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e.Digital Corporation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

e.Digital Corporation,

Plaintiff,

v.

MivaTek International, Inc.,

Defendant.

Case No.

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its undersigned counsel, complains and alleges against Defendant MivaTek International, Inc., formerly known as MivaTek Corporation and Oplink Communications, Inc., (“MivaTek” or “Defendant”) as follows:

NATURE OF THE ACTION

1. This is a civil action for infringement of a patent arising under the laws of the United States relating to patents, 35 U.S.C. § 101, *et seq.*, including, without limitation, 35 U.S.C. §§ 271, 281. Plaintiff e.Digital seeks a preliminary and permanent injunction and monetary damages for patent infringement.

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JURISDICTION AND VENUE

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

3. Venue properly lies within the Northern District of California pursuant to the provisions of 28 U.S.C. §§ 1391(b), (c), and (d) and 1400(b). On information and belief, Defendant conducts substantial business directly and/or through third parties or agents in this judicial district by selling and/or offering to sell the infringing products and/or by conducting other business in this judicial district. Furthermore, Plaintiff is informed and believes that Defendant is headquartered and has its principal place of business in this district, engages in business in this district, and that Plaintiff has been harmed by Defendant's conduct, business transactions and sales in this district.

4. This Court has personal jurisdiction over Defendant because, on information and belief, Defendant transacts continuous and systematic business within the State of California and the Northern District of California. In addition, this Court has personal jurisdiction over the Defendant because, on information and belief, this lawsuit arises out of Defendant's infringing activities, including, without limitation, the making, using, selling and/or offering to sell infringing products in the State of California and the Northern District of California. Finally, this Court has personal jurisdiction over Defendant because, on information and belief, Defendant has made, used, sold and/or offered for sale its infringing products and placed such infringing products in the stream of interstate commerce with the expectation that such infringing products would be made, used, sold and/or offered for sale within the State of California and the Northern District of California.

5. Upon information and belief, certain of the products manufactured by or for Defendant have been and/or are currently sold and/or offered for sale at, among other places, the MivaTek website located at <https://store.mivatek.com> to consumers including, but not limited to, consumers located within the State of California and this District.

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PARTIES

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

7. Upon information and belief, Defendant MivaTek is a corporation registered and lawfully existing under the laws of the State of Delaware, with an office and principal place of business located at 48460 Kato Road, Fremont, California 94538.

THE ACCUSED PRODUCTS

8. The Defendant's accused products for purposes of the asserted patents include but are not limited to sensor-based products and services, such as, without limitation, Defendant's door/window sensors, garage door tilt sensors, heat and fire/CO alarm sensors, cameras, motion sensors, remote key fobs, smart plugs, water leak sensors, activity tracking sensors, *et al.*, together with Defendant's MivaHome, MivaLife, MivaCare, MivaCloud and other server, mobile app, cloud and/or web-based services for remote monitoring and communication, and similar "Oplink" branded products and services (the "Accused Products").

9. By way of example, information about and demonstration videos showing how to infringe the asserted patents are posted by MivaTek on its website(s) at <https://www.mivatek.com>, including, but not limited to, <https://www.mivatek.com/faq/>, <https://www.mivatek.com/resources/>, on its YouTube sites at <https://www.youtube.com/user/OplinkMI> and <https://www.youtube.com/channel/UC3uR1GTp3fDUAbuE5j5ng4Q>, and on its social media sites such as <https://www.facebook.com/MivaTek/?fref=ts>. The Defendant advertises its infringing products and services at among other locations, <https://www.mivatek.com/mivatek>, http://www.amazon.com/MivaTek/b/ref=bl_dp_s_web_12674105011?ie=UTF8&node=12674105011&field-lbr_brands_browse-bin=MivaTek, and on the aforementioned social media web sites.

