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8

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

12 e.Digital Corporation,

13 Plaintiff,

14 v.

15 GPX, Inc.; DPI, Inc., dba Digital Products  
16 International,

17 Defendants.  
18

Case No. **'12CV2825 BEN BLM**

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

19  
20 Plaintiff e.Digital Corporation (“e.Digital” or “Plaintiff”), by and through its undersigned  
21 counsel, complains and alleges against GPX, Inc.; and, DPI, Inc., dba Digital Products  
22 International (“DPI”) (hereinafter collectively referred to as “GPX” or “Defendants”) as follows:  
23

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.

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3. Venue properly lies within the Southern District of California pursuant to the provisions of 28 U.S.C. §§ 1391(b), (c), and (d) and 1400(b). On information and belief, Defendants conduct 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 e.Digital is headquartered and has its principal place of business in this district, engages in business in this district, and has been harmed by Defendants' conduct, business transactions and sales in this district.

4. This Court has personal jurisdiction over Defendants because, on information and belief, Defendants transact continuous and systematic business within the State of California and the Southern District of California. In addition, this Court has personal jurisdiction over the Defendants because, on information and belief, this lawsuit arises out of Defendants' infringing activities, including, without limitation, the making, using, selling and/or offering to sell infringing products in the State of California and the Southern District of California. Finally, this Court has personal jurisdiction over Defendants because, on information and belief, Defendants have made, used, sold and/or offered for sale their 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 Southern District of California.

5. 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.

6. Upon information and belief, Defendant GPX, Inc. is a company registered and lawfully existing under the laws of the State of Missouri, with an office and principal place of business located at 900 N. 23rd Street, St. Louis, MO 63106. Upon information and belief, GPX

1 is a brand of Defendant DPI.

2 7. Upon information and belief, Defendant DPI, Inc. is a company registered and  
3 lawfully existing under the laws of the State of Missouri, with an office and principal place of  
4 business located at 900 N. 23rd Street, St. Louis, MO 63106. Upon information and belief, DPI  
5 does business as and/or its fictitious business name is Digital Products International.

6 **THE ASSERTED PATENTS**

7 8. On April 21, 1998, United States Patent No. 5,742,737 (“the ’737 patent”) entitled  
8 “Method For Recording Voice Messages On Flash Memory In A Hand Held Recorder,” was  
9 duly and legally issued by the United States Patent and Trademark Office. The named inventors  
10 are Norbert P. Daberko, Richard K. Davis, and Richard D. Bridgewater. e.Digital is the assignee  
11 and owner of the entire right, title and interest in and to the ’737 patent and has the right to bring  
12 this suit for damages and other relief. A true and correct copy of the ’737 patent is attached  
13 hereto as Exhibit A.

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

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

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

28 **COUNT ONE**

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

2           12.     Plaintiff re-alleges and incorporates by reference each of the allegations set forth  
3 in paragraphs 1 through 11 above.

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

11           14.     The accused products for purposes of the '737 patent include but are not limited  
12 to the ML series and MT series mp3 and mp4 players.

13           15.     Upon information and belief, certain of these products manufactured by  
14 Defendants have been and/or are currently sold and/or are being offered for sale online to  
15 consumers including but not limited to consumers located within the State of California at the  
16 Best Buy store located at 5151 Mission Center Road, San Diego, CA 92108 and/or sold online at  
17 the Best Buy website at [www.bestbuy.com](http://www.bestbuy.com) to consumers including, but not limited to, consumers  
18 located within the State of California.

19           16.     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 3 and 6 of the '737  
21 patent

22           17.     Upon information and belief, Defendants, without authority, have actively  
23 induced infringement and continue to actively induce infringement of the '737 patent in violation  
24 of 35 U.S.C. § 271(b) by causing others to directly infringe the claims of the '737 patent and/or  
25 by 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           18.     Upon information and belief, Defendants, without authority, have contributed to  
2 and continue to contribute to the infringement of the '737 patent in violation of 35 U.S.C. §  
3 271(c) by importing into the United States, selling and/or offering to sell within the United States  
4 accused products that (1) constitute a material part of the invention of the '737 patent, (2)  
5 Defendants know to be especially adapted for use in infringing the '737 patent, and (3) are not  
6 staple articles of commerce suitable for substantial noninfringing use with respect to the '737  
7 patent.

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

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

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

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

## 23                               **COUNT TWO**

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

25           23.     Plaintiff re-alleges and incorporates by reference each of the allegations set forth  
26 in paragraphs 1 through 11 above.

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

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

6 25. The accused products for purposes of the '774 patent include but are not limited  
7 to the ML series and MT series mp3 and mp4 players.

8 26. Upon information and belief, certain of these products manufactured by  
9 Defendants have been and/or are currently sold and/or are being offered for sale online to  
10 consumers including but not limited to consumers located within the State of California at the  
11 Best Buy store located at 5151 Mission Center Road, San Diego, CA 92108 and/or sold online at  
12 the Best Buy website at www.bestbuy.com to consumers including, but not limited to, consumers  
13 located within the State of California.

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

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

25 29. Upon information and belief, Defendants, without authority, have contributed to  
26 and continue to contribute to the infringement of the '774 patent in violation of 35 U.S.C. §  
27 271(c) by importing into the United States, selling and/or offering to sell within the United States  
28 accused products that (1) constitute a material part of the invention of the '774 patent, (2)

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

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

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

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

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

19 **PRAYER FOR RELIEF**

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

- 21 1. That Defendants be declared to have infringed the Patents-in-Suit;
- 22 2. That Defendants' infringement of the Patents-in-Suit has been deliberate and  
23 willful;
- 24 3. Preliminarily and permanently enjoining the Defendants' officers, agents,  
25 servants, employees, and attorneys, and those persons in active concert or participation with  
26 them, from infringement of the Patents-in-Suit, including but not limited to any making, using,  
27 offering for sale, selling, or importing of unlicensed infringing products within and without the  
28 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 26, 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**

Plaintiff hereby demands a trial by jury on all claims.

**HANDAL & ASSOCIATES**

Dated: November 26, 2012

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