

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**BALOR AUDIO LLC**

**Plaintiff,**

**v.**

**BANDLAB SINGAPORE PTE. LTD. d/b/a  
BANDLAB TECHNOLOGIES,  
BANDLAB U.S.A., INC.**

**Defendant.**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**CIVIL ACTION NO. 1:18-cv-01285-CFC**

**JURY TRIAL DEMANDED**

**FIRST AMENDED COMPLAINT FOR INFRINGEMENT OF PATENT**

COMES NOW, Plaintiff Balor Audio LLC (“Balor” or Plaintiff), through the undersigned attorneys, and respectfully alleges, states, and prays as follows:

**NATURE OF THE ACTION**

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 and enjoin defendants BandLab Singapore Pte Ltd (hereinafter “Bandlab”) and Bandlab U.S.A., Inc. (hereinafter “Bandlab USA”) (collectively “Defendants”), from infringing and profiting, in an illegal and unauthorized manner and without authorization and/or of the consent from Balor, from U.S. Patent No. 8,649,891 (the “‘891 patent”, attached hereto as Exhibit “A”) pursuant to 35 U.S.C. §271, and to recover damages, attorney’s fees, and costs.

**THE PARTIES**

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

3. Upon information and belief, Defendant BandLab is a company organized under the laws of Singapore, having a principal place of business at 12 Jalan Kilan Barat, #03-01,

Bandlab Technologies Building, Singapore 159354. Upon information and belief, Defendant BandLab may be served at the same address.

4. Upon information and belief, Defendant Bandlab USA is a corporation established under the laws of the State of Delaware and a subsidiary of BandLab that handles its business in the United States, having a principal place of business at 14 E Sir Francis Drake Blvd., Suite D, Larkspur, CA 94939. Upon information and belief, Defendant Bandlab USA may be served with process at Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801.

5. Upon information and belief, the Chief Operating Officer of both Bandlad and Bandlab USA is Meng Ru Kuok.

6. Upon information and belief, the Chief Financial Officer of both of both Bandlad and Bandlab USA is Thomas J. Callahan.

7. Upon information and belief, Bandlab USA is a subsidiary of BandLab that manages the operations of the company in the United States.

#### **JURISDICTION AND VENUE**

8. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a) because the action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*

9. This Court has personal jurisdiction over Defendants by virtue of their systematic and continuous contacts with this jurisdiction, as well as because of the injury to Balor, and the cause of action Balor has risen, as alleged herein.

10. Defendants are subject to this Court's personal jurisdiction pursuant to due process, due at least to their substantial business and purposeful availment of this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or

soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Delaware and in this judicial district.

11. Upon information and belief, Defendants, directly and/or through their employees or agents, and/or their customers, use products, as defined below, that contain each and every element of at least one claim of the '891 patent with the knowledge and/or understanding that such products are used or will be used in this District. For example, the accused instrumentality enables users to generate audio signals having a selected length. Upon information and belief, Defendants have engaged in substantial and not isolated activity within this District. Therefore, exercise of jurisdiction over Defendants will not offend traditional notions of fair play and substantial justice.

12. Defendants have conducted and do conduct business within the state of Delaware, including the geographic region within the District of Delaware, directly or through intermediaries, resellers or agents, or offers and advertise (including through the use of interactive web pages with promotional material) products or services, or use services or products in Delaware, including this judicial district, that infringe the '891 patent.

13. Specifically, Defendants solicit business from and market their services to consumers within Delaware, including the geographic region within the District of Delaware, by offering audio products for said Delaware consumers enabling them to generate an audio signal comprising a selected length using a database.

14. In addition to Defendants' continuously and systematically conducting business in Delaware, the causes of action against Defendants are connected (but not limited) to Defendants' purposeful acts committed in the state of Delaware, including the geographic region within the

District of Delaware, such as Defendants' use of audio products that include features that fall within the scope of at least one claim of the '891 patent.

15. Defendants have a regular and established presence in this district, and use and make a product that allows for generating an audio signal comprising a selected length, as claimed in the '891 patent.

16. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1400(b) because Defendant Bandlab is a foreign defendant and Defendant Bandlab USA is a resident of this district.

### **JOINDER**

17. Defendants are properly joined under 35 U.S.C. § 299(a)(1) because a right to relief is asserted against the parties jointly, severally, and in the alternative with respect to the same transactions, occurrences, or series of transactions or occurrences relating to using, the same accused product, as defined below. Specifically, as alleged in detail below, Defendants are alleged to infringe the '891 patent with respect to the same product.

