



Tuesday, May 19
9:45-11:15a

107 Protecting Your Client's Intellectual Property

Michael Goggans
General Counsel
Peavey Electronics Corporation

JoAnn Holmes
Associate General Counsel & Director of Intellectual Property
Cott Corporation

Joseph Peterson
Partner
Kilpatrick Stockton

Faculty Biographies

Michael Goggans

Michael Goggans is general counsel of Peavey Electronics Corporation, a leading worldwide manufacturer of musical instruments, professional audio equipment and sound reinforcement systems. Mr. Goggans manages all legal matters, including a substantial domestic and international intellectual property portfolio, for the affiliated companies of Peavey.

Prior to joining Peavey, Mr. Goggans was a partner in one of Mississippi's largest law firms. There he focused on complex litigation, including asbestos, silica and pharmaceutical defense. Additionally, Mr. Goggans managed the firm's IP practice. Mr. Goggans formerly served as an assistant district attorney, where he was lead counsel for prosecuting crimes of violence against women and children.

Always an advocate for improving educational resources, Mr. Goggans serves as president of the Mississippi School for Mathematics and Science Foundation and as secretary for the Mississippi Afterschool Alliance. Mr. Goggans is also active in local civic organizations and assists with such programs as Habitat for Humanity.

Mr. Goggans earned his J.D. from Fordham University School of Law. He later obtained an LL.M. in Intellectual Property from Franklin Pierce Law Center.

JoAnn Holmes

JoAnn Holmes is associate general counsel and director of intellectual property for Cott Corporation, the world's four largest non-alcoholic beverage company located in Grayson, GA. In that capacity, and as a member of Cott's executive team, Ms. Holmes manages all IP related matters, including Cott's global trademark, patent, trade secret, copyright, and domain name portfolio in over 130 countries and territories. In addition, she is responsible for export, advertising, FDA and FTC, lien and lease related legal issues.

Prior to joining Cott, Ms. Holmes was a senior associate in the technology and intellectual property practice group of the full service, international law firm, Troutman Sanders. There, she assisted clients with a broad array of IP focused matters including domestic and international trademark prosecution, dispute resolution, and contract negotiations.

Ms. Holmes recently spoke at ACC's 2008 Annual Meeting, as well as at the Pennsylvania Bar Institute's annual IP conference on advertising and branding issues. She has lectured at Cornell Law School on IP management strategies, and previously, co-chaired a conference on intellectual property practice for attorneys of color. Moreover,

Ms. Holmes taught IP and advertising law as an adjunct professor for a local college in the Atlanta area. Outside her law practice, Ms. Holmes is a volunteer district chair for CARE International, a global non-governmental humanitarian organization that focuses on sustainably lifting women and girls out of poverty throughout the developing world. In that capacity, she has directly advocated for CARE with Congressional representatives in Washington D.C., seeking legislative support and funding focused on global poverty alleviation.

Ms. Holmes earned her undergraduate degree from Stanford University and is a graduate of the Emory School of Law.

Joseph Peterson

Joseph Petersen is a partner in the intellectual property group in Kilpatrick Stockton's New York office. Mr. Petersen has extensive experience in complex commercial litigation with particular expertise in intellectual property disputes such as copyright infringement, trademark infringement, trade secret litigation, patent infringement, and domain name disputes. He also regularly counsels clients on the protection, enforcement, and licensing of their intellectual property assets.

Mr. Peterson received his B.S., summa cum laude, from the State University of New York. He received his J.D. from Vanderbilt University.



Take Aways

- Designed to give you situational awareness
- Understand the basics of IP so you can spot issues
- When in doubt, consult an expert

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Fact Pattern

- An electronic keyboard bundled with home-studio production software
- Keyboard incorporates programmable touch sensitive strip above the keys
- Incorporates a Zune dock to integrate your music player
- Incorporates a Korg Kaoss pad (a competitor's product)

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Fact Pattern

- To be manufactured in China
- Keyboard named "Alles"
- Software named "Easy Walk"
- To be endorsed by an artist
- Ad campaign utilizing the artist and product

Alles





Trademark Definition

- Source identifier; uniquely distinguish goods or services
- Purpose: Consumer Protection
 - Avoid consumer confusion and deception
- Words, letters, numbers, slogans, characters, logos/designs, symbols, colors, sounds, smells, combinations of the foregoing
 - Example: *National Broadcasting Channel, NBC, 3 tone chime, "Must See TV"*



Trademark Symbols

- ™ is for both products and services
- SM is for services
- ® is for registered trademarks
- Symbols may vary in other countries



Trademarks at Issue

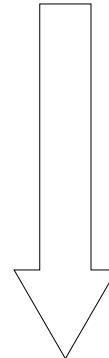
- *Alles* – for keyboard
- *Easy Walk* – for software
- *Zune* – for music device (license)




Trademark Strength (Inherent Distinctiveness)

- Fanciful/Coined
 - Invented term: *Sony electronics*
- Arbitrary
 - Actual term: *Kindle book readers*
- Suggestive
 - Hinting term: *Walkman portable CD players*
- Descriptive
 - Describing term: *Song music software*
- Generic
 - Common identifier: *mp3 player*


strongest



weakest



Branding Selection




**Brand Protection
(Registration)**

**Legal Clearance
By In-House or
Outside Counsel
(Detailed Searching & Analysis)**

**Marketing Ideation
& Brand Creation
(Preliminary Screening)**

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Brand Selection (cont.)

- Marketing Checklist – What’s the plan?
 - Trademark(s) *Easy Walk*
 - Specific product type *Music production software*
 - Customer or Division
 - Trademark keyed off another brand? *Similar to Cakewalk software*
 - Who created the brand name? *Internal marketing team*
 - Brand on sale now or proposed product?
 - Indicate launch date for existing products *Launch ASAP*
 - Use mark with company’s house brand or existing product brand? *Maybe*
 - Indicate house or existing product brand and launch date *Unknown*
 - States/Countries for product’s sale *US and possibly abroad*
 - Confirm that Marketing Manager has conducted initial searches on US PTO web site *Yes*
 - Deadline for response *ASAP!!!*

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Trademark Clearance Searches

- Immediate Elimination Searches
 - Can be conducted by marketing team
 - Free on www.uspto.gov web site
 - Common law searching via Internet (e.g., *Google, Yahoo*)

- Preliminary/Knock-Out Searches
 - Federal & State databases
 - Examples: *Lexis/Westlaw/Trademark.com/Saegis*
 - Should be conducted by counsel

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Trademark Clearance Searches (cont.)

