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## Intellectual Property

## Fender Bender

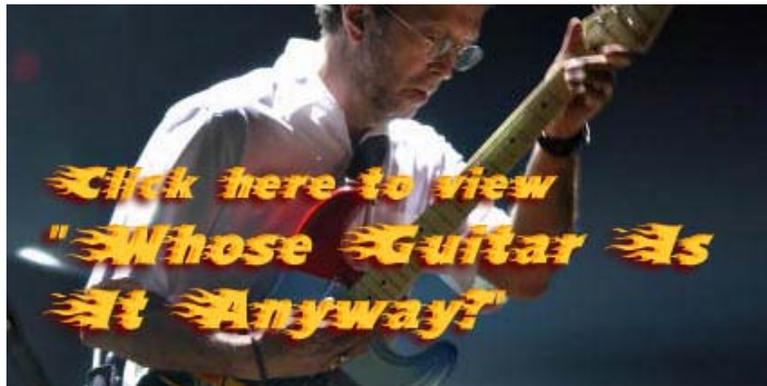
Emily Lambert, 06.22.04, 10:00 AM ET

**Leo Fender**, the father of the electric guitar, had many children--figuratively speaking. For decades now, guitar makers have been using his designs over and over, sharing his legacy.

But privately held **Fender Musical Instruments**, which owns the name to history's most famous electric guitar--the Stratocaster--wants that to stop. Fifty years after the first Strat was sold, the company is claiming that the guitar's shape, as well as that of several other models, belongs to Fender. That's not going over well with its competitors.

Scottsdale, Ariz.-based Fender, which has 30% of the \$488 million U.S. electric guitar market, according to *The Music Trades* magazine, has applied to the U.S. Patent and Trademark Office for federal trademark registrations for the guitar and bass body shapes used on Fender's Stratocaster, Telecaster and P Bass guitars and basses, all of which it has been selling since the 1950s. Countless guitarists play Fenders; **Jimi Hendrix** played a Strat at Woodstock. His guitar, thanks to **Microsoft** (nasdaq: [MSFT](#) - [news](#) - [people](#) ) co-founder **Paul Allen**, is now on display at Seattle's Experience Music Project.

The problem is, dozens of other companies have sold guitars with those shapes too--a knockoff market developed in the mid-'70s. Fellow industry titan **Gibson Guitar** has indicated it may oppose Fender's application. Some smaller guitar makers, which have built reputations and businesses on those shapes, worry they could be put out of business if Fender gets its way.



"It's like [trying to trademark] cars with four wheels, or all tennis rackets that are round," says Ronald Bienstock, a lawyer representing 18 guitar

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companies, big and small, that are opposing Fender's application.

"If Fender gets away with this, it will be catastrophic," says **John Suhr**, founder of **Suhr Guitars** in Lake Elsinore, Calif., who once worked for Fender. "It's really kind of hard in this business, because how many different ways can you make a violin? How different can we make these things look?"

In a notice of opposition filed with the Trademark Trial and Appeal Board, guitar maker Jason Lollar argues that Fender "has failed to police its potential claims" and that "industrywide replication of the guitar body styles...has caused those body styles to become generic."

Fender General Counsel **Mark Van Vleet** says the company has asserted common law trademark rights over these body shapes and is now "seeking to obtain federal legal rights to those particular designs." Fender already has federal trademark registrations for several designs of guitar and bass headstocks, the part of the guitar where tuning pegs anchor the strings.

"I don't want to state or imply that we will or won't go after anybody," Van Vleet added, saying that Fender would protect its intellectual property on a case-by-case basis.

Is the company shoring up intellectual property for a sale or to go public? Fender won't say, but in response to published reports, a spokesman says, "We're currently not for sale." It has reportedly hired **Goldman Sachs Group** (nyse: [GS](#) - [news](#) - [people](#)) to conduct an evaluation of the company.

David J. Byer, a partner in the patent and intellectual property group at Testa, Hurwitz & Thibault, says Fender's case will depend in part on how it has policed the designs over the past 30 years, and on whether the body designs are considered "functional." But even if Fender doesn't convince the Trademark Trial and Appeal Board of its rights, it could still take its common law argument to a judge and sue companies that it feels are infringing on its rights.

Fender's path was paved by privately held Gibson Guitar, which in 1993 registered the body shape of its popular Les Paul model, first made in 1952. In 2000 Gibson sued manufacturer **Paul Reed Smith Guitars**, and this March a judge sided with Gibson. "It's not over. We do not agree with the decision," says **Paul Reed Smith**, who noted that a Fender vice president served as an expert witness for PRS Guitars.

At **Sam Ash**, the second-biggest guitar retailer in the U.S. and a major Fender dealer, Chief Operating Officer **David Ash** said he doubted small shops would fold without use of the designs in question. "I find that hard to believe," he said. "It's not like there aren't plenty of shapes."

Executives at **Guitar Center** (nasdaq: [GTRC](#) - [news](#) - [people](#)), another major instrument retailer, were unavailable for comment.

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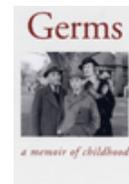
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