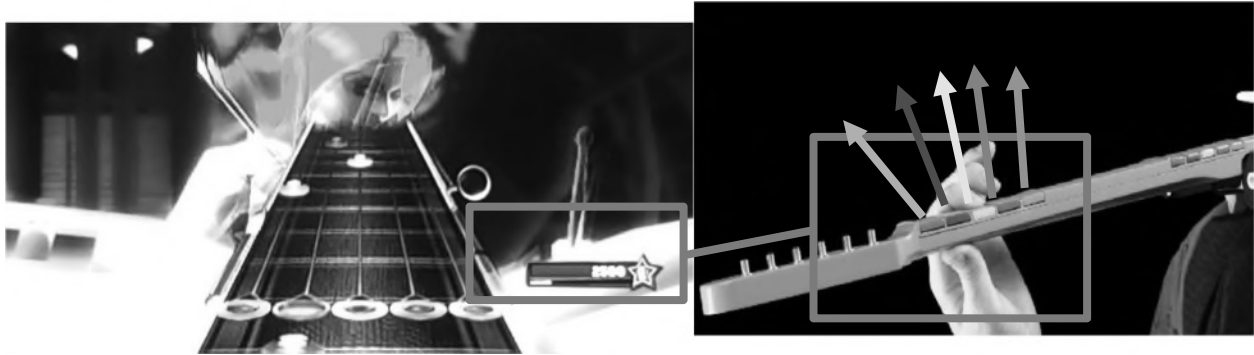


Figure 106 – Guitar Hero 5

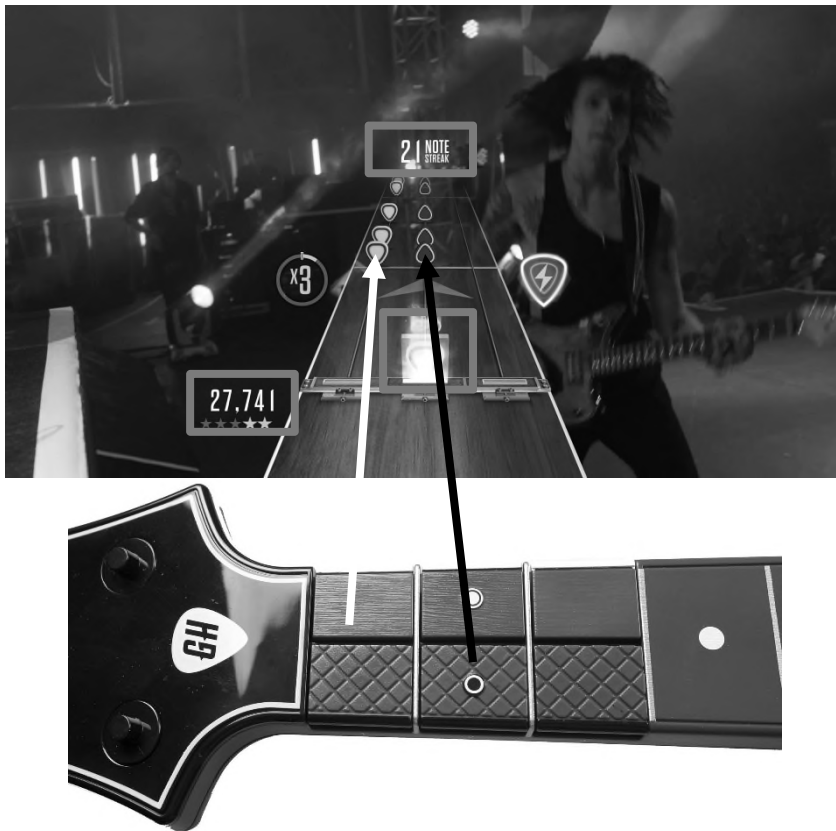


Figure 107 – Guitar Hero Live

87. Claim 50 of the '168 patent recited a music performance system for use by a user in providing a performance of a display presentation of a selected musical composition, said system comprising: an individual music workstation (IMW) comprising a communication interface providing for communications of musical composition data corresponding to the selected musical composition; a computing subsystem providing processing and memory for locally storing the musical composition data responsive to the communication interface; and a

music display apparatus for providing a visual display presentation of the selected musical composition responsive to the computing subsystem and the musical composition data.

88. The Infringing Instrumentalities comprised a music performance system for use by a user in providing a performance of a display presentation of a selected musical composition (evidenced at least by *Figures 3-5, 9, 43-44*), said system comprising: an individual music workstation comprising a communication interface providing for communications of musical composition data corresponding to the selected musical composition (evidenced at least by *Figures 108-109*); a computing subsystem providing processing and memory for locally storing the musical composition data responsive to the communication interface (evidenced at least by *Figures 3-5, 9, 43-44, 21, 95-98*); and a music display apparatus for providing a visual display presentation of the selected musical composition responsive to the computing subsystem and the musical composition data (evidenced at least by *Figures 1-5*).



Figure 108 – Guitar Hero 5

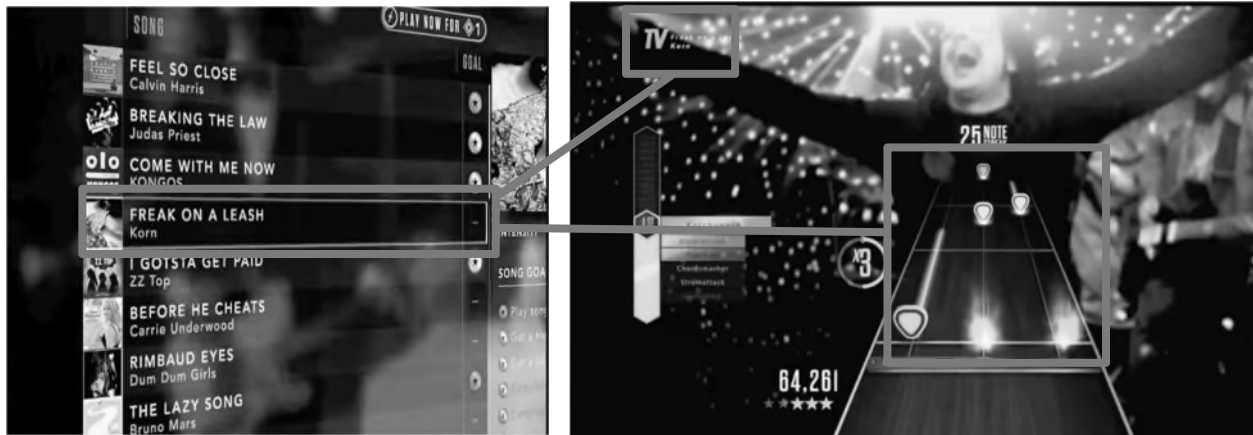


Figure 109- Guitar Hero 5

89. Claim 53 of the '168 patent recited a communications system comprising: an individual music subsystem comprising a music input for selectively providing a performance data output, responsive to a performance by a user of that respective individual music subsystem, and a music data receiver for coupling communicated music data for storage in memory of the respective individual music subsystem; and a display for providing a visual presentation to the user from at least one of the stored music data and the performance data output from the individual music subsystem.

90. The Infringing Instrumentalities comprised a communications system comprising: an individual music subsystem comprising a music input for selectively providing a performance data output, responsive to a performance by a user of that respective individual music subsystem, and a music data receiver for coupling communicated music data for storage in memory of the respective individual music subsystem (evidenced at least by *Figures 6-7, 110-111*); and a display for providing a visual presentation to the user from at least one of the stored music data and the performance data output from the individual music subsystem (evidenced at least by *Figures 112-113*).

