

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

8 Attorneys for Plaintiff
e.Digital Corporation

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

12
13 e.Digital Corporation,
14 Plaintiff,

15 v.

16 Huawei Technologies Co., Ltd.;
Futurewei Technologies, Inc. dba
17 Huawei Technologies (USA); Huawei
Device USA, Inc.; Leap Wireless
18 International, Inc. aka Cricket Wireless;
Target Corporation; Wal-Mart Stores,
19 Inc.; Kmart Corporation; Best Buy Co.,
Buy.Com LLC; and TracFone Wireless,
20 Inc., aka NET10

21 Defendants.
22

Case No. '13CV0783 GPC RBB

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

23 Plaintiff, e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its
24 undersigned counsel, complains and alleges against Defendants Huawei
25 Technologies Co., Ltd.; Futurewei Technologies, Inc. dba Huawei Technologies
26 (USA); and Huawei Device USA, Inc. (collectively referred to hereafter as
27 “Huawei”); Leap Wireless International, Inc., aka Cricket Wireless (“Leap”);
28 Target Corporation (“Target”); Wal-Mart Stores, Inc. (“Wal-Mart”); Kmart

1 Corporation (“Kmart”); Best Buy Co., Inc., Best Buy Stores, L.P. and Best
2 Buy.Com LLC (collectively, “Best Buy”); and TracFone Wireless, Inc., aka
3 NET10 (“TracFone”) (all collectively referred to as “Defendants”) as follows:

4 **NATURE OF THE ACTION**

5 1. This is a civil action for infringement of a patent arising under the
6 laws of the United States relating to patents, 35 U.S.C. § 101, *et seq.*, including,
7 without limitation, § 281. Plaintiff e.Digital seeks a preliminary and permanent
8 injunction and monetary damages for the infringement of its U.S. Patent Nos.
9 5,742,737; 5,491,774; 5,839,108; and 5,842,170.

10 **JURISDICTION AND VENUE**

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

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

22 4. This Court has personal jurisdiction over Defendants because, on
23 information and belief, Defendants transact continuous and systematic business
24 within the State of California and the Southern District of California. In addition,
25 this Court has personal jurisdiction over the Defendants because, on information
26 and belief, this lawsuit arises out of Defendants’ infringing activities, including,
27 without limitation, the making, using, selling and/or offering to sell infringing
28 products in the State of California and the Southern District of California. Finally,

1 this Court has personal jurisdiction over Defendants because, on information and
2 belief, Defendants have made, used, sold and/or offered for sale its infringing
3 products and placed such infringing products in the stream of interstate commerce
4 with the expectation that such infringing products would be made, used, sold
5 and/or offered for sale within the State of California and the Southern District of
6 California.

7 **PARTIES**

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

11 6. Upon information and belief, Defendant Huawei Technologies Co.,
12 Ltd. is a corporation organized and existing under the laws of the People's
13 Republic of China ("China"), with its principal place of business at Bantian,
14 Longgang District, Shenzhen, Guangdong Province 518129, People's Republic of
15 China.

16 7. Upon information and belief, Defendant Futurewei Technologies, Inc.
17 dba Huawei Technologies (USA) is a corporation registered and lawfully existing
18 under the laws of the State of Texas, with an office and principal place of business
19 located at 5700 Tennyson Parkway, Suite #500, Plano, Texas 75024.

20 8. Upon information and belief, Defendant Huawei Device USA, Inc. is
21 a corporation registered and lawfully existing under the laws of the State of Texas,
22 with an office and principal place of business located at 5700 Tennyson Parkway,
23 Suite #500, Plano, Texas 75024.

24 9. Upon information and belief, Defendant Leap, Inc. is a corporation
25 registered and lawfully existing under the laws of the State of Delaware, with an
26 office and principal place of business located at 5887 Copley Drive, San Diego,
27 CA 92111. Upon information and belief, certain of the products manufactured by
28 Huawei have been and/or are currently sold and/or offered for sale by Leap at,

1 among other places, the Leap website located at www.mycricket.com.

2 10. Upon information and belief, Defendant Target is a company
3 registered and lawfully existing under the laws of the State of Minnesota, with an
4 office and principal place of business located at 1000 Nicollet Mall, Minneapolis,
5 Minnesota 55403. Upon information and belief, certain of the products
6 manufactured by Huawei have been and/or are currently sold and/or offered for
7 sale at, among other places, the Target website located at www.target.com.

