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e.Digital Corporation

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

e.Digital Corporation,  
Plaintiff,

v.

Nest Labs, Inc., a Delaware Corporation  
Defendant.

Case No.

**COMPLAINT FOR PATENT  
INFRINGEMENT**  
**DEMAND FOR JURY TRIAL**

Plaintiff e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its undersigned counsel, complains and alleges against Defendant Nest Labs, Inc., (“Nest” or “Defendant”) as follows:

**NATURE OF THE ACTION**

1. This is a civil action for infringement of a patent arising under the laws of the United States relating to patents, 35 U.S.C. § 101, *et seq.*, including, without limitation, 35 U.S.C. §§ 271, 281. Plaintiff e.Digital seeks a preliminary and permanent injunction and monetary damages for patent infringement.

**JURISDICTION AND VENUE**

2. This court has subject matter jurisdiction over this case for patent infringement

1 under 28 U.S.C. §§ 1331 and 1338(a) and pursuant to the patent laws of the United States of  
2 America, 35 U.S.C. § 101, *et seq.*

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

11 4. This Court has personal jurisdiction over Defendant because, on information and  
12 belief, Defendant maintains an office at 3400 Hillview Ave., Palo Alto, CA 94304, California.  
13 Also, Plaintiff is informed and believes that Nest transacts continuous and systematic retail  
14 business within the State of California and the Northern District of California. This Court has  
15 personal jurisdiction over the Defendant because Plaintiff is informed and believes that this  
16 Defendant's infringing activities, including, without limitation, the making, using, selling and/or  
17 offering to sell infringing products, occur in the State of California and the Northern District of  
18 California. In particular, Defendant sells its infringing products at local retail stores within the  
19 Northern District such as, by way of example, Home Depot and Best Buy. Finally, this Court  
20 has personal jurisdiction over Defendant because, on information and belief, Defendant has  
21 made, used, sold and/or offered for sale its infringing products and placed such infringing  
22 products in the stream of interstate commerce with the expectation that such infringing products  
23 would be made, used, sold and/or offered for sale within the State of California and the Northern  
24 District of California. Finally, upon information and belief, certain of the products manufactured  
25 by or for Defendant have been and/or are currently sold and/or offered for sale at, among other  
26 places, the Nest website located at <https://store.nest.com> to consumers including, but not limited  
27 to, consumers located within the State of California and this District.

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**PARTIES**

5. 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.

6. Upon information and belief, Defendant Nest, Inc., is a Delaware Corporation with corporate offices in the Northern District of California, located at 3400 Hillview Ave., Palo Alto, CA 94304, California.

**THE ACCUSED PRODUCTS**

7. The Defendant's accused products for purposes of the asserted patents include but are not limited to sensor-based products and services, such as, without limitation, Defendant's remote monitoring systems, including remote sensors, servers and mobile applications sold as "Nest" branded products and services (the "Accused Products" or "Nest System"). Defendant's Accused Products also work in conjunction with mobile applications marketed, sold and/or distributed by its wholly-owned subsidiary, Dropcam, Inc. Upon information and belief, based on the foregoing, Nest directs or controls the activities of Dropcam, Inc. or otherwise engages in a joint enterprise with Dropcam, Inc. with respect to the Accused Products.

**THE ASSERTED PATENTS**

8. On April 7, 2015, the United States Patent and Trademark office duly and legally issued United States Patent No. 9,002,331, entitled "System and Method for Managing Mobile Communications" ("the '331 patent"), which is a continuation of U.S. Patent No. 8,311,522 ("the '522 patent"). Patrick Nunally is the sole named inventor and Plaintiff e.Digital is assignee and owner of the entire right, title and interest in and to the '331 patent and vested with the right to bring this suit for damages and other relief. A true and correct copy of the '331 patent is attached hereto as Exhibit "A."

