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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 New Dane, dba Dane-Elec; Gigastone
17 Corporation; and, Dane Elec Corp. USA,
aka Dane Corp.,

18 Defendants.

Case No. '13CV2897 BEN NLS

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

19
20 Plaintiff e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its
21 undersigned counsel, complains and alleges against Defendant New Dane dba
22 Dane-Elec; Gigastone Corporation; and, Defendant Dane Elec Corp. USA, aka
23 Dane Corp. (collectively hereafter “Dane-Elec” or “Defendants”) as follows:

24 **NATURE OF THE ACTION**

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

1 5,839,108.

2 **JURISDICTION AND VENUE**

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

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

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

27 **PARTIES**

28 5. Plaintiff e.Digital is a Delaware corporation with its headquarters and

1 principal place of business at 16870 West Bernardo Drive, Suite 120, San Diego,
2 California 92127.

3 6. Upon information and belief, Defendant New Dane, dba Dane-Elec is
4 a French company registered and lawfully existing under the laws of the country of
5 France, with an office and principal place of business located at 66 rue de
6 Miromesnil 75008 Paris, France.

7 7. Upon information and belief, Defendant Gigastone Corporation is a
8 Taiwan company registered and lawfully existing under the laws of the country of
9 Taiwan (Republic of China), with an office and principal place of business located
10 at 12F, No. 480, Rueiguang Rd., Neihu Dist., Taipei 114, Taiwan (R.O.C.).

11 8. Upon information and belief, Defendant Dane Elec Corp. USA, aka
12 Dane Corp is a corporation registered and lawfully existing under the laws of the
13 State of Delaware, with an office and principal place of business at 15770 Laguna
14 Canyon Road, Suite 100, Irvine, California 92618.

15 **THE ASSERTED PATENT**

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

23 **COUNT ONE**

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

25 10. Plaintiff re-alleges and incorporates by reference each of the
26 allegations set forth in paragraphs 1 through 9 above.

27 11. Upon information and belief, Defendants, without authority, (a) have
28 induced and continue to induce infringement of one or more claims of the ’108

1 patent in violation of 35 U.S.C. § 271(b); and, (b) have contributed and continue to
2 contribute to the infringement of one or more claims of the '108 patent in violation
3 of 35 U.S.C. § 271(c).

4 12. The accused products for purposes of the '108 patent include but are
5 not limited to the Defendants' memory card products for Flash Memory Storage
6 including but not limited to its USB, SSD, SD, microSD, and/or Compact Flash
7 products. The accused products include but are not limited to the Defendants'
8 Ultimate Pro Memory Card.

9 13. The accused products, alone or in combination with other products,
10 practice each of the limitations of independent claim 1 of the '108 patent.

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

20 15. Upon information and belief, Defendants, without authority, have
21 contributed and continue to contribute to the infringement of the '108 patent in
22 violation of 35 U.S.C. § 271(c) by importing into the United States, selling and/or
23 offering to sell within the United States accused products that (1) embody and
24 constitute a material part of the invention of the '108 patent, (2) Defendants know
25 to be especially adapted for use in infringing the '108 patent, and (3) are not staple
26 articles of commerce suitable for substantial non-infringing use with respect to the
27 '108 patent.

28 16. Based on information and belief, Plaintiff alleges that Defendants sell,

1 ship, or otherwise deliver the accused product with all the features required to
2 infringe the asserted claims of the '108 patent. On information and belief, these
3 products are designed to practice the infringing features.

4 17. Upon information and belief, certain of these products manufactured
5 by Defendants have been and/or are currently sold and/or offered for sale at,
6 among other places, at the Target online store website located at
7 <http://www.target.com> to consumers including, but not limited to, consumers
8 located within the State of California.

9 18. Upon information and belief, certain of these products manufactured
10 by Defendants have been and/or are currently sold and/or offered for sale at,
11 among other places, the Staples Store located at Glass House Square, 3146B Sports
12 Arena Blvd, San Diego, CA 92110 and/or the Staples online store website located
13 at <http://www.staples.com> to consumers including, but not limited to, consumers
14 located within the State of California.

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

19 **PRAYER FOR RELIEF**

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

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

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- 4. Enhancement of Plaintiff’s damages up to three (3) times their amount pursuant to 35 U.S.C. § 284;
- 5. Granting Plaintiff pre-and post-judgment interest on its damages, together with all costs and expenses; and,
- 6. Awarding such other relief as this Court may deem just and proper.

HANDAL & ASSOCIATES

Dated: December 5, 2013

By: /s/ Pamela C. Chalk
Anton N. Handal
Gabriel G. Hedrick
Pamela C. Chalk
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
Gabriel G. Hedrick
Pamela C. Chalk
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.

HANDAL & ASSOCIATES

Dated: December 5, 2013

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