

1 ANTON HANDAL (Bar No. 113812)
anh@handal-law.com
2 GABRIEL HEDRICK (Bar No. 220649)
ghedrick@handal-law.com
3 PAMELA C. CHALK (Bar No. 216411)
pchalk@handal-law.com
4 HANDAL & ASSOCIATES
1200 Third Avenue, Suite 1321
5 San Diego, California 92101
Tel: 619.544.6400
6 Fax: 619.696.0323

7 Attorneys for Plaintiff
e.Digital Corporation
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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

12 e.Digital Corporation,
13 Plaintiff,
14 v.

15 Shaghal, LTD. dba eMatic; Best Buy Co., Inc.;
16 Best Buy Stores, L.P.; Best Buy.Com LLC; and
J & R Electronics Inc.,

17
18 Defendants.
19

Case No. '12CV2801 JAH RBB

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

20 Plaintiff e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its undersigned
21 counsel, complains and alleges against Shaghal, LTD. dba eMatic (hereinafter referred to as
22 “eMatic”), Best Buy Co., Inc., Best Buy Stores L.P.; and Best Buy.Com LLC (collectively “Best
23 Buy”) and J & R Electronics Inc. (“J&R”) (collectively, “Defendants”) as follows:

24 **NATURE OF THE ACTION**

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

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 Defendants because, on information and
13 belief, Defendants transact continuous and systematic business within the State of California and
14 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 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 eMatic is a company registered and
27 lawfully existing under the laws of the State of California, with an office and principal place of
28 business located at 2231 Colby Avenue, Los Angeles, California 90064.

1 hereto as Exhibit A.

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

6 13. On February 13, 1996, United States Patent No. 5,491,774 ("the '774 patent")
7 entitled "Handheld Record And Playback Device With Flash Memory," was duly and legally
8 issued by the United States Patent and Trademark Office. The named inventors are Elwood G.
9 Norris, Norbert P. Daberko, and Steven T. Brightbill. e.Digital is the assignee and owner of the
10 entire right, title and interest in and to the '774 patent and has the right to bring this suit for
11 damages and other relief. A true and correct copy of the '774 patent is attached hereto as Exhibit
12 C.

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

16 **COUNT ONE**

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

18 15. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
19 in paragraphs 1 through 14 above.

20 16. Upon information and belief, Defendants, without authority, (a) have directly
21 infringed and continue to directly infringe the '737 patent by making, using, offering to sell, or
22 selling within the United States, or importing into the United States, products that practice one
23 ore more claims of the '737 patent in violation of 35 U.S.C. § 271(a); (b) have induced and
24 continue to induce infringement of one or more claims of the '737 patent in violation of 35
25 U.S.C. § 271(b); and (c) have contributed and continue to contribute to the infringement of one
26 ore more claims of the '737 patent in violation of 35 U.S.C. § 271(c).

27 17. The accused products for purposes of the '737 patent include but are not limited
28 to the Esport Clip, E4 Series, E5 Series, E6 Series, E6 Jr. series, E8 Series, EM102 VID, EM144

1 VID, EM714 VIDHD, EM002, and EM162/164/168 mp3/video players; eCAM series
2 camcorders; Funtab Pro, EXP8, EGP007, EGLIDEXLPROII, EGS001, EGL26BL, EGL25BL,
3 EGLXL102B, EGLIDEPROX, EGLIDEPROX, EGLIDEPROX, EGLIDEPROX, EGLIDEPROX, EGLIDEPROX,
4 EGLIDEXL2, EGLIDE1, EGLIDE2, EGLIDE2.2, EL440, tablets and EB104, EB105, EB106,
5 EGL101, EBW204, EBW 304 and EBW404 e-readers.

6 18. Upon information and belief, certain of these products manufactured and/or
7 otherwise supplied by Defendant eMatic have been and/or are currently sold and/or offered for
8 sale at, among other places, the Best Buy store located at 5151 Mission Center Road, San Diego,
9 CA 92108 and/or sold online at the Best Buy website at www.bestbuy.com to consumers
10 including, but not limited to, consumers located within the State of California.

11 19. Upon information and belief, certain of these products manufactured and/or
12 otherwise supplied by Defendant eMatic have been and/or are currently sold and/or offered for
13 sale at, among other places, the Walmart website at www.walmart.com to consumers including,
14 but not limited to, consumers located within the State of California.

15 20. Upon information and belief, certain of these products manufactured and/or
16 otherwise supplied by Defendant eMatic have been and/or are currently sold and/or offered for
17 sale online at the J&R website at www.jr.com to consumers including, but not limited to,
18 consumers located within the State of California.