9. On November 3, 2015, the United States Patent and Trademark office duly and legally issued United States Patent No. 9,178,983, also entitled "System and Method of Managing Mobile Communications" ("the '983 patent"). The '983 patent is a continuation of U.S. Patent No. 8,315,618, which is, in turn, a continuation of the '522 patent. Patrick Nunally is the sole named inventor and Plaintiff e.Digital is assignee and owner of the entire right, title and

1 interest in and to the '983 patent and vested with the right to bring this suit for damages and  
 2 other relief. A true and correct copy of the '983 patent is attached hereto as Exhibit "B."

3 **COUNT ONE**

4 **INFRINGEMENT OF THE '331 PATENT BY DEFENDANT**

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

7 11. Defendant has knowledge of infringement of the '331 patent since at least the  
 8 filing of this complaint.

9 12. Generally speaking, the accused Nest System utilizes sensors, such as cameras,  
 10 infrared sensors, and microphones, for generating sensor data representing a characteristic(s) of  
 11 the user's activity. The Nest System further stores in memory a plurality of social templates  
 12 containing parameters used in classifying activities, such as, for example, motion detection.  
 13 Sensor data is compiled the Nest System's cloud servers or other processing devices and  
 14 compared to the parameters of one or more social templates using, *e.g.*, the "Nest Aware"  
 15 service. When detected activity satisfies certain criteria of a social template as determined by the  
 16 Nest System cloud servers/processors, the Nest System utilizes a social hierarchy to perform  
 17 varying operations, such as sending alerts or other information to users via "push" notifications  
 18 to Apple or Android mobile devices through the Nest or Dropcam mobile applications or via  
 19 email to mobile or desktop devices.

20 13. The Accused Products, alone or in combination with other products, directly or  
 21 alternatively under the doctrine of equivalents practice each of the limitations of independent  
 22 claim 1 and 17 and dependent claims 2, 3, 4, 11, 12, and 16 of the '331 patent in violation of 35  
 23 U.S.C. § 271(a) when Defendant demonstrates, tests or otherwise uses the accused products in  
 24 the United States.

25 14. Plaintiff alleges on information and belief that Defendant has, in the United  
 26 States, without authority, actively induced and continues to actively induce infringement of the  
 27 asserted claims of the '331 patent in violation of 35 U.S.C. § 271(b) by among other things  
 28 posting information about and demonstration videos showing how to infringe the asserted patents

1 as more specifically set forth below.

2 15. Plaintiff similarly alleges upon information and belief that, without authority,  
3 Defendant has contributed and continues to contribute to the infringement of the asserted claims  
4 of the '331 patent in violation of 35 U.S.C. § 271(c) by importing into the United States, selling  
5 and/or offering to sell within the United States accused products, that at a minimum include  
6 wireless camera and/or other sensor products together with remote monitoring and  
7 communication systems constituting material components of the accused products, that  
8 Defendant knows were made and/or especially adapted for use in the accused products and/or are  
9 especially adapted for use in infringing the asserted claims of the '331 patent; and which are not  
10 otherwise staple articles of commerce suitable for substantial use in a manner that does not  
11 infringe the asserted claims of the '331 patent.

12 16. Plaintiff is informed and believes that Defendant intentionally sells, ships or  
13 otherwise delivers the accused products in the United States, with knowledge that are designed to  
14 and do practice the infringing features of the asserted claims of the '331 patent.

15 17. Plaintiff alleges that Defendant encourages others to directly infringe the asserted  
16 claims of the '331 patent in violation of 35 U.S.C. § 271(b) and (c) by, among other things,  
17 advertising and promoting the sale and use of the accused products and providing operating  
18 manuals, guides, instructional and/or informational videos and other materials designed to  
19 instruct others how to use the products in an infringing manner. In particular, Defendant's  
20 product literature, materials and instructional videos advertise and encourage customers to use  
21 the accused product(s) for remote monitoring, which utilizes the devices described by the '331  
22 patent in a manner Defendant knows infringes the patent.

23 18. Information about and demonstration videos showing how to use the accused  
24 products so as to infringe the asserted patents are posted by Nest on its YouTube channel at  
25 <https://www.youtube.com/user/Nest> and on its community page at  
26 <https://community.nest.com/welcome>.

