

1 Volume exhibit at the Experience Museum Project in Seattle. I have appraised instrument collections  
2 for the Country Music Foundation, Gibson Guitar Corp., and many private individuals.

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4 **Materials Reviewed**

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

8 **Summary of Opinions**

9 8. My professional opinion is as follows:

10 9. *Functionality of a "cutaway" design.* The cutting away of a part of the body of a guitar to  
11 provide greater access to the upper register of the fret board does indeed represent a functional  
12 design. However, in a solid body guitar design, the shape of the "horn(s)" (or upper bouts of the  
13 body), and the shape of the body itself are non-functional, so long as the body and neck maintain  
14 sufficient rigidity to support the string tension. As illustrated by the variety of solid body electric  
15 guitar shapes, a solid body electric guitar can have virtually any shape. The recording artist Les Paul  
16 built one of the first electric solid body guitars in 1941 using a 4" x 4" piece of pine as the body. The  
17 recording artist Bo Diddley was well-known for playing guitars with a rectangular body. The  
18 recording artist Prince is well-known for his distinctive "cloud" guitar with a severely elongated body  
19 horn. A cutaway feature is only one element of the body design, and the presence of a cutaway  
20 feature does *not* relegate all solid body guitars to one generic design group.

21 10. *Functionality of a truss rod cover.* The truss rod cover on a guitar is functional in the sense  
22 that it keeps debris out of the cavity through which the adjustable truss rod is accessed. However, not  
23 all guitars have an adjustable truss rod, and not all of those that do have the adjustment accessible at  
24 the headstock. Clearly, the cover of a truss rod cavity is not critical to the performance of a guitar and  
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1 is not functional in that context. The truss rod cover can be of any shape, so long as it covers the  
2 cavity. Although the truss rod cover may have some function, the actual shape of the truss rod cover  
3 is a design and cosmetic.

4 11. *Functionality of a headstock.* The headstock of a guitar is functional in the sense that it  
5 anchors the tuners. However, within the limits of functionality, the shape of the headstock is a  
6 cosmetic feature.

7 12. *Value of a unique body shape.* The major American guitar makers have recognized the value  
8 in the marketplace of unique body shapes and other cosmetic features, and they have historically  
9 designed those features to be different from those of other makers, so that consumers can identify the  
10 maker by the shape of the guitar, the shape of the truss rod cover or the shape of the headstock. The  
11 Les Paul, Flying V, Explorer and SG, for example, are body shapes that consumers recognize as  
12 Gibson's designs. Other cosmetic features, such as Gibson's "dove-wing" peg head shape (in use  
13 since circa 1907) and Gibson's bell-shaped truss rod cover (in use since 1922), are recognized by  
14 consumers as Gibson features.

15 13. *Association with musicians.* The value of a unique body shape is enhanced in the marketplace  
16 by the association of certain body shapes with famous musicians or musical genres. The Les Paul, for  
17 example, was used prominently by Jimmy Page (of Led Zeppelin), Duane Allman, Billy Gibbons (of  
18 ZZ Top) and the Les Paul body shape has become an icon for classic rock music. The Flying V was  
19 used by Jimi Hendrix and, along with the Explorer, has a strong association with heavy metal music.  
20 The SG was used by Angus Young (of AC/DC), Tony Iommi (of Black Sabbath) and Pete  
21 Townshend (of The Who), and has an association with the music of those artists.

22 14. *How consumers buy guitars.* From the first commercially successful electric solid body guitar,  
23 the Fender Esquire of 1950, virtually all electric solid body guitars have had some sort of a cutaway  
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1 feature. Buyers of electric solid body guitars do *not* ask for a single-cutaway or double-cutaway  
2 guitar; rather, they ask for a certain brand or model. Their choices are typically influenced by the type  
3 of music they want to play, the guitars that their favorite musicians play, and the prestige of the brand  
4 name.

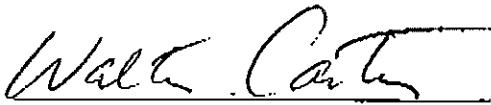
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6 15. Any manufacture of a product, whether a guitar or toy, that incorporates design elements that  
7 are recognizable as Gibson designs would benefit from the association. The resemblance of Paper  
8 Jamz's products to Gibson's trademarked designs is intentional, as evidenced by wording on Paper  
9 Jamz's website and in advertising that specifically associates its guitars with Gibson's Les Paul,  
10 Flying V, Explorer, and SG designs.

