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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
12

13 e.Digital Corporation,
14

Plaintiff,
15

v.
16

17 ZTE Corporation; ZTE (USA) Inc.;
Sprint Nextel Corporation; T-Mobile
USA, Inc.; AT&T Mobility, LLC; and,
Leap Wireless International, Inc., aka
Cricket Wireless;
18

Defendants.
19

Case No. '13CV0782 JAH KSC

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

20 Plaintiff, e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its
21 undersigned counsel, complains and alleges against ZTE Corporation; ZTE (USA)
22 Inc. (collectively referred to hereafter as “ZTE”); Sprint Nextel Corporation
23 (“Sprint ”); T-Mobile USA, Inc. (“T-Mobile”); AT&T Mobility, LLC (“AT&T”);
24 and, Leap Wireless International, Inc., aka Cricket Wireless (“Leap”); (all
25 collectively referred to as “Defendants”) as follows:

26 **NATURE OF THE ACTION**

27 1. This is a civil action for infringement of a patent arising under the
28

1 laws of the United States relating to patents, 35 U.S.C. § 101, *et seq.*, including,
2 without limitation, § 281. Plaintiff e.Digital seeks a preliminary and permanent
3 injunction and monetary damages for the infringement of its U.S. Patent Nos.
4 5,742,737; 5,491,774; 5,839,108; and 5,842,170.

5 JURISDICTION AND VENUE

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

9 3. Venue properly lies within the Southern District of California
10 pursuant to the provisions of 28 U.S.C. §§ 1391(b), (c), and (d) and 1400(b). On
11 information and belief, Defendants conduct substantial business directly and/or
12 through third parties or agents in this judicial district by selling and/or offering to
13 sell the infringing products and/or by conducting other business in this judicial
14 district. Furthermore, Plaintiff e.Digital is headquartered and has its principal
15 place of business in this district, engages in business in this district, and has been
16 harmed by Defendants' conduct, business transactions and sales in this district.

17 4. This Court has personal jurisdiction over Defendants because, on
18 information and belief, Defendants transact continuous and systematic business
19 within the State of California and the Southern District of California. In addition,
20 this Court has personal jurisdiction over the Defendants because, on information
21 and belief, this lawsuit arises out of Defendants' infringing activities, including,
22 without limitation, the making, using, selling and/or offering to sell infringing
23 products in the State of California and the Southern District of California. Finally,
24 this Court has personal jurisdiction over Defendants because, on information and
25 belief, Defendants have made, used, sold and/or offered for sale its infringing
26 products and placed such infringing products in the stream of interstate commerce
27 with the expectation that such infringing products would be made, used, sold
28 and/or offered for sale within the State of California and the Southern District of

1 California.

2 **PARTIES**

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

6 6. Upon information and belief, Defendant ZTE Corporation is a
7 corporation organized and existing under the laws of the People's Republic of
8 China ("China"), with its principal place of business at No. 55, Hi-tech Road
9 South, ShenZhen, People's Republic of China, 518057.

10 7. Upon information and belief, Defendant ZTE (USA) Inc. is a
11 corporation registered and lawfully existing under the laws of the State of Texas,
12 with an office and principal place of business located at 2425 N. Central
13 Expressway, Suite 600, Richardson, Texas 75080.

14 8. Upon information and belief, Defendant Sprint is a company
15 organized and lawfully existing under the laws of the State of Kansas, with an
16 office and principal place of business located at 6500 Sprint Pkwy HI- 5A STX,
17 Overland Park, KS 66251. Upon information and belief, certain of the products
18 manufactured by ZTE have been and/or are currently sold and/or offered for sale
19 at, among other places, Sprint retail stores in this jurisdiction and Sprint's website
20 located at www.sprint.com.

21 9. Upon information and belief, Defendant T-Mobile is a company
22 organized and lawfully existing under the laws of the State of Delaware, with an
23 office and principal place of business located at 12920 SE 38th Street, Bellevue,
24 WA 98006. Upon information and belief, certain of the products manufactured by
25 ZTE have been and/or are currently sold and/or offered for sale at, among other
26 places, T-Mobile retail stores in this jurisdiction and/or T-Mobile's website located
27 at <http://www.t-mobile.com>.

