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

12 e.Digital Corporation,
13 Plaintiff,
14 v.
15 iriver, Ltd.; iriver, Inc.; and Buy.com Inc.,
16 Defendants.
17

Case No. **'12CV2800 BTM KSC**

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

18
19
20 Plaintiff e.Digital Corporation ("e.Digital" or "Plaintiff"), by and through its undersigned
21 counsel, complains and alleges against iriver, Ltd. and iriver, Inc. (collectively, "iriver") and
22 Buy.com, Inc. ("Buy.com") (collectively, "Defendants") as follows:

23 **NATURE OF THE ACTION**

24 1. This is a civil action for infringement of a patent arising under the laws of the
25 United States relating to patents, 35 U.S.C. § 101, *et seq.*, including, without limitation, § 281.
26 Plaintiff e.Digital seeks a preliminary and permanent injunction and monetary damages for the
27 infringement of its U.S. Patent Nos. 5,742,737; and 5,491,774.

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1 **JURISDICTION AND VENUE**

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

5 3. Venue properly lies within the Southern District of California pursuant to the
6 provisions of 28 U.S.C. §§ 1391(b), (c), and (d) and 1400(b). On information and belief,
7 Defendant conducts substantial business directly and/or through third parties or agents in this
8 judicial district by selling and/or offering to sell the infringing products and/or by conducting
9 other business in this judicial district. Furthermore, Plaintiff e.Digital is headquartered and has
10 its principal 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 the Defendants because, on information
13 and belief, Defendants transact continuous and systematic business within the State of California
14 and the Southern District of California. In addition, this Court has personal jurisdiction over the
15 Defendants because, on information and belief, this lawsuit arises out of Defendants' infringing
16 activities, including, without limitation, the making, using, selling and/or offering to sell
17 infringing products in the State of California and the Southern District of California. Finally,
18 this Court has personal jurisdiction over the Defendants because, on information and belief,
19 Defendants have made, used, sold and/or offered for sale its infringing products and placed such
20 infringing products in the stream of interstate commerce with the expectation that such infringing
21 products would be made, used, sold and/or offered for sale within the State of California and the
22 Southern District of California.

23 **PARTIES**

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

26 6. Upon information and belief, Defendant iriver, Ltd. is a company registered and
27 lawfully existing under the laws of the People's Republic of China, with an office and principal
28 place of business located at Songshan Lake, Dongguan, Guangdong, China.

7. Upon information and belief, Defendant Iriver, Inc. is a company registered and lawfully existing under the laws of the State of California, with an office and principal place of business located at 39 Peters Canyon Road, Irvine, California 92606.

8. Upon information and belief, Defendant Buy.com, Inc. is a company registered and lawfully existing under the laws of the State of Delaware, with an office and principal place of business located at 85 Enterprise, Suite 100, Aliso Viejo, California 92656.

THE ASSERTED PATENTS

9. On April 21, 1998, United States Patent No. 5,742,737 (“the ’737 patent”) entitled “Method For Recording Voice Messages On Flash Memory In A Hand Held Recorder,” was duly and legally issued by the United States Patent and Trademark Office. The named inventors are Norbert P. Daberko, Richard K. Davis, and Richard D. Bridgewater. e.Digital is the assignee and owner of the entire right, title and interest in and to the ’737 patent and has the right to bring this suit for damages and other relief. A true and correct copy of the ’737 patent is attached hereto as Exhibit A.

10. On October 17, 2012, the United States Patent and Trademark Office issued a Reexamination Certificate for the '737 patent, canceling Claim 5 and adding new Claim 13, which is substantially identical to former claim 5. A true and correct copy of the Reexamination Certificate is attached hereto as Exhibit B.

11. On February 13, 1996, United States Patent No. 5,491,774 (“the ‘774 patent”) entitled “Handheld Record And Playback Device With Flash Memory,” was duly and legally issued by the United States Patent and Trademark Office. The named inventors are Elwood G. Norris, Norbert P. Daberko, and Steven T. Brightbill. e.Digital is the assignee and owner of the entire right, title and interest in and to the ‘774 patent and has the right to bring this suit for damages and other relief. A true and correct copy of the ‘774 patent is attached hereto as Exhibit C.

12. On August 14, 2012, the United States Patent and Trademark Office issued a Reexamination Certificate for the '774 patent. A true and correct copy of the Reexamination Certificate is attached hereto as Exhibit D.