27 19. The same is available on Nest's social media sites such as: Facebook  
28 <https://www.facebook.com/nest>; Twitter <https://twitter.com/nest/>; and google+

1 <https://plus.google.com/+Nest/posts>.

2 20. Nest also provides operating manuals, user or installation guides, “quick reference  
3 guides,” instructional/informational videos on its website and other public websites that instruct  
4 customers and end-users on how to purchase the Accused Products and set them up in  
5 conjunction with the Defendant’s servers, mobile apps, and/or web sites. (See, e.g.  
6 <https://nest.com/support/>). Among other things, such materials lay out step-by-step instructions  
7 on how to set up an apparatus or system that infringes the asserted claims of the asserted patents.

8 21. Plaintiff believes and thereupon alleges that Nest is aware that its customers and  
9 end-users are using the accused products in an infringing manner based on, among other things:  
10 the discussions, questions, answers, and/or comments posted on its website, YouTube page,  
11 Twitter page, and/or Facebook page where Nest’s authorized agents, customers and/or end-users  
12 discuss and disclose the use of the accused products, a process which Nest knows infringes the  
13 patents-in-suit as alleged herein.

14 22. Plaintiff is without an adequate remedy at law and has thus been irreparably  
15 harmed by these acts of infringement. Plaintiff asserts upon information and belief that  
16 infringement of the asserted claims of the ’331 patent is continuous and ongoing unless and until  
17 Defendant is enjoined from further infringement by the court.

## 18 **COUNT TWO**

### 19 **INFRINGEMENT OF THE ’983 PATENT BY DEFENDANT**

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

22 24. Defendant has knowledge of infringement of the ’983 patent since at least the  
23 filing of this complaint.

24 25. Generally speaking, the accused Nest System utilizes sensors, such as cameras,  
25 infrared sensors, and microphones, for generating sensor data representing a characteristic(s) of  
26 the user’s activity. The Nest System further stores in memory a plurality of social templates  
27 containing parameters used in classifying activities, such as, for example, motion detection.  
28 Sensor data is compiled the Nest System’s cloud servers or other processing devices and

1 compared to the parameters of one or more social templates using, *e.g.*, the “Nest Aware”  
2 service. When detected activity satisfies certain criteria of a social template as determined by the  
3 Nest System cloud servers/processors, the Nest System utilizes a social hierarchy to perform  
4 varying operations, such as sending alerts or other information to users via “push” notifications  
5 to Apple or Android mobile devices through the Nest or Dropcam mobile applications or via  
6 email to mobile or desktop devices.

7 26. The accused products, alone or in combination with other products, directly or  
8 alternatively under the doctrine of equivalents practice each of the limitations of independent  
9 claims 1 and 20 and dependent claims 8, 12, 13, 14, 15, 16, 17, 18, 19, 27, 31, 32, 33, 34, and 35  
10 of the ’983 patent (hereafter “the asserted claims of the ’983 patent”) in violation of 35 U.S.C. §  
11 271(a) when Defendant demonstrates, tests or otherwise uses the accused products in the United  
12 States.

13 27. Plaintiff alleges on information and belief that Defendant has, in the United  
14 States, without authority, actively induced and continues to actively induce infringement of the  
15 asserted claims of the ’983 patent in violation of 35 U.S.C. § 271(b) by among other things  
16 posting information about and demonstration videos showing how to infringe the asserted patents  
17 as more specifically set forth below.

18 28. Plaintiff similarly alleges upon information and belief that, without authority,  
19 Defendant has contributed and continues to contribute to the infringement of the asserted claims  
20 of the ’983 patent in violation of 35 U.S.C. § 271(c) by importing into the United States, selling  
21 and/or offering to sell within the United States accused products, that at a minimum include  
22 wireless camera and/or other sensor products together with remote monitoring and  
23 communication systems constituting material components of the accused products, that  
24 Defendant knows were made and/or especially adapted for use in the accused products and/or are  
25 especially adapted for use in infringing the asserted claims of the ’983 patent; and which are not  
26 otherwise staple articles of commerce suitable for substantial use in a manner that does not  
27 infringe the asserted claims of the ’983 patent.

