**Materials Reviewed** 

7. I have reviewed Gibson's Ex Parte Application. I have also reviewed the Declaration of Jolyon Dantzig in Opposition to Plaintiff's Application for a Preliminary Injunction and the 55 attached Exhibits depicting guitars on the web with supposedly similar designs.

#### **Summary of Opinions**

- 8. My professional opinion is as follows:
- 9. There are many ways to design a guitar functionally to access the higher registered frets without infringing on the Les Paul and SG designs of Gibson. The way that Gibson has designed the guitars has become an iconic design synonymous with the Les Paul and SG models.
- 10. Two examples of functionally successful instruments that do not employ the use of a single or double cut for access of higher register frets are Steinberger Guitars and the Flying V, both parts of the Gibson family.
- 11. Single-cut and double-cut guitar horns move toward the neck requiring a cut for access to the higher registered frets and better functionality. However, the Flying V and Steinberger body designs have the cuts of their designs moved away from the body to allow for access of higher registered frets.

- Obviously, the function of single and double cut guitars is undeniable, but is in 12. no way the only way to accomplish successful guitar function, specifically, access of higher registered frets.
- It is the incorporation of that function with the SG and the Les Paul design that 13. give these Gibson instruments their uniqueness, not place them in the ubiquity of functional instruments.
- In regards to the "bell" shaped truss rod cover, the truss rod is necessary for 14. function, but the cover is strictly ornamental, covering the truss rod nut. By that nature, the "bell" shape was created only for design and can be judged only in the category of design. That ornamental shape was created to distinguish a Gibson guitar and with the allowance of it being re-produced by another dilutes our guitars distinction.
- The Explorer and Flying V are designs that exist in their own category 15. designated by Gibson. One can say the SG and Les Paul reside under the categories of single and double cut guitars, but the Flying V and Explorer are their own broad categories adhering to no higher design designation.
- These instruments have been iconic designs of Gibson since 1958. 16.
- 17. Therefore, any use of the design is a direct and unauthorized copy of the Gibson design.

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### Exhibit 10

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these facts. If called upon to testify during court of this action, I could, and I would competently testify thereto under oath. I am over 18 and a party to this action.

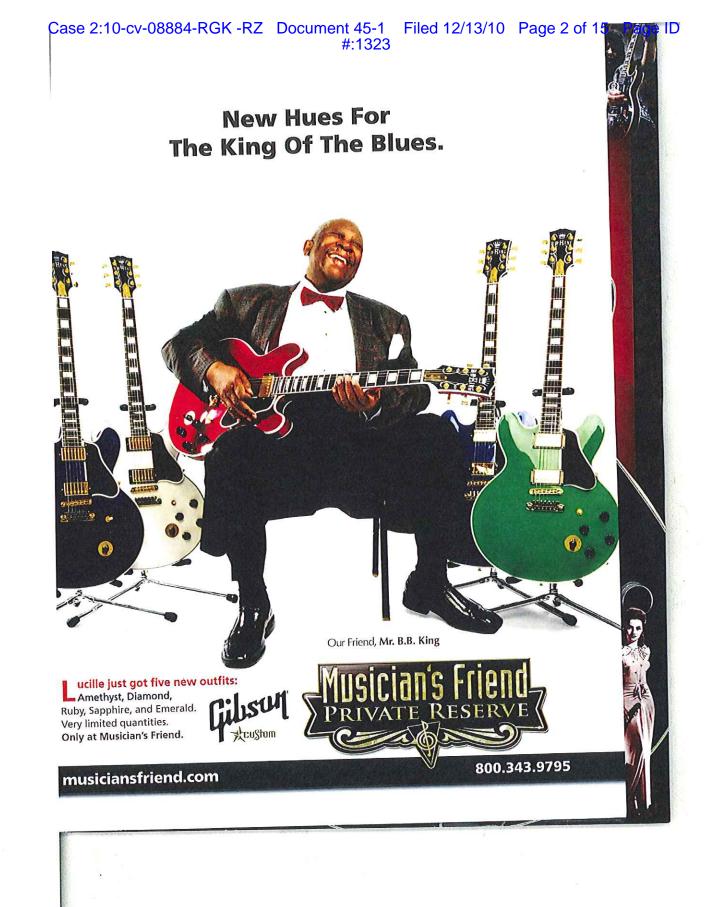
- 2. I am a licensed attorney and am the General Counsel for Plaintiff Gibson Guitar Corp. ("Gibson").
- 3. I have reviewed the Supplemental Declaration of Kim Landsman and Declaration of Jolyon Dantzig, whereby they asserted that Gibson allowed Heritage Guitars manufacture a guitar similar to the LES PAUL design. Mr. Landsman fails to clarify said use; including use of other designs such as the EXPLORER design was subject to a Settlement Agreement, whereby Gibson's rights are reserved. The details of this settlement agreement are governed by confidentiality restrictions.
- 4. I have reviewed the Declaration of Jolyon Dantzig, Ex. 3.16 pgs 6-10 and Ex. 3.17 pgs 1 & 2, whereby he states that, use of the LES PAUL body shapes by Hamer USA makes the Gibson designs generic, however, he fails to indicate that said use is governed by a trademark license from Gibson. The details of this license are governed by confidentiality restrictions.
- In the Declaration of Jolyon Dantzig he points to several third party 5. guitars, which are allegedly similar to the Gibson Design Marks. Defendant WowWee has stated that because Gibson has not "policed" its Gibson Design Marks, said design are now generic. However, this Gibson has policed its mark, previously sending cease an desist letters and/or instituted proceeding against Dean, ESP, Gretsch, Hamer,