11 **Conclusion**

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13 16. The Paper Jamz guitars body shape designs incorporate the key features of the Les Paul Body  
14 Design<sup>®</sup>, the SG Body Design<sup>®</sup>, and the Explorer Body Shape Design<sup>®</sup> depicted by the two-  
15 dimensional drawings in the trademark registrations attached to the Complaint. In my experience  
16 within the guitar industry and my professional opinion, most, if not all, consumers would instantly  
17 recognize the body shape designs displayed on these Paper Jamz guitars as associated with Gibson's  
18 famous Design Marks.

19  
20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed on December 10, 2010 in Nashville, Tennessee.

22  
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24 

25 Walter Carter  
26 Declarant

# Exhibit 8

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11 Plaintiff  
12 GIBSON GUITAR CORP.,

11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 GIBSON GUITAR CORP., a Delaware ) Case No. CV10-8884 RGK (RZx)  
14 corporation, )  
15 Plaintiff, ) DECLARATION OF EDWIN  
16 vs. ) WILSON IN SUPPORT OF  
17 ) PLAINTIFF'S APPLICATION FOR A  
18 WOWWEE USA, INC., et. al. ) PRELIMINARY INJUNCTION  
19 Defendants, ) Judge: Judge R. Gary Klausner  
20 )

21 **DECLARATION OF EDWIN WILSON**

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## DECLARATION OF EDWIN WILSON

I, Edwin Wilson, declare as follows:

1. I am an employee of Gibson Guitar Co. ("Gibson") and have been asked by counsel for Gibson to provide my professional opinion about use and functionality of the guitar body shape designs, the bell-shaped truss rod cover, and headstock designs used on the Gibson Les Paul<sup>®</sup>, Gibson Explorer<sup>®</sup>, Gibson Flying V<sup>®</sup>, and Gibson SG<sup>®</sup> guitars (collectively "Gibson Design Marks"). I have not testified as an expert witness in previous litigation and am not getting paid for my expert testimony by Gibson, other than my salary as an employee.

2. Unless otherwise stated as based upon information and belief, the facts set forth in this declaration are personally known to me and I have first knowledge of 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.

### Professional Background and Expertise

3. I have been in the business of repair and restoration, consulting, buying, selling, designing, recreating and custom-building guitars for 31 years.

4. From 1980 to 1985, I owned my own guitar repair business. My repair business focused on repair and restoration on vintage (older) guitars as well as trading in the vintage guitar market. I would also authenticate vintage guitars.

5. I started working for Gibson in 1985. My title at Gibson is the Historic Program Manager and Engineering.

6. In my 26 year tenure at Gibson, I have continued to repair and restore guitars with the majority of my time devoted to consulting on vintage/artist recreations, managing our Aged guitar

1 department, verification of guitars, raw materials acquisition, tooling and designing elements for the  
2 Gibson Custom Division.

3 7. I have worked directly with and build both new design guitars as well as recreations of  
4 famous artist guitars for several famous musicians including, but not limited to Jimmy Page, Eric  
5 Clapton, Jeff Beck, Ace Frehley, Paul Stanley, Randy Rhoads, Gary Rossington, Allen Collins, Peter  
6 Green, Gary Moore, John Lennon, Johnny Winters, Neal Schon, Lenny Kravitz, Elliot Easton, Joe  
7 Perry, K.K. Downing, Glenn Tipton, Tak Matsumoto, Pete Townshend, and Slash as well as many  
8 others.  
9

### 10 Opinions

11 8. My professional opinion is as follows:

12 9. I am informed by counsel that a trademark, according to the law, can only be held as generic  
13 if the relevant consumer associates the trademark as describing the product rather than identifying the  
14 source of manufacture. Using this assumption, there is no possibility that any of the Gibson Design  
15 Marks are generic.  
16

17 10. These guitar shapes and appointments are unequivocally Gibson in design and all aspects  
18 related to the design; from the shape of the bodies and headstocks, to the shape of the components  
19 such as the truss rod cover, pickguards, knob layout, pickups, tailpiece and bridge. There is no doubt  
20 that consumers recognize all of these designs as being manufactured by Gibson.  
21