10. MivaTek also provides operating manuals, user or installation guides, "quick reference guides," instructional/informational videos on its website and other public websites that instruct customers and end-users on how to purchase the Accused Products and set them up

in conjunction with the Defendant's servers, mobile apps, and/or web sites. Among other things, the Defendant provides informational materials that lays out step-by-step instructions on how to set up an apparatus or system that infringes the asserted claims of the asserted patents on its website including but not limited to the websites located on its website(s) at <https://www.mivatek.com>, including, but not limited to, <https://www.mivatek.com/faq/>, <https://www.mivatek.com/resources/>, on its YouTube sites at <https://www.youtube.com/user/OplinkMI> and <https://www.youtube.com/channel/UC3uR1GTp3fDUAbuE5j5ng4Q>, and on its social media sites such as <https://www.facebook.com/MivaTek/?fref=ts>.

11. Plaintiff believes and thereupon alleges that MivaTek is aware that its customers and end-users are using the accused products in an infringing manner based on, among other things: the discussions, questions, answers, and/or comments posted on its website, YouTube page, and/or its Twitter page (<https://twitter.com/mivatekofficial>), and/or Facebook page (<https://www.facebook.com/MivaTek/?fref=ts>) where MivaTek's authorized agents, customers and/or end-users discuss and disclose the use of the accused products, a process which MivaTek knows infringes upon the patents-in-suit; and/or, the fact that MivaTek encourages its customers and end-users to use the accused products in an infringing manner as set forth herein.

THE ASSERTED PATENTS

12. On November 13, 2012, the United States and Trademark office duly and legally issued United States Patent No. 8,311,522, entitled "System and Method for Managing Mobile Communications" ("the '522 patent"). The patent's named inventor is Patrick Nunally and Plaintiff e.Digital is assignee and owner of the entire right, title and interest in and to the '522 patent and vested with the right to bring this suit for damages and other relief. A true and correct copy of the '522 patent is attached hereto as Exhibit "A."

13. On November 6, 2012, the United States and Trademark office duly and legally issued United States Patent No. 8,306,514, entitled "System and Method for Managing Mobile Communications" ("the '514 patent"). Although, issued one week earlier, the '514 patent is a continuation of the '522 patent. The patent's named inventor is Patrick Nunally and Plaintiff

1 e.Digital is assignee and owner of the entire right, title and interest in and to the '514 patent and
2 vested with the right to bring this suit for damages and other relief. A true and correct copy of
3 the '514 patent is attached hereto as Exhibit "B."

4 14. On November 13, 2012, the United States and Trademark office duly and legally
5 issued United States Patent No. 8,311,524, entitled "System and Method for Managing Mobile
6 Communications" ("the '524 patent"). The '524 patent is a continuation of the '522 patent. The
7 patent's named inventor is Patrick Nunally and Plaintiff e.Digital is assignee and owner of the
8 entire right, title and interest in and to the '524 patent and vested with the right to bring this suit
9 for damages and other relief. A true and correct copy of the '524 patent is attached hereto as
10 Exhibit "C."

11 15. On April 7, 2015, the United States Patent and Trademark office duly and legally
12 issued United States Patent No. 9,002,331, entitled "System and Method for Managing Mobile
13 Communications" ("the '331 patent"), which is a continuation of the '522 patent. Patrick
14 Nunally is the sole named inventor and Plaintiff e.Digital is assignee and owner of the entire
15 right, title and interest in and to the '331 patent and vested with the right to bring this suit for
16 damages and other relief. A true and correct copy of the '331 patent is attached hereto as Exhibit
17 "D."

18 16. On November 3, 2015, the United States Patent and Trademark office duly and
19 legally issued United States Patent No. 9,178,983, also entitled "System and Method of
20 Managing Mobile Communications ("the '983 patent"). The '983 patent is a continuation of
21 U.S. Patent No. 8,315,618, which is, in turn, a continuation of the '522 patent. Patrick Nunally is
22 the sole named inventor and Plaintiff e.Digital is assignee and owner of the entire right, title and
23 interest in and to the '983 patent and vested with the right to bring this suit for damages and
24 other relief. A true and correct copy of the '983 patent is attached hereto as Exhibit "E."

