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

12 e.Digital Corporation,

13 Plaintiff,

14 v.

15 Apacer Technology Inc.; Apacer  
16 Memory America, Inc.; Mouser  
17 Electronics, Inc.; and, Norcomp,  
Incorporated,

18 Defendants.  
19

**'15CV0136 BEN NLS**

**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 Defendants Apacer  
22 Technology Inc.; Apacer Memory America, Inc.; (collectively referred to as  
23 “Apacer”) and Defendants Mouser Electronics, Inc. (“Mouser”) and Norcomp  
24 Incorporated (“Norcomp”) (all collectively referred to hereafter as “Defendant” or  
25 “Defendants”) as follows:

26 **NATURE OF THE ACTION**

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

1 without limitation, 35 U.S.C. §§ 271, 281. Plaintiff e.Digital seeks a preliminary  
2 and permanent injunction and monetary damages for the infringement of its U.S.  
3 Patent No. 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, Defendant conducts 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 Defendant's conduct, business transactions and sales in this district.

16 4. This Court has personal jurisdiction over Defendant because, on  
17 information and belief, Defendant transacts 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 Defendant because, on information  
20 and belief, this lawsuit arises out of Defendant's 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 Defendant because, on information and  
24 belief, Defendant has 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.

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

7. Upon information and belief, Defendant Apacer Memory America, Inc. is a corporation registered and lawfully existing under the laws of the State of California, with an office and principal place of business located at 386 Fairview Way, Suite 102, Milpitas, CA 95035.

8. Upon information and belief, Defendant Apacer Technology Inc. is a corporation organized and existing under the laws of the People's Republic of China ("China"), with an office and principal place of business located at 1F., No.32, Zhongcheng Rd., Tucheng Dist., New Taipei City 236, Taiwan R.O.C.

9. Upon information and belief, Defendant Mouser Electronics, Inc. is a corporation registered and lawfully existing under the laws of the State of Delaware, with an office and principal place of business located at 1000 North Main Street, Mansfield, TX 76063. Upon information and belief, certain of the products manufactured by Apacer have been and/or are currently sold and/or offered for sale at, among other places, Mouser's website located at <http://www.mouser.com> and specifically at <http://www.mouser.com/new/Apacer/>

10. Upon information and belief, Defendant Norcomp Incorporated is a corporation registered and lawfully existing under the laws of the State of California, with an office and principal place of business located at 1267 Oakmead

1 Parkway, Sunnyvale, California 94085. Upon information and belief, certain of the  
2 products manufactured by Apacer are distributed by Norcomp in the State of  
3 California and/or Norcomp acts as Apacer's manufacturing sales and distribution  
4 representative in the State of California.

5 **THE ASSERTED PATENT**

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

13 **COUNT ONE**

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

15 12. Plaintiff re-alleges and incorporates by reference each of the  
16 allegations set forth in paragraphs 1 through 11 above.

17 13. The accused products include but are not limited to Defendant's Flash  
18 Memory Storage products including but not limited to its eMMC, SSD, Compact  
19 Flash, MicroSD, USB, MicroSATA Chip, SATA SSD Series, PATA SSD Series,  
20 Flash Card Series, PCIe SSD Series, and/or NAND Controller products. The  
21 primary and substantial purpose of the accused products is to write to and store  
22 data in electronic format in non-volatile flash memory.

23 14. Defendant has directly and indirectly infringed and is directly and  
24 indirectly infringing Claim 1 of the '108 patent in violation of 35 U.S.C. § 271, *et*  
25 *seq.*, by making, using, offering for sale, selling in the United States and/or  
26 importing into the United States without authority, the accused products identified  
27 above. Claim 1 of the '108 patent teaches a method of memory management for a  
28 non-volatile storage medium. The method comprises several steps, which generally

1 involves, without limitation, writing electronic data segments from volatile,  
 2 temporary memory to a non-volatile, long-term storage medium by linking data  
 3 segments according to a number of specified steps.

4 15. Plaintiff alleges that at least as of the date of the filing of the  
 5 originally filed complaint in this matter, if not sooner, Defendant knew or should  
 6 have known of the existence of Claim 1 of the '108 patent and the fact that the  
 7 accused products infringe said Claim 1.

8 16. Plaintiff alleges that Defendant sold, sells, offers to sell, ships, or  
 9 otherwise delivers the accused products to customers or end-users with all the  
 10 features required to infringe Claim 1 of the '108 patent. Upon information and  
 11 belief, Defendant knows that the accused products infringe Claim 1 of the '108  
 12 patent and intends to induce third parties to include its customers and end-users to  
 13 also infringe Claim 1 of the '108 patent.