22 11. To look at a guitar shaped like a Les Paul<sup>®</sup>, Flying V<sup>®</sup>, Explorer<sup>®</sup>, or SG<sup>®</sup> regardless of any  
23 other aspect such as a different trade name on the guitar, only draws the conclusion that the guitars  
24 were made or licensed by Gibson. These designs were created by Gibson over 50 years ago and that  
25 is where the Gibson association to the designs began; from guitarists to music fans.  
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1 12. Originals of guitars displaying the Les Paul Body Shape Design<sup>®</sup>, the Flying V Body Shape  
2 Design<sup>®</sup>, the SG Body Shape Design<sup>®</sup>, and Explorer Body Shape Design<sup>®</sup> range from \$25,000 to  
3 over \$500,000 due to the fact that they are distinctive and recognizable as Gibson Guitars. Some  
4 Gibson Guitars bearing these designs have even become priceless from the roles that they have  
5 played in music history. For example, John Lennon's Les Paul that he played at one of his last  
6 concerts on August 30, 1972 in Madison Square Garden (Exhibit A).

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8 13. In my professional opinion, the reason anyone would try to use the association with Gibson  
9 Design Marks on instruments of any form is because they are unique, distinct, famous, and have such  
10 strongly recognizable qualities to the public.

11 14. Counsel has informed me that a design that is functional cannot serve as a trademark. I have  
12 been told to assume a design is functional if the product feature is essential to the use or purpose of  
13 the article or if it affects the cost or quality of the article, other than reputation.

14  
15 15. Despite what Mr. Dantzig claims, the Les Paul Body Design<sup>®</sup> and the SG Body Design<sup>®</sup> are  
16 not functional. Reaching the higher frets is ubiquitous to any design of a solid-body guitar and  
17 protecting Gibson's Les Paul Body Design<sup>®</sup> and the SG Body Design<sup>®</sup> trademarks would certainly  
18 not put a competitor at a disadvantage. When these guitars were designed, the design was meant to  
19 compete with other guitar manufacturers in the marketplace. There is no functionality to the shape of  
20 any of these guitars.

21  
22 16. The shapes of all of the Gibson Design Marks serve no purpose in the functioning of the  
23 guitar other than showing the guitars are distinctly Gibson. The geometry was generated was so  
24 Gibson could compete with Fender without copying its guitar designs.



1 17. A functional part of the guitar at that time would be a bridge that you could individually  
2 adjust the string intonation with. Again, the Gibson Design Marks do not serve any utilitarian  
3 purpose and therefore are not functional in design.

4 Conclusion

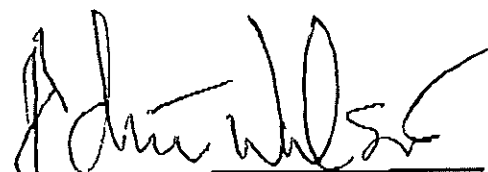
5 18. The Gibson Design Marks have earned their reputation through numerous examples of  
6 playing a part in music history. It would be hard for me to believe that anyone who has been  
7 interested in music over the last 50 years would not recognize them for what they are: Gibson quality.

8 19. There are no functionality aspects in the design of any of the Gibson Design Marks, but rather  
9 they were designed to identify a Gibson Guitar.

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed on December 11, 2010 in Nashville, Tennessee.

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Edwin Wilson  
Declarant

# EXHIBIT A

## A Look at Gibson's John Lennon Les Paul Junior

THE MAKING OF A LEGEND'S LEGENDARY GUITAR

Joe Bisco | 08.01.2007



*"I can make a guitar speak. I can make it howl and move. I was rhythm guitarist. It's an important job."*  
 -- John Lennon

Whenever John Lennon played a Gibson, it became more than a guitar. It transformed into a powerful instrument of change. Whether issuing a desperate cry for "Help!" with his Gibson J-160E acoustic (a guitar he originally nicked from George Harrison), inciting political activism in "Revolution" on his prized Epiphone E230TD Casino (a guitar famously employed during the rooftop session of the Beatles' Apple headquarters), or during one of his last public appearances, at which he played his customized Gibson Les Paul Junior, Lennon's choice of guitars were an essential extension of his unique personality and creativity.

In 1999, Epiphone created two limited-editions John Lennon Casino models, the Epiphone John Lennon "65" Casino (in Vintage Sunburst) and the Epiphone John Lennon "Revolution" Casino (stripped to its natural finish). Both guitars were immediate hits with players and Beatles' fans alike. And in 2002, Gibson Montana introduced the Gibson John Lennon J-160E Peace Model, a limited edition replica of the 1962 guitar that Lennon used faithfully while recording, in movies, and for live performances.