1 COUNT ONE

2 **INFRINGEMENT OF THE '737 PATENT BY DEFENDANTS**

3 13. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
4 in paragraphs 1 through 12 above.

5 14. Upon information and belief, Defendants, without authority, (a) have directly
6 infringed and continue to directly infringe the '737 patent by making, using, offering to sell, or
7 selling within the United States, or importing into the United States, products that practice one
8 ore more claims of the '737 patent in violation of 35 U.S.C. § 271(a); (b) have induced and
9 continue to induce infringement of one or more claims of the '737 patent in violation of 35
10 U.S.C. § 271(b); and (c) have contributed and continue to contribute to the infringement of one
11 ore more claims of the '737 patent in violation of 35 U.S.C. § 271(c).

12 15. The accused products for purposes of the '737 patent include but are not limited
13 to the T5, T6, T8, T9, T60SE, B30, B100, E30, E40, E50, E100, E150, E200, E300, S100, P7,
14 Lplayer, and SPINN mp3 and mp4 players.

15 16. Upon information and belief, certain of these products manufactured by
16 Defendants have been and/or are currently sold and/or are being offered for sale online to
17 consumers including but not limited to consumers located within the State of California at the
18 Buy.com website, located at [http://www.buy.com/prod/iriver-e300-orange-4gb-mp3-mp4-](http://www.buy.com/prod/iriver-e300-orange-4gb-mp3-mp4-player/233181953.html?listingId=224629094)
19 [player/233181953.html?listingId=224629094](http://www.buy.com/prod/iriver-e300-orange-4gb-mp3-mp4-player/233181953.html?listingId=224629094); and/or the iriver, Inc. online store website located
20 at <http://shop.iriverinc.com/storefront.aspx>.

21 17. The accused products, alone or in combination with other products, practice each
22 of the limitations of independent claims 1, 4, 9, and 13, and dependent claims 3 and 6 of the '737
23 patent

24 18. Upon information and belief, Defendants, without authority, have actively
25 induced infringement and continue to actively induce infringement of the '737 patent in violation
26 of 35 U.S.C. § 271(b) by causing others to directly infringe the claims of the '737 patent and/or
27 by intentionally instructing others how to use the accused products in a manner that infringes the
28 claims of the '737 patent. On information and belief, Defendants have induced and continue to

1 induce infringement by instructing customers to operate the products in an infringing manner
2 and/or when Defendants test or otherwise operate the accused products in the United States.

3 19. Upon information and belief, Defendants, without authority, have contributed to
4 and continue to contribute to the infringement of the '737 patent in violation of 35 U.S.C. §
5 271(c) by importing into the United States, selling and/or offering to sell within the United States
6 accused products that (1) constitute a material part of the invention of the '737 patent, (2)
7 Defendants know to be especially adapted for use in infringing the '737 patent, and (3) are not
8 staple articles of commerce suitable for substantial noninfringing use with respect to the '737
9 patent.

10 20. Based on information and belief, Plaintiff alleges that Defendants sell, ship, or
11 otherwise deliver the accused products with all the features required to infringe the asserted
12 claims of the '737 patent. On information and belief, these products are designed to practice the
13 infringing features.

14 21. Defendants had knowledge of infringement of the '737 patent since at least the
15 filing of this complaint and perhaps as early as 2010 by virtue of the Plaintiff's filing of
16 complaints against others within Defendants' industry. On information and belief, Defendants
17 have continued to sell products that practice the '737 patent after acquiring knowledge of
18 infringement.

19 22. Upon information and belief, the infringement by Defendants has been and is
20 willful.

21 23. Plaintiff has been irreparably harmed by these acts of infringement and has no
22 adequate remedy at law. Upon information and belief, infringement of the '737 patent is
23 ongoing and will continue unless Defendants are enjoined from further infringement by the
24 court.

25 **COUNT TWO**

26 **INFRINGEMENT OF THE '774 PATENT BY DEFENDANTS**

27 24. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
28 in paragraphs 1 through 12 above.

1 25. Upon information and belief, Defendants, without authority, (a) have directly
2 infringed and continue to directly infringe the '774 patent by making, using, offering to sell, or
3 selling within the United States, or importing into the United States, products that practice one
4 ore more claims of the '774 patent in violation of 35 U.S.C. § 271(a); (b) have induced and
5 continue to induce infringement of one or more claims of the '774 patent in violation of 35
6 U.S.C. § 271(b); and (c) have contributed and continue to contribute to the infringement of one
7 ore more claims of the '774 patent in violation of 35 U.S.C. § 271(c).

