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ATTORNEYS FOR PLAINTIFF  
INTERWOVEN, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

INTERWOVEN, INC.,

Plaintiff,

vs.

VERTICAL COMPUTER SYSTEMS, INC.

Defendant.

Civil Case No.: 3:10-CV-04645 RS

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY JUDGMENT**

JURY DEMAND

1 Plaintiff Interwoven, Inc. ("Interwoven") for its First Amended Complaint against Defendant  
2 Vertical Computer Systems, Inc. ("Vertical"), alleges:

### 3 **NATURE OF THE ACTION**

4 1. This is an action for declaratory judgment of invalidity and non-infringement of  
5 United States Patent Nos. 6,826,744 ("the '744 patent") (attached hereto as Exhibit A) and  
6 7,716,629 (the "the '629 patent") (attached hereto as Exhibit B), pursuant to the Declaratory  
7 Judgment Act, 28 U.S.C. §§2201-02, and the patent laws of the United States, 35 U.S.C. § 100 *et*  
8 *seq.*, and for such other relief as the Court deems just and proper.

### 9 **THE PARTIES**

10 2. Plaintiff Interwoven is a corporation duly organized and existing under the laws of  
11 the State of Delaware. Interwoven is registered to do business in California and has a principal  
12 place of business at 160 East Tasman Drive, San Jose, CA 95134.

13 3. Upon information and belief, Defendant Vertical is a Delaware corporation with a  
14 principal place of business at 101 W. Renner Road, Suite 300, Richardson, TX 75082. Upon  
15 information and belief, Vertical's agent of service is Vcorp Services, LLC, and is located at  
16 10101 Fondren Road, Suite 515, Houston, TX 77096.

### 17 **EXISTENCE OF AN ACTUAL CONTROVERSY**

18 4. There is an actual controversy within the jurisdiction of this Court under 28 U.S.C.  
19 §§ 2201 and 2202.

20 5. Vertical purports to be the owner of all rights, title and interest in and to the '744  
21 patent and the '629 patent (collectively, "patents-in-suit").

22 6. On or about January 12, 2009, Vertical contacted Interwoven, Inc. ("Interwoven"),  
23 taking the position that claim 1 of the '744 patent "covers" by Interwoven's "TeamSite Team  
24 XM2, TeamSite Server and TeamSite Live Lite Content Publishing Server products."

25 7. On or about August 12, 2010, Vertical contacted Interwoven taking the position  
26 that the claims of the '744 patent "cover" Interwoven's TeamSite 2006 product. It also took the  
27 position that the '629 patent that issued on May 11, 2010, entitled "System and Method for  
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Generating Web Sites in an Arbitrary Object Framework,” which issued to Vertical from a continuation of the application for the ’744 patent, “covers” the TeamSite 2006 product.

8. Based upon the above facts, there is an actual and justifiable controversy within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

### **JURISDICTION AND VENUE**

9. Plaintiff files this complaint against Vertical pursuant to the patent laws of the United States, Title 35 of the United States Code, with a specific remedy sought based upon the laws authorizing actions for declaratory judgment in the federal courts of the United States, 28 U.S.C. §§ 2201 and 2202.

10. This Court has subject matter jurisdiction over this action, which arises under the patent laws of the United States, pursuant to 28 U.S.C. §§1331, 1338(a), and 2201.

11. Venue in this District is proper under 28 U.S.C. §§1391 and 1400.

12. All of the communications described above were sent to Interwoven at its offices in the Northern District of California.

13. In addition to Vertical’s directing its allegation of infringement to Interwoven (and its successors-in-interest) at its offices in the Northern District of California, on information and belief, Vertical has repeated, ongoing, extensive, and deliberate contacts with California:

A. From 2000 through at least 2003, Vertical was based in California at 6336 Wilshire Boulevard, Los Angeles, CA 90048.

B. Vertical maintains a registered agent for service of process in California. William Kenneth Mills of 865 South Figueroa Street, Suite 3200, Los Angeles, CA 90017 who has been a director of Vertical since December 2000 and is listed as Vertical’s agent for service of process in California.

C. Based on publicly available information, Vertical is actively acquiring the business and assets of California companies. On May 21, 2010, a wholly-owned Vertical subsidiary, purchased the business and substantially all the assets of Pelican Applications, LLC, a California Limited Liability Company.