The Gibson Custom Shop has now added to the prestigious line of John Lennon Gibsons, the Gibson John Lennon Les Paul, a faithful reproduction of the modified 1950s Les Paul Junior Lennon played at his unforgettable performance on August 30, 1972 at New York City's Madison Square Garden to benefit the One to One Organization, a group that helped children with learning disabilities.

When Lennon bought the single-cutaway Gibson Les Paul Junior, it was still in its original factory condition—Tobacco Sunburst finish, single P-90 pickup, wraparound tail piece, and Kluson tuners—but he wanted it modified. As he told New York guitar luthier Ron DeMarino, he wanted a "humberdinker" pickup in it—obviously referring to a humbucker. (Somewhat surprisingly, the songwriter and musician who had helped usher in a cultural renaissance was blissfully unaware of many guitar specifics.) "I'm a rhythmmer," he would say. "I don't know anything about these things." Instead of a humbucker, however, DeMarino installed a Charlie Christian pickup in the neck position. First used on the Gibson ES-150 in 1936, the Charlie Christian pickup, with its narrow string-sensing blade, was noted for its clear and powerful sound. Other changes to the guitar included removing the wraparound tailpiece, plugging the holes, and installing a Gibson tuneomatic bridge with a stop tailpiece.

Lennon was delighted with the results, but he had one final request: Sand off the Sunburst finish. When Lennon played the guitar at Madison Square Garden, the guitar's body was bare wood mahogany.

"It is such a special guitar," says Edwin Wilson, Gibson Custom's Historic Program Manager, who personally oversaw every aspect of the Gibson John Lennon Les Paul. "Of course, any guitar the Beatles played is of significance. But because this was such a high-profile concert for John, his return to the stage after several years, the guitar is especially notable. Beyond that, there's the modifications he made to it—in and of themselves, these made this guitar an obvious choice to reproduce."

*"It's a superb instrument," says Edwin Wilson. "It plays like a dream and it sounds incredible. Not only that, but when you hold it, you feel like you own a piece of history."*

Once Yoko Ono gave her enthusiastic endorsement of the project, Wilson flew to the John Lennon Museum in Japan, where the original instrument is on display, to inspect the guitar and document its unique

characteristics. "The museum's curator laid it out for me," says Wilson, "and I went about taking pictures and recording various measurements. Yoko had a couple of stipulations: I couldn't remove or loosen the strings, and I had to wear cotton gloves when handling the guitar."

Wilson recalls being overcome with a sense of awe when holding the original guitar. "I've held a lot of special guitars in my time," he says, "but this one was played by John Lennon himself at Madison Square Garden. Come on—who even gets close to a guitar like that every day?"

Among the peculiarities of the original Les Paul Junior, Wilson noted, were the frets: They were in unusually good shape. "Pre '57, Gibson made very thin frets, so if you had a very heavy fretting technique, or if you bent strings a lot, you'd have a lot of wear and tear. Nothing like that existed on the Lennon original. That leads me to believe that he played with a very light touch with his fretting hand. Another factor could be the extremely light gauge strings he used—.009s, I believe; they were very thin. It's funny: John performed with such force, but I think it came from his entire body; he didn't beat his strings to death." (It should be noted that the John Lennon Les Paul is strung with a set of .010s. "That's our one change," says Wilson. "Most players prefer a little heavier gauge.")

While inspecting the original, Wilson was allowed to remove the back plate and section in front that covers the pickup magnets and toggle switch. Photos were taken so that the guitar builders at the Custom Shop could accurately reproduce the pickup wiring. According to Wilson, including the Charlie Christian pickup was a "have to." Being that it was a unique modification that Lennon himself insisted on, to reproduce the guitar in any other fashion, in Wilson's words, "would've run counter to the spirit of Lennon's wishes."

After performing at Madison Square Garden, Lennon had his original Les Paul Junior refinished in Cherry, and the John Lennon Les Paul is representative of this alteration. "Getting the color to be exact is a real science," says Wilson. "A lot of research and development goes into the aging process of what we do. We use a variety of tools and stains, not to mention a special buffing process. Plus, we have a special glaze that changes the patina of the color—it literally makes the guitar look old!" Various dents and dings have been scrupulously recreated; chief among them are Lennon's scratch marks between the Charlie Christian pickup and the top cutaway. "It's such a distinctive mark," says Wilson. "You look at it and think, Now, how would that ever happen? But that's what separates John Lennon from everybody else. He had his own style of playing."

