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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 Dexxon Groupe Holding S.A., dba
under the brand name EMTEC; and,
17 Dexxon Digital Storage, Inc., dba
under the brand name EMTEC,

18 Defendants.
19

Case No. **'13CV2900 JAH KSC**

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

20 Plaintiff e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its
21 undersigned counsel, complains and alleges against Defendant Dexxon Groupe
22 Holding S.A., dba under the brand name EMTEC (“Dexxon Groupe”) and
23 Defendant Dexxon Digital Storage, Inc., dba under the brand name EMTEC
24 (“Digital Storage”) (collectively hereafter “EMTEC” or “Defendants”) as follows:

25 **NATURE OF THE ACTION**

26 1. This is a civil action for infringement of a patent arising under the
27 laws of the United States relating to patents, 35 U.S.C. § 101, *et seq.*, including,

1 without limitation, § 281. Plaintiff e.Digital seeks a preliminary and permanent
2 injunction and monetary damages for the infringement of its U.S. Patent No.
3 5,839,108.

4 **JURISDICTION AND VENUE**

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

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

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

PARTIES

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

5 6. Upon information and belief, Defendant Dexxon Groupe Holding
6 S.A. is a French company registered and lawfully existing under the laws of the
7 country of France, with an office and principal place of business located at 79
8 Avenue Louis Roche, 92238 Gennevilliers Cedex, France.

9 7. Upon information and belief, Defendant Dexxon Digital Storage,
10 Inc. is a corporation registered and lawfully existing under the laws of the State of
11 Delaware, with an office and principal place of business at 7611 Green Meadows
12 Drive, Lewis Center, Ohio 43035.

13 8. Upon information and belief, EMTEC is a proprietary brand name of
14 the Defendants under which the accused products are manufactured, marketed,
15 distributed, and/or sold.

16 **THE ASSERTED PATENT**

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

24 **COUNT ONE**

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

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

28 11. Upon information and belief, Defendants, without authority, (a) have

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

5 12. The accused products for purposes of the '108 patent include but are
6 not limited to the Defendants' memory card products for Flash Memory Storage
7 including but not limited to its USB, SSD, SD, microSD, and/or Compact Flash
8 products. The accused products include but are not limited to the Defendants' USB
9 Classic Range Easy Slider series of products, the EMTEC C600 Click USB Flash
10 Drive series of product, Looney Tunes USB Flash Drive series of products, and
11 Looney Tunes - Episode 2 Flash Drive series of products.

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

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

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

1 articles of commerce suitable for substantial non-infringing use with respect to the
2 '108 patent.

3 16. Based on information and belief, Plaintiff alleges that Defendants sell,
4 ship, or otherwise deliver the accused product with all the features required to
5 infringe the asserted claims of the '108 patent. On information and belief, these
6 products are designed to practice the infringing features.

7 17. Upon information and belief, certain of these products manufactured
8 by Defendants have been and/or are currently sold and/or offered for sale at,
9 among other places, the Best Buy Store located at 5151 Mission Center Rd, San
10 Diego, California 92108 and/or at the Best Buy online store website located at
11 <http://www.bestbuy.com> to consumers including, but not limited to, consumers
12 located within the State of California.

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

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

22 **PRAYER FOR RELIEF**

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

- 24 1. That Defendants be declared to have infringed the Patent-in-Suit;
25 2. That Defendants, Defendants' officers, agents, servants, employees,
26 and attorneys, and those persons in active concert or participation with them, be
27 preliminarily and permanently enjoined from infringement of the Patent-in-Suit,
28 including but not limited to any making, using, offering for sale, selling, or

1 importing of unlicensed infringing products within and without the United States;

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

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

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

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

9
10 **HANDAL & ASSOCIATES**

11 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

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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