1 D. Based on publicly available information, Vertical has two California-based  
2 subsidiaries. Vertical Internet Solutions, Inc. and Pointmail.com, Inc. that are California  
3 corporations, and are wholly-owned subsidiaries of Vertical.

4 E. Based on publicly available information, Vertical has a royalty interest in  
5 TranStar, based in Claremont, CA. TranStar is a systems integrator and consulting firm. Vertical  
6 is entitled to receive 3% of any transaction fees generated by TranStar in perpetuity.

7 F. Based on publicly available information, Vertical also has a distribution  
8 agreement with TranStar, based in Claremont, CA to market Vertical's products.

9 G. Vertical maintains a website (www.vcsy.com) that advertises its products,  
10 including SiteFlash, ResponseFlash, emPath, and Emily Solutions. These products are the subject  
11 of the distribution agreement with TranStar, outlined above, based on publicly available  
12 information. The website solicits both customers, through its product and service advertisements  
13 and investors, through its investor relations section. It further provides contact information for  
14 Vertical for both customers and investors and an interactive form for submitting questions  
15 including for residents of California.

16 **FIRST CLAIM**

17 **DECLARATORY JUDGMENT OF INVALIDITY AND NON-**  
18 **INFRINGEMENT REGARDING THE '744 PATENT**

19 14. The Plaintiff hereby restates and realleges the allegations set forth in paragraphs 1  
20 through 13 and incorporates them by reference.

21 15. The '744 patent is invalid for failure to comply with one or more of the provisions  
22 of 35 U.S.C., including but not limited to, §§ 101, 102, 103, and/or 112.

23 16. No valid, and enforceable, claim of the '744 patent, including but not limited to  
24 Claim 1, is infringed by the Plaintiff's software, including but not limited to Interwoven's  
25 "TeamSite Team XM2, TeamSite Server and TeamSite Live Lite Content Publishing Server  
26 products."  
27  
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**SECOND CLAIM**

**DECLARATORY JUDGMENT OF INVALIDITY AND NON-  
INFRINGEMENT REGARDING THE '629 PATENT**

17. The Plaintiff hereby restates and realleges the allegations set forth in paragraphs 1 through 16 and incorporates them by reference.

18. The '629 patent is invalid for failure to comply with one or more of the provisions of 35 U.S.C., including but not limited to, §§ 101, 102, 103, and/or 112.

19. No valid, and enforceable, claim of the '629 patent including but not limited to Claim 1, is infringed by the Plaintiff's software, including but not limited to Interwoven's "TeamSite Team XM2, TeamSite Server and TeamSite Live Lite Content Publishing Server products" and TeamSite 2006.

**THIRD CLAIM**

**DECLARATORY JUDGMENT OF UNENFORCEABILITY BY VIRTUE  
OF INEQUITABLE CONDUCT REGARDING THE '744 PATENT**

20. The Plaintiff hereby restates and realleges the allegations set forth in paragraphs 1 through 19 and incorporates them by reference.

21. The claims of the '744 patent are unenforceable as a result of inequitable conduct before the United States Patent and Trademark Office ("PTO"). One or more of the people substantively involved in the prosecution of the application leading to the '744 patent, including inventor Aubrey McAuley, were aware of information material to the patentability of the '744 patent, but withheld that information from the PTO with the intent to deceive, and made false and misleading statements to the PTO during the prosecution of the '744 patent, as set forth herein.

22. Aubrey McAuley, the named inventor of the '744 patent, was a founder and president of Adhesive Media, Inc. ("Adhesive").

23. On information and belief, Adhesive offered for sale and sold software products and/or services based on its "WebOS" technology more than one year before October 1, 1999, the filing date of the application leading to the '744 patent. Those software products and/or services included Adhesive's "NewsFlash" product, as well as a number of web sites that Adhesive

1 designed for particular customers, purportedly using Adhesive's WebOS technology.

2 24. On information and belief, Adhesive also published information relating to its  
3 software products and/or services based on its "WebOS" technology more than one year before  
4 October 1, 1999. For example, more than one year before October 1, 1999, Adhesive posted on  
5 the Internet a diagram of the Web Object Management Facility of its WebOS technology, which  
6 is attached hereto as Exhibit C.

7 25. Exhibit C is nearly identical to Figure 5 of the '744 patent.