25 **COUNT ONE**

26 **INFRINGEMENT OF THE '522 PATENT BY DEFENDANT**

27 17. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
28 in paragraphs 1 through 16 above.

1 18. Defendant has knowledge of infringement of the '522 patent since at least the
2 filing of this complaint.

3 19. The accused products, alone or in combination with other products, directly or
4 alternatively under the doctrine of equivalents practice each of the limitations of independent
5 claim 17 and dependent claim 21 of the '522 patent (hereafter "the asserted claims of the '522
6 patent") in violation of 35 U.S.C. § 271(a) when Defendant demonstrates, tests or otherwise uses
7 the accused products in the United States.

8 20. Plaintiff alleges that Defendant encourages others to directly infringe the asserted
9 claims of the '522 patent by among other things, advertising and promoting the sale and use of
10 the accused products in violation of 35 U.S.C. § 271(b) and (c) by knowingly inducing and
11 contributing to the infringement of the '522 patent by, amount other things, providing operating
12 manuals, guides, instructional and/or informational videos and other materials designed to
13 instruct others how to use the products in an infringing manner. In particular, Defendant's
14 product literature, materials and instructional videos advertise and encourage customers to use
15 the accused product(s) for remote monitoring, which utilizes the devices described by the '522
16 patent in a manner Defendant knows infringes the patent. As more fully set forth above in
17 paragraphs 9, 10 and 11, Defendant's informational materials lay out step-by-step instructions on
18 how to set up an apparatus or system that infringes the asserted claims of the asserted patents.

19 21. Plaintiff thereupon alleges on information and belief that Defendant has, in the
20 United States, without authority, actively induced and continues to actively induce infringement
21 of the asserted claims of the '522 patent in violation of 35 U.S.C. § 271(b) by among other things
22 posting information about and demonstration videos showing how to infringe the asserted patents
23 as more specifically set forth above in paragraphs 9, 10 and 11.

24 22. Plaintiff similarly alleges upon information and belief that, without authority,
25 Defendant has contributed and continues to contribute to the infringement of the asserted claims
26 of the '522 patent in violation of 35 U.S.C. § 271(c) by importing into the United States, selling
27 and/or offering to sell within the United States accused products, that at a minimum include
28 wireless camera and/or other sensor products together with remote monitoring and

1 communication systems constituting material components of the accused products, that
 2 Defendant knows were made and/or especially adapted for use in the accused products and/or are
 3 especially adapted for use in infringing the asserted claims of the '522 patent; and which are not
 4 otherwise staple articles of commerce suitable for substantial use in a manner that does not
 5 infringe the asserted claims of the '522 patent.

6 23. Plaintiff is informed and believes that Defendant intentionally sells, ships or
 7 otherwise delivers the accused products in the United States, with knowledge that are designed to
 8 and do practice the infringing features of the asserted claims of the '522 patent.

9 24. Plaintiff is without an adequate remedy at law and has thus been irreparably
 10 harmed by these acts of infringement. Plaintiff asserts upon information and belief that
 11 infringement of the asserted claims of the '522 patent is continuous and ongoing unless and until
 12 Defendant is enjoined from further infringement by the court.

13 COUNT TWO

14 **INFRINGEMENT OF THE '514 PATENT BY DEFENDANT**

15 25. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
 16 in paragraphs 1 through 16 above.

17 26. Defendant has knowledge of infringement of the '514 patent since at least the
 18 filing of this complaint.

19 27. The accused products, alone or in combination with other products, directly or
 20 alternatively under the doctrine of equivalents practice each of the limitations of independent
 21 claim 34 and dependent claim 35 of the '514 patent (hereafter "the asserted claims of the '514
 22 patent") in violation of 35 U.S.C. § 271(a) when Defendant demonstrates, tests or otherwise uses
 23 the accused products in the United States.