- Comprehensive Searches
 - Concisely organize federal, state, common law, international, ownership history
 - Domain names, web page screen shots, internet search results
 - Valuable for design searches
 - Best defense against willful infringement claim
 - Example: *CSC, Thomson* (outside search firms)

- International Searches
 - Local country trademark databases online
 - Canada (www.cipo.ic.gc.ca)
 - UK (www.ipo.gov.uk)
 - In tandem with comprehensive searches

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Immediate Elimination Search

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Start List At: OR Jump to record: **258 Records(s) found
(This page: 1 ~ 100)**

Refine Search

Current Search: **S3: (walk)[BI] and (009)[IC]** docs: 258 occ: 586

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	79056995		CAKEWALK GIRLY SPIRIT	TARR	LIVE
2	79052697		WALKBOOK	TARR	DEAD
3	79030451	3312904	MOONWALK	TARR	LIVE
4	79022564	3302755	MOONWALK	TARR	LIVE
5	78883955		LIVE WELL...WALK FAR	TARR	LIVE
6	78971792		BAY XQ XPRESS QUOTATION FOR METAL BUILDING INSULATION AND WALK DOORS	TARR	LIVE
7	78746349	3379427	WALK-OFF	TARR	LIVE
8	78587264	3246172	WALKINSIDE	TARR	LIVE
9	78666316	3167837	WALKABOUT	TARR	LIVE
10	78966491		WALK AND LEARN	TARR	DEAD
11	78676222		CAT WALK	TARR	DEAD
12	78969495	3264998	WALKABOUT	TARR	LIVE
13	78869731		ECHARGER	TARR	DEAD
14	78828011		SOUNDWALK	TARR	DEAD
15	78779827		WALK AWAY THE WEATHER ON THE WIRELESS	TARR	DEAD
16	78771873		FIT WALKPUMP	TARR	DEAD
17	78752344	3257841	TV 'N' WALK	TARR	LIVE
18	78752294	3323992	NEWS 'N' WALK	TARR	LIVE
19	78752271	3257839	WEB 'N' WALK	TARR	LIVE
20	78736661		DONTWALK TALK TO THE HAND	TARR	DEAD



Preliminary/Knock-out Searches

- Name and variations thereof
 - Example: *Eas!*, *EZ*, *Walk!*
- Words with similar connotation
 - Example: *Easy Stroll*, *Simple Walk*
- Similar goods and services
 - Example: *software*, *instrument!*, *music!*
- Related International Classes
- Status of mark
 - Example: *Published*, *allowed*, *registered*, *renewed*



Preliminary Search - *Lexis*

- See following page for sample

LexisNexis® Total Research System

FOCUS™ Terms: Search Within:

View: | |

Source: [Legal > /... /> Combined Federal & State Trademarks](#)

Terms: [name\(easyswalk\) or name\(easl and walk\) and g\(musci\)](#)

© 2009 CT Corsearch [EZ WALK \(STANDARD CHARACTER MARK\)](#)

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Federal Trademarks

Trademark Name: EZ WALK
(STANDARD CHARACTER MARK)

Filing Date: July 09, 2008

Serial Number: 77-516472

Official Gazette Status: PENDING

Status Date: March 05, 2009

Goods/Services:
ELECTRONIC FEATURE THAT TEMPORARILY DISABLES TRACKING AND ALERTING FUNCTIONS SOLD AS AN INTEGRAL COMPONENT OF A DEVICE FOR MONITORING, TRACKING AND IDENTIFYING THE GEOGRAPHIC LOCATION AND POSITION OF PETS AND ANIMALS (INTERNATIONAL CLASS: 9; US CLASS: 21, 23, 26, 36, 38)

International Class:
9 (ELECTRICAL AND SCIENTIFIC APPARATUS) - PRIMARY CLASS

U.S. Class:

Pages: 3

Taskbar: 6:28 PM, Saturday, 3/29/2009



Trademark Search Report

- Mark searched
- Date range for marks discussed in search
- Relevant marks found
- Availability likelihood
- Opportunities to increase availability of mark
- Recommendation for investigation or further research

Time is of the Essence!

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Filing Considerations

- Filing Basis
 - Use Based §1(a): product or service available (or offered) for commercial sale
 - Intent to Use Based §1(b): place holder
 - §44(d): Foreign application priority
 - §44(e): Foreign registration priority
- Principal vs. Supplemental Register

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Filing Considerations (cont.)

- Goods & Services ID
 - *Medinol Ltd. v. Neuro Vasx*: Accurate representation of use is imperative
- Specimens: evidence of mark's use
 - Goods: labels, tags, photos of product
 - Services: pamphlets, brochures, web page screen shots



Filing Considerations (cont.)

International Filing

- Paris Convention filing priority w/in 6 mths
- Madrid Protocol & International Regs
 - Base application for multiple countries
- European Union CTM filings
- Other regional filings



Application Examination & Office Actions

- Common Rejections
 - Likelihood of confusion: §2(d)
 - Mere descriptiveness: §2(e)
 - Amendments to goods/services ID
 - Disclaimers
 - No claim is made to the exclusive right to use [insert term] apart from the mark as shown”
- Suspension



Post Examination & Registration

- Publication
 - 30 day period for 3rd party objections
 - Opposition period may be extended up to 180 days from publication
 - Opposition is quasi litigation with pleadings, discovery and hearings
- Certificate of Registration
 - Evidence of mark’s validity and ownership



Post Registration

- §8: Must file Affidavit of Use and specimen between 5th and 6th year after registration
- §9: Must file renewals every 10 years after registration under current rules
 - *Exception of 20 yrs initial term for marks registered before November 16, 1989*
- §15: Incontestability is optional after 5 years of registration

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Trademark License

Zune Trademark

- Fair (or Nominative) Use Factors:
 - No other way to identify goods/services
 - Only use as much of mark as necessary
 - Logo use usually disallowed
 - No suggestion of sponsorship or endorsement by trademark owner
 - Disclaimer may be insufficient
 - Licensing guidelines available?


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Trademark License (cont.)


- Key elements of License
 - Scope, term, territory, quality control, royalty, rights of approval, trademark ownership and defense costs, liability and indemnification, sublicenses and assignments, confidentiality



COPYRIGHT PRACTICE

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WHAT CAN YOU COPYRIGHT?

- "Original works of authorship ... fixed in any tangible medium of expression", 17 U.S.C. § 102.
- Examples:
 - Literary works (books, magazines, etc.)
 - Musical works including lyrics
 - Dramatic works
 - Choreography

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WHAT CAN YOU COPYRIGHT? *(cont'd)*

- Motion pictures
- Sound recordings

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WHAT CAN YOU COPYRIGHT? *(cont'd)*

- Architectural works
- Pictorial, graphic and sculptural works

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WHAT CAN'T YOU COPYRIGHT?