8 26. The specification of the '744 patent describes Figure 5 as an alleged embodiment  
9 of "the present invention." *See* '744 patent at col. 5:3-17.

10 27. Therefore, Adhesive's commercial offer for sale and sale of products and services  
11 based on its WebOS technology, and Adhesive's publication of information relating to its WebOS  
12 technology, all of which occurred more than one year before October 1, 1999, constitute material  
13 prior art.

14 28. Upon information and belief, prior to issuance of the '744 patent, Mr. McAuley, as  
15 Adhesive's founder and president, had knowledge of Adhesive's offer for sale and sale of its  
16 WebOS technology and Adhesive's publication of information relating to its WebOS technology.

17 29. None of the persons involved in the prosecution of the '744 patent, including but  
18 not limited to Mr. McAuley, disclosed to the PTO Adhesive's offer for sale or sale of its WebOS  
19 technology or the publication of information relating to its WebOS technology.

20 30. Information regarding Adhesive's offer for sale and sale of WebOS technology,  
21 and publications relating thereto, was withheld from the PTO with intent to deceive.

22 31. This withholding of information material to patentability with intent to deceive the  
23 PTO constitutes inequitable conduct, which renders the '744 patent unenforceable.

24 **FOURTH CLAIM**

25 **DECLARATORY JUDGMENT OF UNENFORCEABILITY BY VIRTUE**  
26 **OF INEQUITABLE CONDUCT REGARDING THE '629 PATENT**

27 32. Interwoven hereby restates and realleges the allegations set forth in paragraphs 1  
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1 through 31 above and incorporates them by reference.

2 33. The claims of the '629 patent are unenforceable as a result of inequitable conduct  
3 before the PTO. On information and belief, one or more of the people substantively involved in  
4 the prosecution of the application leading to the '629 patent, including inventor Aubrey McAuley  
5 and patent agent Jack D. Stone Jr., were aware of information material to the patentability of the  
6 '629 patent, but withheld that information from the PTO with the intent to deceive, and made  
7 false and misleading statements to the PTO during the prosecution of the '629 patent, as set forth  
8 herein.

9 34. During the prosecution of the '629 patent, Vertical initiated a patent infringement  
10 suit against Microsoft Corporation in the Eastern District of Texas, Civil Action No. 8 2:07-CV-  
11 144 ("the Microsoft litigation"), alleging infringement of the '744 patent.

12 35. During the course of the Microsoft litigation, material information regarding the  
13 patentability of the '744 patent was disclosed by Microsoft to Vertical and Vertical's attorneys.  
14 For example, Microsoft raised inequitable conduct allegations regarding the '744 patent in its  
15 Answer to Vertical's complaint, Microsoft served invalidity contentions explaining how  
16 numerous prior art references anticipated and/or rendered obvious the claims of the '744 patent,  
17 Microsoft produced copies of the underlying prior art references, and Microsoft filed a claim  
18 construction brief arguing that numerous claims of the '744 patent were invalid under 35 U.S.C. §  
19 112. However, this material information was not properly disclosed to the PTO during the  
20 prosecution of the '629 patent.

21 36. Because the application leading to the '629 patent is a continuation of the '744  
22 patent, and because the claims and specifications of the '629 and '744 patents are substantially  
23 similar, Microsoft's inequitable conduct allegations, invalidity contentions and arguments, and  
24 the invalidating prior art references it produced in the Microsoft litigation are also material to the  
25 patentability of the '629 patent.

26 **A. Microsoft's Inequitable Conduct Allegations**

27 37. On July 13, 2007, Microsoft filed its Answer, Affirmative Defenses, and  
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1 Counterclaims (“Microsoft’s Answer”) in the Microsoft litigation. Microsoft alleged that the  
2 ’744 patent was unenforceable due to the inequitable conduct of Mr. McAuley in failing to  
3 disclose material information to the PTO. In particular, Microsoft alleged that Mr. McAuley,  
4 with intent to deceive, failed to disclose Adhesive’s offer for sale and sale of products and  
5 services based on Adhesive’s WebOS technology, and publications relating thereto, more than  
6 one year prior to October 1, 1999.

7 38. Microsoft’s inequitable conduct allegations disclose critical information expressly  
8 challenging the validity and enforceability of the related ’744 patent, and thus constitute material  
9 prior art.