24 28. Plaintiff alleges that Defendant encourages others to directly infringe the asserted
 25 claims of the '514 patent by among other things, advertising and promoting the sale and use of
 26 the accused products in violation of 35 U.S.C. § 271(b) and (c) by knowingly inducing and
 27 contributing to the infringement of the '514 patent by, amount other things, providing operating
 28 manuals, guides, instructional and/or informational videos and other materials designed to

1 instruct others how to use the products in an infringing manner. In particular, Defendant's
2 product literature, materials and instructional videos advertise and encourage customers to use
3 the accused product(s) for remote monitoring, which utilizes the devices described by the '514
4 patent in a manner Defendant knows infringes the patent. As more fully set forth above in
5 paragraphs 9, 10 and 11, Defendant's informational materials lay out step-by-step instructions on
6 how to set up an apparatus or system that infringes the asserted claims of the asserted patents.

7 29. Plaintiff thereupon alleges on information and belief that Defendant has, in the
8 United States, without authority, actively induced and continues to actively induce infringement
9 of the asserted claims of the '514 patent in violation of 35 U.S.C. § 271(b) by among other things
10 posting information about and demonstration videos showing how to infringe the asserted patents
11 as more specifically set forth above in paragraphs 9, 10 and 11.

12 30. Plaintiff similarly alleges upon information and belief that, without authority,
13 Defendant has contributed and continues to contribute to the infringement of the asserted claims
14 of the '514 patent in violation of 35 U.S.C. § 271(c) by importing into the United States, selling
15 and/or offering to sell within the United States accused products, that at a minimum include
16 wireless camera and/or other sensor products together with remote monitoring and
17 communication systems constituting material components of the accused products, that
18 Defendant knows were made and/or especially adapted for use in the accused products and/or are
19 especially adapted for use in infringing the asserted claims of the '514 patent; and which are not
20 otherwise staple articles of commerce suitable for substantial use in a manner that does not
21 infringe the asserted claims of the '514 patent.

22 31. Plaintiff is informed and believes that Defendant intentionally sells, ships or
23 otherwise delivers the accused products in the United States, with knowledge that are designed to
24 and do practice the infringing features of the asserted claims of the '514 patent.

25 32. Plaintiff is without an adequate remedy at law and has thus been irreparably
26 harmed by these acts of infringement. Plaintiff asserts upon information and belief that
27 infringement of the asserted claims of the '514 patent is continuous and ongoing unless and until
28 Defendant is enjoined from further infringement by the court.

COUNT THREE**INFRINGEMENT OF THE '524 PATENT BY DEFENDANT**

33. Plaintiff re-alleges and incorporates by reference each of the allegations set forth in paragraphs 1 through 16 above.

34. Defendant has knowledge of infringement of the '524 patent since at least the filing of this complaint.

35. The accused products, alone or in combination with other products, directly or alternatively under the doctrine of equivalents practice each of the limitations of independent claim 1 and dependent claims 10 and 18 of the '524 patent (hereafter "the asserted claims of the '524 patent") in violation of 35 U.S.C. § 271(a) when Defendant demonstrates, tests or otherwise uses the accused products in the United States.

36. Plaintiff alleges that Defendant encourages others to directly infringe the asserted claims of the '524 patent by among other things, advertising and promoting the sale and use of the accused products in violation of 35 U.S.C. § 271(b) and (c) by knowingly inducing and contributing to the infringement of the '524 patent by, amount other things, providing operating manuals, guides, instructional and/or informational videos and other materials designed to instruct others how to use the products in an infringing manner. In particular, Defendant's product literature, materials and instructional videos advertise and encourage customers to use the accused product(s) for remote monitoring, which utilizes the devices described by the '524 patent in a manner Defendant knows infringes the patent. As more fully set forth above in paragraphs 9, 10 and 11, Defendant's informational materials lay out step-by-step instructions on how to set up an apparatus or system that infringes the asserted claims of the asserted patents.