8 11. Upon information and belief, Defendant Wal-Mart Stores, Inc. is a
9 company registered and lawfully existing under the laws of the State of Delaware,
10 with an office and principal place of business located at 702 SW 8th
11 Street Bentonville, AR 72716-8611. Upon information and belief, certain of the
12 products manufactured by Huawei have been and/or are currently sold and/or
13 offered for sale at, among other places, the Wal-Mart website located at
14 <http://www.walmart.com> and at the Wal-Mart store located at 3382 Murphy
15 Canyon Rd, San Diego, CA 92123.

16 12. Upon information and belief, Kmart Corporation is a company
17 registered and lawfully existing under the laws of the State of Michigan, with an
18 office and principal place of business located at 3333 Beverly Road, Hoffman
19 Estates, Illinois 60179. Upon information and belief, certain of the products
20 manufactured by Huawei have been and/or are currently sold and/or offered for
21 sale at, among other places, the Kmart's website located at www.kmart.com.

22 13. Upon information and belief, Defendant Best Buy Co., Inc. is a
23 company registered and lawfully existing under the laws of the State of Minnesota,
24 with an office and principal place of business located at 7601 Penn Avenue South,
25 Richfield, Minnesota 55423.

26 14. Upon information and belief, Defendant Best Buy Stores L.P. is a
27 limited partnership registered and lawfully existing under the laws of the State of
28 Virginia, with an office and principal place of business located at 7601 Penn

1 Avenue South, Richfield, Minnesota 55423. Upon information and belief, certain
2 of the products manufactured by Huawei have been and/or are currently sold
3 and/or offered for sale at, among other places, the Best Buy store located at, among
4 other places, 5151 Mission Center Road San Diego, CA 92108.

5 15. Upon information and belief, Defendant Best Buy.Com LLC is a
6 limited liability company registered and lawfully existing under the laws of the
7 State of Virginia, with an office and principal place of business located at 7601
8 Penn Avenue South, Richfield, Minnesota 55423. Upon information and belief,
9 certain of the products manufactured by Huawei have been and/or are currently
10 sold and/or offered for sale at, among other places, the Best Buy website located at
11 www.bestbuy.com.

12 16. Upon information and belief, Defendant TracFone is a limited liability
13 company registered and lawfully existing under the laws of the State of Delaware,
14 with an office and principal place of business located at 9700 N.W. 112th Avenue,
15 Miami, Florida 33178. Upon information and belief, certain of the products
16 manufactured by Huawei have been and/or are currently sold and/or offered for
17 sale at, among other places, the NET10 website located at www.net10.com.

18 **THE ASSERTED PATENTS**

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

27 18. On October 17, 2012, the United States Patent and Trademark Office
28 issued a Reexamination Certificate for the ’737 patent adding new Claim 13, and

1 cancelling Claim 5. Claim 13 is substantially identical to former claim 5. A true
2 and correct copy of the Reexamination Certificate is attached hereto as Exhibit B.

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

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

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

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

27 **COUNT ONE**

28 **INFRINGEMENT OF THE ’737 PATENT BY DEFENDANTS**

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

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

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

14 26. The accused products for purposes of the '737 patent include, but are
15 not limited to, Huawei tablets, smartphone, and mobile phone products including,
16 but not limited to, the Huawei Ascend series, G series, M series, and U series
17 smart- and mobile phone products and variations thereof; and Ideos S7 and
18 MediaPad series tablets and variations thereof.

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

28 28. Upon information and belief, Defendants, without authority, have

1 contributed to and continue to contribute to the infringement of the '737 patent in
2 violation of 35 U.S.C. § 271(c) by importing into the United States, selling and/or
3 offering to sell within the United States accused products that (1) constitute a
4 material part of the invention of the '737 patent, (2) Defendants know to be
5 especially adapted for use in infringing the '737 patent, and (3) are not staple
6 articles of commerce suitable for substantial noninfringing use with respect to the
7 '737 patent.

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

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

17 31. Upon information and belief, the infringement by Defendants has
18 been and is willful.

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

23 **COUNT TWO**

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

25 33. Plaintiff re-alleges and incorporates by reference each of the
26 allegations set forth in paragraphs 1 through 22 above.