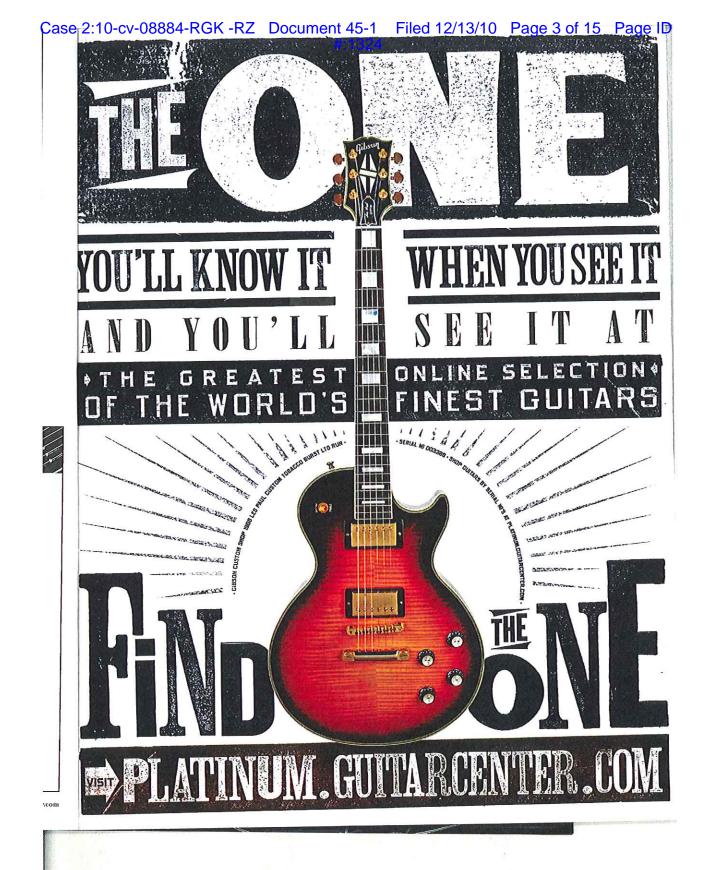
Harmony, Heritage, PRS, Samick, and Jay Turser; all of which are named by Mr. Dantzig.

