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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BALOR AUDIO LLC.,
Plaintiff,
v.
TRACKTION SOFTWARE CORPORATION,
Defendant.

Cause No. 18-cv-1311

COMPLAINT FOR PATENT
INFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiff Balor Audio LLC., (“Balor” or Plaintiff) complains of Defendant Tracktion Software Corporation, (“Tracktion”) as follows:

NATURE OF LAWSUIT

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 United States Code (“U.S.C.”) to prevent defendant Tracktion Software Corporation, (“Defendant” or “Tracktion”), from infringing and profiting from, in an illegal and unauthorized manner and without authorization and/or of the consent from Balor, United States Patent No. 8,649,891 (the “’891 Patent”) (the “Patent-In-Suit”) pursuant to 35 U.S.C. § 271, and to recover damages, attorney’s fees, and costs.

1 **THE PARTIES**

2 2. Plaintiff Balor is a Texas entity with its principal place of business at 6010 W.
3 Spring Creek Parkway, Plano, TX 75024.

4 3. On information and belief, Defendant is a corporation established under the
5 laws of the State of Washington, having a principal place of business at 10820 NE 108 St.,
6 Kirkland, WA, 98033. Upon information and belief, Defendant may be served with process at
7 10820 NE 108 St., Kirkland, WA, 98033.

8 **JURISDICTION AND VENUE**

9 4. This Court has subject matter jurisdiction over this action pursuant to 28
10 U.S.C. §§ 1331 and 1338(a) because the action arises under the patent laws of the United
11 States, 35 U.S.C. §§ 1 et seq.

12 5. This Court has personal jurisdiction over Defendant by virtue of its systematic
13 and continuous contacts with this jurisdiction, including residing in Washington, as well as
14 because of the injury to Balor, and the cause of action Balor has risen, as alleged herein.

15 6. Defendant is subject to this Court’s personal jurisdiction pursuant to due
16 process and/or the Washington Long-Arm Statute, due to at least its substantial business in
17 this forum, including: (i) at least a portion of the infringement alleged herein; and (ii)
18 regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or
19 deriving substantial revenue from goods and services provided to individuals in Washington.

20 7. Venue lies in this District under 28 U.S.C. § 1400(b) because, among other
21 reasons Defendant resides in this District and/or has committed acts of infringement and has a
22 regular and established place of business in this District. For example, Defendant is
23 incorporated and resides in Washington, which is where this District is located.

24 **THE PATENT IN SUIT**

25 8. On February 11, 2014, the United States Patent and Trademark Office
26 (“USPTO”) duly and legally issued the ‘891 patent, entitled “Audio Signal Generator, Method
27

1 of Generating an Audio Signal, and Computer Program for Generating an Audio Signal” after
2 a full and fair examination.

3 9. Balor is presently the owner of the patent, having received all right, title and
4 interest in and to the ‘891 patent from the previous assignee of record. Balor possesses all
5 rights of recovery under the ‘891 patent, including the exclusive right to recover for past
6 infringement. The ‘891 Patent is valid and enforceable. A copy of the ‘891 Patent is attached
7 hereto as **Exhibit A.**

8 10. The ‘891 Patent contains three independent claims and ten dependent claims.

9 11. The ‘891 Patent discloses, *inter alia*, an audio signal generator, method of
10 generating an audio signal, and computer program for generating an audio signal.

11
12 **DESCRIPTION OF THE ACCUSED INSTRUMENTALITIES**

13 12. Defendant offers audio products for individuals and businesses, such as the
14 “Waveform” system (the “Accused Instrumentality”), that enable generating an audio signal
15 comprising a selected length, as recited in claim 1 of the ‘891 patent.¹ For example, as shown
16 in Defendant’s website, the Accused Instrumentality enables users to generate an audio signal
17 by recording, editing and mixing audio sequences (including loops, previously recorded
18 audio, and other audio samples).²

20 13. As recited in claim 1 of the ‘891 patent, the Accused Instrumentality comprises
21 a database comprising information on a plurality of different pre-defined sequences of audio
22 samples, a sample being an audio signal comprising a time duration larger than one second,
23 each pre-defined sequence of the plurality of pre-defined sequences comprising at least two

