

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CIVIL ACTION NO. 09-CV-02578-MSK-MJW

E.DIGITAL CORPORATION;
Plaintiff,

v.

PENTAX OF AMERICA, INC.;
HOYA CORPORATION;
HOYA CORPORATION USA;
CANON USA, INC.;
CANON, INC.;
COBY ELECTRONICS CORP.;
DXG TECHNOLOGY (U.S.A.), INC.;
DXG TECHNOLOGY CORPORATION;
HTC AMERICA, INC.;
HTC CORPORATION;
IKEGAMI ELECTRONICS (USA), INC.;
IMATION CORPORATION;
KYOCERA COMMUNICATIONS, INC.;
KYOCERA WIRELESS CORPORATION;
KYOCERA INTERNATIONAL, INC.;
KYOCERA CORPORATION;
LEICA CAMERA, INC.;
MARANTZ AMERICA, INC.;
D&M HOLDINGS U.S. INC.;
D&M HOLDINGS, INC.;
NOKIA, INC.;
NOKIA CORPORATION;
PANASONIC CORPORATION OF NORTH AMERICA;
PANASONIC CORPORATION;
SUMMIT TECHNOLOGY GROUP, LLC;
SAKAR INTERNATIONAL, INC.;
SAMSON TECHNOLOGIES CORP.;
TEAC AMERICA, INC.; and
VTECH ELECTRONICS NORTH AMERICA, LLC;
Defendants.

PLAINTIFF'S AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff e.Digital Corporation (“e.Digital”) submits this Amended Complaint for Patent Infringement against each and all of the Defendants, and in support thereof states as follows:

NATURE OF ACTION

1. This action seeks monetary damages and injunctive relief under the patent laws of the United States, Title 35 of the United States Code, to remedy Defendants’ infringement of United States Patent No. 5,491,774 (“the ‘774 Patent”) issued on February 13, 1996 and entitled “Handheld Record and Playback Device with Flash Memory,” and United States Patent No. 5,742,737 (“the ‘737 Patent”) issued on April 21, 1998 and entitled “Method for Recording Voice Messages on Flash Memory in a Hand Held Recorder,” and the harm to e.Digital caused by Defendants’ infringement. Copies of the ‘774 Patent and the ‘737 Patent are attached hereto as Exhibits A and B, respectively.

PARTIES

2. e.Digital is a Delaware corporation having its principal place of business located at 16770 West Bernardo Drive, San Diego, California 92127.

3. Upon information and belief, Defendant PENTAX OF AMERICA, INC. is a Delaware corporation, registered as a foreign corporation in Colorado with its principal place of business located at 600 12th Street, Suite 300, Golden, Colorado 80401. Upon further information and belief, Defendant HOYA CORPORATION is a Japanese corporation with its principal place of business located at 2-7-5 Naka-Ochiai, Shinjuku-ku, Tokyo 161-8525 Japan. Upon further information and belief, Defendant HOYA CORPORATION USA is a California corporation with its principal place of business located at 101 Metro Drive, Suite 500, San Jose, California 95110. Hereinafter PENTAX OF AMERICA INC., HOYA CORPORATION, and

HOYA CORPORATION USA will be collectively referred to as “Pentax”.

4. Upon information and belief, Defendant CANON USA, INC. is a New York corporation with its principal place of business located at One Canon Plaza, Lake Success, New York 11042. Upon further information and belief, Defendant CANON, INC. is a Japanese corporation with its principal place of business located at 30-2, Shimomaruko 3-chome, Ohta-ku, Tokyo 146-8501, Japan. Hereinafter CANON USA, INC. and CANON, INC. will be collectively referred to as “Canon”. Canon USA, Inc. is registered with the Colorado Secretary of State as a foreign corporation and has appointed The Corporation Company, 1675 Broadway Suite 1200, Denver, Colorado 80202 as its agent for service of process.

5. Upon information and belief, Defendant COBY ELECTRONICS CORPORATION (“Coby”) is a New York corporation with its principal place of business located at 1991 Marcus Avenue Suite. 301, Lake Success, New York 11042.