- 6. In addition to the licenses stated above, Gibson has also licensed its Gibson Design Marks for toy guitars, which directly compete with the Paper Jamz guitars, namely Hasbro's Power Gig Guitar, Guitar Hero and the J Reynolds guitar.
- 7. Attached hereto as **Exhibit A**, is a cross section of advertisements of the Gibson Marks, of which Gibson has spent 100s of millions of dollars in the past few years, alone.
- 8. Attached hereto as **Exhibit B**, are advertisements and commentaries found on the Internet whereby consumers and retailers refer to Paper Jamz guitars, as being based on Gibson's FLYING V®, LES PAUL®, EXPLORER® and S-G®.
- 9. Attached hereto as **Exhibit C** is the Paper Jamz insert included with the guitars, showing how to play major and minor chords that states "[use] this Paper Jamz pocket guide to play real guitar chords and create your own songs."
- 10. Attached hereto as **Exhibit D** is a search result found on the Defendant Best Buy's website, whereby the search term "electric guitar" brings up both Paper Jamz guitars and Gibson guitars.
- 11. Attached hereto as **Exhibit E** is are articles and books which discuss the iconic nature of the Gibson Marks.

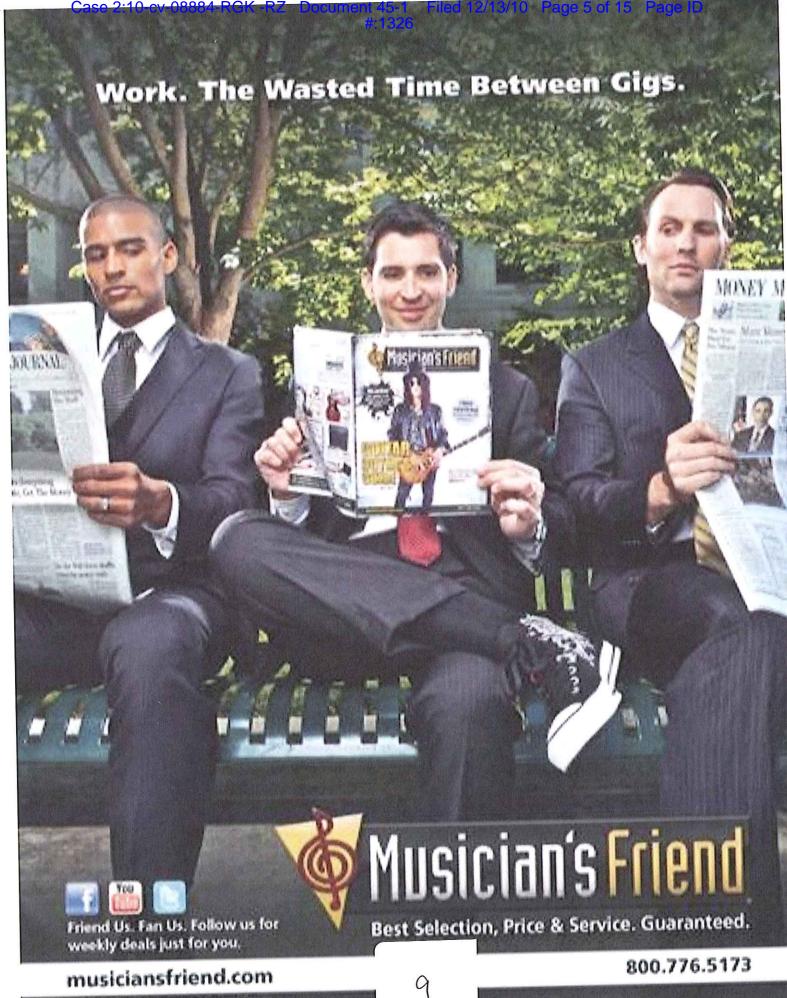
1 2	12. Gibson has not licensed the Gibson Marks to the Defendants for use or the
3	Paper Jamz guitars. The Paper Jamz guitars do not meet the quality standards of
4	Gibson,
5	
6	I declare under penalty of perjury under the laws of the United States of
7	America, the State of Tennessee and California that the foregoing is true and correct.
8	
9	Executed on December 10, 2010 at Nashville Tennessee.
10	
11	
12	Raman
13	Bruce Mitchell, Esq.
14	Declarant
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16 17	
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	SUPPLEMENTAL DECLARATION OF BRUCE MITCHELL IN SUPPORT OF PLAINTIFF'S PRELIMINARY INJUNCTION