18. Defendants are properly joined under 35 U.S.C. § 299(a)(2). Questions of fact will arise that are common to all Defendants, including for example, whether Defendants' products and/or services have features that meet the features of one or more claims of the '891 patent, and what reasonable royalty will be adequate to compensate the owner of the '891 patent for their infringement.

19. Defendants use products and /or offer services that infringe on the '891 patent.

20. At least one right to relief is asserted against these parties jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences relating to using the same accused product and/or process.

### **FACTUAL ALLEGATIONS**

21. On February 11, 2014, the United States Patent and Trademark Office (“USPTO”) duly and legally issued the ‘891 patent, entitled “Audio Signal Generator, Method of Generating an Audio Signal, and Computer Program for Generating an Audio Signal” after a full and fair examination. (Exhibit A).

22. Balor is presently the owner of the patent, having received all right, title and interest in and to the ‘891 patent from the previous assignee of record. Balor possesses all rights of recovery under the ‘891 patent, including the exclusive right to recover for past infringement.

23. The ‘891 patent contains three independent claims and ten dependent claims. Defendant commercializes, inter alia, products that contain all the elements recited in at least one claim of the ‘891 patent.

24. The invention claimed in the ‘891 patent comprises an audio signal generator for generating an audio signal having a selected length.

### **DEFENDANTS’ PRODUCTS**

25. Defendants offer audio products for individuals and businesses, such as the “Cakewalk by Bandlab (SONAR)” system (the “Accused Instrumentality”), that enable generating an audio signal comprising a selected length, as recited in claim 1 of the ‘891 patent.<sup>1</sup> For example, the Accused Instrumentality enables users to generate an audio signal by recording, editing and mixing audio sequences (including loops, previously recorded audio, and other audio samples).<sup>2</sup>

26. As recited in claim 1 of the ‘891 patent, the Accused Instrumentality comprises a database comprising information on a plurality of different pre-defined sequences of audio

---

<sup>1</sup><https://www.bandlab.com/products/cakewalk>

<sup>2</sup> SONAR User’s Guide, p. 34 -

[http://www.synthmanuals.com/manuals/cakewalk/sonar\\_4/users\\_guide/sonar\\_4\\_usersguide.pdf](http://www.synthmanuals.com/manuals/cakewalk/sonar_4/users_guide/sonar_4_usersguide.pdf)

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

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

---

<sup>3</sup> *Id.*, pp. 41, 52, 54, 87, 92, 252, 259, 543-544

<sup>4</sup> *Id.*, pp. 41, 52, 54, 92, 543-544, 252, 259

28. As recited in claim 1 of the '891 patent, the Accused Instrumentality comprises a database interface for accessing a database. For example, the Accused Instrumentality provides access to the database of audio tracks, sequences, loops and recordings using the SONAR graphical user interface.<sup>5</sup>

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

30. As recited in claim 1 of the '891 patent, the Accused Instrumentality provides the claimed audio signal generator, wherein the processor is operative to serially connect the collection of the pre-defined sequences of audio sample IDs for rendering or for generating or storing the audio signal based on a sequential processing of audio sample IDs and the corresponding audio samples. For example, users of the Accused Instrumentality can construct

---

<sup>5</sup> *Id.*, p. 41, 543-544

<sup>6</sup> *Id.*, pp. 52, 54, 87, 92, 257, 259

an audio signal by importing, arranging and mixing predefined audio samples, including loops, which have been recorded or otherwise stored in the library.<sup>7</sup>

31. The elements described in paragraphs 22-27 are covered by at least claim 1 of the '891 patent. Thus, Defendants use of the Accused Instrumentality is enabled by the invention described in the '891 patent.

32. Defendants offer audio products for individuals and businesses, such as the Accused Instrumentality, that allows users to perform a method of generating an audio signal comprising a selected length, as recited in claim 12 of the '891 patent.<sup>8</sup> For example, as shown in Defendants' website, the Accused Instrumentality enables users to generate an audio signal by recording, editing and mixing audio sequences (including loops, previously recorded audio, and other audio samples).<sup>9</sup>

