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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 Micron Technology, Inc.,  
17 Defendant.

Case No. 3:13-cv-2944-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 Micron  
21 Technology, Inc. (“Micron” 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 Micron online store website located at <http://www.crucial.com> to  
28 consumers including, but not limited to, consumers located within the State of

1 California. Upon information and belief, Crucial and/or Crucial Memory is a brand  
2 name Micron uses to market and sell its products to include one or more of the  
3 accused products.

4 **PARTIES**

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

8 7. Upon information and belief, Defendant Micron Technology, Inc. is a  
9 corporation registered and lawfully existing under the laws of the State of  
10 Delaware, with an office and principal place of business located at 8000 South  
11 Federal Way Post Office Box 6, Boise, Idaho 83707-0006.

12 **THE ASSERTED PATENT**

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

20 **COUNT ONE**

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

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

24 10. The accused products include but are not limited to Micron’s Flash  
25 Memory Storage products including but not limited to its USB, SSD, SD,  
26 microSD, and/or Compact Flash products. The primary and substantial purpose of  
27 the accused products is to write to and store data in electronic format in non-  
28 volatile flash memory.

1           11. Micron has directly and indirectly infringed and is directly and  
2 indirectly infringing Claim 1 of the '108 patent in violation of 35 U.S.C. § 271, *et*  
3 *seq.*, by making, using, offering for sale, selling in the United States and/or  
4 importing into the United States without authority, the accused products identified  
5 above. Claim 1 of the '108 patent teaches a method of memory management for a  
6 non-volatile storage medium. The method comprises several steps, which generally  
7 involves, without limitation, writing electronic data segments from volatile,  
8 temporary memory to a non-volatile, long-term storage medium by linking data  
9 segments according to a number of specified steps.

10           12. Plaintiff alleges that at least as of the date of the filing of the  
11 originally filed complaint in this matter, if not sooner, Micron knew or should have  
12 known of the existence of Claim 1 of the '108 patent and the fact that the accused  
13 products infringe said Claim 1.

14           13. Plaintiff alleges that Micron sold, sells, offers to sell, ships, or  
15 otherwise delivers the accused products to customers or end-users with all the  
16 features required to infringe Claim 1 of the '108 patent. Upon information and  
17 belief, Micron knows that the accused products infringe Claim 1 of the '108 patent  
18 and intends to induce third parties to include its customers and end-users to also  
19 infringe Claim 1 of the '108 patent.

20           14. Upon information and belief, the accused products, alone or in  
21 combination with other products, directly or, alternatively, under the doctrine of  
22 equivalents practice each of the limitations of independent Claim 1 of the '108  
23 patent when they are used for their normal and intended purpose of writing to and  
24 storing electronic data on non-volatile memory. Thus, Micron directly infringes  
25 Claim 1 of the '108 patent in violation of 35 U.S.C. § 271(a) when it demonstrates,  
26 tests or otherwise uses the accused products in the United States.

27           15. By way of example, Micron's demonstration and informational  
28 video(s), posted by Micron on Micron's website(s) or other public websites to

1 include those of its brand name Crucial and/or Crucial Memory, show Micron  
2 and/or its authorized agents or employees migrating or transferring data from the  
3 memory of one or more devices to one or more of the accused products. An  
4 example can be found at <https://www.youtube.com/watch?v=Zn31L-jHpfU>.  
5 Micron provides a direct link to this website on its website at  
6 <http://investors.micron.com/releasedetail.cfm?ReleaseID=833504>. Another  
7 example can be found on YouTube at  
8 [https://www.youtube.com/watch?v=\\_vRCgNylkOo](https://www.youtube.com/watch?v=_vRCgNylkOo). Upon information and belief,  
9 Micron directs consumers and end-users to information. Such conduct evidences  
10 Micron's act of direct infringement of Claim 1 of the '108 patent.

11 16. Plaintiff alleges on information and belief that Micron uses, makes,  
12 sells, offers to sell and/or imports the accused products knowing that they will be  
13 used by its customers and end-users for writing and storing electronic data to non-  
14 volatile memory utilizing the steps described in Claim 1 of the '108 patent.  
15 Micron's product literature, videos, blogs, articles, instructional materials, and  
16 instructional videos advertise and encourage customers to use the accused  
17 product(s) to store electronic data in the accused products utilizing the methods of  
18 memory management taught by Claim 1 of the '108 patent and in a manner it  
19 knows infringes upon Claim 1 of the '108 patent.

20 17. Micron also provides operating manuals, user or guides, instructional  
21 and "how-to" articles, or other instructional and/or informational material that  
22 instruct customers and end-users on how to connect the accused products and use  
23 them as non-volatile storage devices for electronic data. Among other things,  
24 Micron's informational materials lay out step-by-step instructions on how to write  
25 data into the memory of the accused products – a process that utilizes the method  
26 disclosed in Claim 1 of the '108 patent and which Micron knows (at the least as of  
27 the filing of the original complaint if not sooner) infringes the method taught in  
28 Claim 1 of the '108 patent. Plaintiff believes that Micron directs consumers and

1 end-users to consult and utilize such instructional material.

2 18. Plaintiff believes and thereupon alleges that Micron is aware that its  
3 customers and end-users are using the accused products in an infringing manner  
4 based on, among other things, the fact that Micron encourages its customers and  
5 end-users to use the accused products in an infringing manner as set forth in the  
6 preceding Paragraphs.

7 19. As alleged above, incorporated herewith, and based upon information  
8 and belief, Plaintiff alleges that Micron, without authority, has induced and  
9 continues to induce infringement of the '108 patent in violation of 35 U.S.C. §  
10 271(b) inasmuch as:

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

1 f. Micron advertises, markets, and promotes the use of the accused  
2 products in an infringing manner.

3 20. As alleged above, incorporated herewith, and based upon information  
4 and belief, Plaintiff alleges that Micron has contributed and continues to contribute  
5 to the infringement of Claim 1 of the '108 patent in violation of 35 U.S.C. § 271(c)  
6 inasmuch as:

7 a. The accused products infringe Claim 1 of the '108 patent during  
8 the normal use of the accused products by Micron's customers  
9 and/or end-users;

10 b. Micron has known and has been continuously aware of the '108  
11 patent since at least the filing of the original complaint in this  
12 action, if not sooner;

13 c. Micron imports into the United States, sells and/or offers to sell  
14 within the United States products that (a) practice the method of  
15 memory management of Claim 1 of the '108 patent; and, (b)  
16 Micron knows that the same constitute material infringing  
17 component(s) of the accused products, which were made and/or  
18 especially adapted for use in the accused products;

19 d. The memory management component(s) and methods of the  
20 accused products are not staple articles of commerce suitable for  
21 substantial non-infringing use with respect to the '108 patent; and,

22 e. Micron sells, has sold, and/or has supplied the accused products  
23 knowing of Plaintiff's '108 patent and knowing that the accused  
24 products incorporate Plaintiff's patented method and/or were  
25 specially adapted for use in a way which infringes the '108 patent.

26 21. As alleged above, Plaintiff alleges that Micron had notice of the '108  
27 patent and knowledge of infringement of Claim 1 of the '108 patent since at least  
28 the filing of the original complaint in this matter, if not sooner. Micron has and

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

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: March 21, 2014

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**

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Plaintiff hereby demands a trial by jury on all claims.

**HANDAL & ASSOCIATES**

Dated: March 21, 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 21st day of March, 2014 at San Diego, California.

**HANDAL & ASSOCIATES**

Dated: March 21, 2014

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