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

12 e.Digital Corporation,

13 Plaintiff,

14 v.

15 Hewlett-Packard Company,

16 Defendant.
17

'15CV0333 AJB NLS

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

18 Plaintiff e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its
19 undersigned counsel, complains and alleges against Defendant Hewlett-Packard
20 Company (“Defendant” or “HP”) 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

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

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

4. This Court has personal jurisdiction over Defendant because, on information and belief, Defendant transacts continuous and systematic business within the State of California and the Southern District of California. In addition, this Court has personal jurisdiction over the Defendant because, on information and belief, this lawsuit arises out of Defendant's infringing activities, including, without limitation, the making, using, selling and/or offering to sell infringing products in the State of California and the Southern District of California. Finally, this Court has personal jurisdiction over Defendant because, on information and belief, Defendant has made, used, sold and/or offered for sale its infringing products and placed such infringing products in the stream of interstate commerce with the expectation that such infringing products would be made, used, sold and/or offered for sale within the State of California and the Southern District of California.

5. Upon information and belief, certain of the Defendant's accused products have been and/or are currently sold and/or offered for sale to California consumers on HP's website located at <http://m.store.hp.com>.

PARTIES

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

4 7. Upon information and belief, Defendant Hewlett-Packard Company is
5 a Delaware corporation registered and lawfully existing under the laws of the State
6 of, with an office and principal place of business located at 3000 Hanover Street,
7 Palo Alto, CA 94304-1185.

8 **THE ASSERTED PATENT**

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

16 **COUNT ONE**

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

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

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

26 11. Defendant has directly and indirectly infringed and is directly and
27 indirectly infringing Claim 1 of the ’108 patent in violation of 35 U.S.C. § 271, *et*
28 *seq.*, by making, using, offering for sale, selling in the United States and/or

1 importing into the United States without authority, the accused products identified
2 above. Claim 1 of the '108 patent teaches a method of memory management for a
3 non-volatile storage medium. The method comprises several steps, which generally
4 involves, without limitation, writing electronic data segments from volatile,
5 temporary memory to a non-volatile, long-term storage medium by linking data
6 segments according to a number of specified steps.

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

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

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

24 15. By way of example, certain website(s) publish the Defendants'
25 descriptions of the accused products including their specifications, features and
26 functionality which discloses the use of eMMC, SSD or other flash memory. Upon
27 information and belief, consumers and end-users are provided information
28 concerning how to use of the accused products in a way that infringes Claim 1.

1 Such conduct evidences Defendant's act of direct infringement of Claim 1 of the
2 '108 patent.

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

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

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

28 19. As alleged above, incorporated herewith, and based upon information

1 and belief, Plaintiff alleges that Defendant, without authority, has induced and
2 continues to induce infringement of the '108 patent in violation of 35 U.S.C. §
3 271(b) inasmuch as:

- 4 a. The accused products infringe Claim 1 during the normal use of
5 the accused products by Defendant's customers 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 has acted in a manner that encourages and continues to
10 encourage others to infringe Claim 1 of the '108 patent by, among
11 other things, intentionally instructing and/or encouraging
12 customers and end-users to use the accused products in a manner
13 that Defendant knows or should have known would cause them to
14 infringe the '108 patent;
- 15 d. Defendant sells, distributes, and supplies the accused products to
16 customers and end-users with the intent that the products be used
17 in an infringing manner;
- 18 e. Defendant provides operating manuals, guides, instructional
19 and/or informational videos, or other instructional and/or
20 informational material designed to instruct customers and end-
21 users to use the products in an infringing manner; and,
- 22 f. Defendant advertises, markets, and promotes the use of the
23 accused products in an infringing manner.

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

- 28 a. The accused products infringe Claim 1 of the '108 patent during

1 the normal use of the accused products by Defendant's customers
2 and/or end-users;

3 b. Defendant has known and has been continuously aware of the
4 '108 patent since at least the filing of the original complaint in this
5 action, if not sooner;

6 c. Defendant imports into the United States, sells and/or offers to
7 sell within the United States products that (a) practice the method
8 of memory management of Claim 1 of the '108 patent; and, (b)
9 Defendant knows that the same constitute material infringing
10 component(s) of the accused products, which were made and/or
11 especially adapted for use in the accused products;

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

15 e. Defendant sells, has sold, and/or has supplied the accused
16 products knowing of Plaintiff's '108 patent and knowing that the
17 accused products incorporate Plaintiff's patented method and/or
18 were specially adapted for use in a way which infringes the '108
19 patent.

20 21. As alleged above, Plaintiff alleges that Defendant had notice of the
21 '108 patent and knowledge of infringement of Claim 1 of the '108 patent since at
22 least the filing of the original complaint in this matter, if not sooner. Defendant has
23 and continues to sell products that practice the '108 patent after acquiring
24 knowledge of infringement.

25 **PRAYER FOR RELIEF**

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

- 27 1. That Defendant be declared to have infringed the Patent-in-Suit;
- 28 2. That Defendant, Defendant's officers, agents, servants, employees,

1 and attorneys, and those persons in active concert or participation with them, be
2 preliminarily and permanently enjoined from infringement of the Patent-in-Suit,
3 including but not limited to any making, using, offering for sale, selling, or
4 importing of unlicensed infringing products within and without the United States;

5 3. Compensation for all damages caused by Defendant's infringement of
6 the Patent-in-Suit to be determined at trial;

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

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

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

12 **HANDAL & ASSOCIATES**

13 Dated: February 17,2015

14 By: /s/Anton N. Handal
15 Anton N. Handal
16 Pamela C. Chalk
17 Gabriel G. Hedrick
18 Attorneys for Plaintiff
19 e.Digital Corporation
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims.

HANDAL & ASSOCIATES

Dated: February 17, 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 17th day of February, 2015 at San Diego, California.

HANDAL & ASSOCIATES

Dated: February 17, 2015

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