Included in the purchase of the Gibson John Lennon Les Paul is a Custom Shop case, a certificate of authenticity, a custom care kit, and a signed Lennon print by famed artist Allison Lector.

"The bottom line is very simple," says Wilson. "It's a superb instrument. It plays like a dream and it sounds incredible. Not only that, but when you hold it, you feel like you own a piece of history."

#### FEATURED GUITAR

John Lennon Inspired By Series



# Exhibit 9

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10 Attorneys for  
 11 Plaintiff  
 12 GIBSON GUITAR CORP.,

13 UNITED STATES DISTRICT COURT  
 14 CENTRAL DISTRICT OF CALIFORNIA

15	GIBSON GUITAR CORP., a Delaware )	Case No. CV10-8884 RGK (RZx)
16	corporation, )	
17	Plaintiff, )	DECLARATION OF MIKE McGUIRE
18	vs. )	IN SUPPORT OF PLAINTIFF'S
19	WOWWEE USA, INC., et. al. )	REQUEST FOR A PRELIMINARY
20	Defendants, )	INJUNCTION
21		Judge: Judge R. Gary Klausner

22 **DECLARATION OF MIKE McGUIRE**

23 I, Mike McGuire, declare as follows:

24 1. I am an employee of Gibson Guitar Corp. ("Gibson"), and have been asked by  
 25 its counsel to provide my professional opinion about use and functionality of the guitar  
 26 body shape designs, the bell-shaped truss rod cover, and headstock designs used on the  
 27

1 Gibson Les Paul<sup>®</sup>, Gibson Explorer<sup>®</sup>, Gibson Flying V<sup>®</sup>, and Gibson SG<sup>®</sup> guitars  
2 (collectively “Gibson Design Marks”).  
3

4 2. Unless otherwise stated as based upon information and belief, the facts set forth  
5 in this declaration are personally known to me and I have first knowledge of these  
6 facts. If called upon to testify during court of this action, I could, and I would  
7 competently testify thereto under oath. I am over 18.  
8

9 **Professional Background and Expertise**

10 3. I began teaching guitar at The Music World at the age of 15 and opened my first  
11 music retail store in 1969 located in North Hollywood, California which operated until  
12 1993. I began building custom instruments by hand in 1977 for such notables as Larry  
13 Carlton, Lee Ritenour, Steve Lukather and Tommy Tedesco under the name Valley  
14 Arts Guitars. During this time I procured patents for neck joints and truss rods. Also,  
15 during this period I served as a guitar design consultant for the Samick Corporation,  
16 who built guitars for Washburn, Ibanez, Fender, Epiphone, etc. in Korea.  
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19 4. I served as an expert witness for Grover/Jackson for a lawsuit in the mid1980’s.  
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21 5. In October of 1993, I was hired by Gibson Guitar to start the Custom Shop and  
22 have served as Operations Manager for the last 17 years.  
23

24 6. During my tenure at Gibson I have lectured at the Rock-N-Roll Hall of Fame  
25 and built guitars for the most famous artists in the world (Jimmy Page, Billy Gibbons,  
26 Eric Clapton, Jeff Beck, The John Lennon Estate, The Jimi Hendrix Estate).  
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1 12. Obviously, the function of single and double cut guitars is undeniable, but is in  
2 no way the only way to accomplish successful guitar function, specifically, access of  
3 higher registered frets.  
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5 13. It is the incorporation of that function with the SG and the Les Paul design that  
6 give these Gibson instruments their uniqueness, not place them in the ubiquity of  
7 functional instruments.  
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9 14. In regards to the "bell" shaped truss rod cover, the truss rod is necessary for  
10 function, but the cover is strictly ornamental, covering the truss rod nut. By that nature,  
11 the "bell" shape was created only for design and can be judged only in the category of  
12 design. That ornamental shape was created to distinguish a Gibson guitar and with the  
13 allowance of it being re-produced by another dilutes our guitars distinction.  
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16 15. The Explorer and Flying V are designs that exist in their own category  
17 designated by Gibson. One can say the SG and Les Paul reside under the categories of  
18 single and double cut guitars, but the Flying V and Explorer are their own broad  
19 categories adhering to no higher design designation.  
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21 16. These instruments have been iconic designs of Gibson since 1958.  
22

23 17. Therefore, any use of the design is a direct and unauthorized copy of the Gibson  
24 design.  
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