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

21 18. By way of example, certain website(s) publish the Defendants'  
 22 datasheets and descriptions of the features and functionality of the accused  
 23 products. Examples can be found on the internet at:

- 24 a) <http://us.apacer.com/business/technology/wear-leveling>
- 25 b) <http://us.apacer.com/products/SAFD-25P/SSD/>
- 26 c) <http://www.mouser.com/catalog/specsheets/microSDSPEC.pdf>
- 27 d) <http://us.apacer.com/products/Industrial-AH322-M/SSD/>
- 28 e) <http://us.apacer.com/business/industrial-ssd/sata/>
- f) <http://us.apacer.com/business/industrial-ssd/pata/>

- g) <http://us.apacer.com/business/industrial-ssd/flash-card/>
- h) <http://us.apacer.com/business/industrial-ssd/usb/>
- g) <http://us.apacer.com/business/industrial-ssd/PCIe/>

where upon information and belief, consumers and end-users are provided information concerning how to use of the accused products in a way that infringes Claim 1. Such conduct evidences Defendant's act of direct infringement of Claim 1 of the '108 patent.

19. Plaintiff also alleges on information and belief that Defendant uses, makes, sells, offers to sell and/or imports the accused products knowing that they will be used by its customers and end-users for writing and storing electronic data to non-volatile memory utilizing the steps described in Claim 1 of the '108 patent. Defendant's product literature encourages customers to use the accused product(s) knowing that the accused products utilize the methods of memory management taught by Claim 1 of the '108 patent and in a manner it knows infringes upon Claim 1 of the '108 patent.

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

21. Plaintiff believes and thereupon alleges that Defendant is aware that its customers and end-users are using the accused products in an infringing manner based on, among other things, the fact that Defendant encourages its customers and

1 end-users to use the accused products in an infringing manner as set forth in the  
2 preceding Paragraphs.

3 22. As alleged above, incorporated herewith, and based upon information  
4 and belief, Plaintiff alleges that Defendant, without authority, has induced and  
5 continues to induce infringement of the '108 patent in violation of 35 U.S.C. §  
6 271(b) inasmuch as:

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

27 23. As alleged above, incorporated herewith, and based upon information  
28 and belief, Plaintiff alleges that Defendant has contributed and continues to



1 contribute to the infringement of Claim 1 of the '108 patent in violation of 35  
2 U.S.C. § 271(c) inasmuch as:

- 3 a. The accused products infringe Claim 1 of the '108 patent during  
4 the normal use of the accused products by Defendant's customers  
5 and/or end-users;
- 6 b. Defendant has known and has been continuously aware of the  
7 '108 patent since at least the filing of the original complaint in this  
8 action, if not sooner;
- 9 c. Defendant imports into the United States, sells and/or offers to  
10 sell within the United States products that (a) practice the method  
11 of memory management of Claim 1 of the '108 patent; and, (b)  
12 Defendant knows that the same constitute material infringing  
13 component(s) of the accused products, which were made and/or  
14 especially adapted for use in the accused products;
- 15 d. The memory management component(s) and methods of the  
16 accused products are not staple articles of commerce suitable for  
17 substantial non-infringing use with respect to the '108 patent; and,
- 18 e. Defendant sells, has sold, and/or has supplied the accused  
19 products knowing of Plaintiff's '108 patent and knowing that the  
20 accused products incorporate Plaintiff's patented method and/or  
21 were specially adapted for use in a way which infringes the '108  
22 patent.

23 24. As alleged above, Plaintiff alleges that Defendant had notice of the  
24 '108 patent and knowledge of infringement of Claim 1 of the '108 patent since at  
25 least the filing of the original complaint in this matter, if not sooner. Defendant has  
26 and continues to sell products that practice the '108 patent after acquiring  
27 knowledge of infringement.

28 **PRAYER FOR RELIEF**



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

2 1. That Defendants be declared to have infringed the Patent-in-Suit;

3 2. That Defendants, Defendants' officers, agents, servants, employees,  
4 and attorneys, and those persons in active concert or participation with them, be  
5 preliminarily and permanently enjoined from infringement of the Patent-in-Suit,  
6 including but not limited to any making, using, offering for sale, selling, or  
7 importing of unlicensed infringing products within and without the United States;

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

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

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

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

15 **HANDAL & ASSOCIATES**

16 Dated: January 21, 2015

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

Plaintiff hereby demands a trial by jury on all claims.

**HANDAL & ASSOCIATES**

Dated: January 21, 2015

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

**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 21<sup>st</sup> day of January, 2015 at San Diego, California.

**HANDAL & ASSOCIATES**

Dated: January 21, 2015

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