6. Upon information and belief, Defendant DXG TECHNOLOGY (U.S.A.), INC. is a California corporation with its principal place of business located at 1001 Lawson Street, City of Industry, California 91748. Upon further information and belief, Defendant DXG TECHNOLOGY CORPORATION is a Taiwanese corporation with its principal place of business located at 15F., No. 4, Sec 3, Ming-Chuan East Road, Taipei 10477. Hereinafter DXG TECHNOLOGY (U.S.A.), INC. and DXG TECHNOLOGY CORPORATION will be collectively referred to as “DXG”.

7. Upon information and belief, Defendant HTC AMERICA, INC. is a Texas corporation with its principal place of business located at 13920 South East Eastgate Way, Suite 400, Bellevue, Washington 98005. Upon further information and belief, Defendant HTC

CORPORATION is a Taiwanese corporation with its principal place of business located at 23 Hsin Hua Rd., Taoyuan 330, Taiwan, R. O. C. Hereinafter HTC AMERICA, INC. and HTC CORPORATION will be collectively referred to as “HTC”.

8. Upon information and belief, Defendant IKEGAMI ELECTRONICS (USA), INC. (“Ikegami”) is a New York corporation with its principal place of business located at 37 Brook Avenue, Maywood, New Jersey 07607.

9. Upon information and belief, IMATION CORPORATION (“Imation”) is a Delaware corporation with its principal place of business located at 1 Imation Way, Oakdale, Minnesota 55128.

10. Upon information and belief, Defendant KYOCERA COMMUNICATIONS, INC. is a California corporation with its principal place of business located at 10300 Campus Point Drive, San Diego, CA 92121. Upon further information and belief, KYOCERA WIRELESS CORPORATION is a California corporation with its principal place of business located at 10300 Campus Point Drive, San Diego, CA 92121. Upon further information and belief, Defendant KYOCERA INTERNATIONAL, INC. is a California corporation with its principal place of business located at 8611 Balboa Avenue, San Diego, California 92123-1580. Upon further information and belief, Defendant KYOCERA CORPORATION is a Japanese corporation with its principal place of business located at 6 Takeda Tobadono-cho, Fushimi-ku, Kyoto 612-8501, Japan. Hereinafter KYOCERA COMMUNICATIONS, INC., KYOCERA WIRELESS CORPORATION, KYOCERA INTERNATIONAL, INC., and KYOCERA CORPORATION will be collectively referred to as “Kyocera”.

11. Upon information and belief, Defendant LEICA CAMERA, INC. (“Leica”) is a

Delaware corporation with its principal place of business located at 1 Pearl Court, Unit A, Allendale, New Jersey, 07401.

12. Upon information and belief, Defendant MARANTZ AMERICA, INC. is a California corporation with its principal place of business located at 100 Corporate Drive, Mahwah, New Jersey 07430. Upon further information and belief, Defendant D&M HOLDINGS US INC. is a Delaware corporation with its principal place of business located at 100 Corporate Drive, Mahwah, New Jersey 07430. Upon further information and belief, Defendant D&M HOLDINGS INC. is a Japanese corporation with its principal place of business located at D&M Building 2-1, Nisshin-cho, Kawasaki-ku, Kawasaki-shi, Kanagawa, 210-8569 Japan. Hereinafter MARANTZ AMERICA, INC., D&M HOLDINGS US INC., and D&M HOLDINGS INC. will be collectively referred to as “Marantz”.

13. Upon information and belief, Defendant NOKIA, INC. is a Delaware corporation with its principal place of business located at 102 Corporate Park Drive, White Plains, New York 10604. Nokia is registered to do business in Colorado as a foreign corporation and has appointed National Registered Agents Inc., 1535 Grant Street Suite 140, Denver, Colorado 80203, as its agent for service of process. Upon further information and belief, NOKIA CORPORATION is a Finnish corporation with its principal place of business located at Keilalahdentie 2-4, P.O. Box 226, FIN-00045 Nokia Group, Finland. Hereinafter NOKIA, INC. and NOKIA CORPORATION will be collectively referred to as “Nokia”.