24
25 ¹<https://www.tracktion.com/products/waveform>

26 ²Waveform User Guide, pp. 14 - [http://www.tracktion.com/wp/wp-content/uploads/2017/03/waveform-](http://www.tracktion.com/wp/wp-content/uploads/2017/03/waveform-user-guide.pdf)
27 [user-guide.pdf](http://www.tracktion.com/wp/wp-content/uploads/2017/03/waveform-user-guide.pdf)

1 audio samples, the information for a pre-defined sequence comprising an order of the audio
2 samples in the pre-defined sequence and a duration of the pre-defined sequence. For example,
3 the Accused Instrumentality provides a library of audio sequences (including loops,
4 previously recorded audio, and other audio samples) for its users to use while generating
5 audio mixes. Each audio sequence in the library comprises at least two audio samples in a
6 predefined sequence wherein each sample is an audio portion (loops, beats, instrument
7 sounds, etc.) of duration larger than one second.³

8 14. As recited in claim 1 of the '891 patent, the Accused Instrumentality comprises
9 a database comprising information on a plurality of different pre-defined sequences of audio
10 samples, wherein the audio samples are stored in a library so that each audio sample is
11 identifiable using an audio sample ID, wherein the information for the pre-defined sequence
12 comprises a pre-defined sequence of audio sample IDs as the order of the audio samples. For
13 example, the Accused Instrumentality provides a library of audio sequences (sequences
14 (including loops, previously recorded audio, and other audio samples). Each audio sequence
15 in the library comprises at least two audio samples wherein each sample is an audio portion
16 (loops, beats, instrument sounds, etc.) of a duration larger than one second. Each audio sample
17 is identifiable using an audio sample ID (as seen in the library and editing areas of the
18 Waveform graphical user interface) and the information for the sequences includes
19 information of the order in which the samples are arranged to form the sequence.⁴

20 15. As recited in claim 1 of the '891 patent, the Accused Instrumentality comprises
21 a database interface for accessing a database. For example, the Accused Instrumentality
22 provides access to the database of audio tracks, sequences, loops and recordings using the
23 Waveform graphical user interface.⁵

24
25 3*Id.*, pp. 49, 80, 105-109, 323-324

26 4*Id.*, pp. 49, 80, 105-109

27 5*Id.*, p. 49, 80, 105

1 16. As recited in claim 1 of the ‘891 patent, the Accused Instrumentality comprises
2 a processor for constructing the audio signal by serially connecting the pre-defined sequences
3 using the information on the duration of each pre-defined sequence in accordance with a
4 construction algorithm to acquire a collection of pre-defined sequences representing the audio
5 signal a combined duration of the collection of pre-defined sequences being as close as
6 possible to the selected length, a number of pre-defined sequences in the resulting collection
7 of pre-defined sequences being minimum. For example, users of the Accused Instrumentality
8 construct an audio signal by importing, arranging and mixing predefined audio samples,
9 including loops, which have been recorded or otherwise stored in the library. The users
10 specify a length for the overall audio signal – and the Accused Instrumentality’s software uses
11 a construction algorithm for repeating the selected loops such that the combined duration of
12 the loop tracks is as close as possible to the length of the overall audio signal as specified by
13 the user using the graphical user interface.⁶

14 17. As recited in claim 1 of the ‘891 patent, the Accused Instrumentality provides
15 the claimed audio signal generator, wherein the processor is operative to serially connect the
16 collection of the pre-defined sequences of audio sample IDs for rendering or for generating or
17 storing the audio signal based on a sequential processing of audio sample IDs and the
18 corresponding audio samples. For example, users of the Accused Instrumentality can
19 construct an audio signal by importing, arranging and mixing predefined audio samples,
20 including loops, which have been recorded or otherwise stored in the library.⁷

21 18. Defendant offers audio products for individuals and businesses, such as the
22 “Waveform” system (the “Accused Instrumentality”), that allows users to perform a method
23 of generating an audio signal comprising a selected length, as recited in claim 12 of the ‘891
24 patent. For example, as shown in Defendant’s website, the Accused Instrumentality enables
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26 ⁶*Id.*, pp. 105-109, 323-324

27 ⁷*Id.*, pp. 105-109, 323-324

1 users to generate an audio signal by recording, editing and mixing audio sequences (including
2 loops, previously recorded audio, and other audio samples).