- Titles, names, short phrases and slogans
- Copyright does not protect the design of useful articles, unless the pictorial, graphic or sculptural features of the design exist independently from its useful purpose.
- Procedures, concepts, systems, methods and the like
- Ideas
- Works that have not been fixed in a tangible medium
- History or other facts
- Works in the public domain

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EXCLUSIVE RIGHTS

- (1) Reproduction
- (2) Derivative Works
- (3) Distribution
- (4) Public Performance
- (5) Public Display

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BENEFITS OF COPYRIGHT REGISTRATION

- Establishes a public record of the basic facts/claims of the copyright
- Prerequisite for infringement suit
- *Prima facie* evidence of validity and facts. 17 U.S.C. § 410(c).
- Statutory damages and attorneys fees
- Constructive notice of transfer
- U.S. Customs Service protection

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COPYRIGHT AUTHOR

- Typically the person who creates work is the author and owns the copyright

- Exception for "Works Made for Hire"

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WORK FOR HIRE

- Work by employee within the scope of employee's employment:
 - **employer** considered author and owns the copyright



WORK FOR HIRE

- Independent contractors/freelancers
 - Specially ordered or commissioned; certain types of works
 - Contribution to a collective work
 - As part of a motion picture or other audiovisual work
 - As a translation
 - As a supplementary work
 - As a compilation
 - As an instructional text
 - As a test
 - As answer material for a test
 - Or as an atlas
 - Parties must expressly agree in a signed writing that work is a work made for hire



APPLICATION FOR COPYRIGHT REGISTRATION

* Designates Required Fields

1 WORK BEING REGISTERED

1a. * Type of work being registered (Fill in one only)

- Literary work
- Performing arts work
- Visual arts work
- Motion picture/audiovisual work
- Sound recording
- Single serial issue

ApplicationForCopyrightRegistration

1b. * Title of this work (one title per space)

Remove

WorkTitles

Click here to create space to add an additional title

1c. For a serial issue: Volume Number Issue ISSN

Frequency of publication: Other

1d. Previous or alternative title

1e. * Year of completion

Publication (If this work has not been published, skip to section 2)

1f. Date of publication (mm/dd/yyyy) 1g. ISBN

1h. Nation of publication United States Other Clear Response

1i. Published as a contribution in a larger work entitled

1j. If line 1i above names a serial issue Volume Number Issue
On pages

1k. If work was preregistered Number PRE-



Print Form

Clear Form

For Office Use Only

WorkBeingRegistered

2 AUTHOR INFORMATION - Entry Number

Remove Item

2a. Personal name *** complete either 2a or 2b**

First Name Middle Last

2b. Organization name

2c. Doing business as

2d. Year of birth 2e. Year of death

2f. * Citizenship United States Other Other

Domicile United States Other Other

2g. Author's contribution: Made for hire Anonymus

Pseudonymous (Pseudonym is:)

Continuation of Author Information

2h. * This author created (Fill in only the authorship that applies to this author)

- Text/poetry Compilation Map/technical drawing Music
- Editing Sculpture Architectural work Lyrics
- Computer program Jewelry design Photography Motion picture/audiovisual
- Collective work 2-dimensional artwork Script/play/screenplay Sound recording/performance

Other:

For Office Use Only

AuthorInformation



Print Form

Clear Form

Click here to create space to add an additional author

3 COPYRIGHT CLAIMANT INFORMATION - Entry Number

Remove Item

Clear Section

Claimant

** complete either 3a or 3b - if you do not know the address for a claimant, enter "not known" in the Street address and City fields.*

3a. Personal name

First Name

Middle

Last

Input fields for First Name, Middle, and Last name.

3b. Organization name

Input field for Organization name.

3c. Doing business as

Input field for Doing business as.

3d. Street address *

Input field for Street address (line 1).

Street address (line 2)

Input field for Street address (line 2).

City *

State

ZIP / Postal code

Country

Input fields for City, State, ZIP / Postal code, and Country.

Email

Phone number

(Add "+" and country code for foreign numbers)

Input fields for Email and Phone number.

3e. If claimant is **not** an author, copyright ownership acquired by: Written agreement Will or inheritance Other

Clear

Other

Input field for Other.

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CopyrightClaimantInformation

Click here to create space to add an additional claimant

4 LIMITATION OF COPYRIGHT CLAIM

Skip section 4 if this work is all new.

4a. Material excluded from this claim (Material previously registered, previously published, or not owned by this claimant)

- Text Artwork Music Sound recording/performance Motion picture/audiovisual

Other:

Input field for Other.



Print Form

Clear Form

7b. Name of organization

[Text input field]

7c. Street address *

[Text input field]

Street address (line 2)

[Text input field]

City *

[Text input field]

State

[Text input field]

ZIP / Postal code

[Text input field]

Country

[Dropdown menu]

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MailCertificateTo

8 CERTIFICATION

17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

I certify that I am the author, copyright claimant, or owner of exclusive rights, or the authorized agent of the author, copyright claimant, or owner of exclusive rights, of this work, and that the information given in this application is correct to the best of my knowledge.

8a. Handwritten signature

[Handwritten signature line]

Today's date Write date by hand

8b. Printed name

[Printed name line]

8c. Date signed

[Date signed line]

8d. Deposit account number

Account holder

[Deposit account number field]

[Account holder field]

8e. Applicant's internal tracking number (optional)

[Internal tracking number field]



For Office Use Only

Certification

Privacy Act Notice

Sections 408-410 of title 17 of the *United States Code* authorize the Copyright Office to collect the personally identifying information requested on this form in order to process the application for copyright registration. By providing this information you are agreeing to routine uses of the information that include publication to give legal notice of your copyright claim as required by 17 U.S.C. § 705. It will appear in the Office's online catalog. If you do not provide the information requested, registration may be refused or delayed, and you may not be entitled to certain relief, remedies, and benefits under the copyright law.



NOTICE OF COPYRIGHT

- Not required for works published in the U.S. after March 1, 1989
- Consists of three elements (can be abbreviated)
 - The symbol © or term "Copyright"
 - The year of original publication of the work
 - The name of the owner of the copyright
- *e.g.*, © 2007 Kilpatrick Stockton LLP
- May prevent defense of "innocent infringement", 17 U.S.C. § 405(b).