37. Plaintiff thereupon alleges on information and belief that Defendant has, in the United States, without authority, actively induced and continues to actively induce infringement of the asserted claims of the '524 patent in violation of 35 U.S.C. § 271(b) by among other things posting information about and demonstration videos showing how to infringe the asserted patents as more specifically set forth above in paragraphs 9, 10 and 11.

38. Plaintiff similarly alleges upon information and belief that, without authority,

1 Defendant has contributed and continues to contribute to the infringement of the asserted claims
 2 of the '524 patent in violation of 35 U.S.C. § 271(c) by importing into the United States, selling
 3 and/or offering to sell within the United States accused products, that at a minimum include
 4 wireless camera and/or other sensor products together with remote monitoring and
 5 communication systems constituting material components of the accused products, that
 6 Defendant knows were made and/or especially adapted for use in the accused products and/or are
 7 especially adapted for use in infringing the asserted claims of the '524 patent; and which are not
 8 otherwise staple articles of commerce suitable for substantial use in a manner that does not
 9 infringe the asserted claims of the '524 patent.

10 39. Plaintiff is informed and believes that Defendant intentionally sells, ships or
 11 otherwise delivers the accused products in the United States, with knowledge that are designed to
 12 and do practice the infringing features of the asserted claims of the '524 patent.

13 40. Plaintiff is without an adequate remedy at law and has thus been irreparably
 14 harmed by these acts of infringement. Plaintiff asserts upon information and belief that
 15 infringement of the asserted claims of the '524 patent is continuous and ongoing unless and until
 16 Defendant is enjoined from further infringement by the court.

17 **COUNT FOUR**

18 **INFRINGEMENT OF THE '331 PATENT BY DEFENDANT**

19 41. Plaintiff re-alleges and incorporates by reference each of the allegations set forth
 20 in paragraphs 1 through 16 above.

21 42. Defendant has knowledge of infringement of the '331 patent since at least the
 22 filing of this complaint.

23 43. The accused products, alone or in combination with other products, directly or
 24 alternatively under the doctrine of equivalents practice each of the limitations of independent
 25 claim 1 and dependent claims 2, 3 and 11 of the '331 patent (hereafter "the asserted claims of the
 26 '331 patent") in violation of 35 U.S.C. § 271(a) when Defendant demonstrates, tests or otherwise
 27 uses the accused products in the United States.

28 44. Plaintiff alleges that Defendant encourages others to directly infringe the asserted

1 claims of the '331 patent by among other things, advertising and promoting the sale and use of
2 the accused products in violation of 35 U.S.C. § 271(b) and (c) by knowingly inducing and
3 contributing to the infringement of the '331 patent by, among other things, providing operating
4 manuals, guides, instructional and/or informational videos and other materials designed to
5 instruct others how to use the products in an infringing manner. In particular, Defendant's
6 product literature, materials and instructional videos advertise and encourage customers to use
7 the accused product(s) for remote monitoring, which utilizes the devices described by the '331
8 patent in a manner Defendant knows infringes the patent. As more fully set forth above in
9 paragraphs 9, 10 and 11, Defendant's informational materials lay out step-by-step instructions on
10 how to set up an apparatus or system that infringes the asserted claims of the asserted patents.

11 45. Plaintiff thereupon alleges on information and belief that Defendant has, in the
12 United States, without authority, actively induced and continues to actively induce infringement
13 of the asserted claims of the '331 patent in violation of 35 U.S.C. § 271(b) by among other things
14 posting information about and demonstration videos showing how to infringe the asserted patents
15 as more specifically set forth above in paragraphs 9, 10 and 11.

