

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

GIBSON GUITAR CORP.,)	
)	
Plaintiff,)	
)	Civil Action No. _____
v.)	JUDGE _____
)	MAGISTRATE JUDGE _____
745 LLC,)	JURY DEMAND
)	
Defendant.)	

COMPLAINT FOR PATENT INFRINGEMENT AND JURY DEMAND

COMES NOW Plaintiff GIBSON GUITAR CORP., files this Complaint for Patent Infringement and Jury Demand against 745 LLC and alleges as follows:

I. THE PARTIES

1. Plaintiff, GIBSON GUITAR CORP. (“Gibson” or “Plaintiff”), is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 309 Plus Park Boulevard, Nashville, Tennessee, 37217.

2. Upon information and belief, Defendant 745 LLC (“Seven45 Studios” or “Defendant”) is a Limited Liability Company organized and existing under the laws of the State of Delaware, having its principal place of business at 745 Boylston Street, Boston, Massachusetts, 02116.

II. JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction of this action for patent infringement under 28 U.S.C. §§1331, 1338(a) and 35 U.S.C. §271 et seq. as this action arises under the patent laws of the United States.

4. This Court also has subject matter jurisdiction over this civil action pursuant to 28 U.S.C. §1332(a) as Plaintiff Gibson has diversity of citizenship in relation to Defendant and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

5. This Court has personal jurisdiction over Seven45 Studios by reason of its presence in the Middle District of Tennessee, its sufficient contacts to the Middle District of Tennessee and because Seven45 Studios has committed and continues to commit, has contributed and continues to contribute to, and has induced and continues to induce acts of patent infringement in the Middle District of Tennessee and throughout the United States as alleged in this Complaint. Venue in the Middle District of Tennessee is proper under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

III. GENERAL ALLEGATIONS

6. Gibson is engaged in the business of developing, manufacturing, and selling musical instruments, including electric and acoustic guitars, basses, and mandolins under the famous Gibson® trademark.

7. Gibson has been in the business of making musical instruments for over one hundred years. Gibson musical instruments are sold worldwide, have worldwide recognition and have won awards for their designs.

8. Gibson is also engaged in the business of developing, manufacturing and selling musical playing devices, systems and amplifiers, under various trademarks, but most notably, under the famous Wurlitzer® trademark.

9. Gibson is the sole owner through assignment of United States Patent No. 5,990,405 entitled “System And Method For Generating And Controlling A Simulated Musical Concert Experience,” which issued through the United States Patent and Trademark Office (“USPTO”) on November 23, 1999 (“the ‘405 Patent”) and has standing to bring legal action to enforce all rights arising under the ‘405 Patent.

10. The ‘405 Patent is directed to systems and methods for electronically simulating participation in a musical performance. A true and correct copy of the ‘405 Patent is attached hereto as **Exhibit A** and is incorporated by reference.

11. The ‘405 Patent was subjected to reexamination in 2008. An Ex Parte Reexamination Certificate in regards to the ‘405 Patent was issued by the USPTO on December 1, 2009. The reexamination deemed claims 1, 13, 18, 22, 25, 26, 28 and 29 of the ‘405 Patent valid and enforceable with modified claim language. The reexamination deemed claims 2-12, 14-17, 19, 20, 27 and 30 valid and enforceable as being dependent on an amended claim. New claims 31-46 were also determined to be valid and enforceable. A true and correct copy of the ‘405 Patent Ex Parte Reexamination Certificate is attached hereto as **Exhibit B** and is incorporated by reference.

IV. THE INFRINGING PRODUCTS AT ISSUE

12. Defendant does and has continued to manufacture and/or sell products that infringe, contribute to the infringement of and/or induce the infringement of the claims in the reexamined '405 Patent.

13. Upon information and belief, Defendant Seven45 Studios has created, developed, sold and/or induced the sale of a video game under the tradename "PowerGig: Rise of the SixString" ("PowerGig").

14. The PowerGig video game was designed for use with various video game consoles, including the Sony Playstation® 3 and the Microsoft XBOX 360®.

15. Various PowerGig components, including but not limited to guitar style instruments, are sold together and separately with the PowerGig video game. The PowerGig video game and the PowerGig components whether sold together with the PowerGig video game or separately are collectively referred to herein as the "PowerGig Products."

16. The PowerGig Products infringe, contribute to the infringement of and/or induce the infringement of the reexamined '405 Patent.

17. Upon information and belief, Seven45 Studios sold or caused to be sold the PowerGig Products into the Middle District of Tennessee through several mass retailers of video games with both physical stores located in Nashville, Tennessee and interactive websites available to residents of Nashville, Tennessee and other cities in this district.

18. Gibson notified the Defendant of its patent infringement through cease and desist letters (collectively "C&D") dated August 5, 2010 and again on September 13,

2010. True and correct copies of the C&Ds are attached hereto as **Exhibit C** and are incorporated by reference.

V. CLAIM 1
DIRECT PATENT INFRINGEMENT

19. Plaintiff Gibson repeats and realleges each and every allegation of paragraphs 1-18 as though fully set forth herein.

20. Upon information and belief, Defendant Seven45 Studios makes, uses, or sells PowerGig Products that directly infringe one or more claims of the reexamined '405 Patent.