19 21. The accused products, alone or in combination with other products, practice each
20 of the limitations of independent claims 1, 4, 9, and 13, and dependent claims 2 through 3 and 6
21 of the '737 patent

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

1 ore more claims of the '774 patent in violation of 35 U.S.C. § 271(a); (b) have induced and
2 continue to induce infringement of one or more claims of the '774 patent in violation of 35
3 U.S.C. § 271(b); and (c) have contributed and continue to contribute to the infringement of one
4 ore more claims of the '774 patent in violation of 35 U.S.C. § 271(c).

5 30. The accused products for purposes of the '774 patent include but are not limited
6 to the Esport Clip, E4 Series, E5 Series, E6 Series, E6 Jr. series, E8 Series, and EM714 VIDHD
7 mp3/video players; eCAM series camcorders; Funtab Pro, EXP8, EGP007, EGLIDEXLPROII,
8 EGS001, EGL26BL, EGL25BL, EGLXL102B, EGLIDEPROX, EGLIDEPRISM, EGLIDEPRO,
9 EGLIDEPRO2, EGLIDEPRO3, EGLIDEXL2, EGLIDE1, EGLIDE2, EGLIDE2.2, EL440,
10 tablets and EB104, EB105, EB106, EGL101, EBW204, EBW 304 and EBW404 e-readers.

11 31. Upon information and belief, certain of these products manufactured and/or
12 otherwise supplied by Defendant eMatic have been and/or are currently sold and/or offered for
13 sale at, among other places, the Best Buy store located at 5151 Mission Center Road, San Diego,
14 CA 92108 and/or sold online at the Best Buy website at www.bestbuy.com to consumers
15 including, but not limited to, consumers located within the State of California.

16 32. Upon information and belief, certain of these products manufactured and/or
17 otherwise supplied by Defendant eMatic have been and/or are currently sold and/or offered for
18 sale at, among other places, the Walmart website at www.walmart.com to consumers including,
19 but not limited to, consumers located within the State of California.

20 33. Upon information and belief, certain of these products manufactured and/or
21 otherwise supplied by Defendant eMatic have been and/or are currently sold and/or offered for
22 sale online at the J&R website at www.jr.com to consumers including, but not limited to,
23 consumers located within the State of California.

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

27 35. Upon information and belief, Defendants, without authority, have actively
28 induced infringement and continues to actively induce infringement of the '774 patent in

1 violation of 35 U.S.C. § 271(b) by causing others to directly infringe the claims of the '774
2 patent and/or by intentionally instructing others how to use the accused products in a manner that
3 infringes the claims of the '774 patent. On information and belief, Defendants have induced and
4 continue to induce infringement by instructing customers to operate the products in an infringing
5 manner and/or when Defendants test or otherwise operate the accused products in the United
6 States.

7 36. Upon information and belief, Defendants, without authority, have contributed to
8 and continue to contribute to the infringement of the '774 patent in violation of 35 U.S.C. §
9 271(c) by importing into the United States, selling and/or offering to sell within the United States
10 accused products that (1) constitute a material part of the invention of the '774 patent, (2)
11 Defendants know to be especially adapted for use in infringing the '774 patent, and (3) are not
12 staple articles of commerce suitable for substantial noninfringing use with respect to the '774
13 patent.

14 37. Based on information and belief, Plaintiff alleges that Defendants sell, ship, or
15 otherwise deliver the accused products with all the features required to infringe the asserted
16 claims of the '774 patent. On information and belief, these products are designed to practice the
17 infringing features.

18 38. Defendants had knowledge of infringement of the '774 patent since at least the
19 filing of this complaint and perhaps as early as 2010 by virtue of the Plaintiff's filing of
20 complaints against others within Defendants' industry. On information and belief, Defendants
21 have continued to sell products that practice the '774 patent after acquiring knowledge of
22 infringement.

23 39. Upon information and belief, the infringement by Defendants has been and is
24 willful.

25 40. Plaintiff has been irreparably harmed by these acts of infringement and has no
26 adequate remedy at law. Upon information and belief, infringement of the '774 patent is
27 ongoing and will continue unless Defendant is enjoined from further infringement by the court.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

1. That Defendants be declared to have infringed the Patents-in-Suit;
2. That Defendants' infringement of the Patents-in-Suit has been deliberate and willful;
3. Preliminarily and permanently enjoining the Defendants' officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, from infringement of the Patents-in-Suit, including but not limited to any making, using, offering for sale, selling, or importing of unlicensed infringing products within and without the United States;
4. Compensation for all damages caused by Defendants' infringement of the Patents-in-Suit to be determined at trial;
5. Enhancing Plaintiff's damages up to three (3) times their amount pursuant to 35 U.S.C. § 284;
6. Granting Plaintiff pre- and post-judgment interest on its damages, together with all costs and expenses; and
7. Awarding such other relief as this Court may deem just and proper.

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

DEMAND FOR JURY TRIAL

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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