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11 *Attorneys for Plaintiff*
Topdown Licensing LLC

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE CENTRAL DISTRICT**
14 **OF CALIFORNIA**

15 **TOPDOWN LICENSING LLC,**

16 Plaintiff,

17 v.

18 **NATIVE INSTRUMENTS NORTH**
19 **AMERICA, INC.,**

20 Defendant.

Civil Action No. 2:20-cv-05800

AMENDED COMPLAINT

JURY TRIAL DEMANDED

1 **AMENDED COMPLAINT**

2 Plaintiff Topdown Licensing LLC (“Topdown”) files this amended complaint against
3 Native Instruments North America, Inc., (“NINA” or “Defendant”), for infringement of U.S.
4 Patent Nos. 8,178,773 (“the ‘773 Patent”) and 7,858,870 (“the ‘870 Patent”) (collectively, the
5 “Asserted Patents”) alleging, based on its own knowledge as to itself and its own actions, and
6 based on information and belief as to all other matters, as follows:
7

8 **PARTIES**

9 1. Topdown is a limited liability company formed under the laws of the State of Texas,
10 with a principal place of business at 6001 W Palmer Ln, Ste 370 #1071, Austin, TX 78727.

11 2. Defendant is a company organized and existing under the laws of the state of
12 California with its principal place of business 6725 Sunset Blvd., Ste. 500, Los Angeles CA,
13 90028. NINA conducts business in and is doing business in California and in this District and
14 elsewhere in the United States, including, without limitation, using, promoting, offering to sell,
15 importing and/or selling Traktor Kontrol S4 Mk2 and Traktor Pro 3 that embody the patented
16 technology, and enabling end-user purchasers to use such devices in this District. NINA may be
17 served thru its registered agent: Siegmar Pohl, Two Embarcadero Center, Ste. 1900, San Francisco,
18 CA 94111.
19
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21 **JURISDICTION AND VENUE**

22 3. This is an action for infringement of a United States patent arising under 35 U.S.C.
23 §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action
24 under 28 U.S.C. §§ 1331 and 1338(a).
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1 4. Venue is proper in this district under 28 U.S.C. §§ 1400(b). Defendant is
2 incorporated under the laws of the forum state and also has a place of business within this District
3 and has committed the acts of which are the subject of this complaint within this District.

4 5. Defendant is subject to this Court’s specific and general personal jurisdiction under
5 due process and/or the California Long Arm Statute due at least to Defendant’s substantial business
6 in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly
7 doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving
8 substantial revenue from goods and services provided to individuals in California and in this
9 district.
10

11 **U.S. PATENT NO. 8,178,773**

12 6. U.S. Patent No. 8,178,773, titled “System and Methods for the Creation and
13 Performance of Enriched Musical Composition,” teaches a system which provides for associating
14 content with one or more triggers and provides user interfaces for causing content to be presented
15 to an audience. Attached hereto as Exhibit A.
16

17 7. On May 15, 2012, the ’773 Patent was duly and legally issued by the United States
18 Patent and Trademark Office.
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20 8. Topdown is the owner of the ’773 Patent with all substantive rights in and to that
21 patent, including the sole and exclusive right to prosecute this action and enforce the ’773 patent
22 against infringers, and to collect damages for all relevant times.

23 9. The ’773 Patent is valid and enforceable under United States Patent laws.
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25 **U.S. PATENT NO. 7,858,870**

26 10. U.S. Patent No. 7,858,870, titled “System and Methods for the Creation and
27 Performance of Sensor Stimulating Content,” teaches a system which provides for associating
28