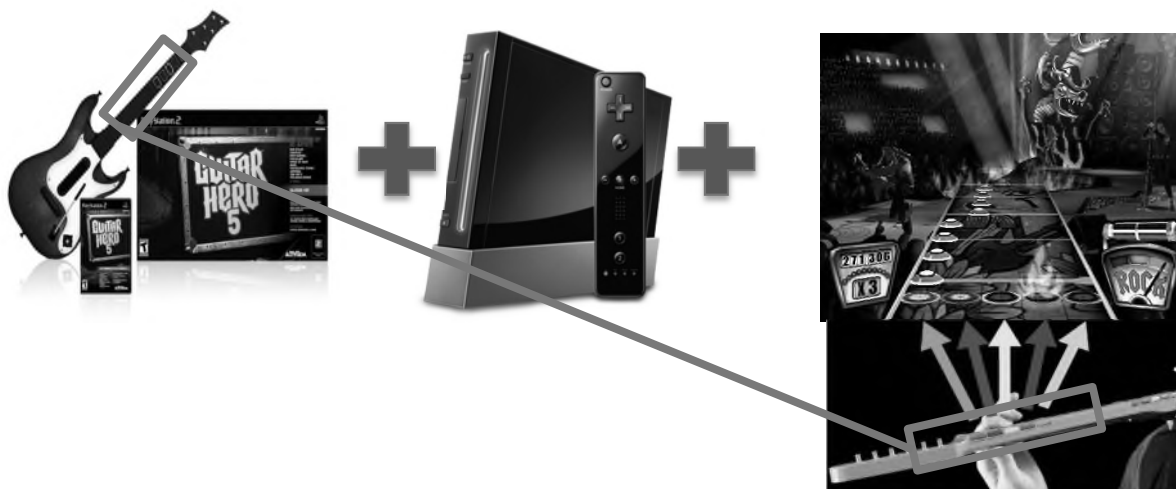


Figure 110 – Guitar Hero 5

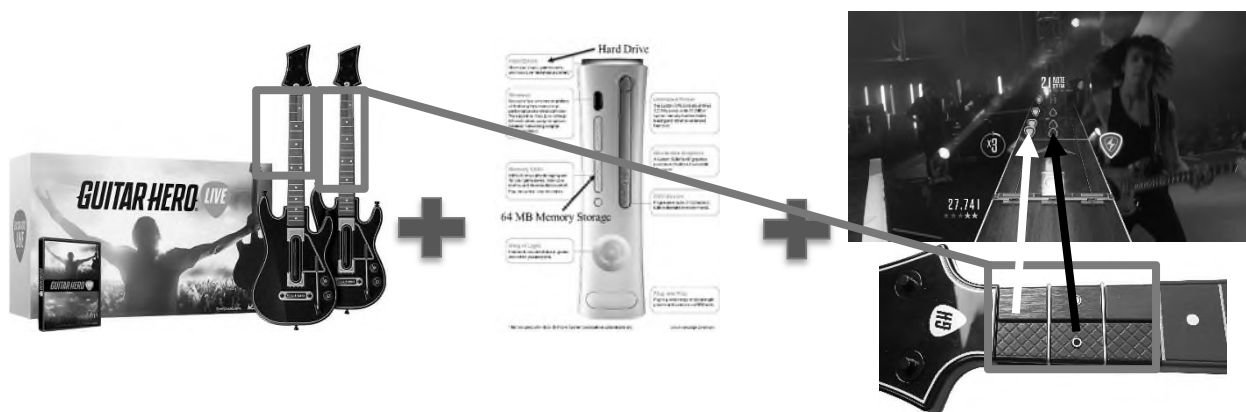


Figure 111 – Guitar Hero Live



The performance data output from the individual music subsystem

Figure 112 – Guitar Hero 5



The performance data output from the individual music subsystem

Figure 113 – Guitar Hero Live

91. Claim 54 of the '168 patent recited the system as in claim 53, further comprising a plurality of individual music subsystems, the system further comprising: means to provide a combined output of composite virtual performance data responsive to communicated performance data out from at least two from the plurality of the individual music subsystems.

92. The Infringing Instrumentalities comprised a system, as recited in claim 53 of the '168 patent, comprising a plurality of individual music subsystems (evidenced at least by *Figures 3-5, 9, 43-44*), the system further comprising: means to provide a combined output of composite virtual performance data responsive to communicated performance data out from at least two from the plurality of the individual music subsystems (evidenced at least by *Figure 8; Figure*

114).

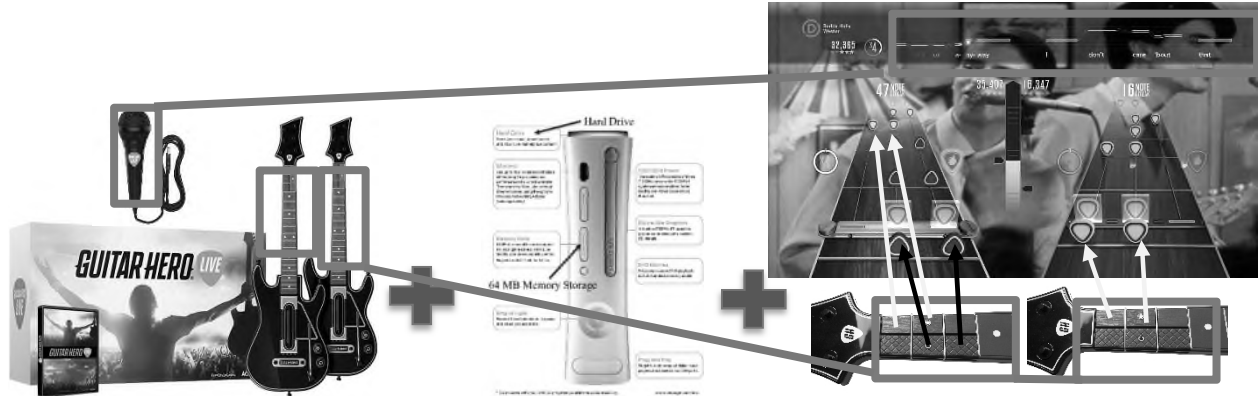


Figure 114 – Guitar Hero Live

93. Bama is the assignee and owner of the right, title and interest in and to the '168 patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 5,728,960

94. The allegations set forth in the foregoing paragraphs 1 through 93 are incorporated into this Second Claim for Relief.

95. On March 17, 1998, U.S. Patent No. 5,728,960 (the “’960 patent”), entitled *Multi-Dimensional Transformation Systems and Display Communication Architecture for Musical Compositions*, was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’960 patent is attached as Exhibit 2.

96. The inventions of the ’960 patent resolved logistical and analytical problems associated with laypersons and musicians learning and performing new compositional data simultaneously at one or multiple locations. For example, the inventions enabled several users performing together, at various remote locations, to view and received analytical feedback of the multiple performances simultaneously using a networked arrangement of each user station.

97. The '960 patent did not merely recite performance of a musical composition by a group. Moreover, what was claimed went beyond simply communicating performances by performances over a network.

98. The technology claimed in the '960 patent did not preempt all ways of simultaneous music performance or analysis of said performance.

99. Accordingly, each claim of the '960 patent recited a combination of elements sufficient to ensure that the claim in practice amounted to significantly more than a patent on an ineligible concept.

100. Plaintiff is the assignee and owner of the right, title and interest in and to the '960 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

101. Upon information and belief, each Defendant directly infringed at least claims 1-6, 9-10, 12-14, 18-20, 22, 24-29, 31-39, 45-52, 54, 57, and 60 of the '960 patent by making, using, selling, importing and/or providing and causing to be used Guitar Hero 5, Guitar Hero Live, DJ Hero, DJ Hero 2, and Band Hero (the "Infringing Instrumentalities"). The Infringing Instrumentalities included but were not limited to Defendants' Guitar Hero 5, Guitar Hero Live, DJ Hero, DJ Hero 2, and Band Hero games.

102. In particular, claim 1 of the '960 patent recited a musical display networked system for producing a display presentation, the system comprising: means for receiving an original musical composition; a memory, for selectively storing the received original musical composition; selection means for determining a selected operating mode; a controller responsive to the selection means, the controller providing means for selectively controlling the storing of the original musical composition in memory and selectively altering the stored original musical

composition responsive to the selected operating mode to produce a derivative musical composition; and a plurality of display subsystems, at least one of said plurality of display subsystems responsive to communication from the controller wherein at least one of the display subsystems provide for displaying a display presentation of the derivative musical composition in accordance with the selected operating mode.

103. The Infringing Instrumentalities comprised a musical display networked system for producing a display presentation, the features of the system collectively practice each limitation of claim 1 of the '960 patent, the combined features comprising means for receiving an original musical composition; a memory, for selectively storing the received original musical composition; selection means for determining a selected operating mode; a controller responsive to the selection means, the controller providing means for selectively controlling the storing of the original musical composition in memory and selectively altering the stored original musical composition responsive to the selected operating mode to produce a derivative musical composition; and a plurality of display subsystems, at least one of said plurality of display subsystems responsive to communication from the controller wherein at least one of the display subsystems provide for displaying a display presentation of the derivative musical composition in accordance with the selected operating mode (evidenced at least by *Figures 6-7, 102-103, 110-111*).

104. Claim 2 of the '960 patent recited the system as in claim 1, wherein the selection means is further comprised of an input device for selecting a first musical composition from a library of a plurality of musical compositions as the original musical composition to be received.

105. The Infringing Instrumentalities comprised a musical display networked system, as in claim 1 of the '960 patent, which practices each limitation of claim 2 of the '960 patent, the

combined features comprising selection means, further comprising an input device for selecting a first musical composition from a library of a plurality of musical compositions as the original musical composition to be received (evidenced at least by *Figures 108-109*).

106. Claim 3 of the '960 patent recited the system as in claim 1 of the '960 patent, further comprising an input device, for providing at least one of the means for determining the selected operating mode, the means for determining a display format, and means for determining selected ones of the display subsystems for communication between the selected ones of the display subsystems.

107. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, which practices each limitation of claim 3 of the '960 patent, the combined features comprising an input device, for providing at least one of the means for determining the selected operating mode, the means for determining a display format, and means for determining selected ones of the display subsystems for communication between the selected ones of the display subsystems (evidenced at least by *Figures 58-65*).

108. Claim 4 of the '960 patent recited the system as in claim 1 of the '960 patent, wherein the derivative musical composition is the same as the original musical composition.

109. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein the derivative musical composition is the same as the original musical composition (evidenced at least by *Figures 58-65*).

110. Claim 5 of the '960 patent recited the system as recited in claim 1 of the '960 patent, wherein said plurality of display subsystems comprises interactive music workstations, wherein said interactive music workstations are operatively coupled together and enabled for real time communication with said control means.

111. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein said plurality of display subsystems comprises interactive music workstations, wherein said interactive music workstations are operatively coupled together and enabled for real time communication with said control means (evidenced at least by *Figures 33-37, 51-52, 86-88*).

112. Claim 6 of the '960 patent recited the system as in claim 1, wherein at least two of the display subsystems provide communications therebetween responsive to the controller.

113. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein at least two of the display subsystems provide communications responsive to the controller (evidenced at least by *Figures 33-37, 47-49, 51-52*).

114. Claim 9 of the '960 patent recited the system as in claim 1, wherein each of said display subsystems is further comprised of a local memory and a local display, wherein the control means outputs data for the derivative musical composition, wherein said data is stored in said local memory for the respective display subsystem, and wherein the local display provides the display presentation for the derivative musical composition responsive to the data stored in the respective local memory for the respective display subsystem.

115. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein each of said display subsystems is further comprised of a local memory and a local display, wherein the control means outputs data for the derivative musical composition, wherein said data is stored in said local memory for the respective display subsystem, and wherein the local display provides the display presentation for the derivative musical composition responsive to the data stored in the respective local memory for the respective display subsystem (evidenced at least by *Figures 3-5, 9, 43-44, 72-76, 96-98*).

116. Claim 10 of the '960 patent recited the system as in claim 1, wherein the communication is via wireless communications.

117. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein the communication is via wireless communications (evidenced at least by *Figures 3-5, 9, 43-44*).

118. Claim 12 of the '960 patent recited the system as in claim 1, wherein at least two of the plurality of display subsystems are configured to receive the same output from the controller.

119. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein at least two of the plurality of display subsystems are configured to receive the same output from the controller (evidenced at least by *Figures 3-5, 9, 43-44, 72-76*).

120. Claim 13 of the '960 patent recited the system as in claim 1, wherein the selection means is comprised of at least one of a keyboard device, a touch sensitive liquid crystal display, a voice recognition system which sends commands to the controller in response to voice commands, a visual recognition system which sends commands to the controller responsive to an individual's movement, and an audiotransducer for converting input soundwaves into signals representative of soundwaves.

121. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein the selection means is comprised of at least one of a keyboard device, a touch sensitive liquid crystal display, a voice recognition system which sends commands to the controller in response to voice commands, a visual recognition system which sends commands to the controller responsive to an individuals movement, and an audiotransducer for converting

input soundwaves into signals representative of soundwaves (evidenced at least by *Figures 8-13, 58, 114*).

122. Claim 14 of the '960 patent recited the system as in claim 8, wherein said different ones of said plurality of derivative musical compositions each represent a different musical part of the original musical composition.

123. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein said different ones of said plurality of derivative musical compositions each represent a different musical part of the original musical composition (evidenced at least by *Figures 72-76*).

124. Claim 18 of the '960 patent recited the system as in claim 2, wherein the library is coupled from an external source outside said networked system.

125. The Infringing Instrumentalities comprised a system, as in claim 2 of the '960 patent, wherein the library is coupled from an external source outside said networked system (evidenced at least by *Figures 6-7, 96-98*).

126. Claim 19 of the '960 patent recited the system as in claim 17, wherein the library is stored in non-volatile memory.

127. The Infringing Instrumentalities comprised a system, as in claim 17 of the '960 patent, wherein the library is stored in non-volatile memory (evidenced at least by *Figures 6-7*).

128. Claim 20 of the '960 patent recited the system as in claim 1, wherein the selection means provides for selection of an auto-operation mode wherein the system provides for display of a real-time scrolling presentation of the musical composition, said real time scrolling selectively enabled on at least one of said display subsystems.

129. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein the system provides for display of a real-time scrolling presentation of the musical composition, said real time scrolling selectively enabled on at least one of said display subsystems (evidenced at least by *Figures 23-27*).

130. Claim 22 of the '960 patent recited the system as in claim 1, wherein the variables comprise feedback signals generated responsive to a music performance external to the networked system.

131. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein the variables comprise feedback signals generated responsive to a music performance external to the networked system (evidenced at least by *Figures 14-22*).

132. Claim 24 of the '960 patent recited the system as in claim 1, wherein at least one of said plurality of display subsystems comprises a designated master interactive music workstation enabled to provide system control, communication and selection, and wherein all other said display subsystems comprise slave music workstations responsive to the master interactive music workstation.

133. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein at least one of said plurality of display subsystems comprises a designated master interactive music workstation enabled to provide system control, communication and selection, and wherein all other said display subsystems comprise slave music workstations responsive to the master interactive music workstation (evidenced at least by *Figures 3-5, 9, 43-44*).

134. Claim 25 of the '960 patent recited the system as in claim 1, wherein at least one of the plurality of display subsystems provides an audio presentation to synchronously accompany the display presentation for that respective one of the display subsystems.

135. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein at least one of the plurality of display subsystems provides an audio presentation to synchronously accompany the display presentation for that respective one of the display subsystems (evidenced at least by *Figures 17-22*).

136. Claim 26 of the '960 patent recited the system as in claim 1, wherein at least one of the display subsystems is further comprised of local control means for providing local user selection of a display format of the derivative musical composition responsive to the local control means.

137. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein at least one of the display subsystems is further comprised of local control means for providing local user selection of a display format of the derivative musical composition responsive to the local control means (evidenced at least by *Figures 58-65*).

138. Claim 27 of the '960 patent recited the system as in claim 26 wherein the local control means provides for selection of a musical instrument type, wherein a corresponding musical instrument display presentation is generated responsive to the selection of the musical instrument type.

139. The Infringing Instrumentalities comprised a system, as in claim 26 of the '960 patent, wherein the local control means provides for selection of a musical instrument type, wherein a corresponding musical instrument display presentation is generated responsive to the selection of the musical instrument type (evidenced at least by *Figures 84-88*).

140. Claim 28 of the '960 patent recited the system as in claim 1, further comprising a plurality of selectable display formats wherein at least one said display subsystem provides the display presentation for a selected one of the plurality of display formats.

141. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein the system comprises a plurality of selectable display formats wherein at least one said display subsystem provides the display presentation for a selected one of the plurality of display formats (evidenced at least by *Figures 58-65*).

142. Claim 29 of the '960 patent recited the system as in claim 28, wherein the display presentation format is selected responsive to an external audio performance, associated with a particular musical instrument type which is thereafter associated with said at least one respective display subsystem.

143. The Infringing Instrumentalities comprised a system, as in claim 28 of the '960 patent, wherein the display presentation format is selected responsive to an external audio performance, associated with a particular musical instrument type which is thereafter associated with said at least one respective display subsystem (evidenced at least by *Figures 72-76*).

144. Claim 31 of the '960 patent recited the system as in claim 1, wherein the control means further comprises means for sensing parameters of performed music, and advancing the display presentation responsive to tracking the parameters of the performed music relative to said display presentation.

145. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein the control means further comprises means for sensing parameters of performed music, and advancing the display presentation responsive to tracking the parameters of the performed music relative to said display presentation (evidenced at least by *Figures 18-19, 25-28, 74-75*).

146. Claim 32 of the '960 patent recited the system as in claim 1, further comprising: means for tracking a user's movements to generate tracking data; and means for interpreting the

tracking data to convey presentation information associated with the tracking data to at least one said music display subsystem.

147. The Infringing Instrumentalities comprised a musical display networked system, as in claim 1 of the '960 patent, which practices each limitation of claim 32 of the '960 patent, the combined features comprising selection means for tracking a user's movements to generate tracking data; and means for interpreting the tracking data to convey presentation information associated with the tracking data to at least one said music display subsystem (evidenced at least by *Figures 14-16, 77-83, 89-94*).

148. Claim 33 of the '960 patent recited the system as in claim 32, wherein the tracking data is associated with a conductor, and wherein the display presentation is provided at least in part in response to the tracking data.

149. The Infringing Instrumentalities comprised a system, as in claim 1 of the '960 patent, wherein the tracking data is associated with a conductor, and wherein the display presentation is provided at least in part in response to the tracking data (evidenced at least by *Figures 18-19, 25-28, 74-75*).