28 10. Upon information and belief, Defendant AT&T is a limited liability

1 company organized and lawfully existing under the laws of the State of Delaware,
2 with an office and principal place of business located at 1025 Lenox Park Blvd.
3 NE, Atlanta, GA, 30319. Upon information and belief, certain of the products
4 manufactured by ZTE have been and/or are currently sold and/or offered for sale
5 at, among other places, AT&T retail stores in this jurisdiction and/or AT&T's
6 website located at www.att.com.

7 11. Upon information and belief, Defendant Leap, Inc. is a corporation
8 registered and lawfully existing under the laws of the State of Delaware, with an
9 office and principal place of business located at 5887 Copley Drive, San Diego,
10 CA 92111. Upon information and belief, certain of the products manufactured by
11 ZTE have been and/or are currently sold and/or offered for sale by Leap at, among
12 other places, the Leap website located at www.mycricket.com.

13 **THE ASSERTED PATENTS**

14 12. On April 21, 1998, the United States Patent and Trademark Office
15 duly and legally issued United States Patent No. 5,742,737 ("the '737 patent")
16 entitled "Method For Recording Voice Messages On Flash Memory In A Hand
17 Held Recorder," to its named inventors, Norbert P. Daberko, Richard K. Davis,
18 and Richard D. Bridgewater. Plaintiff, e.Digital is the assignee and owner of the
19 entire right, title and interest in and to the '737 patent and has the right to bring this
20 suit for damages and other relief. A true and correct copy of the '737 patent is
21 attached hereto as Exhibit A.

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

26 14. On February 13, 1996, the United States Patent and Trademark Office
27 duly and legally issued United States Patent No. 5,491,774 ("the '774 patent")
28 entitled "Handheld Record And Playback Device With Flash Memory," to its

1 named inventors Elwood G. Norris, Norbert P. Daberko, and Steven T. Brightbill.
2 Plaintiff, e.Digital is the assignee and owner of the entire right, title and interest in
3 and to the '774 patent and has the right to bring this suit for damages and other
4 relief. A true and correct copy of the '774 patent is attached hereto as Exhibit C.

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

8 16. On November 17, 1998, the United States Patent and Trademark
9 Office duly and legally issued United States Patent No. 5,839,108 ("the '108
10 patent") entitled "Flash Memory File System In A Handheld Record And Playback
11 Device," to its named inventors Norbert P. Daberko and Richard K. Davis.
12 Plaintiff e.Digital is the assignee and owner of the entire right, title and interest in
13 and to the '108 patent and has the right to bring this suit for damages and other
14 relief. A true and correct copy of the '108 patent is attached hereto as Exhibit E.

15 17. On November 24, 1998, the United States Patent and Trademark
16 Office duly and legally issued United States Patent No. 5,842,170 ("the '170
17 patent") entitled "Method For Editing In Hand Held Recorder," to its named
18 inventors Norbert P. Daberko, Richard K. Davis, and Richard D. Bridgewater.
19 Plaintiff, e.Digital is the assignee and owner of the entire right, title and interest in
20 and to the '170 patent and has the right to bring this suit for damages and other
21 relief. A true and correct copy of the '170 patent is attached hereto as Exhibit F.

22 COUNT ONE

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

24 18. Plaintiff re-alleges and incorporates by reference each of the
25 allegations set forth in paragraphs 1 through 17 above.

26 19. Upon information and belief, Defendants, without authority, (a) have
27 directly infringed and continue to directly infringe the '737 patent by making,
28 using, offering to sell, or selling within the United States, or importing into the

1 United States, products that practice one or more claims of the '737 patent in
2 violation of 35 U.S.C. § 271(a); (b) have induced and continue to induce
3 infringement of one or more claims of the '737 patent in violation of 35 U.S.C. §
4 271(b); and (c) have contributed and continue to contribute to the infringement of
5 one or more claims of the '737 patent in violation of 35 U.S.C. § 271(c).

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

9 21. The accused products for purposes of the '737 patent include, but are
10 not limited to ZTE mobile phones and/or ZTE tablets including without limitation
11 Anthem 4G; "Avail(Z990)"; Avid 4G; Chorus "Concord (V768 GoSmart mobile)";
12 Engage; Engage LT; Flash; Force; Fury; Groove X501; Memo; Merit; Render;
13 Score; Score M; Warp; Warp Sequent; Adamant; Aspect; Z331; Z431; Optik; and
14 variations thereof.