28 29. Plaintiff is informed and believes that Defendant intentionally sells, ships or

1 otherwise delivers the accused products in the United States, with knowledge that are designed to  
 2 and do practice the infringing features of the asserted claims of the '983 patent.

3 30. Plaintiff alleges that Defendant encourages others to directly infringe the asserted  
 4 claims of the '983 patent in violation of 35 U.S.C. § 271(b) and (c) by, among other things,  
 5 advertising and promoting the sale and use of the accused products, and by providing operating  
 6 manuals, guides, instructional and/or informational videos and other materials designed to  
 7 instruct others how to use the products in an infringing manner. In particular, Defendant's  
 8 product literature, materials and instructional videos advertise and encourage customers to use  
 9 the accused product(s) for remote monitoring, which utilizes the devices described by the '983  
 10 patent in a manner Defendant knows infringes the patent.

11 31. Information about and demonstration videos showing how to use the accused  
 12 products so as to infringe the asserted patents are posted by Nest on its YouTube channel at  
 13 <https://www.youtube.com/user/Nest> and on its community page at  
 14 <https://community.nest.com/welcome>.

15 32. The same is available on Nest's social media sites such as: Facebook  
 16 <https://www.facebook.com/nest>; Twitter <https://twitter.com/nest/>; and google+  
 17 <https://plus.google.com/+Nest/posts>.

18 33. Nest also provides operating manuals, user or installation guides, "quick reference  
 19 guides," instructional/informational videos on its website and other public websites that instruct  
 20 customers and end-users on how to purchase the Accused Products and set them up in  
 21 conjunction with the Defendant's servers, mobile apps, and/or web sites. (See, e.g.  
 22 <https://nest.com/support/>). Among other things, such materials lay out step-by-step instructions  
 23 on how to set up an apparatus or system that infringes the asserted claims of the asserted patents.

24 34. Plaintiff believes and thereupon alleges that Nest is aware that its customers and  
 25 end-users are using the accused products in an infringing manner based on, among other things:  
 26 the discussions, questions, answers, and/or comments posted on its website, YouTube page,  
 27 Twitter page, and/or Facebook page where Nest's authorized agents, customers and/or end-users  
 28 discuss and disclose the use of the accused products, a process which Nest knows infringes the



1 patents-in-suit as alleged herein.

2 35. Plaintiff is without an adequate remedy at law and has thus been irreparably  
3 harmed by these acts of infringement. Plaintiff asserts upon information and belief that  
4 infringement of the asserted claims of the '983 patent is continuous and ongoing unless and until  
5 Defendant is enjoined from further infringement by the court.

6 **PRAYER FOR RELIEF**

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

8 1. That Defendant has infringed the Patents-in-Suit;

9 2. That Defendant, Defendant's officers, agents, servants, employees, and attorneys,  
10 and those persons in active concert or participation with them, be preliminarily and permanently  
11 enjoined from infringement of the Patents-in-Suit, including but not limited to any making,  
12 using, offering for sale, selling, or importing of unlicensed infringing products within and  
13 without the United States;

14 3. Compensation for all damages caused by Defendant's infringement of the Patents-  
15 in-Suit to be determined at trial;

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

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

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

21 HANDAL & ASSOCIATES

22  
23 Dated: January 22, 2016

By: /s/Gabriel G. Hedrick  
Gabriel G. Hedrick  
Attorneys for Plaintiff  
e.Digital Corporation

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all claims.

HANDAL & ASSOCIATES

Dated: January 22, 2016

By: /s/Gabriel G. Hedrick  
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 is 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 22nd day of January 2016 at San Diego, California.

Dated: January 22, 2016

By: /s/ Gabriel G. Hedrick

Gabriel G. Hedrick