14. Upon information and belief, Defendant PANASONIC CORPORATION OF NORTH AMERICA is a Delaware corporation with its principal place of business located at One Panasonic Way, Secaucus, New Jersey 07094. Panasonic has appointed The Corporation

Company, 1675 Broadway, Suite 1200, Denver, Colorado 80202 as its agent for service of process. Upon further information and belief, PANASONIC CORPORATION is a Japanese corporation with its principal place of business located at 1006, Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan. Hereinafter PANASONIC CORPORATION OF NORTH AMERICA and PANASONIC CORPORATION will collectively be referred to as "Panasonic".

15. Upon information and belief, Defendant SUMMIT TECHNOLOGY GROUP, LLC ("Polaroid") is a New Jersey limited liability corporation with its principal place of business located at 145 Belmont Drive, Somerset, NJ 08873.

16. Upon information and belief, Defendant SAKAR INTERNATIONAL, INC. ("Sakar") is a New York corporation with its principal place of business located at 195 Carter Drive, Edison, New Jersey 08817.

17. Upon information and belief, Defendant SAMSON TECHNOLOGIES CORP. ("Samson") is a New York corporation with its principal place of business located at 45 Gilpin Avenue, Suite 100, Hauppauge, New York 11788.

18. Upon information and belief, Defendant TEAC AMERICA, INC. doing business as TASCAM ("Tascam") is a California corporation with its principal place of business located at 7733 Telegraph Road, Montebello, California 90640.

19. Upon information and belief, Defendant VTECH ELECTRONICS NORTH AMERICA, LLC ("Vtech") is a Delaware limited liability company with its principal place of business located at 1155 West Dundee, Suite 130, Arlington Heights, Illinois 60004-1454.

20. Pentax, Canon, Coby, DXG, HTC, Ikegami, Imation, Kyocera, Leica, Marantz, Nokia, Panasonic, Polaroid, Sakar, Samson, Tascam, and Vtech shall collectively be referred to

herein as the “Defendants.”

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction over this case based on 28 U.S.C. §§ 1331 and 1338(a) because this case presents a well-pleaded federal question under the Patent Act of 1952 (as amended), 35 U.S.C. §§ 1, *et seq.*

22. This Court has personal jurisdiction over the Defendants. Upon information and belief, each of the Defendants has transacted business in this judicial district directly or indirectly through its affiliated subsidiaries and has committed, contributed to, and/or induced acts of patent infringement in this judicial district including, among other things, through the sale of infringing products through retailers located in Colorado and this judicial jurisdiction.

23. Venue within this District is proper under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

COUNT 1: INFRINGEMENT OF THE ‘774 PATENT **(35 U.S.C. § 271)**

24. The allegations of paragraphs 1-22 are incorporated herein by reference.

25. Plaintiff e.Digital is the sole owner by assignment of the ‘774 Patent.

26. Upon information and belief, Pentax manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the ‘774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the ‘774 Patent, including without limitation, the Pentax Optio E70 and other camera and video camera products acting or capable of acting in the manner

described and claimed in the '774 Patent (collectively referred to as "Pentax Infringing Products"). The Pentax Infringing Products have been and are currently sold and/or offered for sale by Pentax Imaging Company in Golden, Colorado.

27. Upon information and belief, Canon manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the '774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the '774 Patent, including without limitation, the Powershot SD1000, Powershot A460, Powershot G7, Powershot S3 IS, Powershot TX1, and other camera and video camera products acting or capable of acting in the manner described and claimed in the '774 Patent (collectively referred to as "Canon Infringing Products"). Certain of the Canon Infringing Products have been and/or are currently sold and/or offered for sale at the Best Buy, located at 1400 Denver West Blvd., Lakewood, Colorado 80401.

28. Upon information and belief, Coby manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the '774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the '774 Patent, including without limitation, the Coby CAM4000 digital video camera and other digital recorder and video camera products acting or capable of acting in the manner described and claimed in the '774 Patent (collectively referred to

as “Coby Infringing Products”). Certain of the products manufactured by Coby have been and/or are currently sold and/or offered for sale at the Walmart, located at 11101 South Parker Road, Parker, Colorado 80134.

