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e.Digital Corporation

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10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12  
13 e.Digital Corporation,

14 Plaintiff,

15 v.

16 Mach Xtreme Technology Inc.; 3PX  
17 USA Inc.,

18 Defendants.

Case No. '13CV2911 JAH NLS

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its  
2 undersigned counsel, complains and alleges against Defendant Mach Xtreme  
3 Technology Inc. (“Mach Xtreme”); and, Defendant 3PX USA Inc. (“3PX USA  
4 Inc.”) (collectively hereafter “Defendants”) as follows:

5 **NATURE OF THE ACTION**

6 1. This is a civil action for infringement of a patent arising under the  
7 laws of the United States relating to patents, 35 U.S.C. § 101, *et seq.*, including,  
8 without limitation, § 281. Plaintiff e.Digital seeks a preliminary and permanent  
9 injunction and monetary damages for the infringement of its U.S. Patent No.  
10 5,839,108.

11 **JURISDICTION AND VENUE**

12 2. This court has subject matter jurisdiction over this case for patent  
13 infringement under 28 U.S.C. §§ 1331 and 1338(a) and pursuant to the patent laws  
14 of the United States of America, 35 U.S.C. § 101, *et seq.*

15 3. Venue properly lies within the Southern District of California  
16 pursuant to the provisions of 28 U.S.C. §§ 1391(b), (c), and (d) and 1400(b). On  
17 information and belief, Defendants conduct substantial business directly and/or  
18 through third parties or agents in this judicial district by selling and/or offering to  
19 sell the infringing products and/or by conducting other business in this judicial  
20 district. Furthermore, Plaintiff e.Digital is headquartered and has its principal  
21 place of business in this district, engages in business in this district, and has been  
22 harmed by Defendants’ conduct, business transactions and sales in this district.

23 4. This Court has personal jurisdiction over Defendants because, on  
24 information and belief, Defendants transact continuous and systematic business  
25 within the State of California and the Southern District of California. In addition,  
26 this Court has personal jurisdiction over the Defendants because, on information  
27 and belief, this lawsuit arises out of Defendants’ infringing activities, including,  
28 without limitation, the making, using, selling and/or offering to sell infringing

1 products in the State of California and the Southern District of California. Finally,  
2 this Court has personal jurisdiction over Defendants because, on information and  
3 belief, Defendants have made, used, sold and/or offered for sale its infringing  
4 products and placed such infringing products in the stream of interstate commerce  
5 with the expectation that such infringing products would be made, used, sold  
6 and/or offered for sale within the State of California and the Southern District of  
7 California.

8 **PARTIES**

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

12 6. Upon information and belief, Defendant Mach Xtreme Technology  
13 Inc. is a Taiwan company registered and lawfully existing under the laws of the  
14 country of Taiwan (Republic of China), with an office and principal place of  
15 business located at 14F, No. 866-9 Zhong-Zheng Rd, Zhong-He District, New  
16 Taipei City 23586, Taiwan (R.O.C.).

17 7. Upon information and belief, Defendant 3PX USA Inc. is a  
18 corporation registered and lawfully existing under the laws of the State of  
19 California, with an office and principal place of business at 15362 E. Valley Blvd,  
20 City of Industry, California 91746. Upon information and belief, 3PX USA Inc. is  
21 one of Mach Xtreme's primary distributors of the accused products in the United  
22 States.

23 **THE ASSERTED PATENT**

24 8. On November 17, 1998, the United States Patent and Trademark  
25 Office duly and legally issued United States Patent No. 5,839,108 ("the '108  
26 patent") entitled "Flash Memory File System In A Handheld Record And Playback  
27 Device," to its named inventors Norbert P. Daberko and Richard K. Davis.  
28 Plaintiff e.Digital is the assignee and owner of the entire right, title and interest in

1 and to the '108 patent and has the right to bring this suit for damages and other  
2 relief. A true and correct copy of the '108 patent is attached hereto as Exhibit A.