15 22. Upon information and belief, Defendants, without authority, have
16 actively induced infringement and continue to actively induce infringement of the
17 '737 patent in violation of 35 U.S.C. § 271(b) by causing others to directly infringe
18 the claims of the '737 patent and/or by intentionally instructing others how to use
19 the accused products in a manner that infringes the claims of the '737 patent. On
20 information and belief, Defendants have induced and continue to induce
21 infringement by instructing customers to operate the products in an infringing
22 manner and/or when Defendants test or otherwise operate the accused products in
23 the United States.

24 23. Upon information and belief, Defendants, without authority, have
25 contributed to and continue to contribute to the infringement of the '737 patent in
26 violation of 35 U.S.C. § 271(c) by importing into the United States, selling and/or
27 offering to sell within the United States accused products that (1) constitute a
28 material part of the invention of the '737 patent, (2) Defendants know to be

1 especially adapted for use in infringing the '737 patent, and (3) are not staple
2 articles of commerce suitable for substantial noninfringing use with respect to the
3 '737 patent.

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

8 25. Defendants had knowledge of infringement of the '737 patent since at
9 least the filing of this complaint and perhaps as early as 2010 by virtue of the
10 Plaintiff's filing of complaints against others within Defendants' industry. On
11 information and belief, Defendants have continued to sell products that practice the
12 '737 patent after acquiring knowledge of infringement.

13 26. Upon information and belief, the infringement by Defendants has
14 been and is willful.

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

19 **COUNT TWO**

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

21 28. Plaintiff re-alleges and incorporates by reference each of the
22 allegations set forth in paragraphs 1 through 17 above.

23 29. Upon information and belief, Defendants, without authority, (a) have
24 directly infringed and continue to directly infringe the '774 patent by making,
25 using, offering to sell, or selling within the United States, or importing into the
26 United States, products that practice one or more claims of the '774 patent in
27 violation of 35 U.S.C. § 271(a); (b) have induced and continue to induce
28 infringement of one or more claims of the '774 patent in violation of 35 U.S.C. §

271(b); and (c) have contributed and continue to contribute to the infringement of one ore more claims of the '774 patent in violation of 35 U.S.C. § 271(c).

30. The accused products, alone or in combination with other products, practice each of the limitations of independent claims 33 and 34, and dependent claims 2, 3, 6 through 8, 10, 15 through 16, 18, 23 through 26, and 28 through 31 of the '774 patent.

31. The accused products for purposes of the '774 patent include but are not limited to the ZTE mobile phones and/or ZTE tablets Anthem 4G, "Avail (Z990)", Avid 4G Chorus, "Concord (V768 GoSmart mobile)"; Engage; Engage LT; Flash; Force; Fury; Groove X501; Memo; Merit; Render; Score; Score M; Warp; Warp Sequent; Adamant; Aspect; Z331; Z431; Optik; and variations thereof.

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

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

1 '774 patent.

2 34. Based on information and belief, Plaintiff alleges that Defendants sell,
3 ship, or otherwise deliver the accused products with all the features required to
4 infringe the asserted claims of the '774 patent. On information and belief, these
5 products are designed to practice the infringing features.

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

11 36. Upon information and belief, the infringement by Defendants has
12 been and is willful.

13 37. Plaintiff has been irreparably harmed by these acts of infringement
14 and has no adequate remedy at law. Upon information and belief, infringement of
15 the '774 patent is ongoing and will continue unless Defendants are enjoined from
16 further infringement by the court.

17 **COUNT THREE**

18 **INFRINGEMENT OF THE '108 PATENT BY DEFENDANTS**

19 38. Plaintiff re-alleges and incorporates by reference each of the
20 allegations set forth in paragraphs 1 through 17 above.

21 39. Upon information and belief, Defendants, without authority, (a) have
22 directly infringed and continue to directly infringe the '108 patent by making,
23 using, offering to sell, or selling within the United States, or importing into the
24 United States, products that practice one or more claims of the '108 patent in
25 violation of 35 U.S.C. § 271(a); (b) have induced and continue to induce
26 infringement of one or more claims of the '108 patent in violation of 35 U.S.C. §
27 271(b); and (c) have contributed and continue to contribute to the infringement of
28 one or more claims of the '108 patent in violation of 35 U.S.C. § 271(c).