10 39. None of the persons involved in the prosecution of the ’629 patent, including  
11 Mr. McAuley and Mr. Stone, disclosed to the PTO either Microsoft’s Answer or the existence or  
12 substance of Microsoft’s inequitable conduct allegations.

13 40. Further, during prosecution of the ’629 patent, the applicants disclosed certain  
14 prior art documents relating to Adhesive’s prior art WebOS technology relied on by Microsoft  
15 during the Microsoft litigation, but failed to disclose the critical facts that Mr. McAuley was the  
16 founder and president of Adhesive and other information indicating that the WebOS technology  
17 qualified as prior art under 35 U.S.C. § 102(b).

18 41. The knowledge that Mr. McAuley is both a named inventor of the ’629 patent and  
19 the founder and president of Adhesive, as well as the date of the WebOS materials, is essential for  
20 the PTO to fully understand the relevance and applicability of Adhesive’s prior art WebOS  
21 technology.

22 42. During prosecution of the ’629 patent, the applicants selectively disclosed to the  
23 PTO only certain information and prior art materials from the Microsoft litigation.

24 43. The selective disclosure to the PTO of information arising out of the Microsoft  
25 litigation demonstrates that Mr. McAuley and Mr. Stone were aware of the Microsoft litigation  
26 and the existence of material regarding the patentability of the ’629 patent information arising out  
27 of that litigation.  
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44. This selective disclosure to the PTO also demonstrates that Mr. McAuley and Mr. Stone made a deliberate decision to withhold material information from the PTO, and thus demonstrates an intent to deceive.

45. The withholding of information material to patentability with intent to deceive constitutes inequitable conduct, which renders the '629 patent unenforceable.

**B. Microsoft's Invalidity Contentions and Claim Construction Brief**

46. Upon information and belief, on January 18, 2008, Microsoft served its Invalidity Contentions in the Microsoft litigation.

47. Microsoft's Invalidity Contentions identified 58 prior art references that anticipated and/or rendered obvious claims 1-5, 9, 11, 17-19, 21, 23, 25-29, 33, 39-41, 43, 45, and 47-48 of the '744 patent and provided over 50 pages of narrative analysis of how the identified prior art anticipated and/or rendered obvious the asserted claims. The Invalidity Contentions also included over 250 pages of claim charts mapping the prior art references to each limitation of the asserted claims. Further, the Invalidity Contentions include an analysis of the '744 patent's invalidity based on lack of enablement, lack of written description, and indefiniteness.

48. Upon information and belief, on July 18, 2008, Microsoft served its First Amended Invalidity Contentions in the Microsoft litigation.

49. Microsoft's First Amended Invalidity Contentions added three prior art references to Microsoft's prior Invalidity Contentions, identifying a total of 61 prior art references that anticipated and/or rendered obvious claims 1-5, 9, 11, 17-19, 21, 23, 25-29, 33, 39-41, 43, 45, 47-48, and 53 of the '744 patent. As with the initial Invalidity Contentions, Microsoft First Amended Invalidity Contentions provided over 50 pages of narrative analysis of how the identified prior art anticipated and/or rendered obvious the asserted claims and included over 250 pages of claim charts mapping the prior art references to each limitations of the asserted claims. Further, the First Amended Invalidity Contentions include an analysis of the '744 patent's Invalidity based on lack of enablement, lack of written description, and indefiniteness.

50. Upon information and belief, on June 6, 2008, Microsoft filed its Claim

1 Construction Brief in the Microsoft litigation.

2 51. Microsoft argued in its Claim Construction Brief that the term “arbitrary object  
3 framework” is fatally indefinite.

4 52. The term “arbitrary object framework” is found in all independent claims of both  
5 the ’744 and ’629 patents, making Microsoft’s indefiniteness argument material to the  
6 patentability of the ’629 patent.

7 53. Microsoft’s Invalidity Contentions, First Amended Invalidity Contentions, and  
8 Claim Construction Brief disclose critical information expressly challenging the validity of the  
9 related ’744 patent, and thus constitute material prior art.

10 54. None of the persons involved in the prosecution of the ’629 patent, including  
11 Mr. McAuley and Mr. Stone, disclosed to the PTO Microsoft’s Invalidity Contentions, First  
12 Amended Invalidity Contentions, or Claim Construction Brief. Further, none of the persons  
13 involved in the prosecution of the ’629 patent, including Mr. McAuley and Mr. Stone, disclosed  
14 to the PTO the existence of Microsoft’s Invalidity Contentions, First Amended Invalidity  
15 Contentions, or Claim Construction Brief or the substance of the invalidity arguments set forth  
16 therein.