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TERM OF COPYRIGHT

- Works created on or after January 1, 1978
 - For an individual, life plus 70 years; in the case of a joint work by two or more authors, life of the last surviving author plus 70 years
 - Anonymous, pseudonymous and works made for hire, 95 years from "publication" or 120 years from creation, whichever expires first

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INFRINGEMENT

- There are two elements to a copyright infringement claim:
 - ownership of a valid copyright; and
 - copying of constituent elements of the work that are original

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OWNERSHIP

- A certificate of registration from the United States Register of Copyrights constitutes *prima facie* evidence of the valid ownership of a copyright

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COPYING

- To prove infringement, a plaintiff with a valid copyright must demonstrate that:
 - the defendant has actually copied the plaintiff's work; and
 - the copying is illegal because a substantial similarity exists between the defendant's work and the protectable elements of plaintiff's



INFERRING COPYING

- Since direct evidence of copying is seldom available, "[c]opying may be inferred where a plaintiff establishes that the defendant had access to the copyrighted work and that substantial similarities exist as to protectable material in the two works."



INFRINGEMENT

- Access
 - Some courts have defined it as the actual viewing and knowledge of the plaintiff's work by the person who created the defendant's work
 - Sometimes access can be inferred. Thus, if it can be shown that the defendant had the opportunity to view the plaintiff's work, this (when combined with substantial similarity and a "thick" copyright) may be enough



INFRINGEMENT *(cont'd)*

- This is why movie studios and television producers are reluctant to open unsolicited mail -- because if the envelope includes a treatment or script, it may later be argued that an employee of the studio who wrote another screen play "had the opportunity" to view the unsolicited version allegedly infringed by the studio's actual release



INFRINGEMENT *(cont'd)*

- Infringement of the display and performance rights often involve straight copying -- the display of pictures on a website or the performance of music publicly at a club



INFRINGEMENT *(cont'd)*

- But one of the most difficult questions of copyright law is the question of when a work which is not identical to a prior work is nevertheless infringing of it



SECONDARY LIABILITY

- Individuals or entities that are not directly involved in infringing activity may still be found liable for the infringement under the doctrines of “contributory infringement” or “vicarious liability.”
- Generally speaking, there may be contributory liability by one who, with knowledge of the infringing activity, induces, causes, or materially contributes to the infringing conduct of another.
- An individual or entity may be vicariously liable for infringement when it has the right and ability to supervise the infringing activities and has a direct financial interest in them.

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FAIR USE – A SUMMARY

- Overview
 - The doctrine allows a person other than the owner of the exclusive rights to use the copyrighted work in a manner that (but for “fair use”) would violate one or more of those rights
 - In litigation, fair use is a defense once copyright infringement has been provided. The burden is on the defendant to provide fair use
 - Fair use is grounded in commonsense – for example, quotations by a critic of portions of a book being reviewed generally are fair use

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FAIR USE FACTORS

- Purpose of use
- Nature of copyrighted work
- Amount and substantiality of work used
- Effect of the use on market for, or value of, the copyrighted work

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FAIR USE

- Fair use is an equitable rule of reason. Although the fourth factor often is referred to as the most important, the weight given to the factors will vary from case to case. Moreover, the factors are interrelated; thus, less copying (factor 3) of a creative work (factor 2) will be permitted than of an informational work. Similarly, the effect on the marketplace (factor 4) may be discounted depending upon the nature of the use (factor 1).
- The Golden Rule Definition -- As stated by Nimmer at 13.05[A], p. 13-158-59: "It may be that no more precise guide can be stated than Joseph McDonald's clever paraphrase of the Golden Rule: 'Take not from others to such an extent and in such a manner that you would be resentful if they so took from you.'"

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FAIR USE

- Parody, satire, comment and criticism – like news reporting – are generally favored as fair use under 17 U.S.C. 107.
- This is especially the case where the allegedly infringing use is “transformative”; and parody is a classic example of “transformative” use. *Campbell v. Acuff-Rose Music Inc.*, 510 U.S. 569, 114 S. Ct. 1164 (1994).

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FAIR USE



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MORAL RIGHTS

- The United States has adopted a very limited subset of moral rights for “works of visual art” in the Visual Artists Rights Act (“VARA”).
- This Act grants a limited right of attribution (the right to claim authorship or to prevent the use of an author’s name on a work he or she did not create) and right of integrity (the right to prevent an intentional modification to a work that is prejudicial to the artist’s reputation or any destruction of a work of recognized stature). Anyone contemplating the destruction or modification of a work of visual art – for example, a sculpture in the lobby of a corporate building – should consider whether these rights apply.

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COPYRIGHT TRANSFERS

- Licenses
 - Owner can license one or more of the "Exclusive Rights" to a licensee
 - Exclusive licenses must be in writing and signed by the owner
 - Licensee does not become copyright holder
 - Non-exclusive licenses should also be written and signed

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ASSIGNMENTS

- When a copyright is assigned, the "Assignee" becomes the owner of the copyright
- Assignment must be in writing and signed by owner

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STATUTORY TERMINATION

- For works created after January 1, 1978, author has the right to terminate any license or assignment at any time during the five year period commencing 35 years after the transfer
- If author dies before termination period begins, termination right can be exercised by heirs

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Patents

- Patents grant a right to exclude others from the manufacture, sale and importation of the patented invention.
- Patents are creatures of statute and differ around the world.
- This analysis is limited to US Patent law, but since the product is to be manufactured in China, you should also consider protecting it under Chinese law.
- Patents are defined by the claims, not the abstract or description

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Patents

- Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title. 35 USC 101

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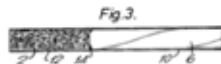
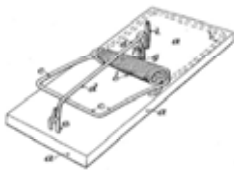
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Process Patents

- Process, art or method
- includes a new use of a known process, machine, manufacture, composition of matter or material.
 - Example: pharmaceutical is found to be useful for treating a different symptom; a process patent may issue

Product Patents

- Machine (e.g., mousetrap)
- Article of manufacture (e.g., cigarettes)
- Composition of matter (e.g., genes)



Patentability

- To be patentable, an invention must be useful, novel and non-obvious and must satisfy the statutory bars.
- What is not patentable?
- Laws of nature, physical phenomena, and abstract ideas are not patentable.
- But the application to processes, machines, manufacture and compositions of matter are.

Nuclear Weapons are not Patentable

Novelty

- The patentable invention must be new in that it:
 - Is not Anticipated (not already known to the public or in public use, had not been published or described in a pending patent application)
 - Has Priority (was not already invented by someone else) and
 - Is not Derived (only the inventor can file the patent application).



Usefulness

- Must simply provide some identifiable benefit.
- Must be more than aesthetic or descriptive (design patents, excluded of course).
- Must be operable, but not required to be better than any other way.
- Most commonly a problem in biotech: researchers often find a compound or gene before knowing what it does (i.e., haven't identified its usefulness).