#### **EXHIBIT A**









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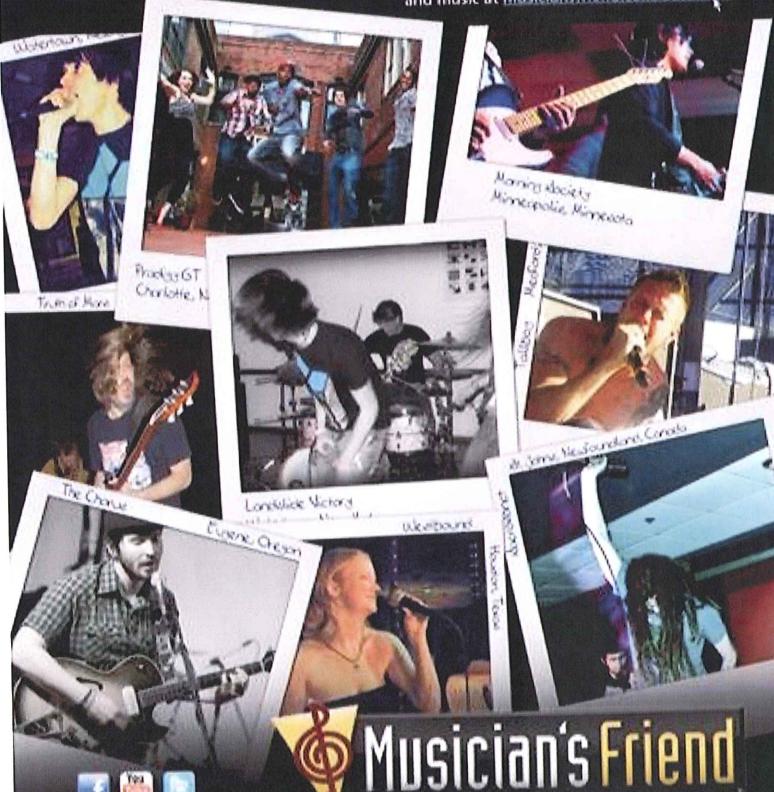
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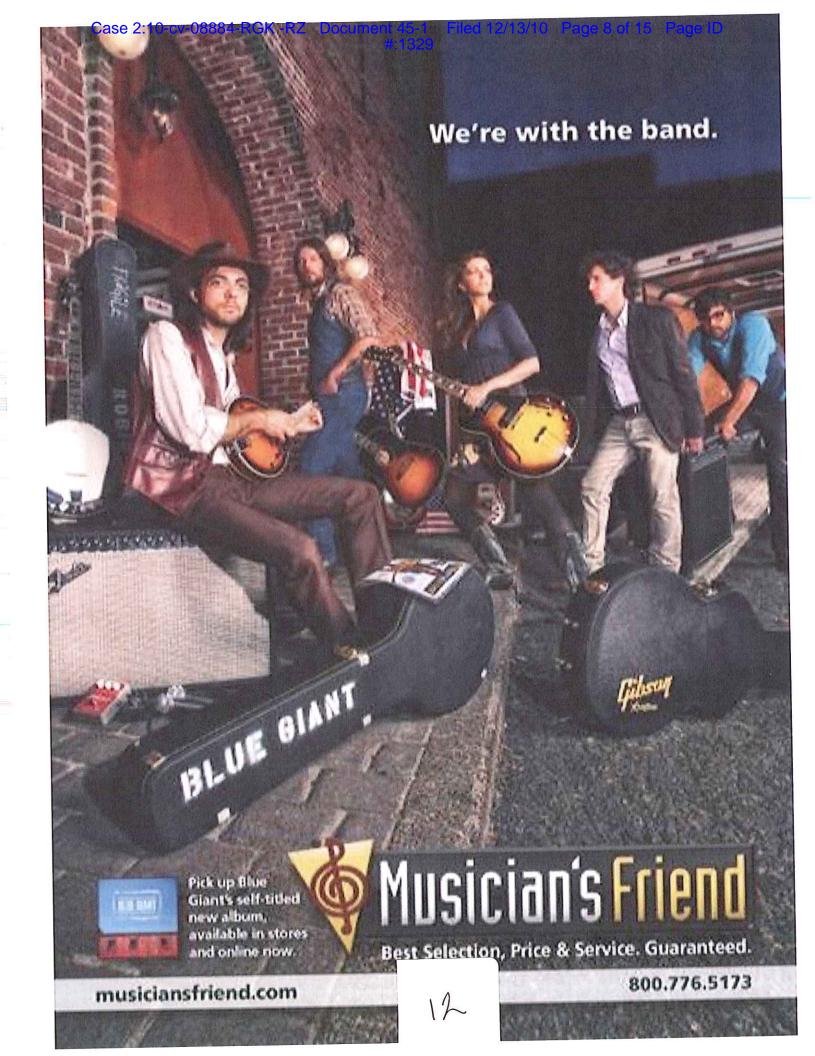


