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7 8	James F. Valentine (SBN 149269) HOWREY LLP 1950 University Avenue, 4 th Floor East Palo Alto, CA 94303 Telephone: (650) 798-3500 Facsimile: (650) 798-3600 E-Mail: PistorinoJ@howrey.com	JUN 8 2006 M(JY) RIGHARD W. WIEKING NORTHERN DISTRICT OF CALIFORNIA	
11 12 13	Attorneys for Plaintiffs SEVEN NETWORKS, INC. and SEVEN NETWORKS INTERNATIONAL OY		
13	UNITED STATES DISTRICT COURT		
	NORTHERN DISTRICT OF CALIFORNIA		
15			
16	CONTRACTOR OF THE PARTY OF THE	06 36540	
17	SEVEN NETWORKS, INC., a Delaware corporation, and SEVEN NETWORKS	Case No.	
18	INTERNATIONAL OY,)	COMPLAINT FOR DECLARATORY JUDGMENT	
19	Plaintiffs,)		
20	vs.		
21	VISTO CORPORATION, a Delaware) corporation,)		
22	Defendant.		
23	Defendant.		
24			
25	Plaintiffs Seven Networks, Inc. and Seven Networks International OY (collectively, "Seven") for their complaint against Defendant Visto Corporation ("Visto"), allege and aver:		
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HOL/REY LLP			
	Case No. COMPLAINT FOR DECLARATORY JUDGMENT		

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PARTIES

- 1. Seven Networks, Inc. is a Delaware corporation having its principal place of business at 901 Marshall Street, Redwood City, California 94063.
- 2. Seven Networks International OY is a Finnish corporation having its principal place of business in Helsinki, Finland.
- 3. Visto is a Delaware corporation having its principal place of business at 275 Shoreline Drive, Suite 300, Redwood Shores, California 94065.

JURISDICTION AND VENUE

- 4. This is an action for the resolution of an existing conflict under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. The underlying causes of action arise under the patent laws of the United States. A case or controversy exists between Plaintiffs and Visto. The amount in controversy between the parties exceeds \$75,000. This Court therefore has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1332, and 1338(a).
- 5. On information and belief, this Court has personal jurisdiction over Visto because Visto is found in this District.
- 6. Venue for this action is proper in this District under 38 U.S.C. §§ 1391(b) and 1400(b) because Visto resides in this District and because a substantial part of the events giving rise to this claim occurred in this District.
- 7. In August 2005, Seven Networks, Inc. filed suit against Visto in the Eastern District of Texas in the case captioned *Seven Networks, Inc. v. Visto Corporation*, Civil Action No. 2:05-CV-365-TJW, alleging infringement by Visto of a patent owned by Seven Networks. Visto has indicated its intention to try and amend its Answer in that case to assert the patents that are the subject of this Complaint. Because the patents that are the subject of this complaint are not asserted in that action, do not share a common nucleus of operative fact with the allegations of that case and Seven Networks' own case against Visto is so advanced, Seven Networks does not believe that the cases are related (e.g., no products of Seven have been accused of infringing any patents owned by Visto in the *Seven Networks v. Visto* case).

Likewise pending in the Eastern District of Texas is a case captioned Visto Corporation

1 v. Smartner Information Systems, Ltd., Civil Action No. 2:05-CV-91-TJW. Smartner Information Systems, Ltd. is Seven Networks International OY's former name. Visto has previously indicated its 3 intention to try and amend its Complaint in that case to assert one of the patents that is the subject of this suit (the '679 patent). However, Visto has not done so. In addition, that case was filed in February 2005 and is well advanced. Because this Court will be faced with the '679 patent as a result 6 of Seven Networks, Inc.'s own action, Seven Networks International OY does not believe that this case 7 is related as there would be no savings if the case was consolidated with the action pending in the 8 Eastern District of Texas. Further, because of its advanced state, it does not appear likely that the 9 patents in this case could practically be considered in that case. 10

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SEVEN'S REASONABLE APPREHENSION OF SUIT

