

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

GIBSON GUITAR CORPORATION,

Plaintiff,

v.

AMAZON.COM, INC., GAMESTOP  
CORPORATION, TOYS-R-US INC.,  
WAL-MART STORES, INC.,  
TARGET CORPORATION, AND  
KMART CORPORATION, SEARS  
ROEBUCK & CO, HARMONIX  
MUSIC SYSTEMS, INC., MTV, and  
ELECTRONIC ARTS INC.,

Defendants.

**Civil Action No. 3:08-0279**

United States District Judge  
Thomas A. Wiseman, Jr.

United States Magistrate Judge  
Juliet Griffin

**Jury Demand**

**MOTION FOR A STAY PENDING U.S.P.T.O.'S REEXAMINATION  
OF THE PATENT IN SUIT**

Defendants Harmonix Music Systems, Inc., Viacom International Inc. (erroneously named herein as “MTV Networks”), and Electronic Arts Inc. (collectively the “Viacom Defendants”), joined by defendants Amazon.com, Inc., GameStop Corp., Toys-R-Us, Inc., Wal-Mart Stores Inc., Target Corp., Kmart Corp., and Sears, Roebuck and Co. (collectively the “Retailer Defendants”), move the Court to stay proceedings in this case pending the U.S. Patent & Trademark Office’s (“PTO”) reexamination of the patent in suit, U.S. Patent No. 5,990,405 (“the ’405 Patent”).

The grounds for this motion are as follows:

(a) On April 24, 2008, a Request for *Ex Parte* Reexamination of the ’405 Patent was filed with the PTO. The request, which raises a substantial new question of patentability, asks the PTO to cancel some or all of the claims in the patent based on substantial prior art, or to narrow the scope of the patent’s claims with regard to their potential coverage of the defendants’ activities. Indeed, even if the claims survive, but are narrowed by the patentee, a result that occurs frequently, this will have a significant impact on claim construction, and Gibson will be unable to collect any damages prior to the date its patent emerges from reexamination.

(b) The benefits of allowing the PTO to resolve the validity of the Plaintiff’s patent claim prior to proceeding with litigation substantially outweigh any minimal prejudice to Plaintiff that might result from a stay. The advantages of a stay are tremendous: until the PTO’s reexamination is complete, the patent claims are a moving target subject to cancellation, amendment, or the addition of new claims. The indeterminate status of the claims will complicate and frustrate any orderly procession of

this action, leaving the Court and the parties with insufficient guidance on issues such as the proper scope of discovery, claim construction, and which (if any) patent claims will ultimately be in dispute at trial. The Court's construction of any relevant patent claims that survive reexamination will benefit from the PTO's technical expertise in considering the prior art cited in the reexamination request. On the other side of the equation, any possible prejudice to Plaintiff that might result from a stay is negligible.

Filed in support of this motion are Memorandum In Support Of Motion For A Stay Pending U.S.P.T.O.'s Reexamination Of The Patent In Suit and the Declaration of William J. Charron.

Dated: May 7, 2008

Respectfully submitted,

By: /s/ Aubrey B. Harwell, III  
Aubrey B. Harwell, III

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(erroneously named in the Complaint as  
"MTV Networks"), and Electronic Arts  
Inc.

By: /s/ Samuel D. Lipshie (by Aubrey B.  
Harwell III w/ express permission)

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Counsel for Defendants Wal-Mart Stores  
Inc., Sears, Roebuck & Co., Target  
Corporation, Kmart Corporation,  
Amazon.com, Inc., GameStop  
Corporation, and Toys-R-Us, Inc.

## CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May 2008, I caused a true and correct copy of the foregoing:

**MOTION FOR A STAY PENDING U.S.P.T.O.'s REEXAMINATION OF  
THE PATENT IN SUIT**

to be served via hand delivery and via the Court's electronic filing system upon the following counsel of record for plaintiff:

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and to be served via the Court's electronic filing system upon the following counsel of record for plaintiff:

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