29. Upon information and belief, DXG manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the ‘774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the ‘774 Patent, including without limitation, the DXG 595V HD and other video camera products acting or capable of acting in the manner described and claimed in the ‘774 Patent (collectively referred to as “DXG Infringing Products”). Certain of the DXG Infringing Products have been and/or are currently sold and/or offered for sale at Office Max, located at 9575 E. County Line Road, Englewood, Colorado 80112.

30. Upon information and belief, Ikegami manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the ‘774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the ‘774 Patent, including without limitation, the HDS-V10 and other video camera products acting or capable of acting in the manner described and claimed in the ‘774 Patent (collectively referred to as “Ikegami Infringing Products”). Certain of the Ikegami Infringing Products have been and/or are currently sold and/or offered for sale at Burst

Communications Inc., located at 8200 S. Akron, Suite 108, Englewood, Colorado 80112.

31. Upon information and belief, HTC manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the '774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the '774 Patent, including without limitation, the HTC Imagio and other mobile phone products acting or capable of acting in the manner described and claimed in the '774 Patent (collectively referred to as "HTC Infringing Products"). Certain of the HTC Infringing Products have been and are currently sold and/or offered for sale at Best Buy, located at Best Buy, 1400 Denver West Blvd., Lakewood, Colorado 80401.

32. Upon information and belief, Imation manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the '774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the '774 Patent, including without limitation, the Memorex PIC MCC228RSBLK and other video camera products acting or capable of acting in the manner described and claimed in the '774 Patent (collectively referred to as "Imation Infringing Products"). Certain of the Imation Infringing Products have been and are currently sold and/or offered for sale at Toys R' Us, located at 13790 E. Mississippi Ave., Aurora, CO 80012.

33. Upon information and belief, Kyocera manufactures, uses, sells and offers to sell,

and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the '774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the '774 Patent, including without limitation, the SL300RT, X-tc and other camera and mobile phone products acting or capable of acting in the manner described and claimed in the '774 Patent (collectively referred to as "Kyocera Infringing Products"). Certain of the Kyocera Infringing Products have been and are currently sold and/or offered for sale at Best Buy, located at 1400 Denver West Blvd., Lakewood, Colorado 80401.

34. Upon information and belief, Leica manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the '774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the '774 Patent, including without limitation, the LEICA V-LUX1 and other camera products acting or capable of acting in the manner described and claimed in the '774 Patent (collectively referred to as "Leica Infringing Products"). Certain of the Leica Infringing Products have been and are currently sold and/or offered for sale at Englewood Camera, located at 5885 S. Broadway, Englewood, Colorado 80121.

35. Upon information and belief, Marantz manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least

claims 1 and 18 of the '774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the '774 Patent, including without limitation, the Marantz Professional PMD620 and other digital recorder products acting or capable of acting in the manner described and claimed in the '774 Patent (collectively referred to as "Marantz Infringing Products"). Certain of the Marantz Infringing Products have been and are currently sold and/or offered for sale at Guitar Center, located at 1585 South Colorado Boulevard, Denver, Colorado 80222.

36. Upon information and belief, Nokia manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the '774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the '774 Patent, including without limitation, the Nokia 7205 and other mobile phone products acting or capable of acting in the manner described and claimed in the '774 Patent (collectively referred to as "Nokia Infringing Products"). Certain of the Nokia Infringing Products have been and are currently sold and/or offered for sale at Verizon Wireless, located at Cherry Creek Mall, 3000 East First Avenue, Suite 199, Denver, Colorado 80206.

37. Upon information and belief, Panasonic manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the '774 Patent and indirectly infringe (by inducement and/or

contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the '774 Patent, including without limitation, the Panasonic Lumix® DMC-ZS3 and other camera, video camera, and digital recorder products acting or capable of acting in the manner described and claimed in the '774 Patent (collectively referred to as "Panasonic Infringing Products"). Certain of the Panasonic Infringing Products have been and are currently sold and/or offered for sale at the Wolf Camera, located at 14255 W. Colfax Ave., Lakewood, Colorado 80401.

