

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
8

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

11 e.Digital Corporation,
12

13 Plaintiff,

14 v.

15 Creative Labs, Inc.; Creative Technology, Ltd.,
Buy.Com, Inc.; J & R Electronics, Inc.;
16 Newegg Inc.,

17 Defendants.
18

Case No. '12CV2879 LAB BLM

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

19 Plaintiff e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its undersigned
20 counsel, complains and alleges against Creative Labs, Inc. and Creative Technology, Ltd.
21 (collectively “Creative”); Buy.Com, Inc. (“Buy.com”); J & R Electronics Inc. (“J&R”); and
22 Newegg Inc. (“Newegg”) 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.
28

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 Creative Labs, Inc. is a company
27 registered and lawfully existing under the laws of the State of California, with an office and
28 principal place of business located at 1901 McCarthy Boulevard, Milpitas, California 95035.

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 ZEN Style 100, M100, 300, and M300 series, Zen Touch 2 series, Zen X-Fi series, Zen

1 MX and Zen Mozaic series mp3 players; and the Vado series camcorders.

2 18. The accused products, alone or in combination with other products, practice each
3 of the limitations of independent claims 1, 4, 9, 11 and 13, and dependent claims 3 and 6 of the
4 '737 patent

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

12 20. Upon information and belief, Defendants, without authority, have contributed to
13 and continue to contribute to the infringement of the '737 patent in violation of 35 U.S.C. §
14 271(c) by importing into the United States, selling and/or offering to sell within the United States
15 accused products that (1) constitute a material part of the invention of the '737 patent, (2)
16 Defendants know to be especially adapted for use in infringing the '737 patent, and (3) are not
17 staple articles of commerce suitable for substantial noninfringing use with respect to the '737
18 patent.

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

23 22. Defendants had knowledge of infringement of the '737 patent since at least the
24 filing of this complaint and perhaps as early as 2010 by virtue of the Plaintiff's filing of
25 complaints against others within Defendants' industry. On information and belief, Defendants
26 have continued to sell products that practice the '737 patent after acquiring knowledge of
27 infringement.

28 23. Upon information and belief, the infringement by Defendants has been and is

1 willful.

2 24. Plaintiff has been irreparably harmed by these acts of infringement and has no
3 adequate remedy at law. Upon information and belief, infringement of the '737 patent is
4 ongoing and will continue unless Defendant is enjoined from further infringement by the court.

5 **COUNT TWO**

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

7 25. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
8 in paragraphs 1 through 14 above.

9 26. Upon information and belief, Defendants, without authority, (a) have directly
10 infringed and continue to directly infringe the '774 patent by making, using, offering to sell, or
11 selling within the United States, or importing into the United States, products that practice one
12 ore more claims of the '774 patent in violation of 35 U.S.C. § 271(a); (b) have induced and
13 continue to induce infringement of one or more claims of the '774 patent in violation of 35
14 U.S.C. § 271(b); and (c) have contributed and continue to contribute to the infringement of one
15 ore more claims of the '774 patent in violation of 35 U.S.C. § 271(c).

16 27. The accused products for purposes of the '774 patent include but are not limited
17 to the ZEN Style M100 and M300 series, Zen Touch 2 series, Zen X-Fi series, and Zen MX
18 series mp3 players.

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

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

1 States.

2 30. Upon information and belief, Defendants, without authority, have contributed to
3 and continue to contribute to the infringement of the '774 patent in violation of 35 U.S.C. §
4 271(c) by importing into the United States, selling and/or offering to sell within the United States
5 accused products that (1) constitute a material part of the invention of the '774 patent, (2)
6 Defendants know to be especially adapted for use in infringing the '774 patent, and (3) are not
7 staple articles of commerce suitable for substantial noninfringing use with respect to the '774
8 patent.

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

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

18 33. Upon information and belief, the infringement by Defendants has been and is
19 willful.

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

23 **PRAYER FOR RELIEF**

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

- 25 1. That Defendants be declared to have infringed the Patents-in-Suit;
- 26 2. That Defendants' infringement of the Patents-in-Suit has been deliberate and
27 willful;
- 28 3. Preliminarily and permanently enjoining the Defendants' officers, agents,

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

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

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

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

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

12 **HANDAL & ASSOCIATES**

13
14 Dated: December 4, 2012

By: /s/ Gabriel G. Hedrick

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

DEMAND FOR JURY TRIAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff hereby demands a trial by jury on all claims.

HANDAL & ASSOCIATES

Dated: December 4, 2012

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