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Statutory Bars

- Must be filed no later than a year after the invention has been put in public use, is published or is put on sale
- Must not have abandoned the invention
- Must file for US patent less than year after filing for a foreign patent
- Must exercise diligence in filing patent application

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Obviousness

- Not patentable if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.
- Obviousness analyzed from perspective of one with ordinary skill in the pertinent art, not the most skilled.



Obviousness

- Prior art is all information publically available prior to the invention date.
- Distinguish elements of the claimed invention from elements in the prior art. Are they found in a single reference, in multiple references within the same discipline, within multiple references over multiple disciplines?
- Co-worker's prior art won't count against each other.



Design Patents

- Design Patents are issued for ornamental designs that are not dictated by functional considerations
- Ornamentality is liberally construed (cement mixer found to be ornamental in design)
- Design must be visible, not hidden
- If functional aspect of the design may be achieved by other design techniques, then it is not primarily functional

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Anatomy of a Patent

- Abstract: a brief description of the invention
- Drawings: shows the preferred embodiment of the invention
- Description or Specification: describes in detail the preferred embodiment of the invention
- Claims: the legal description that defines the “metes and bounds” of the invention

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US007242779B2

(12) **United States Patent**
Coats et al.

(10) **Patent No.:** **US 7,242,779 B2**
(45) **Date of Patent:** **Jul. 10, 2007**

(54) **METHODS AND APPARATUS FOR SUB-HARMONIC GENERATION, STEREO EXPANSION AND DISTORTION**

(75) Inventors: **Elon Ray Coats**, Meridian, MS (US);
Ernest Lloyd Trammell, Meridian, MS (US)

(73) Assignee: **Peavey Electronics Corporation**, Meridian, MS (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 513 days.

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U.S. Appl. No. 11/053,716, filed Feb. 8, 2005, Coats et al.
120XP Subharmonic Synthesizer, A Harman International Company, Nov. 5, 1997, pp. 1-2.

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Primary Examiner—Xu Mei

(74) Attorney, Agent, or Firm—Matthew B. Dernier; Kaplan Gilman Gibson & Dernier LLP

(21) Appl. No.: **10/158,628**

(22) Filed: **May 30, 2002**

(65) **Prior Publication Data**

US 2003/0223588 A1 Dec. 4, 2003

(51) **Int. Cl.**

H03G 3/00 (2006.01)

(52) **U.S. Cl.** 381/61; 381/98

(58) **Field of Classification Search** 381/17, 381/18, 1, 61, 98

See application file for complete search history.

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(57) **ABSTRACT**

Methods and apparatus are disclosed that achieve sub-harmonic signal processing, stereo-width expansion, sub-woofer signal processing, and tube distortion emulation to achieve various desirable acoustic effects when used to modify an input signal containing, for example, music content.

27 Claims, 10 Drawing Sheets

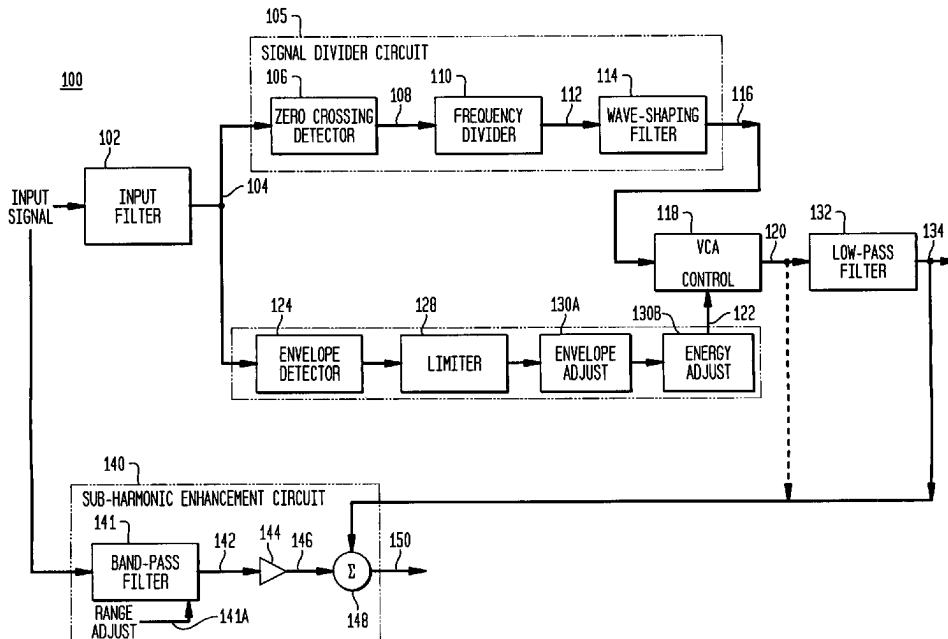
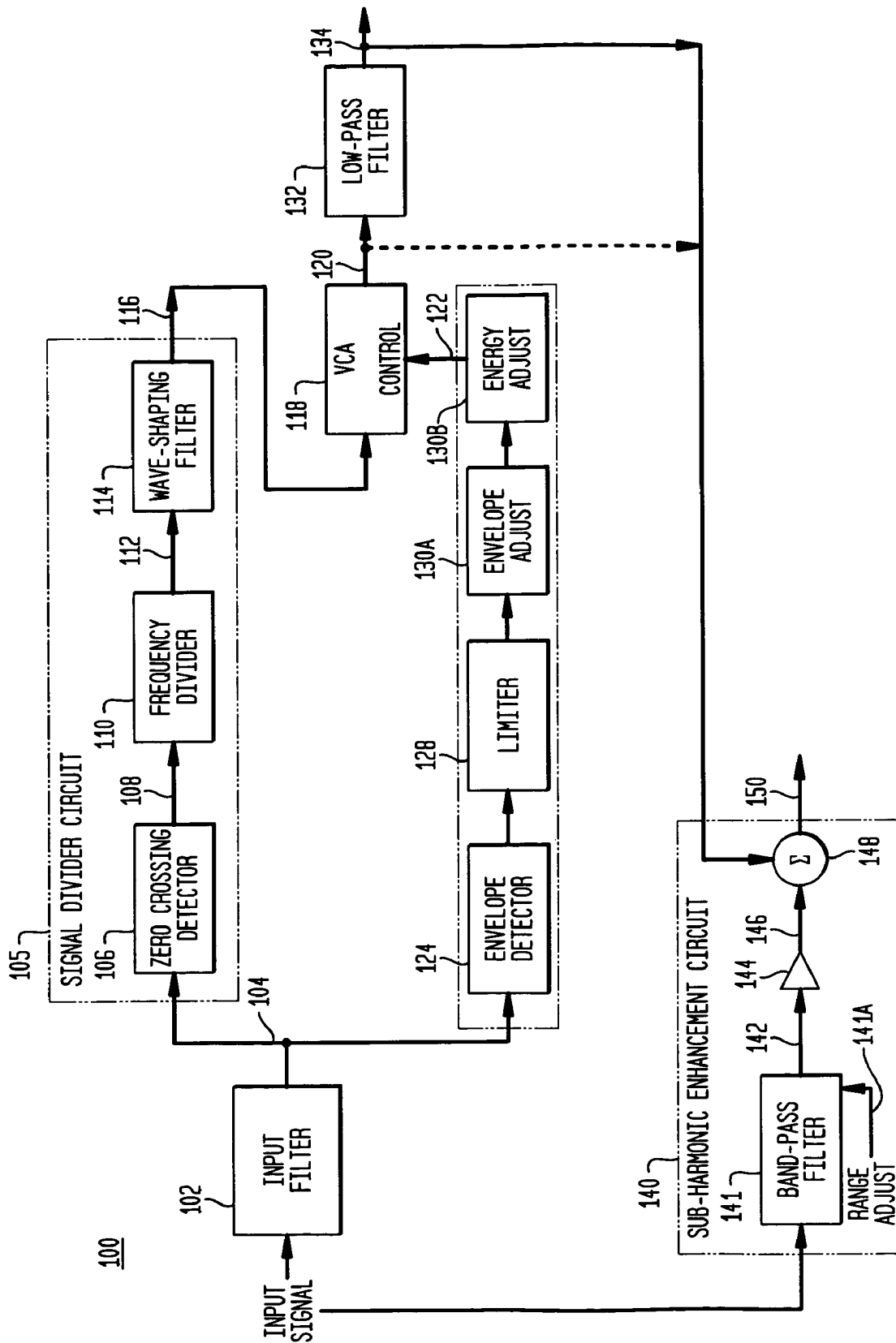