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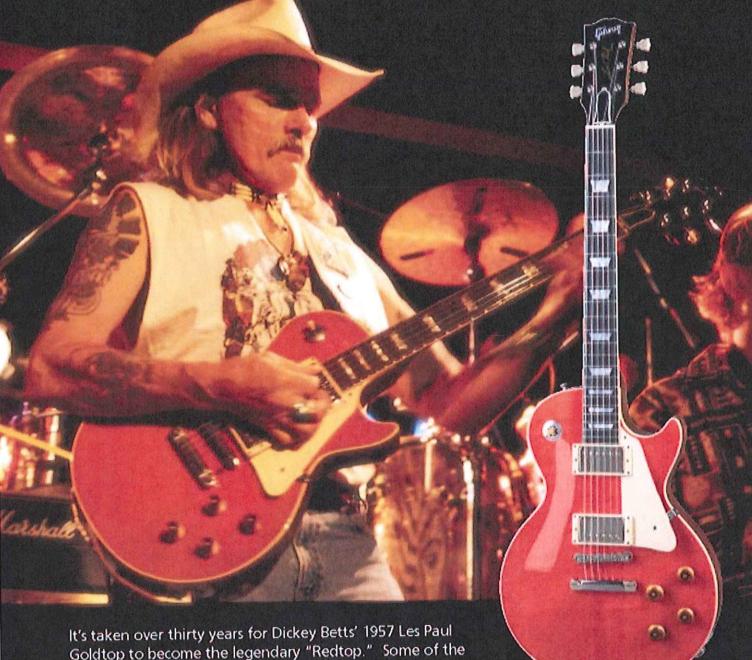
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It's taken over thirty years for Dickey Betts' 1957 Les Paul Goldtop to become the legendary "Redtop." Some of the modifications were carefully calculated works of precision – others were merely inspired tweaks made over the years. They all add up to an amazing guitar.