150. Claim 34 of the '960 patent recited the system as in claim 1, further comprising: means for tracking a user's movements to generate tracking data; and means for interpreting the tracking data to provide a virtual music performance by said user, said performance being correspondingly associated with the tracking data.

151. The Infringing Instrumentalities comprised a musical display networked system, as in claim 1 of the '960 patent, which practices each limitation of claim 34 of the '960 patent, the combined features comprising means for tracking a user's movements to generate tracking data; and means for interpreting the tracking data to provide a virtual music performance by said

user, said performance being correspondingly associated with the tracking data (evidenced at least by *Figures 14-16, 77-83, 89-94*).

152. Claim 35 of the '960 patent recited the system as in claim 1, further comprising: means for tracking a user's movement to generate tracking data; and means for interpreting the tracking data to analyze said user's performance associated with the tracking data.

153. The Infringing Instrumentalities comprised a musical display networked system, as in claim 1 of the '960 patent, which practices each limitation of claim 35 of the '960 patent, the combined features comprising means for interpreting the tracking data to analyze said user's performance associated with the tracking data (evidenced at least by *Figures 14-16, 66, 71, 77-83, 89-94*).

154. Claim 36 of the '960 patent recited the system as in claim 1, wherein there is performed music associated with the display presentation, wherein there are parameters associated with the performed music and respective parameters associated with the display presentation wherein the control means further comprises means for tracking the parameters of the performed music, and comparing said parameters of the performed music to the respective parameters of the display presentation wherein at least one said music display subsystem provides a user performance quality indicator responsive to analyzing the parameters relative to the respective parameters.

155. The Infringing Instrumentalities comprised a musical display networked system, as in claim 1 of the '960 patent, wherein there is performed music associated with the display presentation, wherein there are parameters associated with the performed music and respective parameters associated with the display presentation wherein there are control means, and which practices each limitation of claim 36 of the '960 patent, the combined features comprising means

for tracking the parameters of the performed music, and comparing said parameters of the performed music to the respective parameters of the display presentation wherein at least one said music display subsystem provides a user performance quality indicator responsive to analyzing the parameters relative to the respective parameters (evidenced at least by *14-16, 66, 71, 77-83, 89-94*).

156. Claim 37 of the '960 patent recited the system as in claim 36, further comprising: means for providing a training mode, wherein the display presentation for said training mode provides for teaching assistance to said user of said music display subsystem responsive to the performance quality indicator.

157. The Infringing Instrumentalities comprised a musical display networked system, as in claim 36 of the '960 patent, which practices each limitation of claim 36 of the '960 patent, the combined features comprising means for providing a training mode, wherein the display presentation for said training mode provides for teaching assistance to said user of said music display subsystem responsive to the performance quality indicator (evidenced at least by *Figures 58-65*).

158. Claim 38 of the '960 patent recited the system as in claim 36, wherein the controller further comprises means for producing a report of skill level and errors of said user responsive to the performance quality indicator.

159. The Infringing Instrumentalities comprised a musical display networked system, as in claim 36 of the '960 patent, which practices each limitation of claim 36 of the '960 patent, the combined features comprising means for producing a report of skill level and errors of said user responsive to the performance quality indicator (evidenced at least by *Figures 14-16, 66, 71, 77-83, 89-94*).

160. Claim 39 of the '960 patent recited the system as in claim 1, wherein at least one said music display subsystem is further comprised of: local input means for providing performance signals representative of a particular individual performer associated with a particular one of the display subsystems; means for receiving a plurality of said performers' performance signals individually; and wherein the control means further comprise means for comparing and tracking the performance signals relative to the respective displayed musical compositions for the respective particular one of the display subsystems to produce divergence data representative of at least one of performance quality, skill level, and errors related to said respective particular individual performer associated with said at least one said music display subsystem.

161. The Infringing Instrumentalities comprised a musical display networked system, as in claim 1 of the '960 patent, which practices each limitation of claim 39 of the '960 patent, the combined features comprising local input means for providing performance signals representative of a particular individual performer associated with a particular one of the display subsystems; means for receiving a plurality of said performers' performance signals individually; and wherein the control means further comprises means for comparing and tracking the performance signals relative to the respective displayed musical compositions for the respective particular one of the display subsystems to produce divergence data representative of at least one of performance quality, skill level, and errors related to said respective particular individual performer associated with said at least one said music display subsystem (evidenced at least by *Figures 14-16, 66, 71, 77-83, 89-94*).

162. Claim 45 of the '960 patent recited the system as in claim 39, wherein divergence data of an individual performer is displayed as feedback on the music display subsystem for the respective individual performer.

163. The Infringing Instrumentalities comprised a system, as in claim 39 of the '960 patent, wherein divergence data of an individual performer is displayed as feedback on the music display subsystem for the respective individual performer (evidenced at least by *Figures 14-16, 66, 71, 77-83, 89-94*).

164. Claim 46 of the '960 patent recited the system as in claim 39, wherein said divergence data is stored for later analysis.

165. The Infringing Instrumentalities comprised a system, as in claim 39 of the '960 patent, wherein said divergence data is stored for later analysis (evidenced at least by *Figures 14-16, 66, 71, 77-83, 89-94*).

166. Claim 47 of the '960 patent recited the system as in claim 39, wherein the divergence data is processed by the controller to provide for the display presentation of the divergence data.

167. The Infringing Instrumentalities comprised a system, as in claim 39 of the '960 patent, wherein the divergence data is processed by the controller to provide for the display presentation of the divergence data (evidenced at least by *Figures 14-16, 66, 71, 77-83, 89-94*).

168. Claim 48 of the '960 patent recited the system as in claim 39, wherein said divergence data is processed by the controller to provide the display presentation of the divergence data in a selected one of multiple display formats, and wherein said multiple formats comprise at least one of deviation error, deviation direction, timing, pitch, audio, video, and an audiovisual graphical presentation.

169. The Infringing Instrumentalities comprised a system, as in claim 39 of the '960 patent, wherein said divergence data is processed by the controller to provide the display presentation of the divergence data in a selected one of multiple display formats, and wherein said multiple formats comprise at least one of deviation error, deviation direction, timing, pitch, audio, video, and an audiovisual graphical presentation (evidenced at least by *Figures 14-16, 66, 71, 77-83, 89-94*).

170. Claim 49 of the '960 patent recited the system of claim 11, wherein the plurality of music display subsystems are each further comprised of local memory means for local storage of respective selected derivative musical compositions.

171. The Infringing Instrumentalities comprised a system, as in claim 39 of the '960 patent, wherein the plurality of music display subsystems are each further comprised of local memory means for local storage of respective selected derivative musical compositions (evidenced at least by *Figures 53-57, 96-98*).

172. Claim 50 of the '960 patent recited a musical display networked music system for selectively creating derivative musical compositions, and monitoring user performance relative to a stored original musical composition, the system comprising: a plurality of networked music display subsystems, said subsystems enabled to communicate; a user input device responsive to a user for providing user control signals; composition selection means for providing a selected musical composition responsive to the stored original musical composition; means for associating the selected musical composition with an associated addressable user type; wherein each of the music display subsystems is further comprised of an addressable receiver for selectively receiving addressed communication for the associated addressable user type to provide for a local display presentation of the respective selected musical composition in a

display format directed to the associated addressable user type; a local display each associated with one of the associated addressable user types: wherein the system is further comprised of means for communicating the selected musical composition to at least one of said plurality of music display subsystems, such that said selected musical composition is received and displayed only by the respective associated local display.

173. The Infringing Instrumentalities comprised a musical display networked music system for selectively creating derivative musical compositions, and monitoring user performance relative to a stored original musical composition, the system comprising: a plurality of networked music display subsystems, said subsystems enabled to communicate; a user input device responsive to a user for providing user control signals; composition selection means for providing a selected musical composition responsive to the stored original musical composition; means for associating the selected musical composition with an associated addressable user type; wherein each of the music display subsystems is further comprised of an addressable receiver for selectively receiving addressed communication for the associated addressable user type to provide for a local display presentation of the respective selected musical composition in a display format directed to the associated addressable user type; a local display each associated with one of the associated addressable user types: wherein the system is further comprised of means for communicating the selected musical composition to at least one of said plurality of music display subsystems, such that said selected musical composition is received and displayed only by the respective associated local display (evidenced at least by *Figures 14-16, 66, 71, 77-83, 89-94*).

174. Claim 51 of the '960 patent recited the system as in claim 50, wherein a plurality of said selected musical compositions are provided, wherein each of said selected musical

compositions is associated with a different one of the addressable user types; and wherein the means for communicating further comprises means for communicating said plurality of selected musical compositions, wherein the plurality of music display subsystems are further comprised of independently addressable receivers for receiving respective selected ones of said plurality of selected musical compositions.