38. Upon information and belief, Polaroid manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the '774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the '774 Patent, including without limitation, the Polaroid DVC-00725F and other camera and video camera products acting or capable of acting in the manner described and claimed in the '774 Patent (collectively referred to as "Polaroid Infringing Products"). Certain of the Polaroid Infringing Products have been and are currently sold and/or offered for sale at Target, located at 14500 W. Colfax Ave., Lakewood, Colorado 80401.

39. Upon information and belief, Sakar manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the '774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly

infringe at least claims 3 and 19 of the '774 Patent, including without limitation, the Vivitar DVR865HD Digital Video Camcorder and other camera and video camera products acting or capable of acting in the manner described and claimed in the '774 Patent (collectively referred to as "Sakar Infringing Products"). Certain of the Sakar Infringing Products have been and are currently sold and/or offered for sale at Walmart, located at 440 Wadsworth Blvd., Lakewood, Colorado 80226.

40. Upon information and belief, Samson manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the '774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the '774 Patent, including without limitation, the Zoom H4n and other products acting or capable of acting in the manner described and claimed in the '774 Patent (collectively referred to as "Samson Infringing Products"). Certain of the Samson Infringing Products have been and are currently sold and/or offered for sale at National Speaker & Sound, located at 1559 S. Broadway, Denver, Colorado 80210.

41. Upon information and belief, Tascam manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the '774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the '774 Patent, including without limitation, the TASCAM

DR-100 and other products acting or capable of acting in the manner described and claimed in the '774 Patent (collectively referred to as "Tascam Infringing Products"). Certain of the Tascam Infringing Products have been and are currently sold and/or offered for sale at Guitar Center, located at 9647 E. County Line Rd., Englewood, Colorado 80112.

42. Upon information and belief, Vtech manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly infringe, or which employ systems or components that make use of systems that directly infringe at least claims 1 and 18 of the '774 Patent and indirectly infringe (by inducement and/or contributory infringement) or which employ systems or components that make use of systems that indirectly infringe at least claims 3 and 19 of the '774 Patent, including without limitation, the vTech Kidizoom and other products acting or capable of acting in the manner described and claimed in the '774 Patent (collectively referred to as "Vtech Infringing Products"). Certain of the VTech Infringing Products have been and are currently sold and/or offered for sale at Walmart, located at 440 Wadsworth Blvd., Lakewood, Colorado 80226.

43. With respect to the Defendants' indirect infringement of claims 3 and 19 of the '774 Patent, such allegations of indirect infringement are based on, at least, the instances in which the Defendants offered for sale the Infringing Products without a removable flash memory card. The corresponding acts of direct infringement would include, at least, the end user of those products using the product with a flash memory card inserted into the receiving socket and that card being selected as the sole memory of the received processed sound electrical signals capable of retaining recorded digital information for storage in nonvolatile form. Furthermore, upon information and belief, Defendants have had knowledge of the '774 Patent since no later than

the time they received the licensing letter sent by e.Digital following the filing of the original Complaint.

44. In response to the Court's request at the January 7 Rule 16 Conference, e.Digital has identified the foregoing independent and dependent claims of the '774 Patent so as to narrow the issues in this case. Nevertheless, e.Digital reserves the right to amend or supplement its identification of asserted claims based on information that it obtains through discovery in this matter and/or in response to the positions taken by the Defendant(s) with respect to their counter-claim(s) that the '774 Patent is invalid.

45. As a result of Defendants' infringement of the '774 Patent, e.Digital has suffered, and will continue to suffer, damages in an amount to be shown at trial.

46. As a result of Defendants' continuing infringement of e.Digital's rights in the '774 Patent, e.Digital is suffering irreparable harm. If Defendants' infringing conduct is not enjoined, e.Digital will continue to suffer irreparable harm.

COUNT 2: INFRINGEMENT OF THE '737 PATENT
(35 U.S.C. § 271)

47. The allegations of paragraphs 1-45 are incorporated herein by reference.

48. Plaintiff e.Digital is the sole owner by assignment of the '737 Patent.

49. Upon information and belief, Pentax manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the Pentax Infringing Products.

50. Upon information and belief, Canon manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the Canon Infringing Products.

51. Upon information and belief, Coby manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the Coby Infringing Products.