FIG. 1



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**METHODS AND APPARATUS FOR
SUB-HARMONIC GENERATION, STEREO
EXPANSION AND DISTORTION**

BACKGROUND OF THE INVENTION

The present invention relates to producing a synthesized signal that is derived from an input signal and includes frequency content not contained in the input signal. The present invention also relates to increasing the stereo width produced by signals from left and right channels.

Conventional sub-harmonic generators are used to modify an input signal to produce a sub-harmonic signal having at least some desirable characteristics. In music reproduction/processing contexts, an input signal may include frequency components taken from an audible range of about 20 Hz to about 20,000 Hz. The conventional sub-harmonic generator produces an output signal that includes energy at substantially all of the frequency components of the input signal plus additional energy at frequency components in a sub-harmonic range. In some cases, the output signal includes energy at only a subset of the frequency components of the input signal (such as a sub-woofer range) plus the additional energy in the sub-harmonic range. Usually, a range of frequency components from the input signal are utilized to derive the frequency components in the sub-harmonic range, and the input signal is augmented with the frequency components in the sub-harmonic range to obtain the output signal.

In theory, these conventional sub-harmonic generators produce desirable characteristics in the output signal, such as increased signal energy in the sub-harmonic range, thereby producing a richer bass response when converted into audible sound energy. In practice, however, the audible characteristics of the output signal from conventional sub-harmonic generators suffer from a number of disadvantages, namely (i) a relatively flat (or "cardboard") audible sound is obtained from the output signal due primarily to the increase in energy from sub-harmonic frequency components without modifying other frequency characteristics of the input signal, this disadvantage may also manifest in a "rumbly" sound depending on the frequency content of the input signal; and (ii) the audible sound exhibits poor "attack" and "decay" characteristics due to an inability by the sub-harmonic generator to accurately reflect an amplitude envelope of the input signal as a function of the frequency components of interest. Thus, the energy of the output signal in the sub-harmonic frequency range does not exhibit desirable amplitude characteristics. In addition, conventional sub-harmonic generators have not effectively utilized sub-harmonic signals in stereo applications, particularly where maintaining stereo "width" is of importance.

Peavey Electronics Corporation, the assignee of the present invention, has developed a sub-harmonic generator, called KOSMOS™, that avoids flat, cardboard sounding characteristics in an output signal. The KOSMOS™ system achieves this by modifying frequency components at least partially outside the sub-harmonic range, and using the amplitude envelope of the input signal (as a function of frequency components in the relevant frequency range) in producing the output signal. The KOSMOS™ system also increases stereo width characteristics created by signals from left and right channels and improves sound clarity above certain frequencies. Further details concerning the KOSMOS™ system may be found in U.S. patent application Ser. No. 09/727,903 filed Dec. 1, 2000, entitled SUB-

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HARMONIC GENERATOR AND STEREO EXPANSION PROCESSOR, the entire disclosure of which is hereby incorporated by reference.

SUMMARY OF THE INVENTION

The present invention provides improvements over existing sub-harmonic generators and achieves further functionality in its sub-harmonic generator, such as providing adjustability (preferably user adjustability) of the sub-harmonic amplitude envelope. Indeed, it has been found that this can result in highly enjoyable sound characteristics. For example, a percussive attack effect can be achieved when the rate of attack or decay of the amplitude envelope of the sub-harmonic signal is increased, which effect can improve (or synthesize) the sound of a kick-drum or the like. It has also been found to be desirable to modify the energy level of the amplitude envelope of the sub-harmonic signal under certain circumstances, such as when the rates of sloping portions of the amplitude envelope of the sub-harmonic signal are increased. Indeed, in that case, increasing the energy level of the amplitude envelope would tend to balance an apparent decrease in the energy level of the amplitude envelope resulting from a faster slope. In an alternative situation, where the rates of the sloping portions of the amplitude envelope have been reduced, it has been found that a desirable balance in the energy level of the amplitude envelope results when such energy level is reduced.

The present invention still further provides for enhancing the sub-harmonic effect by enabling an adjustment (preferably a user adjustment) in the frequency characteristics of a sub-woofer audio signal, which signal is aggregated with the sub-harmonic signal.

The present invention also provides for adjustability in an amount of stereo width expansion produced by left and right channels of a stereo system. More particularly, in accordance with the present invention, it has been discovered that desirable sound characteristics are achieved when a balance between the amount of stereo width expansion and an amount of high frequency boost is made adjustable (preferably user adjustable) in each of the left and right channels. This advantageously permits a user to adjust this balance to achieve overtones, timbre, etc. that complement the character of the audio content.