- This action is brought to resolve the apprehension under which Seven is forced to 9. conduct its business in the United States as a result of Visto's threats to sue Seven for infringement of certain patents purportedly owned by Visto.
- Seven is a leading designer, manufacturer, and marketer of innovative wireless 10. solutions for the worldwide mobile communications market. Seven's portfolio of award-winning products is used by thousands of organizations around the world and include the Always-on-Mail and Duality wireless platforms, software development tools, and software/hardware licensing agreements.
- On information and belief, counsel for Visto have stated that Visto intends to sue Seven 11. Networks for alleged patent infringement of two patents purportedly owned by Visto (U.S. Patent No. 6,151,606 (the "'606 patent) and U.S. Patent No. 7,039,679 (the "'679 patent"). Counsel for Visto have also stated that Visto intends to sue Seven Networks International Oy for alleged infringement of the '679 patent. Copies of the '606 and '679 patents are attached hereto as Exhibits A and B, respectively.
- Visto's stated goal of bringing a patent infringement suit against Seven has created in 12. Seven a reasonable apprehension that Visto will sue Seven for patent infringement of the '606 and '679 Visto patents. Seven believes that failure to determine the issues presented by this case at this point in time will lead to substantial commercial injury to Seven.

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1	13.	Seven therefore seeks a declaration by this Court that Seven's products and services do	
2	not infringe th	ne '606 and '679 Visto patents and that the '606 and '679 Visto patents are invalid.	
3	COUNT I		
4		Declaratory Judgment of Noninfringement of the '606Patent	
5	14.	Seven repeats and realleges paragraphs 1 through 13 of this Complaint as if the same	
6	were full set forth herein.		
7	15.	Seven's products do not infringe any valid claim of the '606 patent, either directly,	
8	indirectly, contributorily, or otherwise. Seven has not induced others to infringe the '606 patent.		
9	16.	Seven is therefore entitled to a declaratory judgment that it does not infringe the '606	
10	patent.		
11		<u>COUNT II</u>	
12		Declaratory Judgment of Invalidity of the '606 Patent	
13	17.	Seven repeats and realleges paragraphs 1 through 14 of this Complaint as if the same	
14	were full set forth herein.		
15	18.	The claims of the '606 patent are invalid for failure to meet the requirements specified	
16	in Title 35 of the United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, and		
17	112.		
18	19.	Seven is therefore entitled to a declaratory judgment that the '606 patent is invalid.	
19		COUNT III	
20		Declaratory Judgment of Noninfringement of the '679 Patent	
21	20.	Seven repeats and realleges paragraphs 1 through 17 of this Complaint as if the same	
22	were full set forth herein.		
23	21.	Seven's products do not infringe any valid claim of the '679 patent, either directly,	
24	indirectly, contributorily or otherwise. Seven has not induced others to infringe the '679 patent.		
25	22.	Seven is therefore entitled to a declaratory judgment that it does not infringe the '679	
26	patent.		
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LLP		4	

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COUNT IV 1 Declaratory Judgment of Invalidity of the '679 Patent 2 Seven repeats and realleges paragraphs 1 through 22 of this Complaint as if the same 23. 3 were full set forth herein. 4 The claims of the '679 patent are invalid for failure to meet the requirements specified 24. 5 in Title 35 of the United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, and 7 112. Seven is therefore entitled to a declaratory judgment that the '679 patent is invalid. 8 25. 9 PRAYER FOR RELIEF 10 WHEREFORE, Plaintiffs Seven Networks, Inc. and Seven Networks International OY pray 11 that the Court enter judgment that: 12 U.S. Patent No. 6,151,606 is not infringed by Seven's products; 13 a) The claims of U.S. Patent No. 6,1515,606 are invalid; b) 14 U.S. Patent No. 7,039,679 is not infringed by Seven's products; and 15 c) The claims of U.S. Patent No. 7,039,679 are invalid. d) 16 17 Respectfully submitted, Dated: June 8, 2006 18 HOWREY LLP 19 20 By: 21 Henry C. Bunsow K.T. Cherian 22 James C. Pistorino James F. Valentine 23 Attorneys for Plaintiffs SEVEN 24 NETWÖRKS, INC. and SEVEN NETWORKS INTERNATIONAL OY 25 26 27 28

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