175. The Infringing Instrumentalities comprised a system, as in claim 50 of the '960 patent, wherein a plurality of said selected musical compositions are provided, wherein each of said selected musical compositions is associated with a different one of the addressable user types; and wherein the means for communicating further comprises means for communicating said plurality of selected musical compositions, wherein the plurality of music display subsystems are further comprised of independently addressable receivers for receiving respective selected ones of said plurality of selected musical compositions (evidenced at least by *Figures 72-76*).

176. Claim 52 of the '960 patent recited the system as in claim 50, further comprising: means for selecting and monitoring characteristic parameters of a performance by a user of one of the user types; and means for comparing the monitored characteristic parameters of the performance to determine divergence of the performance from the displayed selected musical composition.

177. The Infringing Instrumentalities comprised a musical display networked system, as in claim 52 of the '960 patent, which practices each limitation of claim 50 of the '960 patent, the combined features comprising means for selecting and monitoring characteristic parameters of a performance by a user of one of the user types; and means for comparing the monitored

characteristic parameters of the performance to determine divergence of the performance from the displayed selected musical composition (evidenced at least by *14-16, 66, 71, 77-83, 89-94*).

178. Claim 54 of the '960 patent recited the system as in claim 50, wherein the characteristic parameters of the performance comprise an audio performance.

179. The Infringing Instrumentalities comprised a system, as in claim 50 of the '960 patent, wherein the characteristic parameters of the performance comprise an audio performance (evidenced at least by *Figures 72-76*).

180. Claim 57 of the '960 patent recited the system as in claim 50, further comprising means for providing audio output to at least one said music display subsystem.

181. The Infringing Instrumentalities comprised a musical display networked system, as in claim 50 of the '960 patent, which practices each limitation of claim 57 of the '960 patent, the combined features comprising means for providing audio output to at least one said music display subsystem (evidenced at least by *Figures 19-22, 38-42*).

182. Claim 60 of the '960 patent recited a networked musical presentation system capable of individually and simultaneously displaying a plurality of individual musical scores relating to a common selected musical composition, each of the plurality of scores being correspondingly displayed for a selected corresponding one of a plurality of musical instrument types, the system comprising: a music database storage subsystem comprising at least one of a plurality of musical compositions, each said musical composition comprising music data representative of a corresponding music score stored in the database; first means for selecting a particular one of the musical compositions from the music database; second means for selecting at least one particular one of the plurality of musical instrument types associated with a particular musical instrument associated with the selected particular one of the musical compositions;

memory for storing the music data corresponding to the selected particular one of the musical compositions; controller means for performing system tasks, said controller means comprising means for adapting the music data for the selected particular one of the musical compositions to provide display presentation data for the selected musical instrument types; and a plurality of networked music display presentation stands each providing a music display presentation responsive to said controller means and said display presentation data, each said stand being associated with one of the selected particular musical instrument types, each said stand further comprising means for locally displaying a respective associated particular one of said plurality of musical scores in accordance with the selected particular musical instrument type associated with using that stand.

183. The Infringing Instrumentalities comprised a system, as in claim 60 of the '960 patent, wherein the system is capable of individually and simultaneously displaying a plurality of individual musical scores relating to a common selected musical composition, each of the plurality of scores being correspondingly displayed for a selected corresponding one of a plurality of musical instrument types, the system comprising: a music database storage subsystem comprising at least one of a plurality of musical compositions, each said musical composition comprising music data representative of a corresponding music score stored in the database; first means for selecting a particular one of the musical compositions from the music database; second means for selecting at least one particular one of the plurality of musical instrument types associated with a particular musical instrument associated with the selected particular one of the musical compositions; memory for storing the music data corresponding to the selected particular one of the musical compositions; controller means for performing system tasks, said controller means comprising means for adapting the music data for the selected

particular one of the musical compositions to provide display presentation data for the selected musical instrument types; and a plurality of networked music display presentation stands each providing a music display presentation responsive to said controller means and said display presentation data, each said stand being associated with one of the selected particular musical instrument types, each said stand further comprising means for locally displaying a respective associated particular one of said plurality of musical scores in accordance with the selected particular musical instrument type associated with using that stand (evidenced at least by *Figures 3-5, 9, 42-43*).

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 7,098,392

184. The allegations set forth in the foregoing paragraphs 1 through 183 are incorporated into this Third Claim for Relief.

185. On August 26, 2006, U.S. Patent No. 7,098,392 (the “’392 patent”), entitled *Electronic Image Visualization System and Communication Methodologies*, was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’392 patent is attached as Exhibit 3.

186. The inventions of the ’392 patent relate to a network architecture system, and resolve logistical and analytical problems associated with laypersons and musicians learning and performing new compositional data simultaneously at one or multiple locations by processing real time performances, and communicating musical data and performances. For example, the inventions enable several users performing together, at various remote locations, to view and received analytical feedback of the multiple performances simultaneously using a networked arrangement of each user station.

187. The '392 patent does not merely recite performance of a musical composition via a network. Moreover, what is claimed goes beyond simply communicating performances by performances over a network.

188. The technology claimed in the '392 patent does not preempt all ways of simultaneous music performance or analysis of said performance.

189. Accordingly, each claim of the '392 patent recites a combination of elements sufficient to ensure that the claim in practice amounts to significantly more than a patent on an ineligible concept.

190. Plaintiff is the assignee and owner of the right, title and interest in and to the '392 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

191. Upon information and belief, Defendant has and continues to directly infringe at least claims 1-5, 19-23, 33-38, and 45-46, and 48-49 of the '392 patent by making, using, selling, importing and/or providing and causing to be used Guitar Hero 5, Guitar Hero Live, DJ Hero, DJ Hero 2, and Band Hero (the "Infringing Instrumentalities"). The Infringing Instrumentalities include but are not limited to Defendants' Guitar Hero 5, Guitar Hero Live, DJ Hero, DJ Hero 2, and Band Hero games.

192. In particular, claim 1 of the '392 patent recites a method for providing for a video display responsive to image data related to a visual presentation, stored in an image database, the method comprising: defining a selected page of image data from the image database; preparing display data to generate the visual presentation responsive to the image data for the selected page; defining first slices of the display data for a first orientation; defining in a second orientation second slices of the first slices, grouping the second slices to define logical sections;

ordering the first slices from beginning to end; ordering the second slices from beginning to end; mapping the first slices, the second slices, the logical sections, and the ordering of the first slices and of the second slices; storing the mapping in a memory for selective retrieval of selected display data; and providing for the video display of the visual presentation responsive to the mapping and the selected display data.

193. The Infringing Instrumentalities comprise a musical display system for producing a display presentation comprising a network architecture system, wherein users can perform new compositional data simultaneously at one or multiple locations by processing real time performances, and communicating musical data and performances via a networked system, the features of the system collectively practice each limitation of claim 1 of the '392 patent, the combined features comprising means for providing for a video display responsive to image data related to a visual presentation, stored in an image database, the method comprising: defining a selected page of image data from the image database; preparing display data to generate the visual presentation responsive to the image data for the selected page; defining first slices of the display data for a first orientation; defining in a second orientation second slices of the first slices, grouping the second slices to define logical sections; ordering the first slices from beginning to end; ordering the second slices from beginning to end; mapping the first slices, the second slices, the logical sections, and the ordering of the first slices and of the second slices; storing the mapping in a memory for selective retrieval of selected display data; and providing for the video display of the visual presentation responsive to the mapping and the selected display data (evidenced at least by *Figures 23-27*).

194. Claim 2 of the '392 patent recites the method as in claim 1, wherein the first orientation equals vertical, wherein the second orientation equals horizontal, wherein the

beginning equals top for vertical, wherein the end equals bottom for vertical, wherein the beginning equals left side for horizontal, and wherein the end equals right side for horizontal.

195. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of claim method of claim 2 of the '392 patent, wherein the first orientation equals vertical, wherein the second orientation equals horizontal, wherein the beginning equals top for vertical, wherein the end equals bottom for vertical, wherein the beginning equals left side for horizontal, and wherein the end equals right side for horizontal (evidenced at least by *Figures 23-27*).

196. Claim 3 of the '392 patent recites the method as in claim 1, wherein the step of providing for the display of the image is further comprised of: defining a display width and display height for the windows to be used for display of the image; and selecting from the logical sections to determine a best fit to the display width and the display height responsive to the mapping and the display data; and displaying selected ones of the logical sections on the video display to provide a best fit responsive to the selecting .

197. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of claim method of claim 3 of the '392 patent, wherein the step of providing for the display of the image is further comprised of: defining a display width and display height for the windows to be used for display of the image; and selecting from the logical sections to determine a best fit to the display width and the display height responsive to the mapping and the display data; and displaying selected ones of the logical sections on the video display to provide a best fit responsive to the selecting (evidenced at least by *Figures 23-27*).

198. Claim 4 of the '392 patent recites the method as in claim 1, further comprising: providing user-defined page-display parameters for viewing the selected display data; ordering the logical sections responsive to the user-selected page display parameters; generating a user mapping data file comprising the ordering of the logical sections; and providing for the video display of the selected display data responsive to the mapping.

199. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of claim method of claim 4 of the '392 patent, further comprising providing user-defined page-display parameters for viewing the selected display data; ordering the logical sections responsive to the user-selected page display parameters; generating a user mapping data file comprising the ordering of the logical sections; and providing for the video display of the selected display data responsive to the mapping (evidenced at least by *Figures 23-27*).

200. Claim 5 of the '392 patent recites the method as in claim 1, further comprising: selecting portions of the selected display data and the respective selected logical section, as a first logical section for bookmarking a first bookmark; selecting a specific location within the portions; associating an associated identification (ID) with the specific locations; providing bookmark information; associating the bookmark information with the associated ID and the specific location; providing for video display of the specific location responsive to user input based selection of the respective bookmark information.

201. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of claim method of claim 5 of the '392 patent, further comprising selecting portions of the selected display data and the respective selected logical section, as a first logical section for bookmarking

a first bookmark; selecting a specific location within the portions; associating an associated identification (ID) with the specific locations; providing bookmark information; associating the bookmark information with the associated ID and the specific location; providing for video display of the specific location responsive to user input based selection of the respective bookmark information (evidenced at least by *Figures 23-27*).

202. Claim 19 of the '392 patent recites an image display system comprising: a source of an image database providing image data representative of visual images; providing display data for generating a video presentation responsive to the image data; a video display providing a video presentation having a definable display size; a processing subsystem comprised of a processor, memory providing instruction data and other data; and a user input providing at least for user selection of the display size, wherein the processor is responsive to the user selection of the display size and to the instruction data, providing for successive sub-sectioning of a composition of the display data providing for definition of a page of display data; definition of first slices of the display data for a first orientation; and definition of a second orientation of second slice of the first slices to define logical sections; wherein the processor provides for ordering the first slices from beginning to end; and then ordering the second slices from beginning to end; wherein the processor provides for storing in the memory a mapping of the first slices and of the second slices for selective retrieval; and wherein the video display provides a visual presentation of the visual images responsive to the mapping.

203. The Infringing Instrumentalities comprise a image display system as in claim 19 of the '392 patent, wherein the system comprises: a source of an image database providing image data representative of visual images; providing display data for generating a video presentation responsive to the image data; a video display providing a video presentation having a definable

display size; a processing subsystem comprised of a processor, memory providing instruction data and other data; and a user input providing at least for user selection of the display size, wherein the processor is responsive to the user selection of the display size and to the instruction data, providing for successive sub-sectioning of a composition of the display data providing for definition of a page of display data; definition of first slices of the display data for a first orientation; and definition of a second orientation of second slice of the first slices to define logical sections; wherein the processor provides for ordering the first slices from beginning to end; and then ordering the second slices from beginning to end; wherein the processor provides for storing in the memory a mapping of the first slices and of the second slices for selective retrieval; and wherein the video display provides a visual presentation of the visual images responsive to the mapping (evidenced at least by *Figures 23-27*).

204. Claim 20 of '392 patent recites the system as in claim 19, wherein the visual images are representative of visual images of music notation.

205. The Infringing Instrumentalities comprise an image display system as in claim 20 of the '392 patent, wherein the visual images are representative of visual images of music notation (*evidenced at least by Figures 28-32, 38-42, 112-113*)

206. Claim 21 of the '392 recites the system as in claim 19, wherein the visual images are representative of visual images of text.

207. The Infringing Instrumentalities comprise an image display system as in claim 21 of the '392 patent, wherein the visual images are representative of visual images of text (*evidenced at least by Figures 72-76*).

208. Claim 22 of the '392 patent recites the system as in claim 19, wherein the first orientation equals vertical and the second orientation equals horizontal; wherein the beginning

equals top for vertical; wherein the end equals bottom for vertical; and wherein the beginning equals left side for horizontal, and wherein the end equals right side for horizontal.

209. The Infringing Instrumentalities comprise a image display system as in claim 22 of the '392 patent, wherein the first orientation equals vertical and the second orientation equals horizontal; wherein the beginning equals top for vertical; wherein the end equals bottom for vertical; and wherein the beginning equals left side for horizontal, and wherein the end equals right side for horizontal (evidenced at least by *Figures 23-27*).

210. Claim 23 of the '392 patent recites the system as in claim 19, wherein the user selection of the display size is utilized in defining a maximum display width and a maximum display height for the video presentation; wherein selected ones of the logical sections are selected to determine a best fit to the maximum display width and the maximum display height responsive to the mapping; and wherein the selected ones of the logical sections are provided as the video presentation on the video display so as to provide a best fit.

211. The Infringing Instrumentalities comprise a image display system as in claim 23 of the '392 patent, wherein the user selection of the display size is utilized in defining a maximum display width and a maximum display height for the video presentation; wherein selected ones of the logical sections are selected to determine a best fit to the maximum display width and the maximum display height responsive to the mapping; and wherein the selected ones of the logical sections are provided as the video presentation on the video display so as to provide a best fit (evidenced at least by *Figures 58-65*).

212. Claim 33 of the '392 patent recites the system as in claim 19, further comprising: a network interface for communicating the selected display data to a remote system for video display.

213. The Infringing Instrumentalities comprise an image display system as in claim 33 of the '392 patent, comprising a network interface for communicating the selected display data to a remote system for video display (evidenced at least by *Figures 1-5*).

214. Claim 34 of the '392 patent recites a method of displaying a video presentation of performance notation for performance data comprising: processing a defined page of the performance data to provide display data for generating the video presentation for the displaying of a visual page of the performance notation defining display parameters; selecting logical sections from the display data responsive to the display parameters; determining logical ordering of the logical sections and defining advancement of display of the performance data responsive to the display parameters; displaying the display data as a video display presentation responsive to the logical sections and the defined logical ordering.

215. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 34 of the '392 patent for displaying a video presentation of performance notation for performance data comprising: processing a defined page of the performance data to provide display data for generating the video presentation for the displaying of a visual page of the performance notation defining display parameters; selecting logical sections from the display data responsive to the display parameters; determining logical ordering of the logical sections and defining advancement of display of the performance data responsive to the display parameters; displaying the display data as a video display presentation responsive to the logical sections and the defined logical ordering (evidenced at least by *Figures 23-27*).

216. Claim 35 of the '392 patent recites the method as in claim 34, wherein the performance notation is music notation, and wherein the performance data is music data.

217. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 35 of the '392 patent, wherein the performance notation is music notation, and wherein the performance data is music data (evidenced at least by *Figures 23-27*).

218. Claim 36 of the '392 patent recites the method as in claim 34, wherein the performance notation is script and wherein the performance data generates a video display presentation of script pages.

219. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 36 of the '392 patent, wherein the performance notation is script and wherein the performance data generates a video display presentation of script pages (evidenced at least by *Figures 72-76*).

220. Claim 37 of the '392 patent recites the method as in claim 34, further comprising: evaluating the performance data to find a largest logical section, responsive to the display parameters, and utilizing the largest logical section to define a scale utilized in providing the video presentation for other ones of the logical sections to be displayed; and providing a video display presentation responsive to the evaluating.

221. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 37 of the '392 patent, and further comprises: evaluating the performance data to find a largest logical section, responsive to the display parameters, and utilizing the largest logical section to define a scale utilized in providing the video presentation

for other ones of the logical sections to be displayed; and providing a video display presentation responsive to the evaluating (evidenced at least by *Figures 77-83*).

222. Claim 38 of the '392 patent recites the method as in claim 34, further comprising: providing for user definition of at least some of the display parameters.

223. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 38 of the '392 patent, and further comprise: providing for user definition of at least some of the display parameters (evidenced at least by *Figures 1-5*).

224. Claim 45 of the '392 patent recites a method for processing and structuring data to provide for video display presentation thereof, the method comprising: providing a database comprising at least one data file having plurality of pages of presentation data each having a corresponding video presentation which can be generated; processing the presentation data for a selected one of the pages to generate respective display data for the respective corresponding video presentation; defining the display data into defined pages having a given display resolution and a given size; defining first slices, for each of the defined pages, of the display data for a first orientation; defining second slices of each of the first slices to define logical sections; ordering the first slices from beginning to end, ordering the second slices from beginning to end; and displaying a best-fit number of logical sections on each of the defined pages of the video presentation at the given display resolution and the given size.

225. The Infringing Instrumentalities comprise a musical display system as in claim 1 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 38 of the '392 patent, and further comprise: providing a database comprising at least one data file having plurality of pages of presentation data each having a

corresponding video presentation which can be generated; processing the presentation data for a selected one of the pages to generate respective display data for the respective corresponding video presentation; defining the display data into defined pages having a given display resolution and a given size; defining first slices, for each of the defined pages, of the display data for a first orientation; defining second slices of each of the first slices to define logical sections; ordering the first slices from beginning to end, ordering the second slices from beginning to end; and displaying a best-fit number of logical sections on each of the defined pages of the video presentation at the given display resolution and the given size (evidenced at least by *Figures 23-27*).