33. As recited in claim 12 of the '891 patent, Defendants perform the step of using a database comprising information on a plurality of different pre-defined sequences of audio samples, a sample being an audio signal comprising a time duration larger than one second, each pre-defined sequence of the plurality of pre-defined sequences comprising at least two audio samples, the information for a pre-defined sequence comprising an order of the audio samples in the pre-defined sequence and a duration of the pre-defined sequence. For example, the Accused Instrumentality provides a library of audio sequences (including loops, previously recorded audio, and other audio samples) for its users to use while generating audio mixes. Each audio sequence in the library comprises at least two audio samples in a predefined sequence wherein

---

<sup>7</sup> *Id.*, pp. 52, 54, 87, 92, 257, 259

<sup>8</sup> <https://www.bandlab.com/products/cakewalk>

<sup>9</sup> SONAR User's Guide, p. 34 -

[http://www.synthmanuals.com/manuals/cakewalk/sonar\\_4/users\\_guide/sonar\\_4\\_usersguide.pdf](http://www.synthmanuals.com/manuals/cakewalk/sonar_4/users_guide/sonar_4_usersguide.pdf)



each sample is an audio portion (loops, beats, instrument sounds, etc.) of duration larger than one second.<sup>10</sup>

34. As recited in claim 12 of the '891 patent, Defendants perform the step of using a database comprising information on a plurality of different pre-defined sequences of audio samples. For example, the Accused Instrumentality provides a library of audio sequences (sequences (including loops, previously recorded audio, and other audio samples)). Each audio sequence in the library comprises at least two audio samples wherein each sample is an audio portion (loops, beats, instrument sounds, etc.) of a duration larger than one second. Each audio sample is identifiable using an audio sample ID (as seen in the library and editing areas of the SONAR graphical user interface) and the information for the sequences includes information of the order in which the samples are arranged to form the sequence.<sup>11</sup>

35. As recited in claim 12 of the '891 patent, Defendants perform the step of accessing a database. For example, users of the Accused Instrumentality access the database of audio tracks, sequences, loops and recordings using the SONAR graphical user interface.<sup>12</sup>

36. As recited in claim 12 of the '891 patent, Defendants perform the step of constructing the audio signal by serially connecting the pre-defined sequences using the information on the duration of each pre-defined sequence in accordance with a construction algorithm to acquire a collection of pre-defined sequences representing the audio signal a combined duration of the collection of pre-defined sequences being as close as possible to the selected length, a number of pre-defined sequences in the resulting collection of pre-defined sequences being minimum. For example, users of the Accused Instrumentality construct an audio signal by importing, arranging and mixing predefined audio samples, including loops, which

---

<sup>10</sup> *Id.*, pp. 41, 52, 54, 87, 92, 252, 259, 543-544

<sup>11</sup> *Id.*, pp. 41, 52, 54, 92, 543-544, 252, 259

<sup>12</sup> *Id.*, p. 41, 543-544

have been recorded or otherwise stored in the library. The users specify a length for the overall audio signal – and the Accused Instrumentality’s software uses a construction algorithm for repeating the selected loops such that the combined duration of the loop tracks is as close as possible to the length of the overall audio signal as specified by the user using the graphical user interface.<sup>13</sup>

37. As recited in claim 12 of the ‘891 patent, Defendants perform the claimed method, wherein the collection of the pre-defined sequences of audio sample IDs is serially connected for rendering or for generating or storing the audio signal based on a sequential processing of audio sample IDs and the corresponding audio samples. For example, users of the Accused Instrumentality can construct an audio signal by importing, arranging and mixing predefined audio samples, including loops, which have been recorded or otherwise stored in the library.<sup>14</sup>

38. The elements described in paragraphs 29-34 are covered by at least claim 12 of the ‘891 patent. Thus, Defendants’ use of the Accused Instrumentality is enabled by the method described in the ‘891 patent.

**COUNT I**  
**(DIRECT INFRINGEMENT OF THE ‘891 PATENT)**

39. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 to 35.

40. In violation of 35 U.S.C. § 271, Defendants are now, and have been directly infringing the ‘891 patent by making and/or using a product, at least during internal testing, that includes all the elements recited in claims 1 and 12 of the ‘891 patent, as outlined in paragraphs 21-34 of the present complaint.

---

<sup>13</sup> *Id.*, pp. 52, 54, 87, 92, 257, 259

<sup>14</sup> *Id.*, pp. 52, 54, 87, 92, 257, 259

41. Defendants have had knowledge of infringement of the '891 patent at least as of the service of the present complaint

42. Defendants have directly infringed and continues to directly infringe at least claims 1 and 12 of the '891 patent by making and/or using the Accused Instrumentality without authority in the United States, and will continue to do so unless enjoined by this Court. As a direct and proximate result of Defendants' direct infringement of the '891 patent, Plaintiff has been and continues to be damaged.

