

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

TOPDOWN LICENSING LLC,

Plaintiff,

v.

GIBSON BRANDS, INC.,

Defendant.

Civil Action No. 1:20-cv-00890-MN

AMENDED COMPLAINT

JURY TRIAL DEMANDED

AMENDED COMPLAINT

Plaintiff Topdown Licensing LLC (“Topdown”) files this amended complaint against Gibson Brands, Inc., (“Gibson” or “Defendant”), for infringement of U.S. Patent Nos. 8,178,773 (“the ‘773 Patent”) (attached hereto as Exhibit A), and 7,858,870 (“the ‘870 Patent”) (attached hereto as Exhibit B) (collectively, the “Asserted Patents”) alleging, based on its own knowledge as to itself and its own actions, and based on information and belief as to all other matters, as follows:

PARTIES

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

2. Defendant Gibson Brands Inc., is a company organized and existing under the laws of the state of Delaware with its principal place of business 209 10th Ave. S., Ste. 460, Nashville, TN 37203. Gibson conducts business in and is doing business in Delaware and in this District and elsewhere in the United States, including, without limitation, using, promoting, offering to sell, importing and/or selling Stanton – SCS.4DJ and DJC.4 and accompany software that embody the patented technology, and enabling end-user purchasers to use such devices in this District. Gibson

may be served thru its registered agent: Corporation Service Company, 251 Little Falls Dr., Wilmington, DE 19808.

JURISDICTION AND VENUE

3. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper in this district under 28 U.S.C. §§ 1400(b). Defendant is incorporated under the laws of the forum state.

5. Defendant is subject to this Court’s specific and general personal jurisdiction under due process and/or the Delaware Long Arm Statute due at least to Defendant’s substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; (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 district, and (iii) by virtue of its incorporation under the laws of the forum state.

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

6. U.S. Patent No. 8,178,773, titled “System And Method For The Creation And Performance Of Enriched Musical Composition,” teaches a system and method for creating an enriched musical composition using triggers and/or a graphical user interface.

7. On May 15, 2012, the ’773 Patent was duly and legally issued by the United States Patent and Trademark Office.

8. In the prior art, the goal of a performer is to “accurately and consistently reproduce the content”. ’773 Patent at 1:53-55. In contrast, the ’773 Patent allowed the performer “the freedom to innovate and create new and unique performances using the same program.” *Id.* at 3:7-

10. “For example, the performer can control the timing with which some or all content segments are presented to the audience, can transpose content, and otherwise control the performance.” *Id.* at 3:9-13. This is accomplished through triggers which “will cause the content selected by the composer as background content to be presented.” *Id.* at 3:13-24.

9. This functionality was at least unconventional as of the priority date of the invention. For example, even in 2014 the functionality disclosed in the 739 Patent was considered unconventional. *See, e.g., Musical Meshworks: From Networked Performance to Cultures of Exchange* available at <https://dl.acm.org/doi/pdf/10.1145/2598510.2598583> (describing similar functionality to that claimed as unconventional); *See also* Declaration of Bencar, attached hereto as Exhibit C.

10. Topdown is the owner of the ’773 Patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the ’773 patent against infringers, and to collect damages for all relevant times.

11. The ’773 Patent is valid and enforceable under United States Patent laws.

U.S. PATENT NO. 7,858,870

12. U.S. Patent No. 7,858,870, titled “System and Methods for the Creation and Performance of Sensor Stimulating Content,” teaches a system which provides for associating content with one or more triggers and provides user interfaces for causing content to be presented to an audience.

13. On December 28, 2010, the ’870 Patent was duly and legally issued by the United States Patent and Trademark Office.

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

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

15. Gibson made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale the accused products, including, for example, at least the Stanton – DJC.4 with the accompanying software, which infringe one or more claims of the '773 Patent when placed into operation.



