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e.Digital Corporation

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

13 e.Digital Corporation,

14 Plaintiff,

15 v.

16 Mushkin, Inc.,

17 Defendant.

Case No. 3:13-cv-2914-H-BGS

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

**Assigned to the Honorable
Judge Marilyn L. Huff**

Courtroom 15A (Annex)

19 Plaintiff e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its
20 undersigned counsel, complains and alleges against Defendant Mushkin, Inc.
21 (“Mushkin” or “Defendant”) as follows:

22 **NATURE OF THE ACTION**

23 1. This is a civil action for infringement of a patent arising under the
24 laws of the United States relating to patents, 35 U.S.C. § 101, *et seq.*, including,
25 without limitation, 35 U.S.C. §§ 271, 281. Plaintiff e.Digital seeks a preliminary
26 and permanent injunction and monetary damages for the infringement of its U.S.
27 Patent No. 5,839,108.

28 **JURISDICTION AND VENUE**

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

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

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

25 5. Upon information and belief, certain of the products manufactured by
26 Defendant have been and/or are currently sold and/or offered for sale at, among
27 other places, the Amazon.com online store website located at
28 <http://www.amazon.com> to consumers including, but not limited to, consumers

1 located within the State of California.

2 6. Upon information and belief, certain of the products manufactured by
3 Defendant have been and/or are currently sold and/or offered for sale at, among
4 other places, the Memory4Less.com online store website located at
5 <http://www.memory4less.com> to consumers including, but not limited to,
6 consumers located within the State of California. Upon information and belief,
7 Memory4Less.com's office and principal business is located at 1504 W.
8 Commonwealth Ave, Suite B, Fullerton, CA 92833.

9 7. Upon information and belief, certain of the products manufactured by
10 Defendant have been and/or are currently sold and/or offered for sale at, among
11 other places, the RAM Experts online store website located at
12 <http://www.ramexperts.com> to consumers including, but not limited to, consumers
13 located within the State of California.

14 **PARTIES**

15 8. Plaintiff e.Digital is a Delaware corporation with its headquarters and
16 principal place of business at 16870 West Bernardo Drive, Suite 120, San Diego,
17 California 92127.

18 9. Upon information and belief, Defendant Mushkin, Inc. is a
19 corporation registered and lawfully existing under the laws of the State of
20 Colorado, with an office and principal place of business located at 317 Inverness
21 Way South, Suite 130, Englewood, CO 80112. Upon information and belief,
22 Mushkin also has an office location and place of business located at 828 New
23 Meister Lane, Suite 300, Pflugerville, TX 78660.

24 **THE ASSERTED PATENT**

25 10. On November 17, 1998, the United States Patent and Trademark
26 Office duly and legally issued United States Patent No. 5,839,108 ("the '108
27 patent") entitled "Flash Memory File System In A Handheld Record And Playback
28 Device," to its named inventors Norbert P. Daberko and Richard K. Davis.

1 Plaintiff e.Digital is the assignee and owner of the entire right, title and interest in
2 and to the '108 patent and has the right to bring this suit for damages and other
3 relief. A true and correct copy of the '108 patent is attached hereto as Exhibit A.

4 **COUNT ONE**

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

6 11. Plaintiff re-alleges and incorporates by reference each of the
7 allegations set forth in paragraphs 1 through 10 above.

8 12. The accused products include but are not limited to the Defendant's
9 Flash Memory Storage products including but not limited to its USB, SSD, SD,
10 microSD, and/or Compact Flash products. The accused products include but are
11 not limited to Defendant's Callisto deluxe™ -- 25nm product, UHS-1 SD Card
12 series of products to include the MKNSDXCU1-64G, Class 10 SDHC card series
13 of products to include the MKNSDHCC10-32GB, and the Class 4 microSDHC
14 card series of products to include the MKNUSDHCC4-16GB.

15 13. On information and belief, the Defendant and/or its downstream
16 customers have used, sold, sell or supplied the accused product(s) in the United
17 States. Further, as of the date of the filing of this complaint or sooner, Defendant
18 knew or should have known of the existence of Claim 1 of the '108 patent.

19 14. Based on information and belief, Plaintiff alleges that Defendant sells,
20 offers to sell, ships, or otherwise delivers the accused products to customers or
21 end-users with all the features required to infringe Claim 1 of the '108 patent.

22 15. Upon information and belief, the accused products, alone or in
23 combination with other products, directly or alternatively under the doctrine of
24 equivalents practice each of the limitations of independent Claim 1 of the '108
25 patent in violation of 35 U.S.C. § 271(a).

26 16. On information and belief, Defendant encourages and intends for its
27 customers to use the accused products in a manner that infringes the Claim 1 of the
28 '108 patent. Among other things, on its public website and/or on other public

1 websites such as youtube.com, Twitter.com, and/or Facebook.com, Mushkin
2 advertises, promotes, and/or instructs customers on how to use the accused
3 products in a manner that infringes the '108 patent.

4 17. Based upon information and belief, Defendant, without authority, has
5 induced and continues to induce infringement of the '108 patent in violation of 35
6 U.S.C. § 271(b) inasmuch as:

- 7 a. The accused products infringe Claim 1 whenever the Defendant
8 engages in product testing, and/or during the normal use of the
9 accused products by Defendant or Defendant's customers;
- 10 b. The Defendant has known and has been continuously aware of the
11 '108 patent since at least the filing of the original complaint in this
12 action if not sooner;
- 13 c. The Defendant has acted in a manner that encourages and
14 continues to encourage others to infringe Claim 1 of the '108
15 patent by, among other things, intentionally instructing and/or
16 encouraging customers and end-users to use the accused products
17 in a manner that Defendant knows or should have known would
18 cause them to infringe the '108 patent;
- 19 d. The Defendant sells, distributes, and supplies the accused
20 products to customers and end-users with the intent that the
21 products be used in an infringing manner;
- 22 e. The Defendant provides instructional and/or informational
23 material designed to instruct and encourage customers and end-
24 users to use the products in an infringing manner; and,
- 25 f. The Defendant advertises, markets, and promotes the use of the
26 accused products in an infringing manner.

27 18. Plaintiff is also informed and believes that Defendant has contributed
28 and continues to contribute to the infringement of Claim 1 of the '108 patent in

1 and attorneys, and those persons in active concert or participation with them, be
2 preliminarily and permanently enjoined from infringement of the Patent-in-Suit,
3 including but not limited to any making, using, offering for sale, selling, or
4 importing of unlicensed infringing products within and without the United States;

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

7 4. A finding that this case is exceptional and an award of reasonable
8 attorneys fees pursuant to 35 U.S.C. § 285;

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

11 6. Awarding such other relief as this Court may deem just and proper.
12

13 **HANDAL & ASSOCIATES**

14 Dated: March 7,2014

15 By: /s/Pamela C. Chalk
16 Anton N. Handal
17 Pamela C. Chalk
18 Gabriel G. Hedrick
19 Attorneys for Plaintiff
20 e.Digital Corporation
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims.

HANDAL & ASSOCIATES

Dated: March 7,2014

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 7th day of March 2014 at San Diego, California.

HANDAL & ASSOCIATES

Dated: March 7,2014

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