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8 Attorneys for Plaintiff
e.Digital Corporation
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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 e.Digital Corporation,
13
14 Plaintiff,
15 v.
16 Patriot Memory, LLC,
17 Defendant.

Case No. '13CV2916 LAB DHB

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

18 Plaintiff e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its
19 undersigned counsel, complains and alleges against Defendant, Patriot Memory,
20 LLC (“Patriot” or “Defendant”) as follows:

21 **NATURE OF THE ACTION**

22 1. This is a civil action for infringement of a patent arising under the
23 laws of the United States relating to patents, 35 U.S.C. § 101, *et seq.*, including,
24 without limitation, § 281. Plaintiff e.Digital seeks a preliminary and permanent
25 injunction and monetary damages for the infringement of its U.S. Patent No.
26 5,839,108.

27 **JURISDICTION AND VENUE**

28 2. This court has subject matter jurisdiction over this case for patent

1 infringement under 28 U.S.C. §§ 1331 and 1338(a) and pursuant to the patent laws
2 of the United States of America, 35 U.S.C. § 101, *et seq.*

3 3. Venue properly lies within the Southern District of California
4 pursuant to the provisions of 28 U.S.C. §§ 1391(b), (c), and (d) and 1400(b). On
5 information and belief, Defendant conducts substantial business directly and/or
6 through third parties or agents in this judicial district by selling and/or offering to
7 sell the infringing products and/or by conducting other business in this judicial
8 district. Furthermore, Plaintiff e.Digital is headquartered and has its principal
9 place of business in this district, engages in business in this district, and has been
10 harmed by Defendant's conduct, business transactions and sales in this district.

11 4. This Court has personal jurisdiction over Defendant because, on
12 information and belief, Defendant transacts continuous and systematic business
13 within the State of California and the Southern District of California. In addition,
14 this Court has personal jurisdiction over the Defendant because, on information
15 and belief, this lawsuit arises out of Defendant's infringing activities, including,
16 without limitation, the making, using, selling and/or offering to sell infringing
17 products in the State of California and the Southern District of California. Finally,
18 this Court has personal jurisdiction over Defendant because, on information and
19 belief, Defendant has made, used, sold and/or offered for sale its infringing
20 products and placed such infringing products in the stream of interstate commerce
21 with the expectation that such infringing products would be made, used, sold
22 and/or offered for sale within the State of California and the Southern District of
23 California.

24 PARTIES

25 5. Plaintiff e.Digital is a Delaware corporation with its headquarters and
26 principal place of business at 16870 West Bernardo Drive, Suite 120, San Diego,
27 California 92127.

28 6. Upon information and belief, Defendant Patriot Memory, LLC is a

1 limited liability company registered and lawfully existing under the laws of the
2 State of Delaware, with an office and principal place of business located at 47027
3 Benicia Street, Fremont, CA 94538.

4 **THE ASSERTED PATENT**

5 7. On November 17, 1998, the United States Patent and Trademark
6 Office duly and legally issued United States Patent No. 5,839,108 (“the ’108
7 patent”) entitled “Flash Memory File System In A Handheld Record And Playback
8 Device,” to its named inventors Norbert P. Daberko and Richard K. Davis.
9 Plaintiff e.Digital is the assignee and owner of the entire right, title and interest in
10 and to the ’108 patent and has the right to bring this suit for damages and other
11 relief. A true and correct copy of the ’108 patent is attached hereto as Exhibit A.

12 **COUNT ONE**

13 **INFRINGEMENT OF THE ’108 PATENT BY DEFENDANT**

14 8. Plaintiff re-alleges and incorporates by reference each of the
15 allegations set forth in paragraphs 1 through 7 above.

16 9. Upon information and belief, Defendant, without authority, (a) has
17 induced and continues to induce infringement of one or more claims of the ’108
18 patent in violation of 35 U.S.C. § 271(b); and, (b) has contributed and continue to
19 contribute to the infringement of one or more claims of the ’108 patent in violation
20 of 35 U.S.C. § 271(c).