21. The C&Ds attached as **Exhibit C** provided Defendant actual notice that a patent covering the PowerGig Products existed. Furthermore, Defendant admitted in its response letter to the C&D of August 18, 2010, attached hereto as **Exhibit D**, that Defendant was aware of Plaintiff Gibson's '405 patent. Therefore, upon information and belief, Defendant knew that its actions would constitute patent infringement of an issued patent.

22. Upon information and belief, Defendant chose to continue making, using, and selling the PowerGig Products despite the objectively high likelihood that its actions would constitute infringement of the '405 patent.

23. The aforesaid past acts and continuing acts of the Defendant constitute willful direct infringement and/or if continued will constitute willful direct infringement of the reexamined '405 Patent.

24. The aforesaid past acts and continuing acts of the Defendant are in violation of 35 U.S.C. §271 et seq. of the Patent Act.

VI. CLAIM 2
CONTRIBUTORY PATENT INFRINGEMENT

25. Plaintiff Gibson repeats and realleges each and every allegation of paragraphs 1-24 as though fully set forth herein.

26. Upon information and belief, further and in the alternative, Defendant Seven45 Studios is actively offering for sale or selling PowerGig Products knowing these products are especially made or adapted for a use that infringes one or more claims of the reexamined '405 Patent.

27. The C&Ds attached as **Exhibit C** provided Defendant notice that a patent covering the PowerGig Products existed. Furthermore, Defendant admitted in its response letter to the C&D of August 18, 2010, attached hereto as **Exhibit D**, that Defendant was aware of Plaintiff Gibson's '405 patent. Therefore, upon information and belief, Defendant knew that its actions would constitute patent infringement of an issued patent.

28. Upon information and belief, Defendant chose to continue making, using, and selling the PowerGig Products despite the objectively high likelihood that its actions would constitute infringement of the '405 patent.

29. The aforesaid past acts and continuing acts of the Defendant constitute willful contributory infringement and/or if continued will constitute willful contributory infringement of the reexamined '405 Patent.

30. The aforesaid past acts and continuing acts of the Defendant are in violation of 35 U.S.C. §271 et seq. of the Patent Act.

VII. CLAIM 3
INDUCEMENT OF PATENT INFRINGEMENT

31. Plaintiff Gibson repeats and realleges each and every allegation of paragraphs 1-30 as though fully set forth herein.

32. Upon information and belief, further and in the alternative, Defendant Seven45 Studios, through the conduct described above, has induced infringement of one or more claims of the reexamined '405 Patent. Defendant makes, uses, sells, or offers for sale PowerGig Products in a manner that encourages the infringement of one or more claims of the reexamined '405 Patent.

33. The C&Ds attached as **Exhibit C** provided Defendant notice that a patent covering the PowerGig Products existed. Furthermore, Defendant admitted in its response letter to the C&D of August 18, 2010, attached hereto as **Exhibit D**, that Defendant was aware of Plaintiff Gibson's '405 patent. Therefore, upon information and belief, Defendant knew that its actions would constitute patent infringement of an issued patent.

34. Upon information and belief, Defendant chose to continue making, using, and selling the PowerGig Products despite the objectively high likelihood that its actions would constitute infringement of the '405 patent.

35. The aforesaid past acts and continuing acts of the Defendant constitutes a willful inducement to infringe and/or if continued will constitute a willful inducement to infringe the reexamined '405 Patent.

36. The aforesaid past acts and continuing acts of the Defendant are in violation of 35 U.S.C. §271 et seq. of the Patent Act.

VIII. PRAYER FOR RELIEF

37. Gibson has been irreparably damaged and will continue to be damaged by the aforesaid infringement unless Defendant is enjoined, preliminarily and permanently, from selling and offering for sale infringing PowerGig Products or otherwise inducing or contributing to the infringement of the reexamined '405 Patent. Gibson has no adequate remedy at law.

WHEREFORE, Plaintiff prays for the following relief:

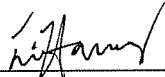
- a) that Seven45 Studios be adjudged to have directly and contributorily infringed United States Reexamined Patent No. 5,990,405;
- b) that Seven45 Studios be adjudged to have induced infringement of United States Reexamined Patent No. 5,990,405;
- c) that Seven45 Studios, its respective officers, agents, servants, employees and attorneys and all persons in concert or in participation with it who receive actual notice of the Order by personal service or otherwise, be preliminarily and permanently enjoined and restrained from infringing, contributing to infringement and inducing others to infringe the reexamined '405 Patent;

- d) that Gibson be awarded damages by reason of Seven45 Studios infringement of the subject patent;
- e) that this case be deemed as an exceptional case under 35 U.S.C. §285 and Gibson be awarded treble damages and attorney fees;
- f) that Gibson be awarded its costs and expenses, including reasonable attorney fees; and
- g) that Gibson have other and further relief deemed just and proper by the Court under the circumstances.

DEMAND FOR A JURY TRIAL

Plaintiff Gibson hereby demands a trial by jury of all issues so triable in accordance to Rule 38 of the Federal Rules of Civil Procedure.

Respectfully submitted,



Tim Harvey (TN Bar No. 21509)
Riley Warnock & Jacobson, PLC
1906 West End Avenue
Nashville, TN 37203
(615) 320-3700
(615) 320-3737
tharvey@rwjplc.com

OF COUNSEL:

BATES & BATES, LLC
Andrea E. Bates
Michael Boswell
964 DeKalb Ave. Suite 101
Atlanta, GA 30307
Telephone: 404-228-7439

*Attorneys for Plaintiff
Gibson Guitar Corp.*