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

12 e.Digital Corporation,  
13 Plaintiff,  
14 v.  
15 Acer America Corporation,  
16 Defendant.  
17

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

**'15CV144 BTM DHB**

18 Plaintiff e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its  
19 undersigned counsel, complains and alleges against Defendants Acer America  
20 Corporation (“Defendant” or “Acer”) as follows:

21 **NATURE OF THE ACTION**

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

27 **JURISDICTION AND VENUE**  
28

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 to consumers  
27 including, but not limited to, Acer's website located at  
28 [http://store.acer.com/store?Action=DisplayHomePage&Locale=en\\_US&SiteID=ac](http://store.acer.com/store?Action=DisplayHomePage&Locale=en_US&SiteID=ac)

1 eramer which is available to consumers located within the State of California.

2 **PARTIES**

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

6 7. Upon information and belief, Defendant Acer America Corporation is  
7 a corporation registered and lawfully existing under the laws of the State of  
8 California, with an office and principal place of business located at 333 West San  
9 Carlos Street, Suite 1500, San Jose, CA 95110.

10 **THE ASSERTED PATENT**

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

18 **COUNT ONE**

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

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

22 10. The accused products include but are not limited to Defendant’s  
23 products that utilize Flash Memory Storage including but not limited to its line of  
24 tablets and PCs. A primary and substantial function of the accused products is to  
25 process information and write electronic data to and store such data in electronic  
26 format in non-volatile flash memory utilizing embedded memory (“eMMC”), SD  
27 card memory and/or SSD memory. The accused products include but are not  
28 limited to Defendants’ line of tablets that utilize flash memory. The accused

1 products also include its Computer models including but not limited to its Aspire  
2 products that utilize flash memory.

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

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

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

22 14. 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 when they are used for their normal and intended purpose of writing to and  
26 storing electronic data on non-volatile memory. Thus, Defendant directly infringes  
27 Claim 1 of the '108 patent in violation of 35 U.S.C. § 271(a) when it demonstrates,  
28 tests or otherwise uses the accused products in the United States.

1           15. By way of example, certain website(s) publish the Defendants'  
2 descriptions of the specifications, features and functionality of the accused  
3 products which disclose the use of eMMC, SD, SSD or other flash memory. An  
4 example can be found on the Internet<sup>1</sup> where upon information and belief,  
5 consumers and end-users are provided information concerning how to use of the  
6 accused products in a way that infringes Claim 1. Such conduct evidences  
7 Defendant's act of direct infringement of Claim 1 of the '108 patent.

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

17           17. Defendant also provides operating manuals, user or guides,  
18 instructional, or other instructional and/or informational material that instruct  
19 customers and end-users on how to connect the accused products and use them as  
20 non-volatile storage devices for electronic data. Among other things, Defendant's  
21 informational materials lay out step-by-step instructions on how to write data into  
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23           <sup>1</sup> <http://us.acer.com/ac/en/US/press/2014/81620>

24           <http://us.acer.com/ac/en/US/search?q=ssd>

25           <http://us.acer.com/ac/en/US/search?q=flash>

1 the memory of the accused products – a process that utilizes the method disclosed  
2 in Claim 1 of the '108 patent and which Defendant knows (at the least as of the  
3 filing of the original complaint if not sooner) infringes the method taught in Claim  
4 1 of the '108 patent. Plaintiff believes that Defendant directs consumers and end-  
5 users to consult and utilize such instructional material.

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

11 19. As alleged above, incorporated herewith, and based upon information  
12 and belief, Plaintiff alleges that Defendant, without authority, has induced and  
13 continues to induce infringement of the '108 patent in violation of 35 U.S.C. §  
14 271(b) inasmuch as:

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

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- e. Defendant provides operating manuals, guides, instructional and/or informational videos, or other instructional and/or informational material designed to instruct customers and end-users to use the products in an infringing manner; and,
- f. Defendant advertises, markets, and promotes the use of the accused products in an infringing manner.

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

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



**DEMAND FOR JURY TRIAL**

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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

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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 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