226. Claim 46 of the '392 patent recites the method as in claim 45, further comprising: mapping of the first slices and the second slices, respectively, to the ordering of the first slices and the second slices, respectively.

227. The Infringing Instrumentalities comprise a musical display system as in claim 45 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 46 of the '392 patent, and further comprise: mapping of the first slices and the second slices, respectively, to the ordering of the first slices and the second slices, respectively (evidenced at least by *Figures 23-27*).

228. Claim 48 of the '392 patent recites the method as in claim 45, wherein: the first orientation equals vertical, and the second orientation equals horizontal, where the beginning equals top for vertical, where the end equals bottom for vertical, where the beginning equals left side for horizontal, and where the end equals the right side for horizontal.

229. The Infringing Instrumentalities comprise a musical display system as in claim 45 of the '392 patent, wherein the features of the system collectively practice each limitation of the

claimed method of claim 48 of the '392 patent, wherein: the first orientation equals vertical, and the second orientation equals horizontal, where the beginning equals top for vertical, where the end equals bottom for vertical, where the beginning equals left side for horizontal, and where the end equals the right side for horizontal (evidenced at least by *Figures 23-27*).

230. Claim 49 of the '392 patent recites the method as in claim 45, wherein: the first orientation equals horizontal, and the second orientation equals vertical, where the beginning equals top for vertical, where the end equals bottom for vertical, where the beginning equals right side for horizontal, and where the end equals the left side for horizontal.

231. The Infringing Instrumentalities comprise a musical display system as in claim 45 of the '392 patent, wherein the features of the system collectively practice each limitation of the claimed method of claim 49 of the '392 patent, wherein the first orientation equals horizontal, and the second orientation equals vertical, where the beginning equals top for vertical, where the end equals bottom for vertical, where the beginning equals right side for horizontal, and where the end equals the left side for horizontal (evidenced at least by *Figures 23-27*).

COUNT IV – INFRINGEMENT OF U.S. PATENT NO. 7,074,999

232. The allegations set forth in the foregoing paragraphs 1 through 231 are incorporated into this Fourth Claim for Relief.

233. On July 11, 2006, U.S. Patent No. 7,074,999 (the "'999 patent"), entitled *Electronic Image Visualization System and Management and Communication Methodologies*, was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '999 patent is attached as Exhibit 4.

234. The inventions of the '999 patent related to a network architecture system, apparatus and methodology relating to the construction and utilization of a subsystem (or a plurality of subsystems) for displaying musical compositions, and processing and

communicating music data and/or user performances. For example, the inventions enabled several users performing together, at various remote locations, to view and receive analytical feedback of the multiple performances simultaneously using a networked arrangement of each user station.

235. The '999 patent did not merely recite performance of a musical composition via a network. Moreover, what was claimed went beyond simply communicating performances by performances over a network.

236. The technology claimed in the '999 patent did not preempt all ways of simultaneous music performance or analysis of said performance.

237. Accordingly, each claim of the '999 patent recited a combination of elements sufficient to ensure that the claim in practice amounted to significantly more than a patent on an ineligible concept.

238. Plaintiff is the assignee and owner of the right, title and interest in and to the '999 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

239. Upon information and belief, each Defendant directly infringed at least claims 16 and 31-32 of the '999 patent by making, using, selling, importing and/or providing and causing to be used Guitar Hero 5, Guitar Hero Live, DJ Hero, DJ Hero 2, and Band Hero (the "Infringing Instrumentalities"). The Infringing Instrumentalities included but were not limited to Defendants' Guitar Hero 5, Guitar Hero Live, DJ Hero, DJ Hero 2, and Band Hero games.

240. In particular, claim 16 of the '999 patent recited a musical image display system comprising: a processing subsystem comprised of a processor, a communications interface, and memory providing instruction data and other data; a composition database providing

composition data for a selected composition corresponding to a video display of the selected composition: wherein the processing subsystem, responsive to the instruction data, generates an image database providing image data for use in directly generating a video display of the selected composition, and wherein the processing subsystem further provides for mapping and sectioning of the image data into a plurality of addressable defined portions of grouping of the image data representative of visual images for the selected composition; a video display providing a video presentation having a defined display size; means for providing for a user output responsive to a user input wherein the processor is responsive to the image database, the mapping and sectioning, and to the instruction data for use in directly generating a video display, wherein responsive to the user input of selecting portions of the image data for bookmarking, and selecting a specific location within the portions and providing bookmark information, the system associates an associated identification (ID) with the specific location, wherein the system further provides for associating the bookmark information with the associated ID and the specific location; and wherein thereafter the processor subsystem is responsive to the user input, to provide for selective video display of the specific locations responsive to user input based on the respective bookmark information.

241. The Infringing Instrumentalities comprised a musical display system for displaying and processing musical data and compositions performed by the user comprising a network architecture system, producing a display presentation comprising a network architecture system, wherein the system comprises a processing subsystem comprised of a processor, a communications interface, and memory providing instruction data and other data; a composition database providing composition data for a selected composition corresponding to a video display of the selected composition: wherein the processing subsystem, responsive to the instruction

data, generates an image database providing image data for use in directly generating a video display of the selected composition, and wherein the processing subsystem further provides for mapping and sectioning of the image data into a plurality of addressable defined portions of grouping of the image data representative of visual images for the selected composition; a video display providing a video presentation having a defined display size; means for providing for a user output responsive to a user input wherein the processor is responsive to the image database, the mapping and sectioning, and to the instruction data for use in directly generating a video display, wherein responsive to the user input of selecting portions of the image data for bookmarking, and selecting a specific location within the portions and providing bookmark information, the system associates an associated identification (ID) with the specific location, wherein the system further provides for associating the bookmark information with the associated ID and the specific location; and wherein thereafter the processor subsystem is responsive to the user input, to provide for selective video display of the specific locations responsive to user input based on the respective bookmark information (evidenced at least by *Figures 1-5*).

242. Claim 31 of the '999 patent recited the system as in claim 16, wherein the image data is comprised of at least one of information data and control data, the system further providing for navigating to a defined location in the image data responsive to the control data, and providing for a video display presentation responsive to the image data at the defined location.

243. The Infringing Instrumentalities comprised a musical image display system as in claim 16 of the '999 patent, wherein the image data is comprised of at least one of information data and control data, the system further providing for navigating to a defined location in the

image data responsive to the control data, and providing for a video display presentation responsive to the image data at the defined location (evidenced at least by *Figures 1-5*).

244. Claim 32 of the '999 patent recited the system as in claim 31, wherein the selection of the defined location is made responsive to the control data to effect transition as relates to the respective video display presentation responsive to the image data at the defined location.

245. The Infringing Instrumentalities comprised a musical image display system as in claim 31 of the '999 patent, wherein the selection of the defined location is made responsive to the control data to effect transition as relates to the respective video display presentation responsive to the image data at the defined location (evidenced at least by *Figures 1-5*).

COUNT V – INFRINGEMENT OF U.S. PATENT NO. 7,612,278

246. The allegations set forth in the foregoing paragraphs 1 through 245 are incorporated into this Fifth Claim for Relief.

247. On November 3, 2009, U.S. Patent No. 7,612,278 (the "'278 patent"), entitled *System and Methodology for Image and Overlaid Annotation Display, Management and Communication*, was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '278 patent is attached as Exhibit 5.

248. The inventions of the '278 patent relate to a network architecture, system, apparatus and methodology relating to the construction and utilization of a subsystem (or a plurality of subsystems) for displaying musical compositions, either batch or in a real time environment, and processing and communicating music data and/or user performances.

249. The '278 patent does not merely recite performance of a musical composition via a network. Moreover, what is claimed goes beyond simply communicating performances by performances over a network.

250. The technology claimed in the '278 patent does not preempt all ways of simultaneous music performance or analysis of said performance.

251. Accordingly, each claim of the '278 patent recites a combination of elements sufficient to ensure that the claim in practice amounts to significantly more than a patent on an ineligible concept.

252. Plaintiff is the assignee and owner of the right, title and interest in and to the '278 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

253. Upon information and belief, each Defendant has and continues to directly infringe at least claims 1, 4, 6-7, 9, 11-16, and 19-21 of the '278 patent by making, using, selling, importing and/or providing and causing to be used Guitar Hero 5, Guitar Hero Live, DJ Hero, DJ Hero 2, and Band Hero (the "Infringing Instrumentalities"). The Infringing Instrumentalities include but are not limited to Defendants' Guitar Hero 5, Guitar Hero Live, DJ Hero, DJ Hero 2, and Band Hero games.