3 19. As recited in claim 12 of the '891 patent, Defendant performs the step of using
4 a database comprising information on a plurality of different pre-defined sequences of audio
5 samples, a sample being an audio signal comprising a time duration larger than one second,
6 each pre-defined sequence of the plurality of pre-defined sequences comprising at least two
7 audio samples, the information for a pre-defined sequence comprising an order of the audio
8 samples in the pre-defined sequence and a duration of the pre-defined sequence. For example,
9 the Accused Instrumentality provides a library of audio sequences (including loops,
10 previously recorded audio, and other audio samples) for its users to use while generating
11 audio mixes. Each audio sequence in the library comprises at least two audio samples in a
12 predefined sequence wherein each sample is an audio portion (loops, beats, instrument
13 sounds, etc.) of duration larger than one second.

14 20. As recited in claim 12 of the '891 patent, Defendant performs the step of using
15 a database comprising information on a plurality of different pre-defined sequences of audio
16 samples. For example, the Accused Instrumentality provides a library of audio sequences
17 (sequences (including loops, previously recorded audio, and other audio samples). Each audio
18 sequence in the library comprises at least two audio samples wherein each sample is an audio
19 portion (loops, beats, instrument sounds, etc.) of a duration larger than one second. Each
20 audio sample is identifiable using an audio sample ID (as seen in the library and editing areas
21 of the Waveform graphical user interface) and the information for the sequences includes
22 information of the order in which the samples are arranged to form the sequence.

23 21. As recited in claim 12 of the '891 patent, Defendant performs the step of
24 accessing a database. For example, users of the Accused Instrumentality access the database
25 of audio tracks, sequences, loops and recordings using the Digital Performer graphical user
26 interface.

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1 22. As recited in claim 12 of the '891 patent, Defendant performs the step of
2 constructing the audio signal by serially connecting the pre-defined sequences using the
3 information on the duration of each pre-defined sequence in accordance with a construction
4 algorithm to acquire a collection of pre-defined sequences representing the audio signal a
5 combined duration of the collection of pre-defined sequences being as close as possible to the
6 selected length, a number of pre-defined sequences in the resulting collection of pre-defined
7 sequences being minimum. For example, users of the Accused Instrumentality construct an
8 audio signal by importing, arranging and mixing predefined audio samples, including loops,
9 which have been recorded or otherwise stored in the library. The users specify a length for the
10 overall audio signal – and the Accused Instrumentality's software uses a construction
11 algorithm for repeating the selected loops such that the combined duration of the loop tracks
12 is as close as possible to the length of the overall audio signal as specified by the user using
13 the graphical user interface.

14 23. As recited in claim 12 of the '891 patent, Defendant performs the claimed
15 method, wherein the collection of the pre-defined sequences of audio sample IDs is serially
16 connected for rendering or for generating or storing the audio signal based on a sequential
17 processing of audio sample IDs and the corresponding audio samples. For example, users of
18 the Accused Instrumentality can construct an audio signal by importing, arranging and mixing
19 predefined audio samples, including loops, which have been recorded or otherwise stored in
20 the library.⁸

21 **COUNT I**
22 **(DIRECT INFRINGEMENT OF THE '891 PATENT)**

23 24. Plaintiff re-alleges and incorporates by reference the allegations set forth in
24 paragraphs 1-23.

25 25. Defendant has directly infringed and continues to directly infringe at least
26 claims 1 and 12 of the '891 patent. In particular, Defendant makes and/or uses (at least during

27 ⁸*Id.*, pp. 105-109, 323-324

1 internal testing) the Accused Product, as described above, without authority in the United
2 States, and will continue to do so unless prevented by this Court. As a direct and proximate
3 result of Defendant's direct infringement of the '891 patent, Plaintiff has been and continues
4 to be damaged.