8 26. The accused products for purposes of the '774 patent include but are not limited
9 to the B30, B100, E100, E150, E200, E300, S100, and P7 mp3 and mp4 players.

10 27. Upon information and belief, certain of these products manufactured by
11 Defendants have been and/or are currently sold and/or are being offered for sale online to
12 consumers including but not limited to consumers located within the State of California at the
13 Buy.com website, located at [http://www.buy.com/prod/iriver-e300-orange-4gb-mp3-mp4-](http://www.buy.com/prod/iriver-e300-orange-4gb-mp3-mp4-player/233181953.html?listingId=224629094)
14 [player/233181953.html?listingId=224629094](http://www.buy.com/prod/iriver-e300-orange-4gb-mp3-mp4-player/233181953.html?listingId=224629094); and/or the iriver, Inc. online store website located
15 at <http://shop.iriverinc.com/storefront.aspx>.

16 28. The accused products, alone or in combination with other products, practice each
17 of the limitations of independent claims 33 and 34, and dependent claims 2, 6 through 8, 10
18 through 11, 15 through 16, 18, 23 through 26, and 28 through 31 of the '774 patent.

19 29. Upon information and belief, Defendants, without authority, have actively
20 induced infringement and continues to actively induce infringement of the '774 patent in
21 violation of 35 U.S.C. § 271(b) by causing others to directly infringe the claims of the '774
22 patent and/or by intentionally instructing others how to use the accused products in a manner that
23 infringes the claims of the '774 patent. On information and belief, Defendants have induced and
24 continue to induce infringement by instructing customers to operate the products in an infringing
25 manner and/or when Defendants test or otherwise operate the accused products in the United
26 States.

27 30. Upon information and belief, Defendants, without authority, have contributed to
28 and continue to contribute to the infringement of the '774 patent in violation of 35 U.S.C. §

1 271(c) by importing into the United States, selling and/or offering to sell within the United States
2 accused products that (1) constitute a material part of the invention of the '774 patent, (2)
3 Defendants know to be especially adapted for use in infringing the '774 patent, and (3) are not
4 staple articles of commerce suitable for substantial noninfringing use with respect to the '774
5 patent.

6 31. Based on information and belief, Plaintiff alleges that Defendants sell, ship, or
7 otherwise deliver the accused products with all the features required to infringe the asserted
8 claims of the '774 patent. On information and belief, these products are designed to practice the
9 infringing features.

10 32. Defendants had knowledge of infringement of the '774 patent since at least the
11 filing of this complaint and perhaps as early as 2010 by virtue of the Plaintiff's filing of
12 complaints against others within Defendants' industry. On information and belief, Defendants
13 have continued to sell products that practice the '774 patent after acquiring knowledge of
14 infringement.

15 33. Upon information and belief, the infringement by Defendants has been and is
16 willful.

17 34. Plaintiff has been irreparably harmed by these acts of infringement and has no
18 adequate remedy at law. Upon information and belief, infringement of the '774 patent is
19 ongoing and will continue unless Defendants are enjoined from further infringement by the
20 court.

21 **PRAYER FOR RELIEF**

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

- 23 1. That Defendants be declared to have infringed the Patents-in-Suit;
24 2. That Defendants' infringement of the Patents-in-Suit has been deliberate and
25 willful;
26 3. Preliminarily and permanently enjoining the Defendants' officers, agents,
27 servants, employees, and attorneys, and those persons in active concert or participation with
28 them, from infringement of the Patents-in-Suit, including but not limited to any making, using,

1 offering for sale, selling, or importing of unlicensed infringing products within and without the
2 United States;

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

5 5. Enhancing Plaintiff's damages up to three (3) times their amount pursuant to 35
6 U.S.C. § 284;

7 6. Granting Plaintiff pre- and post-judgment interest on its damages, together with
8 all costs and expenses; and

9 7. Awarding such other relief as this Court may deem just and proper.

10 **HANDAL & ASSOCIATES**

11
12 Dated: November 20, 2012

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

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims.

HANDAL & ASSOCIATES

Dated: November 20, 2012

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