The present invention further provides for introducing an acoustic brightness into the audio content, preferably into both the left and right channels of a stereo signal. More particularly, the present invention provides for aggregating an adjustable level (preferably user adjustable) of additional harmonic frequency content to the left and right channels, which frequency content emulates the higher frequency distortion effects of a vacuum tube amplifier. Advantageously, the present invention contemplates offsetting frequency characteristics of the added harmonic frequency content provided in the left and right channels of the audio content to increase and/or complement the stereo width expansion effect.

In accordance with at least one aspect of the present invention, a sub-harmonic generator includes: an input filter operable to receive an input signal containing frequencies from among a first range and to produce a first intermediate signal containing frequencies from among a second range; a signal divider circuit operable to receive the first intermediate signal and to produce a second intermediate signal containing signal components at frequencies from among a third range, the third range of frequencies being about one

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of the right channel expansion signal on node 429, the sub-harmonic signal on node 134, the intermediate signal on node 146, and/or the right channel distortion signal on node 525 to produce the right channel output signal.

The above aspects of the present invention enjoy wide application, particularly in the audio context. For example, stereo systems, home theaters, car stereos, drum equipment, sound systems utilized by disc jockeys, etc. may utilize one or more aspects of the invention to improve audible sound quality and, therefore, increase user satisfaction.

Although the invention herein has been described with reference to particular embodiments, it is to be understood that these embodiments are merely illustrative of the principles and applications of the present invention. It is therefore to be understood that numerous modifications may be made to the illustrative embodiments and that other arrangements may be devised without departing from the spirit and scope of the present invention as defined by the appended claims.

What is claimed is:

1. A sub-harmonic generator, comprising:
 - an input band-pass filter operable to receive an input signal containing frequencies from among a first range and to produce a first intermediate signal containing frequencies from among a second range, wherein the band-pass filter includes a low pass filter having a first corner frequency and a high pass filter having a second corner frequency, the first corner frequency being greater than the second corner frequency, and the low pass filter is operable to receive the input signal and to produce a low pass signal, and the high pass filter is operable to receive the low pass signal and to produce the first intermediate signal;
 - a signal divider circuit operable to receive the first intermediate signal and to produce a second intermediate signal containing signal components at frequencies from among a third range, the third range of frequencies being about one octave below the second range of frequencies;
 - an envelope detector operable to produce an envelope signal corresponding to an instantaneous amplitude of the first intermediate signal;
 - a gain control circuit operable to at least variably adjust a gain of the envelope signal; and
 - a voltage controlled amplifier operable to amplify the second intermediate signal by an amount proportional to the envelope signal to produce a sub-harmonic signal.
2. The sub-harmonic generator of claim 1, wherein the gain control circuit is operable to variably increase or decrease rates of sloping portions of the envelope signal.
3. The sub-harmonic generator of claim 2, wherein the gain control circuit includes a user adjustable control to increase or decrease the rates of the sloping portions of the envelope signal.
4. The sub-harmonic generator of claim 2, wherein the slope adjustment circuit includes an adjustable gain amplifier operable to increase or decrease the rates of the sloping portions of the envelope signal by a factor of about 1.7 to about 0.7.
5. The sub-harmonic generator of claim 2, wherein the slope adjustment circuit includes a limiter circuit operable to limit an amplitude of the envelope signal.
6. The sub-harmonic generator of claim 1, further comprising an offset circuit operable to increase or decrease an amplitude of the envelope signal by an adjustable offset

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value as the gain control circuit variably increases or decreases rates of sloping portions of the envelope signal.

7. The sub-harmonic generator of claim 6, further comprising a user adjustable control operable to simultaneously (i) vary a gain of an adjustable gain amplifier that is operable to increase or decrease the rates of the sloping portions of the envelope signal; and (ii) vary the amplitude of the envelope signal by adding the offset value.

8. The sub-harmonic generator of claim 1, wherein the envelope detector includes an RMS detector operable to produce the envelope signal such that it corresponds to the instantaneous amplitude of the first intermediate signal.

9. The sub-harmonic generator of claim 1, further comprising a summing circuit operable to receive a stereo signal including a left channel signal and a right channel signal, and to aggregate the left and right channel signals to produce the input signal.

10. The sub-harmonic generator of claim 1, wherein the input filter is operable such that the second range is within about 40-110 Hz.

11. The sub-harmonic generator of claim 1, wherein the signal divider circuit is operable such that the third range of frequencies is within about 20 Hz to about 55 Hz.

12. The sub-harmonic generator of claim 1, further comprising:

a summing circuit operable to receive a stereo signal including a left channel signal and a right channel signal, and to aggregate the left and right channel signals to produce the input signal;

a left channel summation circuit operable to sum the left channel signal and the sub-harmonic signal to produce at least a portion of a left channel output signal; and

a right channel summation circuit operable to sum the right channel signal and the sub-harmonic signal to produce at least a portion of a right channel output signal.

13. The sub-harmonic generator of claim 1, wherein at least one of the input filter, the signal divider circuit, the envelope detector, the gain control circuit, and the voltage controlled amplifier is implemented using one or more programmable devices.

14. A method, comprising:

receiving an input signal containing frequencies from among a first range and producing a first intermediate signal containing frequencies from among a second range;

producing a second intermediate signal from the first intermediate signal, the second intermediate signal being a square wave signal produced from the first intermediate signal by comparing respective amplitudes of the first intermediate signal and a reference potential and transitioning a zero crossing signal each time the amplitude of the reference potential substantially equals the first intermediate signal, such that the second intermediate signal contains signal components at frequencies from among a third range, the third range of frequencies being about one octave below the second range of frequencies;

producing an envelope signal corresponding to an instantaneous amplitude of the first intermediate signal;

variably adjusting a gain of the envelope signal; and

amplifying the second intermediate signal by an amount proportional to the envelope signal to produce a sub-harmonic signal.



US00D578563S

(12) **United States Design Patent** (10) **Patent No.:** **US D578,563 S**
Peavey et al. (45) **Date of Patent:** **** Oct. 14, 2008**

(54) **GUITAR HEADSTOCK**

D512,453 S * 12/2005 Dawson et al. D17/20

OTHER PUBLICATIONS

(75) Inventors: **Hartley D Peavey**, Meridian, MS (US);
Daniel J Wolper, Meridian, MS (US)

Brattleboro Museum & Art Center: <http://www.brattleboromuseum.org/exhibits/exhibits2005.html>, Nov. 2005, Tiger Equinox Archtop Guitar, center of page.*

(75) Assignee: **Peavey Electronics Corporation**,
 Meridian, MS (US)

* cited by examiner

(*) **Term:** **14 Years**

Primary Examiner Ian Simmons

Assistant Examiner Rashida Johnson

(21) **Appl. No.:** **29/280,596**

(74) *Attorney, Agent, or Firm* Matthew B. Demier; Kaplan Gilman Gibson & Demier LLP

(22) **Filed:** **Jun. 1, 2007**

(57) **CLAIM**

(51) **LOC (8) CL.** **17-03**

The ornamental design for a guitar headstock, as shown and described.