5 26. Defendant has had knowledge of its infringement of the '891 Patent at least as
6 of the service of the present complaint.

7 27. By engaging in the conduct described herein, Defendant has injured Balor and
8 is thus liable for infringement of the '891 Patent, pursuant to 35 U.S.C. § 271.

9 28. Defendant has committed these acts of infringement without license or
10 authorization.

11 29. To the extent that facts learned in discovery show that Defendant's
12 infringement of the '891 Patent is or has been willful, Balor reserves the right to request such
13 a finding at the time of trial.

14 30. As a result of Defendant's infringement of the '891 Patent, Balor has suffered
15 harm and monetary damages and is entitled to a monetary judgment in an amount adequate to
16 compensate for Defendant's past infringement, together with interests and costs.

17 31. Balor will continue to suffer harm and damages in the future unless
18 Defendant's infringing activities are prevented by this Court.

19 **COUNT II**
20 **(INDIRECT INFRINGEMENT OF THE '891 PATENT)**

21 32. Plaintiff realleges and incorporates by reference the allegations set forth in
22 paragraphs 1 to 31.

23 33. Defendant has indirectly infringed and continues to indirectly infringe at least
24 claims 1 and 12 of the '891 patent by actively inducing its respective customers, users, and/or
25 licensees to directly infringe by using the Accused Instrumentality. Defendant engaged or
26 will have engaged in such inducement having knowledge of the '891 patent. Furthermore,
27 Defendant knew or should have known that its action would induce direct infringement by

1 others and intended that its actions would induce direct infringement by others. For example,
2 Defendant sells, offers to sell and advertises the Accused Instrumentality through websites or
3 digital distribution platforms that are available in Washington, specifically intending that its
4 customers use it. Furthermore, Defendant's customers' use of the Accused Instrumentality is
5 facilitated by the invention described in the '891 patent. As a direct and proximate result of
6 Defendant's indirect infringement by inducement of the '891 patent, Plaintiff has been and
7 continues to be damaged.

8 34. Defendant has had knowledge of infringement of the '891 patent at least as of
9 the service of the present complaint.

10 35. By engaging in the conduct described herein, Defendant has injured Balor and
11 is thus liable for infringement of the '891 patent, pursuant to 35 U.S.C. § 271.

12 36. Defendant has committed these acts of infringement without license or
13 authorization.

14 37. As a result of Defendant's infringement of the '891 patent, Balor has suffered
15 monetary damages and is entitled to a monetary judgment in an amount adequate to
16 compensate for Defendant's past infringement, together with interests and costs. Balor will
17 continue to suffer damages in the future unless Defendant's infringing activities are enjoined
18 by this Court. As such, Balor is entitled to compensation for any continuing and/or future
19 infringement up until the date that Defendant is finally and permanently enjoined from further
20 infringement.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Balor asks this Court to enter judgment against Defendant Tracktion,
23 and against its subsidiaries, affiliates, agents, servants, employees and all persons in active
24 concert or participation with it granting the following relief:

25 A. That Defendant be adjudged to have infringed the Patent-In-Suit;
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1 B. That Defendant, its officers, directors, agents, servants, employees, attorneys,
2 affiliates, divisions, branches, parents, and those persons in active concert or participation
3 with any of them, be permanently restrained from directly infringing the Patent-In-Suit;

4 C. An award of damages pursuant to 35 U.S.C. § 284 sufficient to compensate
5 Balor for Defendant's past infringement and any continuing and/or future infringement up
6 until the date that Defendant is finally restrained from further infringement, including
7 compensatory damages;

8 D. An assessment of pre-judgment and post-judgment interests and costs against
9 Defendant, together with an award of such interests and costs, in accordance with 35 U.S.C. §
10 284; and

11 E. That Balor be given such other and further relief as this Court may deem just
12 and proper.

13 **JURY DEMAND**

14 Balor demands a trial by jury on all issues presented in this Complaint.

15 Dated this 5th day of September, 2018.

16 Respectfully submitted,

17 s/ Philip P. Mann

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