52. Upon information and belief, DXG manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the DXG Infringing Products.

53. Upon information and belief, HTC manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or

contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the HTC Infringing Products.

54. Upon information and belief, Imation manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the Imation Infringing Products.

55. Upon information and belief, Ikegami manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the Ikegami Infringing Products.

56. Upon information and belief, Kyocera manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the Kyocera Infringing Products.

57. Upon information and belief, Leica manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or

indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the Leica Infringing Products.

58. Upon information and belief, Marantz manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the Marantz Infringing Products.

59. Upon information and belief, Nokia manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the Nokia Infringing Products.

60. Upon information and belief, Panasonic manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the Panasonic Infringing Products.

61. Upon information and belief, Polaroid manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the Polaroid Infringing Products.

62. Upon information and belief, Sakar manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the Sakar Infringing Products.

63. Upon information and belief, Samson manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the Samson Infringing Products.

64. Upon information and belief, Tascam manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or

contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the Tascam Infringing Products.

65. Upon information and belief, Vtech manufactures, uses, sells and offers to sell, and/or imports into the United States for subsequent use and sale products that directly or indirectly (by inducement and/or contributory infringement) infringe, or which employ systems or components that make use of systems that directly or indirectly (by inducement and/or contributory infringement) infringe at least claim 5 of the '737 Patent, including without limitation, the Vtech Infringing Products.

66. With respect to the Defendants' indirect infringement of claim 5 of the '737 Patent, such allegations of indirect infringement are based on, at least, the Defendants offering for sale the Infringing Products that perform the method steps of claim 5 upon the insertion of an SD or microSD flash memory card. The corresponding acts of direct infringement would include at least the end users of those products using the Infringing Products in conjunction with an SD or micro SD flash memory card to perform the method steps. Furthermore, upon information and belief, Defendants have had knowledge of the '737 Patent since no later than January 7, 2010.

67. In response to the Court's request at the January 7 Rule 16 Conference, e.Digital has identified the foregoing independent claim of the '737 Patent so as to narrow the issues in this case. Nevertheless, e.Digital reserves the right to and anticipates that it will amend or supplement its identification of asserted claims based on information that it obtains through discovery in this matter and/or in response to the positions taken by the Defendant(s) with respect to their counter-claim(s) that the '737 Patent is invalid.

68. As a result of Defendants' infringement of the '737 Patent, e.Digital has suffered, and will continue to suffer, damages in an amount to be shown at trial.

69. As a result of Defendants' continuing infringement of e.Digital's rights in the '737 Patent, e.Digital is suffering irreparable harm. If Defendants' infringing conduct is not enjoined, e.Digital will continue to suffer irreparable harm.

JURY DEMAND

70. e.Digital demands a trial by jury on all claims and issues so triable.

PRAYER FOR RELIEF

WHEREFORE, e.Digital petitions this Court and requests that a judgment be entered and relief be granted as follows:

A. Entering judgment against each of the Defendants and finding that each of the Defendants has infringed the '774 Patent and '737 Patent, as alleged herein (directly, by inducement, and/or contributorily);

B. Preliminarily and permanently enjoining, restraining, and prohibiting each of the Defendants, and any party acting through, for, or in concert with the Defendants from further infringing (directly, by inducement, or contributorily) any claim of the '774 Patent or the '737 Patent;

C. Awarding to Plaintiff such monetary or compensatory damages as may be found or deemed adequate to fully compensate Plaintiff for any of the Defendants' acts of infringement of the '774 Patent and '737 Patent and/or any other injury suffered by Plaintiff due to the Defendants' acts of infringement of the '774 Patent and '737 Patent;

D. Awarding to Plaintiff its costs; and

E. Awarding to Plaintiff such other, further, or general relief as this Court may deem proper.

Dated: February 19, 2010

Respectfully submitted,

DUANE MORRIS LLP

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February, 2010, I electronically filed the foregoing **PLAINTIFF'S AMENDED COMPLAINT FOR PATENT INFRINGEMENT** with the Clerk of the Court using the CM/ECF electronic filing system, which will send an electronic copy of this filing to the following counsel of record:

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