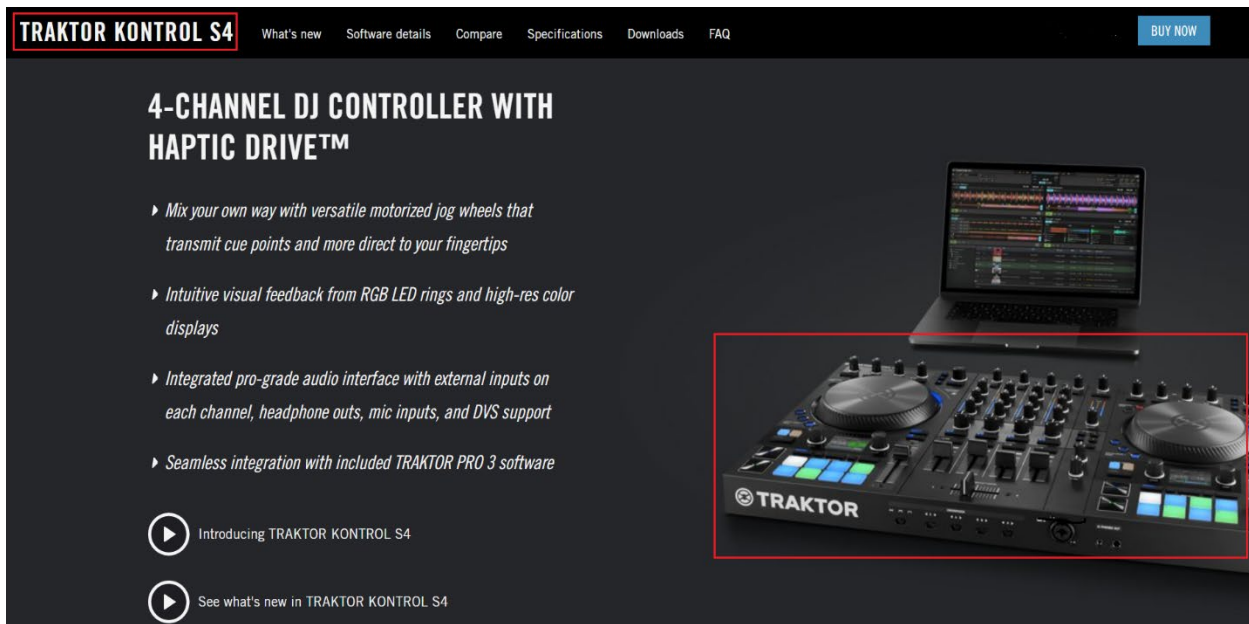
1 content with one or more triggers and provides user interfaces for causing content to be presented
2 to an audience. Attached hereto as Exhibit B.

3 11. On December 28, 2010, the '870 Patent was duly and legally issued by the United
4 States Patent and Trademark Office.

5 12. Topdown is the owner of the '870 Patent with all substantive rights in and to that
6 patent, including the sole and exclusive right to prosecute this action and enforce the '870 patent
7 against infringers, and to collect damages for all relevant times.
8

9 **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,178,773**

10 13. NINA made, had made, used, imported, provided, supplied, distributed, sold,
11 and/or offered for sale the accused products, including, for example, at least the Traktor Kontrol
12 S4 Mk2 with the accompanying Traktor Pro 3 software, which infringe one or more claims of the
13 '773 Patent when placed into operation.
14



26 <https://www.native-instruments.com/en/products/traktor/dj-controllers/traktor-kontrol-s4/>

1 14. By doing so, Defendant and its end users have directly infringed (literally and/or
2 under the doctrine of equivalents) at least Claim 1 of the '773 Patent. Defendant's infringement in
3 this regard is ongoing.