16 46. Plaintiff similarly alleges upon information and belief that, without authority,
17 Defendant has contributed and continues to contribute to the infringement of the asserted claims
18 of the '331 patent in violation of 35 U.S.C. § 271(c) by importing into the United States, selling
19 and/or offering to sell within the United States accused products, that at a minimum include
20 wireless camera and/or other sensor products together with remote monitoring and
21 communication systems constituting material components of the accused products, that
22 Defendant knows were made and/or especially adapted for use in the accused products and/or are
23 especially adapted for use in infringing the asserted claims of the '331 patent; and which are not
24 otherwise staple articles of commerce suitable for substantial use in a manner that does not
25 infringe the asserted claims of the '331 patent.

26 47. Plaintiff is informed and believes that Defendant intentionally sells, ships or
27 otherwise delivers the accused products in the United States, with knowledge that are designed to
28 and do practice the infringing features of the asserted claims of the '331 patent.

COUNT FIVE

53. Plaintiff thereupon alleges on information and belief that Defendant has, in the United States, without authority, actively induced and continues to actively induce infringement

1 of the asserted claims of the '983 patent in violation of 35 U.S.C. § 271(b) by among other things
 2 posting information about and demonstration videos showing how to infringe the asserted patents
 3 as more specifically set forth above in paragraphs 9, 10 and 11.

4 54. Plaintiff similarly alleges upon information and belief that, without authority,
 5 Defendant has contributed and continues to contribute to the infringement of the asserted claims
 6 of the '983 patent in violation of 35 U.S.C. § 271(c) by importing into the United States, selling
 7 and/or offering to sell within the United States accused products, that at a minimum include
 8 wireless camera and/or other sensor products together with remote monitoring and
 9 communication systems constituting material components of the accused products, that
 10 Defendant knows were made and/or especially adapted for use in the accused products and/or are
 11 especially adapted for use in infringing the asserted claims of the '983 patent; and which are not
 12 otherwise staple articles of commerce suitable for substantial use in a manner that does not
 13 infringe the asserted claims of the '983 patent.

14 55. Plaintiff is informed and believes that Defendant intentionally sells, ships or
 15 otherwise delivers the accused products in the United States, with knowledge that are designed to
 16 and do practice the infringing features of the asserted claims of the '983 patent.

17 56. Plaintiff is without an adequate remedy at law and has thus been irreparably
 18 harmed by these acts of infringement. Plaintiff asserts upon information and belief that
 19 infringement of the asserted claims of the '983 patent is continuous and ongoing unless and until
 20 Defendant is enjoined from further infringement by the court.

21 **PRAYER FOR RELIEF**

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

- 23 1. That Defendant has infringed the Patents-in-Suit;
- 24 2. That Defendant, Defendant's officers, agents, servants, employees, and attorneys,
 25 and those persons in active concert or participation with them, be preliminarily and permanently
 26 enjoined from infringement of the Patents-in-Suit, including but not limited to any making,
 27 using, offering for sale, selling, or importing of unlicensed infringing products within and
 28 without the United States;

4. A finding that this case is exceptional and an award of reasonable attorneys fees pursuant to 35 U.S.C. § 285;

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

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

HANDAL & ASSOCIATES

Dated: December 17, 2015

By: /s/ Gabriel G. Hedrick

Gabriel G. Hedrick
Lauren G. Kane
Anton N. Handal
Attorneys for Plaintiff
e.Digital Corporation

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims.

HANDAL & ASSOCIATES

Dated: December 17, 2015

By: /s/ Gabriel G. Hedrick

Gabriel G. Hedrick
Lauren G. Kane
Anton N. Handal
Attorneys for Plaintiff
e.Digital Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on this date to all counsel of record, if any to date, who are deemed to have consented to electronic service via the Court's CM/ECF system per CivLR 5.4(d). Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery upon their appearance in this matter.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed this 17th day of December, 2015 at San Diego, California.

HANDAL & ASSOCIATES

Dated: December 17, 2015

By: /s/ Gabriel G. Hedrick

Gabriel G. Hedrick