254. In particular, claim 1 of the '278 patent recites a system comprising: a database configured to store a video presentation of a composition to be performed by at least one performer; and a subsystem comprising: selection logic configured to select a plurality of segments of the video presentation of the composition as selected segments that pertain to an assignment of the at least one performer; reordering logic configured to reorder the selected segments to display according to the selection of segments; annotation logic responsive to a user input and configured to add annotations to the selected segments of the video presentation, to be overlaid atop the selected segments of the video presentation, wherein the annotations have annotation data associated with the location within the selected segments; association logic

configured to provide mapping data to map the annotation data to the location within the selected segments; and memory for storing the video presentation, the annotation data and the mapping data.

255. The Infringing Instrumentalities comprise: a database configured to store a video presentation of a composition to be performed by at least one performer; and a subsystem comprising: selection logic configured to select a plurality of segments of the video presentation of the composition as selected segments that pertain to an assignment of the at least one performer; reordering logic configured to reorder the selected segments to display according to the selection of segments; annotation logic responsive to a user input and configured to add annotations to the selected segments of the video presentation, to be overlaid atop the selected segments of the video presentation, wherein the annotations have annotation data associated with the location within the selected segments; association logic configured to provide mapping data to map the annotation data to the location within the selected segments; and memory for storing the video presentation, the annotation data and the mapping data (evidenced at least by *Figures 28-32*).

256. Claim 4 of the '278 patent recites the system of claim 1, wherein the annotation data includes a media component; and wherein a presentation is provided responsive to the media component for the location.

257. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, wherein the annotation data includes a media component; and wherein a presentation is provided responsive to the media component for the location (evidenced at least by *Figures 28-32*).

258. Claim 6 of the '278 patent recites the system of claim 4, wherein the location is a first location, the media component is at least one of an audio component, a video still component, a movie, a graphic image overlay and a link providing for a display presentation for a second location in the database.

259. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, wherein the location is a first location, the media component is at least one of an audio component, a video still component, a movie, a graphic image overlay and a link providing for a display presentation for a second location in the database (evidenced at least by *Figures 1-5*).

260. Claim 7 of the '278 patent recites the system of claim 1, further comprising: mapping logic for associating an object with the annotation data; associating the location of annotation data with the respective object; and wherein the video presentation is provided as a video presentation of the object concurrently with the presentation display for the location of the annotation data responsive to the object.

261. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, further comprising: mapping logic for associating an object with the annotation data; associating the location of annotation data with the respective object; and wherein the video presentation is provided as a video presentation of the object concurrently with the presentation display for the location of the annotation data responsive to the object (evidenced at least by *Figures 1-5*).

262. Claim 9 of the '278 patent recites the system of claim 1, wherein the annotation data comprises display content and annotation mapping data; and wherein the annotation data is mapped to appear atop the location responsive to the annotation mapping data.

263. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, wherein the annotation data comprises display content and annotation mapping data; and wherein the annotation data is mapped to appear atop the location responsive to the annotation mapping data (evidenced at least by *Figures 28-32*).

264. Claim 11 of the '278 patent recites the system of claim 1, wherein the database includes a video presentation of at least one of sheet music, medical images, audiovisual content, text, graphics, photographs, still video, at least a portion of a person, and a video movie.

265. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, wherein the database includes a video presentation of at least one of sheet music, medical images, audiovisual content, text, graphics, photographs, still video, at least a portion of a person, and a video movie (evidenced at least by *Figure 50*)

266. Claim 12 of the '278 patent recites the system of claim 1, further comprising: a plurality of separate subsystems, each further comprising means for communicating between selected ones of the plurality of subsystems.

267. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent further comprising: a plurality of separate subsystems, each further comprising means for communicating between selected ones of the plurality of subsystems (evidenced at least by *Figures 72-76*).

268. Claim 13 of the '278 patent recites the system of claim 12, further comprising: means for communicating the annotation data from a first subsystem, as a communicated annotation data sent to a second subsystem; and means for providing a display presentation comprising the video presentation of the composition, with the annotations simultaneously

displayed as integrated to appear aligned as a layer on top of the video presentation of the composition.

269. The Infringing Instrumentalities comprise a musical image display system as in claim 12 of the '278 patent further comprising: means for communicating the annotation data from a first subsystem, as a communicated annotation data sent to a second subsystem; and means for providing a display presentation comprising the video presentation of the composition, with the annotations simultaneously displayed as integrated to appear aligned as a layer on top of the video presentation of the composition (*evidenced at least by Figures 14-22*).

270. Claim 14 of the '278 patent recites the system of claim 1, wherein the video presentation of the composition forms an underlying image layer; wherein the video presentation for the annotation data for the location forms an overlying image layer associated with the underlying image layer, the system further comprising: means for mapping the underlying image layer and overlying image layer to define an integration mapping; and wherein the system generates the video presentation responsive to the underlying image layer and overlying image layer, responsive to the integration mapping.

271. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, wherein the video presentation for the annotation data for the location forms an overlying image layer associated with the underlying image layer, the system further comprising: means for mapping the underlying image layer and overlying image layer to define an integration mapping; and wherein the system generates the video presentation responsive to the underlying image layer and overlying image layer, responsive to the integration mapping (*evidenced at least by Figures 14-22*).

272. Claim 15 of the '278 patent recites the system of claim 1, further comprising: means for generating a display presentation responsive to the annotation data and the mapping data.

273. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent further comprising: means for generating a display presentation responsive to the annotation data and the mapping data (evidenced at least by *Figures 14-22*).

274. Claim 16 of the '278 patent recites the system of claim 1, wherein each selected segment has annotations that appear within the video presentation to be atop the selected segment of the display presentation; and wherein the annotations have associated annotation data associated with the location within the selected slice.

275. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, wherein each selected segment has annotations that appear within the video presentation to be atop the selected segment of the display presentation; and wherein the annotations have associated annotation data associated with the location within the selected slice (evidenced at least by *Figures 14-22*).

276. Claim 19 of the '278 patent recites the system of claim 1 wherein the composition is a musical composition, and wherein the assignment comprises at least one of a musical instrument assignment or a player assignment within the composition.

277. The Infringing Instrumentalities comprise a musical image display system as in claim 1 of the '278 patent, wherein the composition is a musical composition, and wherein the assignment comprises at least one of a musical instrument assignment or a player assignment within the composition (evidenced at least by *Figures 72-76*).

278. Claim 20 of the '278 patent recites the system of claim 19 wherein the plurality of players comprise a musical orchestra.

279. The Infringing Instrumentalities comprise a musical image display system as in claim 19 of the '278 patent wherein the plurality of players comprise a musical orchestra (evidenced at least by *Figures 72-76*).

280. Claim 21 of the '278 patent recites the system of claim 19 wherein the selected slices are reordered linearly such that each slice is played once according to the assignment.

281. The Infringing Instrumentalities comprise a musical image display system as in claim 19 of the '278 patent wherein the selected slices are reordered linearly such that each slice is played once according to the assignment (evidenced at least by *Figures 72-76*).

282. Defendants' aforesaid activities have been without authority and/or license from Plaintiff.

283. Each Defendant was made aware of the patents in issue, and its infringement thereof at least as early as the filing of this complaint by Bama providing notice of the patents in issue and each Defendant's infringement thereof.

284. Upon information and belief, since at least the time they received notice, each Defendant has induced, and continues to induce, others to infringe at least one claim of the patents in issue under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including but not limited to Infinity's partners and customers, whose use of the Accused Instrumentalities constitutes direct infringement of at least one claim of the '168 patent.

285. In particular, each Defendant's actions that aid and abet others such as their partners and customers to infringe include advertising and distributing the Infringing

Instrumentalities and providing instruction materials, training, and services regarding the Infringing Instrumentalities. On information and belief, each Defendant has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because each Defendant has had actual knowledge of the patents in issue and that their acts were inducing infringement of the said patents since at least the date each Defendant received notice that such activities infringed the patents in issue.

286. Upon information and belief, each Defendant is liable as a contributory infringer of the patents in issue under 35 U.S.C. § 271(c) by offering to sell, selling and importing into the United States musical video games to be especially made or adapted for use in an infringement of the patents in issue. The Infringing Instrumentalities are material components for use in practicing the patents in issue and are specifically made and are not a staple article of commerce suitable for substantial non-infringing use.

287. Bama Gaming has been harmed by each Defendant's infringing activities.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Bama Gaming demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Bama Gaming demands judgment for itself and against Defendants as follows:

- A. An adjudication that each Defendant has infringed the '168, '960, '392, '999, and '278 patents;
- B. An award of damages to be paid by Defendants adequate to compensate Bama Gaming for Defendants' past infringement of the '168, '960, '392, '999, and '278 patents, and any continuing or future infringement of the '392 and '278 patents through the date such

judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Plaintiff's reasonable attorneys' fees; and

D. An award to Bama Gaming of such further relief at law or in equity as the Court deems just and proper.

□



DATED: April 25, 2017

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