(52) **U.S. CL.** **D17/20**

(58) **Field of Classification Search** D17/14,

D17/15, 18, 19, 20; 84/7, 173, 267, 268,
 84/269, 275, 277, 284, 285, 290, 291, 293,
 84/306, 314, 453

See application file for complete search history.

DESCRIPTION

FIG. 1 is a reduced front perspective view of a guitar headstock showing our new design;

FIG. 2 is another front perspective view thereof;

FIG. 3 is a top plan view thereof;

FIG. 4 is a bottom plan view thereof;

FIG. 5 is a right side elevational view thereof;

FIG. 6 is a left side elevational view thereof;

FIG. 7 is a front elevational view thereof; and,

FIG. 8 is a rear elevational view thereof.

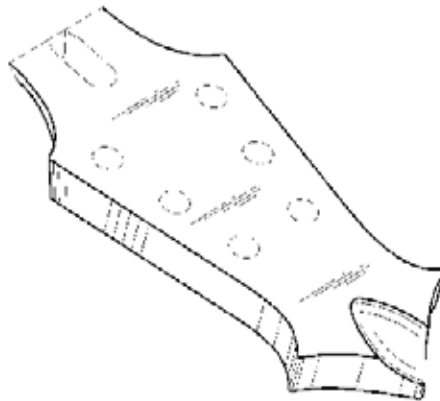
The broken lines of the drawing are for illustrative purposes only and form no part of the claimed design.

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D477,013	S *	7/2003	Rico	D17/14
D489,133	S *	11/2004	Hoffman	D17/14

1 Claim, 6 Drawing Sheets





General Considerations

- Always make sure EVERY employee signs an invention assignment form upon hire.
- A qualified patent attorney will need to prepare and file a patent application.
- Cost ranges from \$10,000 for a simple patent to \$100,000 for a moderately complex patent to far more for highly complex patents.
- To reduce unnecessary costs, go through your own internal vetting prior to hiring a patent attorney.
- Consider which countries you should file for protection in and familiarize yourself with the laws there.

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Invention Disclosure Forms

- Identify who worked on the invention and their contribution
- Fully describe the invention and include drawings
- What makes this invention unique?
- Describe alternative designs that might work
- Cover dates of conception, reduction to practice and public disclosure
- If external funding used, list it
- Describe and list similar/parent technology and known prior art

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Post Disclosure Form

- Interview the inventors
- Break invention down to constituent parts for analysis
- What is novel?
- Conduct preliminary search
- Research disclosed prior art

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Investigation

- What may be novel in Alles?
 - The touch strip above the keyboard
 - Integration of a Zune into the keyboard
- What patents might this infringe?
 - Abstracts are NOT the invention (claims are), but abstracts help narrow your search

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Patents to Investigate

- Touchpad integrated in keyboard?
- Patents on touchpads themselves?
- Is the Kaoss device covered by patents?
- Are patents involved in the Zune integration?
- Can we file for a design patent?

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Searching the USPTO

- Commercial search services are available
- USPTO.gov allows you to search issued patents and published patents
- Search broadly, manually narrow the scope

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Touchpad Integration

- Search issued patents for “acIm/keyboard and acIm/touch”
- 1253 results. Far too many. Quick review shows medical devices, mobile communication devices, etc.
- Refine search by adding “acIm/music”
- 44 results

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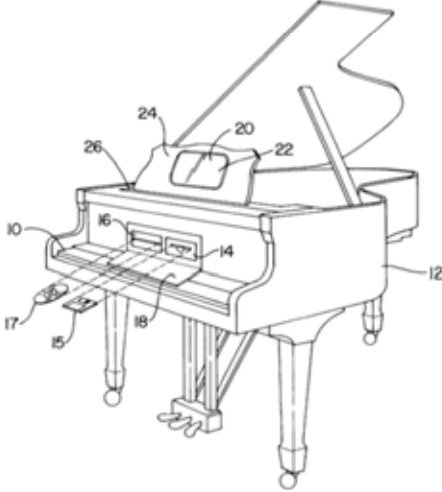
Touchpad Integration

- 5,864,078: “Electronic piano having an integrated music stand and touch screen interfaced display”
- An electronic piano includes an electronic keyboard; a graphical user interface, having a video display and a touch responsive overlay, for displaying graphical images representing controllable parameters of the electronic piano and generating control signals; a control system for the electronic piano and the graphical user interface; a piano housing supporting the electronic keyboard and providing a desk surface above the keyboard; and a music stand mounted to the desk surface for supporting sheet material, wherein the graphical user interface forms part of the music stand. The graphical user interface can be mounted in an opening in the music stand and can provide a touch screen flush with the music support surface or recessed.

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ACC Association of Corporate Counsel



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Patent Claim

1. An electronic piano having a computer based control system, the piano comprising:
 - a keyboard;
 - a graphical user interface, having a video display *and a touch responsive overlay, for displaying graphical images representing controllable parameters of the electronic piano and generating control signals for the control system;*
 - a piano housing supporting said keyboard and providing a desk surface above the keyboard; and
 - a music stand mounted to said desk surface for supporting sheet material, wherein said graphical user interface forms part of said music stand.

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Formerly Corporate Counsel Quarterly

May 17-19, 2009
Hyatt Regency Atlanta



Touchpad Technologies

- Multiple patents cover differing touch sensitive technology
 - Haptic response (feedback)
 - Transparency (see through touchpads)
 - Differing textures (for specific functions)
 - Force sensing (differing force results in differing response)
- Your invention disclosure and interviews will guide your search, but your search may change your engineering plans

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Patent Licensing

- If you choose to incorporate someone else's patented technology, you must obtain a license
- May have a flat fee, royalty percentage, or (rarely) a free license
- Due diligence to ensure licensor has right to license

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What do we Apply For?

- A musical keyboard synthesizer incorporating a touch interface placed above the keys that is functional to modify the settings of the synthesizer or alter the sound or tone of the keys being depressed.
- A musical keyboard synthesizer incorporating a portable music device interface



Design Patent

- Can we file for a design patent on the strip configuration?
- No, because it is there for a functional purpose.
- If artistic modifications made (e.g., a fancifully shaped touchpad), perhaps.



Advice of Counsel

- Send your descriptions, drawings and research to a qualified and trusted patent attorney
- Is an opinion letter necessary?
- Full search
- File applicable patents