43. By engaging in the conduct described herein, Defendants have injured Balor and are thus liable for infringement of the '891 patent, pursuant to 35 U.S.C. § 271.

44. Defendants have committed these acts of infringement without license or authorization.

45. As a result of Defendants' infringement of the '891 patent, Balor has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendants' past infringement, together with interests and costs.

46. Balor will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court. As such, Balor is entitled to compensation for any continuing and/or future infringement up until the date that Defendant' are finally and permanently enjoined from further infringement.

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

47. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 to 44.

48. In violation of 35 U.S.C. § 271, Defendants are now, and have been indirectly infringing the '891 patent.

49. Defendants have had knowledge of infringement of the '891 patent at least as of the service of the present complaint.

50. Defendants have indirectly infringed and continue to indirectly infringe at least claims 1 and 12 of the '891 patent by actively inducing their respective customers, users, and/or licensees to directly infringe by using the Accused Instrumentality. Defendants engaged or will have engaged in such inducement having knowledge of the '891 patent. Furthermore, Defendants knew or should have known that their action would induce direct infringement by others and intended that their actions would induce direct infringement by others. For example, Defendants sells, offer to sell and advertise the Accused Instrumentality through websites or digital distribution platforms that are available in Delaware, specifically intending that their customers use it.<sup>15</sup> Furthermore, Defendants' customers' use of the Accused Instrumentality is facilitated by the invention described in the '891 patent. As a direct and proximate result of Defendants' indirect infringement by inducement of the '891 patent, Plaintiff has been and continues to be damaged.

51. By engaging in the conduct described herein, Defendants have injured Balor and are thus liable for infringement of the '891 patent, pursuant to 35 U.S.C. § 271.

52. Defendants have committed these acts of infringement without license or authorization.

53. As a result of Defendants' infringement of the '891 patent, Balor has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendants' past infringement, together with interests and costs. Balor will continue to suffer

---

<sup>15</sup> <https://www.bandlab.com/products/cakewalk>

damages in the future unless Defendants' infringing activities are enjoined by this Court. As such, Balor is entitled to compensation for any continuing and/or future infringement up until the date that Defendants are finally and permanently enjoined from further infringement.

**DEMAND FOR JURY TRIAL**

54. Balor demands a trial by jury of any and all causes of action.

**PRAYER FOR RELIEF**

WHEREFORE, Balor prays for the following relief:

- a. That Defendants be adjudged to have directly infringed the '891 patent either literally or under the doctrine of equivalents;
- b. An accounting of all infringing sales including, but not limited to, those sales not presented at trial;
- c. That Defendants, their officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be permanently restrained and enjoined from directly infringing the '891 patent;
- d. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Balor for the Defendants' past infringement and any continuing or future infringement up until the date that Defendants are finally and permanently enjoined from further infringement, including compensatory damages;
- e. An assessment of pre-judgment and post-judgment interest and costs against Defendants, together with an award of such interest and costs, in accordance with 35 U.S.C. §284; and
- f. That Balor have such other and further relief as this Court may deem just and proper.

Dated: October 29, 2018

Respectfully Submitted,

STAMOULIS & WEINBLATT LLC

---

Stamatios Stamoulis (#4606)  
stamoulis@swdelaw.com  
Richard C. Weinblatt (#5080)  
weinblatt@swdelaw.com  
Two Fox Point Centre  
6 Denny Road, Suite 307  
Wilmington, Delaware 19809  
Telephone: (302) 999-1540

Eugenio J. Torres-Oyola  
USDC No. 215505  
**Ferraiuoli LLC**  
221 Plaza, 5th Floor  
221 Ponce de León Avenue  
San Juan, PR 00917  
Telephone: (787) 766-7000  
Facsimile: (787) 766-7001  
Email: [etorres@ferraiuoli.com](mailto:etorres@ferraiuoli.com)

Jean G. Vidal Font  
USDC No. 227811  
Ferraiuoli LLC  
221 Plaza, 5th Floor  
221 Ponce de León Avenue  
San Juan, PR 00917  
Telephone: (787) 766-7000  
Facsimile: (787) 766-7001  
Email: [jvidal@ferraiuoli.com](mailto:jvidal@ferraiuoli.com)

**ATTORNEYS FOR PLAINTIFF  
BALOR AUDIO LLC**