<http://www.stantondj.com/stanton-controllers-systems/scs4dj.html>

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

17. For example, when placed into operation by Defendant and its end users the Stanton – SCS.4DJ with software infringe claim 1 of the ’773 Patent. When used, the Stanton – DJC.4 with the accompanying software comprise a music instrument configured to allow a user to compose interactive musical sounds, comprising: a plurality of triggers configured to be controlled by a user (e.g., hardware triggers on DJC.4 such as knobs, buttons, sliders, etc. and software triggers through the Virtual DJ LE software); a processor configured to be controlled by a graphical user interface (“GUI”) (e.g., a processor of a user’s laptop/computer enabled with the Virtual DJ LE software); a controller (e.g., the DJC.4) responsive to the plurality of triggers (e.g., hardware triggers on the product such as knobs, buttons, etc.), and configured to generate control signals as a function of the triggers selected by the user (e.g., hardware/ trigger such as knobs, buttons, shift button, etc.); a plurality of music programs (e.g., one or more music tracks, beats), wherein each said music program is mapped and composed into related components (e.g., one or more music tracks are mapped to a particular deck and different parts of said tracks can be mapped to cue points) and configured to play sympathetic sounds in real time (e.g., the sync functionality provides the tempo matching between one or more music tracks and/or its cues in order to generate sympathetic sound in real time), the processor (e.g. the processor within a connected device running the Virtual DJ LE software) configured to generate an electronic signal (e.g., instructions to produce sound according to music tracks and triggers) as a function of the controller control signals (e.g., control signals generated by the accused product and tied to the tracks and triggers) and the related components of the plurality of mapped and composed music programs (e.g., one or more music tracks and/or their one or more cue points such as a hot cue); and at least one sound generator e.g., speakers or headphones connected with the DJC.4 controller) configured to generate the sympathetic sounds as a function of the related components of the mapped and

composed music programs (e.g. one or more music tracks are mapped to a particular deck or cue points, and the sync functionality creates tempo matched mix between one or more music tracks or cues in order to generate sympathetic sound).. *See* Ex. A-1, Figs. 1-18.

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

19. Topdown and/or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '739 Patent.

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 7,858,870

20. Gibson made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale the accused products, including, for example, at least the Stanton – SCS.4DJ with the accompanying software, which infringe one or more claims of the '870 Patent when placed into operation by Defendant or its end users.



<http://www.stantondj.com/stanton-controllers-systems/scs4dj.html>

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

22. Defendant and its end users have infringed claim 18 of the '870 Patent by using, importing, providing, supplying, distributing, selling or offering for sale the Stanton – SCS.4DJ with the accompanying software. For example, the Stanton – SCS.4DJ with the accompanying software when placed into operation by Defendant or its end users is a music instrument configured to allow a user to compose musical sounds (e.g., composing sounds by mixing music and cue point selection), comprising: a plurality of triggers (e.g., hardware triggers on the SCS.4DJ such as knobs, buttons, sliders, etc.); a control module responsive to the plurality of triggers (e.g., in the case of hardware triggers on the SCS.4DJ such as knobs, buttons, sliders, etc., the accused product will utilize a combination of hardware and software to detect and respond to user initiation of a

trigger); a plurality of music programs (e.g., one or more music tracks, or beats), the control module (e.g., controller board of the accused product) configured to generate electronic signals (e.g., instructions to produce sound according to music tracks and triggers) as a function of the plurality of music programs (e.g., one or more music tracks, beats) and the plurality of triggers (e.g., hardware triggers on the SCS.4DJ such as knobs, buttons, sliders, etc.), wherein each said music program (e.g., one or more music tracks, beats) comprises sound elements comprising a subset of a predetermined musical composition (e.g., various music tracks beats, and one or more cue points within said tracks will be combined to create a musical composition as a whole); and a sound generator configured to generate synchronized sympathetic audible musical sounds as a function of the electronic signals (e.g. instructions to produce sound according to music tracks and triggers). *See* Ex. B-1, Figs. 1-15.

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

24. Topdown and/or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '739 Patent.

COUNT IV – INDUCED INFRINGEMENT

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

26. Defendant has had knowledge of the Asserted Patents and that the Stanton – SCS.4DJ and DJC.4 infringe the since at least the filing of the original complaint.

27. Defendant has continued to provide the Stanton – SCS.4DJ and SCS.4DJ and DJC.4 to its customers and, on information and belief, instructions to use the Accused Instrumentalities in an infringing manner while being on notice of the Asserted Patents and Defendant’s infringement. Therefore, Defendant has known of the Asserted Patents and of its own infringing acts since at least the filing of this complaint.

28. Defendant knowingly and intentionally encourages and aids at least its end-user customers to directly infringe the Asserted Patents. *See, e.g.,* <http://www.stantondj.com/pdf/products/controllers/scs4dj/scs4djv5.pdf>.

29. Defendant’s end-user customers directly infringe at least one or more claims of the Asserted Patents by using Stanton – SCS.4DJ and DJC.4 in their intended manner to infringe. Defendant induces such infringement by providing the Stanton – SCS.4DJ and DJC.4 with instructions to enable and facilitate infringement, knowing of, or being willfully blind to the existence of, the Asserted Patents. On information and belief, Defendant specifically intends that its actions will result in infringement of one or more claims of the Asserted Patents, or subjectively believe that their actions will result in infringement of the Asserted Patents.

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

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

32. Topdown is entitled to recover from Defendant all damages that Topdown has sustained as a result of Defendant’s infringement of the Asserted Patents, including, without 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 '739, '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.

October 21, 2020

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