1 40. The accused products, alone or in combination with other products,
2 practice each of the limitations of independent claim 2 of the '108 patent.

3 41. The accused products for purposes of the '108 patent include, but are
4 not limited to, the ZTE mobile phones Anthem 4G; Flash; Force; Render; and
5 variations thereof.

6 42. Upon information and belief, Defendants, without authority, have
7 actively induced and continue to actively induce infringement of claims 2 of the
8 '108 patent in violation of 35 U.S.C. § 271(b) by causing others to directly infringe
9 the claims of the '108 patent and/or by intentionally instructing others how to use
10 the accused products in a manner that infringes claim 2 of the '108 patent. Plaintiff
11 also alleges that Defendants have induced and continue to induce infringement by
12 instructing customers to operate the products in an infringing manner and/or when
13 Defendants test or otherwise operate the accused products in the United States.

14 43. Upon information and belief, Defendants, without authority, have
15 contributed and continue to contribute to the infringement of claim 2 of the '108
16 patent in violation of 35 U.S.C. § 271(c) by importing into the United States,
17 selling and/or offering to sell within the United States accused products that (1)
18 embody and constitute a material part of the invention of the '108 patent, (2)
19 Defendants knows to be especially adapted for use in infringing the '108 patent,
20 and (3) are not staple articles of commerce suitable for substantial non-infringing
21 use with respect to the '108 patent.

22 44. On information and belief, Defendants sell, ship or otherwise deliver
23 the accused products with all the features required to infringe the asserted claims of
24 the '108 patent. On information and belief, these products are designed to practice
25 the infringing features.

26 45. Defendants had knowledge of infringement of the '108 patent since at
27 least the filing of this complaint and perhaps as early as 2010 by virtue of the
28 Plaintiff's filing of complaints against others within Defendants' industry.

1 '170 patent in violation of 35 U.S.C. § 271(b) by causing others to directly infringe
2 the claims of the '170 patent and/or by intentionally instructing others how to use
3 the accused products in a manner that infringes the claims of the '170 patent. On
4 information and belief, Defendants have induced and continue to induce
5 infringement by instructing customers to operate the products in an infringing
6 manner and/or when Defendants test or otherwise operate the accused products in
7 the United States.

8 53. Upon information and belief, Defendants, without authority, have
9 contributed and continue to contribute to the infringement of the '170 patent in
10 violation of 35 U.S.C. § 271(c) by importing into the United States, selling and/or
11 offering to sell within the United States accused products that (1) embody and
12 constitute a material part of the invention of the '170 patent, (2) Defendants know
13 to be especially adapted for use in infringing the '170 patent, and (3) are not staple
14 articles of commerce suitable for substantial non-infringing use with respect to the
15 '170 patent.

16 54. Based on information and belief, Plaintiff alleges that Defendants sell,
17 ship, or otherwise deliver the accused products with all the features required to
18 infringe the asserted claims of the '170 patent. On information and belief, these
19 products are designed to practice the infringing features.

20 55. Plaintiff alleges upon information and belief, that the infringement by
21 Defendants has been and is willful. Plaintiff has been irreparably harmed by these
22 acts of infringement and has no adequate remedy at law. Upon information and
23 belief, infringement of the '170 patent is ongoing and will continue unless
24 Defendants are enjoined from further infringement by the court.

25 **PRAYER FOR RELIEF**

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

- 27 1. That Defendants be declared to have infringed the Patents-in-Suit;
28 2. That Defendants' infringement of the Patents-in-Suit has been

1 deliberate and willful;

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

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

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

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

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

14
15 **HANDAL & ASSOCIATES**

16 Dated: April 1, 2013

17 By: /s/ Pamela C. Chalk
18 Anton N. Handal
19 Gabriel G. Hedrick
20 Pamela C. Chalk
21 Attorneys for Plaintiff
22 e.Digital Corporation
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims.

HANDAL & ASSOCIATES

Dated: April 1, 2013

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