21 10. The accused products for purposes of the ’108 patent include but are
22 not limited to the Defendant’s memory card products for Flash Memory Storage
23 including but not limited to its USB, SSD, SD, microSD, and/or Compact Flash
24 products. The accused products include but are not limited to Defendant’s LX
25 Series SDHC/SDXC product.

26 11. The accused product, alone or in combination with other products,
27 practice each of the limitations of independent claim 1 of the ’108 patent.

28 12. Upon information and belief, Defendant, without authority, has

1 actively induced infringement and continues to actively induce infringement of the
2 '108 patent in violation of 35 U.S.C. § 271(b) by causing others to directly infringe
3 the claims of the '108 patent and/or by intentionally instructing others how to use
4 the accused products in a manner that infringes the claims of the '108 patent. On
5 information and belief, Defendant has induced and continues to induce
6 infringement by instructing customers to operate the product in an infringing
7 manner and/or when Defendant tests or otherwise operates the accused products in
8 the United States.

9 13. Upon information and belief, Defendant, without authority, has
10 contributed and continues to contribute to the infringement of the '108 patent in
11 violation of 35 U.S.C. § 271(c) by importing into the United States, selling and/or
12 offering to sell within the United States accused products that (1) embody and
13 constitute a material part of the invention of the '108 patent, (2) Defendant knows
14 to be especially adapted for use in infringing the '108 patent, and (3) are not staple
15 articles of commerce suitable for substantial non-infringing use with respect to the
16 '108 patent.

17 14. Upon information and belief, certain of the products manufactured by
18 Defendant have been and/or are currently sold and/or offered for sale at, among
19 other places, the Fry's Electronics store located at 9825 Stonecrest Blvd., San
20 Diego, CA 92123 and/or the Fry's Electronics online store website located at
21 <http://www.frys.com> to consumers including, but not limited to, consumers located
22 within the State of California.

23 15. Based on information and belief, Plaintiff alleges that Defendant sells,
24 ships, or otherwise delivers the accused product with all the features required to
25 infringe the asserted claims of the '108 patent. On information and belief, these
26 products are designed to practice the infringing features.

27 16. Defendant had knowledge of infringement of the '108 patent since at
28 least the filing of this complaint. On information and belief, Defendant has

1 continued to sell products that practice the '108 patent after acquiring knowledge
2 of infringement.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for relief and judgment as follows:

5 1. That Defendant be declared to have infringed the Patent-in-Suit;

6 2. That Defendant, Defendant's officers, agents, servants, employees,
7 and attorneys, and those persons in active concert or participation with them, be
8 preliminarily and permanently enjoined from infringement of the Patent-in-Suit,
9 including but not limited to any making, using, offering for sale, selling, or
10 importing of unlicensed infringing products within and without the United States;

11 3. Compensation for all damages caused by Defendant's infringement of
12 the Patent-in-Suit to be determined at trial;

13 4. Enhancement of Plaintiff's damages up to three (3) times their amount
14 pursuant to 35 U.S.C. § 284;

15 5. Granting Plaintiff pre-and post-judgment interest on its damages,
16 together with all costs and expenses; and,

17 6. Awarding such other relief as this Court may deem just and proper.

18 **HANDAL & ASSOCIATES**

19 Dated: December 5, 2013

20 By: /s/ Pamela C. Chalk
21 Anton N. Handal
22 Pamela C. Chalk
23 Gabriel G. Hedrick
24 Attorneys for Plaintiff
25 e.Digital Corporation
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims.

Respectfully submitted,

Dated: December 5, 2013

HANDAL & ASSOCIATES

By: /s/ Pamela C. Chalk
Anton N. Handal
Pamela C. Chalk
Gabriel G. Hedrick
Attorneys for Plaintiff
e.Digital Corporation

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on this date to all counsel of record, if any to date, who are deemed to have consented to electronic service via the Court’s CM/ECF system per CivLR 5.4(d). Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery upon their appearance in this matter.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed this 5th day of December, 2013 at San Diego, California.

Respectfully submitted,
Dated: December 5, 2013 **HANDAL & ASSOCIATES**

By: /s/ Pamela C. Chalk
Anton N. Handal
Pamela C. Chalk
Gabriel G. Hedrick
Attorneys for Plaintiff
e.Digital Corporation