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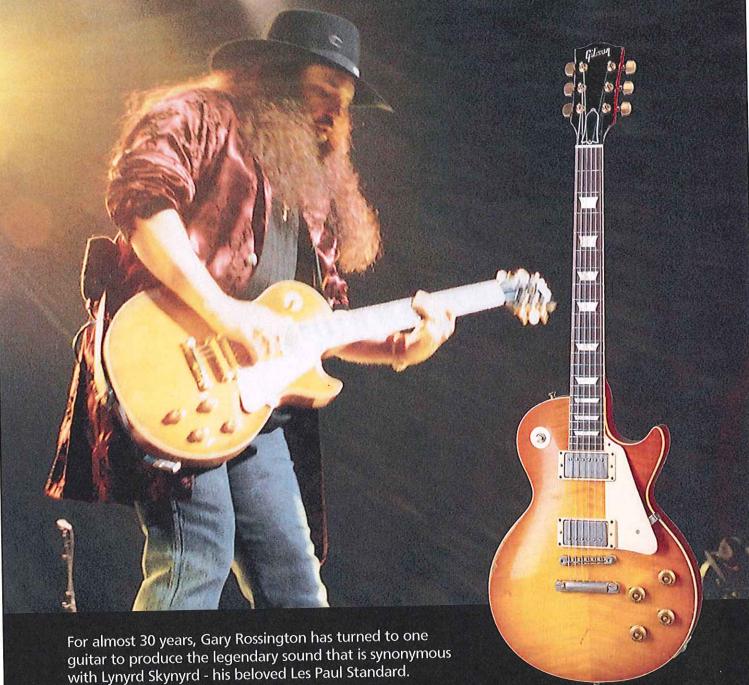
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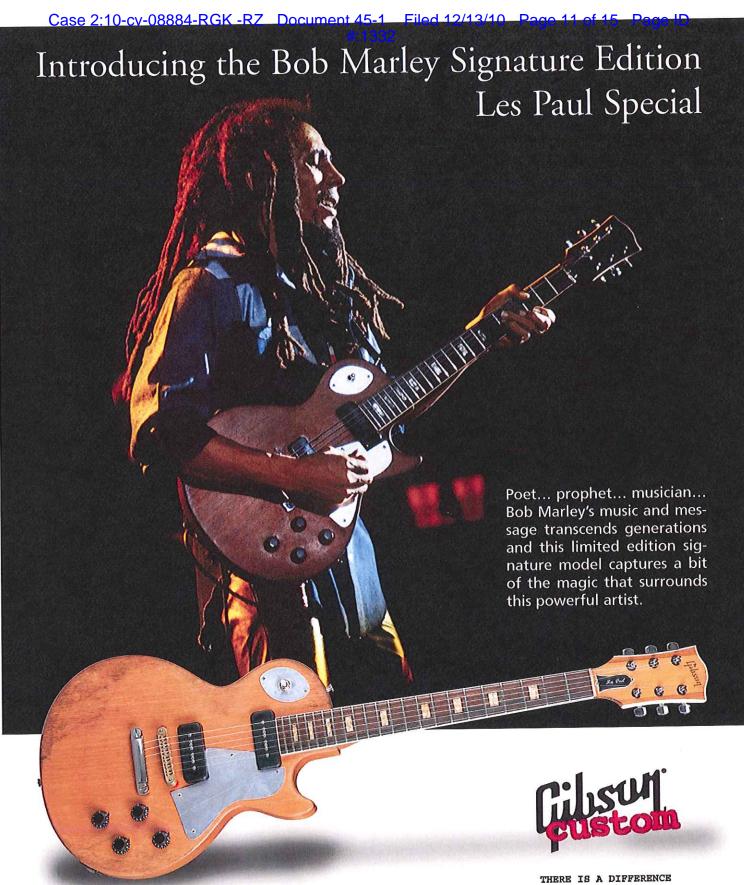
with Lynyrd Skynyrd - his beloved Les Paul Standard.

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#### the pete townshend signature sg new from gibson custom

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signature model, the Pete
Townshend Signature SG.
True Townshend fans will
recognize this guitar as a
faithful replica of the SG
that Pete used during the Who's
"Live at Leeds" concert in 1970.

The production of this model is limited to 250 units and a portion of the proceeds will go to Pete Townshend's Double O Charity to benefit young people globally.



Each guitar comes complete with a hand-signed and hand-stamped certificate of authenticity, an exclusive flight case, a Custom Shop hardshell SG case, and a protective cloth cover emblazoned with the artist's signature. Townshend's signature is also replicated on the

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