3 **COUNT ONE**

4 **INFRINGEMENT OF THE '108 PATENT BY DEFENDANT**

5 9. Plaintiff re-alleges and incorporates by reference each of the  
6 allegations set forth in paragraphs 1 through 8 above.

7 10. Upon information and belief, Defendants, without authority, (a) have  
8 induced and continue to induce infringement of one or more claims of the '108  
9 patent in violation of 35 U.S.C. § 271(b); and, (b) have contributed and continue to  
10 contribute to the infringement of one or more claims of the '108 patent in violation  
11 of 35 U.S.C. § 271(c).

12 11. The accused products for purposes of the '108 patent include but are  
13 not limited to the Defendants' memory card products for Flash Memory Storage  
14 including but not limited to its USB, SSD, SD, microSD, and/or Compact Flash  
15 products. The accused products include but are not limited to the Defendant Mach  
16 Xtreme's MXSSD3SDSTP - 2.5" SATA3 SLC Drive product.

17 12. The accused products, alone or in combination with other products,  
18 practice each of the limitations of independent claim 1 of the '108 patent.

19 13. Upon information and belief, Defendants, without authority, have  
20 actively induced infringement and continue to actively induce infringement of the  
21 '108 patent in violation of 35 U.S.C. § 271(b) by causing others to directly infringe  
22 the claims of the '108 patent and/or by intentionally instructing others how to use  
23 the accused products in a manner that infringes the claims of the '108 patent. On  
24 information and belief, Defendants have induced and continue to induce  
25 infringement by instructing customers to operate the product in an infringing  
26 manner and/or when Defendants test or otherwise operate the accused products in  
27 the United States.

28 14. Upon information and belief, Defendants, without authority, have

1 contributed and continue to contribute to the infringement of the '108 patent in  
2 violation of 35 U.S.C. § 271(c) by importing into the United States, selling and/or  
3 offering to sell within the United States accused products that (1) embody and  
4 constitute a material part of the invention of the '108 patent, (2) Defendants know  
5 to be especially adapted for use in infringing the '108 patent, and (3) are not staple  
6 articles of commerce suitable for substantial non-infringing use with respect to the  
7 '108 patent.

8 15. Based on information and belief, Plaintiff alleges that Defendants sell,  
9 ship, or otherwise deliver the accused product with all the features required to  
10 infringe the asserted claims of the '108 patent. On information and belief, these  
11 products are designed to practice the infringing features.

12 16. Upon information and belief, certain of these products manufactured  
13 by Defendants have been and/or are currently sold and/or offered for sale at,  
14 among other places, at the MyDigitalDiscount.com online store website located at  
15 <http://www.mydigitaldiscount.com> to consumers including, but not limited to,  
16 consumers located within the State of California.

17 17. Defendants had knowledge of infringement of the '108 patent since at  
18 least the filing of this complaint. On information and belief, Defendants have  
19 continued to sell products that practice the '108 patent after acquiring knowledge  
20 of infringement.

21 **PRAYER FOR RELIEF**

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

- 23 1. That Defendants be declared to have infringed the Patent-in-Suit;
- 24 2. That the Defendants, the Defendants' officers, agents, servants,  
25 employees, and attorneys, and those persons in active concert or participation with  
26 them, be preliminarily and permanently enjoined from infringement of the Patent-  
27 in-Suit, including but not limited to any making, using, offering for sale, selling, or  
28 importing of unlicensed infringing products within and without the United States;

1           3.     Compensation for all damages caused by Defendants’ infringement of  
2 the Patent-in-Suit to be determined at trial;

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

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

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

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**HANDAL & ASSOCIATES**

Dated: December 5, 2013

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

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all claims.

**HANDAL & ASSOCIATES**

Dated: December 5, 2013

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 5<sup>th</sup> day of December, 2013 at San Diego, California.

**HANDAL & ASSOCIATES**

Dated: December 5, 2013

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