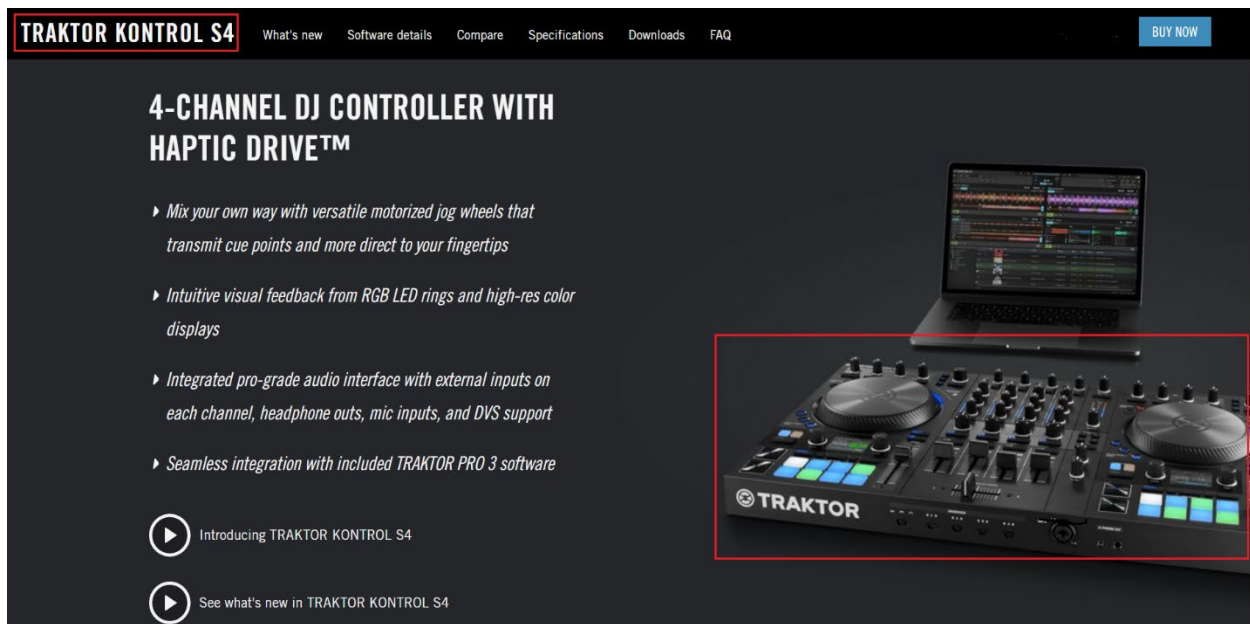
4 15. For example, when placed into operation by Defendant and its end users the Traktor
5 Kontrol S4 Mk2 with Traktor Pro 3 software infringe claim 1 of the '773 Patent. When used, the
6 Traktor Kontrol S4 Mk2 with the accompanying Traktor Pro 3 software comprise a music
7 instrument configured to allow a user to compose interactive musical sounds, comprising: a
8 plurality of triggers configured to be controlled by a user; a processor configured to be controlled
9 by a graphical user interface ("GUI") (*e.g.*, in order to use the Traktor Kontrol S4 Mk2, Defendant
10 and its end users must install and use the Traktor Pro 3 software, which includes a GUI, on a
11 computer which includes a processor); a controller responsive to the plurality of triggers, and
12 configured to generate control signals as a function of the triggers selected by the user; a plurality
13 of music programs, wherein each said music program is mapped and composed into related
14 components and configured to play sympathetic sounds in real time, the processor configured to
15 generate an electronic signal as a function of the controller control signals and the related
16 components of the plurality of mapped and composed music programs; and at least one sound
17 generator configured to generate the sympathetic sounds as a function of the related components
18 of the mapped and composed music programs. *See* Ex. A-1, Figs. 1-20.

19 16. Topdown has been damaged as a result of the infringing conduct by Defendant
20 alleged above. Thus, Defendant is liable to Topdown in an amount that adequately compensates
21 Topdown for such infringements, which, by law, cannot be less than a reasonable royalty, together
22 with interest and costs as fixed by this Court under 35 U.S.C. § 284.
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1 17. Topdown and/or its predecessors-in-interest have satisfied all statutory obligations
2 required to collect pre-filing damages for the full period allowed by law for infringement of the
3 '773 Patent.

4 **COUNT II – INFRINGEMENT OF U.S. PATENT NO. 7,858,870**

5 18. NINA made, had made, used, imported, provided, supplied, distributed, sold,
6 and/or offered for sale the accused products, including, for example, at least the Traktor Kontrol
7 S4 Mk2 with the accompanying Traktor Pro 3 software, which infringe one or more claims of the
8 '870 Patent when placed into operation by Defendant or its end users.
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21 <https://www.native-instruments.com/en/products/traktor/dj-controllers/traktor-kontrol-s4/>

22 19. By doing so, Defendant and its end users have directly infringed (literally and/or
23 under the doctrine of equivalents) at least Claim 1 of the '870 Patent. Defendant's infringement in
24 this regard is ongoing.