27 34. Upon information and belief, Defendants, without authority, (a) have
28 directly infringed and continue to directly infringe the '774 patent by making,

1 using, offering to sell, or selling within the United States, or importing into the
2 United States, products that practice one or more claims of the '774 patent in
3 violation of 35 U.S.C. § 271(a); (b) have induced and continue to induce
4 infringement of one or more claims of the '774 patent in violation of 35 U.S.C. §
5 271(b); and (c) have contributed and continue to contribute to the infringement of
6 one or more claims of the '774 patent in violation of 35 U.S.C. § 271(c).

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

11 36. The accused products for purposes of the '774 patent include but are
12 not limited to Huawei tablets, smartphone, and mobile phone products including,
13 but not limited to, the Huawei Ascend series, G series, M series, and U series smart
14 and mobile phone products and variations thereof; and Ideos S7 and MediaPad
15 series tablets and variations thereof.

16 37. Upon information and belief, Defendants, without authority, have
17 actively induced infringement and continue to actively induce infringement of the
18 '774 patent in violation of 35 U.S.C. § 271(b) by causing others to directly infringe
19 the claims of the '774 patent and/or by intentionally instructing others how to use
20 the accused products in a manner that infringes the claims of the '774 patent. On
21 information and belief, Defendants have induced and continue to induce
22 infringement by instructing customers to operate the products in an infringing
23 manner and/or when Defendants test or otherwise operate the accused products in
24 the United States.

25 38. Upon information and belief, Defendants, without authority, have
26 contributed to and continue to contribute to the infringement of the '774 patent in
27 violation of 35 U.S.C. § 271(c) by importing into the United States, selling and/or
28 offering to sell within the United States accused products that (1) constitute a

1 material part of the invention of the '774 patent, (2) Defendants know to be
2 especially adapted for use in infringing the '774 patent, and (3) are not staple
3 articles of commerce suitable for substantial noninfringing use with respect to the
4 '774 patent.

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

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

14 41. Upon information and belief, the infringement by Defendants has
15 been and is willful.

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

20 **COUNT THREE**

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

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

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

1 infringement of one or more claims of the '108 patent in violation of 35 U.S.C. §
2 271(b); and (c) have contributed and continue to contribute to the infringement of
3 one or more claims of the '108 patent in violation of 35 U.S.C. § 271(c).

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

6 46. The accused products for purposes of the '108 patent include, but are
7 not limited to, Huawei smartphone devices including, without limitation, the
8 Huawei Ascend and M series of products.

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

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

26 49. On information and belief, Defendants sell, ship or otherwise deliver
27 the accused products with all the features required to infringe the asserted claims of
28 the '108 patent. On information and belief, these products are designed to practice

1 the infringing features.

2 50. Defendants had knowledge of infringement of the '108 patent since at
3 least the filing of this complaint and perhaps as early as 2010 by virtue of the
4 Plaintiff's filing of complaints against others within Defendants' industry.

5 51. Upon information and belief, the infringement by Defendants has
6 been and is willful.

7 52. Plaintiff has been irreparably harmed by these acts of infringement
8 and has no adequate remedy at law. Upon information and belief, infringement of
9 the '108 patent is ongoing and will continue unless Defendants are enjoined from
10 further infringement by the court.

11 **COUNT FOUR**

12 **INFRINGEMENT OF THE '170 PATENT BY DEFENDANTS**

13 53. Plaintiff re-alleges and incorporates by reference each of the
14 allegations set forth in paragraphs 1 through 22 above.

15 54. Upon information and belief, Defendants, without authority, (a) have
16 directly infringed and continue to directly infringe the '170 patent by making,
17 using, offering to sell, or selling within the United States, or importing into the
18 United States, products that practice one or more claims of the '170 patent in
19 violation of 35 U.S.C. § 271(a); (b) have induced and continue to induce
20 infringement of one or more claims of the '170 patent in violation of 35 U.S.C. §
21 271(b); and (c) have contributed and continue to contribute to the infringement of
22 one or more claims of the '170 patent in violation of 35 U.S.C. § 271(c).

23 55. The accused products, alone or in combination with other products,
24 practice each of the limitations of independent claims 1 and 7 and certain
25 dependent claims 2, 3 and 8, 9, 10, 11 and 12 of the '170 patent.

26 56. The accused products for purposes of the '170 patent include, but are
27 not limited to, Huawei smartphone devices including, without limitation, the
28 Huawei Ascend and M series of products.

DEMAND FOR JURY TRIAL

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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