17 55. Only some prior art references relied on during the Microsoft litigation were  
18 selectively disclosed to the PTO during prosecution of the ’629 patent.

19 56. The selective disclosure to the PTO of information arising out of the Microsoft  
20 litigation demonstrates that Mr. McAuley and Mr. Stone were aware of the Microsoft litigation  
21 and the existence of material information regarding the patentability of the ’629 patent arising out  
22 of that litigation.

23 57. This selective disclosure to the PTO also demonstrates that Mr. McAuley and  
24 Mr. Stone made a deliberate decision to withhold material information from the PTO, and thus  
25 demonstrates an intent to deceive.

26 58. The withholding of information material to patentability with intent to deceive  
27 constitutes inequitable conduct, which renders the ’629 patent unenforceable.  
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1                   **C.     Prior Art References Produced by Microsoft**

2           59.     In an Information Disclosure Statement, the '629 patent applicants disclosed to the  
3 PTO 24 of the 61 prior art references (or excerpts thereof) that were identified by Microsoft in its  
4 Invalidity Contentions and First Amended Invalidity Contentions as anticipating and/or rendering  
5 obvious certain claims of the '744 patent.

6           60.     Upon information and belief, none of the persons involved in the prosecution of  
7 the '629 patent, including Mr. McAuley and Mr. Stone, disclosed to the PTO any references  
8 identified in Microsoft's Invalidity Contentions or First Amended Invalidity Contentions that  
9 pertain to the prior art Borland Delphi technology. Specifically, none of the persons involved in  
10 the prosecution of the '629 patent disclosed to the PTO at least the following: (i) *Borland Delphi*  
11 *3 for Windows 95 & Windows NT, User's Guide*, Borland International, Inc. (1997); (ii)  
12 *Borland's Official No-Nonsense Guide to Delphi 2*, Sams Publishing (1996); (iii) Osier et al.,  
13 *Teach Yourself Delphi 3 in 14 Days*, Sams Publishing (1997); (iv) Reisdorph, *Sams Teach*  
14 *Yourself Borland Delphi 4 in 21 Days*, Sams Publishing (1998); (v) Swan, *Delphi 4 Bible*, IDG  
15 Books Worldwide, Inc., Tom Swan (1998); (vi) Teixeira et al., *Borland Delphi 4 Developer's*  
16 *Guide*, Sams Publishing (1998).

17           61.     On information and belief, none of the persons involved in the prosecution of the  
18 '629 patent, including Mr. McAuley and Mr. Stone, disclosed to the PTO any references  
19 identified in Microsoft's Invalidity Contentions or First Amended Invalidity Contentions that  
20 pertain to the prior art Microsoft Visual J++ technology. Specifically, none of the persons  
21 involved in the prosecution of the '629 patent disclosed to the PTO at least the following: (i)  
22 Doss, *DCOM Networking with Visual J++ 6.0*, Wordware Publishing, Inc. (1999); (ii) Morgan et  
23 al., *Visual J++ Unleashed*, Sams.net Publishing (1997); (iii) Mulloy, *Using Visual J++ 6*, Que  
24 Corporation (1998); (iv) Wood, *Visual J++ 6 Secrets*, IDG Books Worldwide, Inc. (1998).

25           62.     On information and belief, none of the persons involved in the prosecution of the  
26 '629 patent, including Mr. McAuley and Mr. Stone, disclosed to the PTO any references  
27 identified in Microsoft's Invalidity Contentions or First Amended Invalidity Contentions that  
28

1 pertain to the prior art ASP technology. Specifically, none of the persons involved in the  
2 prosecution of the '629 patent disclosed to the PTO at least the following: (i) Fedorchek et al.,  
3 *ASP: Active Server Pages*, IDG Books Worldwide, Inc. (1997); (ii) Fedorov et al., *ASP 2.0*  
4 *Programmer's Reference*, Wrox Press (1998).