25 20. Defendant and its end users have infringed claim 18 of the '870 Patent by using,
26 importing, providing, supplying, distributing, selling or offering for sale the Traktor Kontrol S4
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1 Mk2 with the accompanying Traktor Pro 3 software. For example, the Traktor Kontrol S4 Mk2
2 with the accompanying Traktor Pro 3 software when placed into operation by Defendant or its end
3 users is a music instrument configured to allow a user to compose musical sounds, comprising: a
4 plurality of triggers; a control module responsive to the plurality of triggers; a plurality of music
5 programs, the control module configured to generate electronic signals as a function of the plurality
6 of music programs and the plurality of triggers, wherein each said music program comprises sound
7 elements comprising a subset of a predetermined musical composition; and a sound generator
8 configured to generate synchronized sympathetic audible musical sounds as a function of the
9 electronic signals.. *See* Ex. B-1, Figs. 1-12.
10

11
12 21. Topdown has been damaged as a result of the infringing conduct by Defendant
13 alleged above. Thus, Defendant is liable to Topdown in an amount that adequately compensates
14 Topdown for such infringements, which, by law, cannot be less than a reasonable royalty, together
15 with interest and costs as fixed by this Court under 35 U.S.C. § 284.
16

17 22. Topdown and/or its predecessors-in-interest have satisfied all statutory obligations
18 required to collect pre-filing damages for the full period allowed by law for infringement of the
19 '870 Patent.
20

21 **COUNT III – INDUCED INFRINGEMENT**

22 23. Defendant has been and/or currently is an active inducer of infringement of the
23 Asserted Patents under 35 U.S.C. § 271(b).
24

25 24. Defendant has had knowledge of the Asserted Patents and that the Traktor Kontrol
26 S4 Mk2 and Traktor Pro 3 infringe since at least June, 30, 2020, the date of the filing of the
27 complaint.
28

25. Defendant has continued to provide the Traktor Kontrol S4 Mk2 and Traktor Pro 3

1 to its customers and, on information and belief, instructions to use the Accused Instrumentalities
2 in an infringing manner while being on notice of the Asserted Patents and Defendant's
3 infringement. Therefore, Defendant has known of the Asserted Patents and of its own infringing
4 acts since at least the filing of this complaint.

5
6 26. Defendant knowingly and intentionally encourages and aids at least its end-user
7 customers to directly infringe the Asserted Patents. *See, e.g.,* [https://www.native-](https://www.native-instruments.com/fileadmin/ni_media/downloads/manuals/traktor/traktor_kontrol_s4_mk2_manual_english.pdf)
8 [instruments.com/fileadmin/ni_media/downloads/manuals/traktor/traktor_kontrol_s4_mk2_manu](https://www.native-instruments.com/fileadmin/ni_media/downloads/manuals/traktor/traktor_kontrol_s4_mk2_manual_english.pdf)
9 [al_english.pdf](https://www.native-instruments.com/fileadmin/ni_media/downloads/manuals/traktor/traktor_kontrol_s4_mk2_manual_english.pdf).

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11 27. Defendant's end-user customers directly infringe at least one or more claims of the
12 Asserted Patents by using Traktor Kontrol S4 Mk2 and Traktor Pro 3 in their intended manner to
13 infringe. Defendant induces such infringement by providing the Traktor Kontrol S4 Mk2 and
14 Traktor Pro 3 and instructions to enable and facilitate infringement, knowing of, or being willfully
15 blind to the existence of, the Asserted Patents. On information and belief, Defendant specifically
16 intends that its actions will result in infringement of one or more claims of the Asserted Patents,
17 or subjectively believe that their actions will result in infringement of the Asserted Patents.

18
19 28. Defendant's infringement of the Asserted Patents is exceptional and entitles
20 Topdown to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

21 29. Topdown is in compliance with any applicable marking and/or notice provisions of
22 35 U.S.C. § 287 with respect to the Asserted Patents.

23
24 30. Topdown is entitled to recover from Defendant all damages that Topdown has
25 sustained as a result of Defendant's infringement of the Asserted Patents, including, without
26 limitation, a reasonable royalty.

PRAYER FOR RELIEF

WHEREFORE, Topdown respectfully requests:

A. That judgment be entered that Defendant has infringed at least one or more claims of the '773 and '870 Patents, directly and/or indirectly, literally and/or under the doctrine of equivalents;

B. An award of damages sufficient to compensate Topdown for Defendant's infringement under 35 U.S.C. § 284, including an enhancement of damages on account of Defendant's willful infringement;

C. That the case be found exceptional under 35 U.S.C. § 285 and that Topdown be awarded its reasonable attorneys' fees;

D. Costs and expenses in this action;

E. An award of prejudgment and post-judgment interest; and

F. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Topdown respectfully demands a trial by jury on all issues triable by jury.

Dated: October 13, 2020

Respectfully submitted,

/s/ Steven W. Ritcheson, Esq.
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Topdown Licensing LLC**

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