5 63. On information and belief, none of the persons involved in the prosecution of the  
6 '629 patent, including Mr. McAuley and Mr. Stone, disclosed to the PTO any references  
7 identified in Microsoft's Invalidity Contentions or First Amended Invalidity Contentions that  
8 pertain to the prior art Lotus Notes and Domino 4.5 technology. Specifically, none of the persons  
9 involved in the prosecution of the '629 patent disclosed to the PTO at least the following: (i)  
10 Forlini et al., *Lotus Notes and Domino 4.5 Professional Reference*, New Riders Publishing  
11 (1997); (ii) Krantz, *Building Intranets with Lotus Notes & Domino*, Maximum Press (1997).

12 64. On information and belief, none of the persons involved in the prosecution of the  
13 '629 patent, including Mr. McAuley and Mr. Stone, disclosed to the PTO any references  
14 identified in Microsoft's Invalidity Contentions or First Amended Invalidity Contentions that  
15 pertain to the prior art Paradox 7 technology. Specifically, none of the persons involved in the  
16 prosecution of the '629 patent disclosed to the PTO at least the following: (i) Karim et al.,  
17 *Paradox 7 Projects for Windows 95*, The Benjamin/Cummings Publishing Company, Inc. (1997);  
18 (ii) Weingarten et al., *Paradox 7 for Windows 95 Illustrated Brief Edition*, CTI (1997).

19 65. Just as was the case with the 24 prior art references from the Microsoft litigation  
20 that the applicants did selectively disclose to the PTO, the narrative and claim charts submitted  
21 with Microsoft's Invalidity Contentions and First Amended Invalidity contentions demonstrate  
22 how the intentionally undisclosed Borland Delphi, Microsoft Visual J++, ASP, Lotus Notes and  
23 Domino 4.5, and Paradox 7 prior art references listed in Paragraphs 60-64 above anticipate and/or  
24 render obvious the asserted claims in the Microsoft litigation. Therefore, the undisclosed Borland  
25 Delphi, Microsoft Visual J++, ASP, Lotus Notes and Domino 4.5, and Paradox 7 prior art  
26 references listed in Paragraphs 60-64 above constitute material prior art.

27 66. The selective disclosure to the PTO of prior art references identified by Microsoft  
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1 during the Microsoft litigation demonstrates that Mr. McAuley and Mr. Stone were aware of the  
2 Microsoft litigation and the existence of material information regarding the patentability of the  
3 '629 patent arising out of that litigation.

4 67. This selective disclosure to the PTO also demonstrates that Mr. McAuley and  
5 Mr. Stone made a deliberate decision to withhold material information from the PTO, and thus  
6 demonstrates an intent to deceive.

7 68. The withholding of information material to patentability with intent to deceive  
8 constitutes inequitable conduct, which renders the '629 patent unenforceable.

9 **D. Prior Art References Disclosed by Interwoven**

10 69. On or about January 12, 2009, Vertical contacted Interwoven, taking the position  
11 that the '744 patent contains claims that it believes "cover" Interwoven's "TeamSite Team XM2,  
12 TeamSite Server and TeamSite Live Lite Content Publishing Server products" (hereinafter  
13 "TeamSite prior art").

14 70. On or about March 5, 2009, Vertical's agent and attorney, Vasilios Dossas and its  
15 Chief Technology Officer, Luiz Claudio Valdetaro met with representatives from Interwoven at  
16 Interwoven's headquarters in San Jose, California.

17 71. During this meeting Interwoven presented Mr. Dossas and Mr. Valdetaro with  
18 information including claim charts, clearly indicating that the alleged infringing TeamSite prior  
19 art has been in use and was on sale prior to October 1, 1998. As such, TeamSite constitutes  
20 material prior art under at least 35 U.S.C. § 102(b).

21 72. On information and belief, Vertical is a company that had approximately 29  
22 employees at the time of its meeting with Interwoven, and Mr. Valdetaro is the highest ranking  
23 management-level employee at Vertical primarily responsible for technology, including the  
24 development and monetization of Vertical's intellectual property and represented Vertical in this  
25 capacity at the meeting with Interwoven.

26 73. On information and belief, persons involved in the prosecution of the '629 patent,  
27 including Mr. Valdetaro, Mr. McAuley and Mr. Stone, were aware of the existence of material  
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information regarding the patentability of the '629 patent arising out of its discussions with Interwoven, including at least the prior art disclosed by Interwoven at the March 5, 2009 meeting at Interwoven's headquarters.

74. On information and belief, in his position as Chief Technology Officer, Mr. Valdetaro would have known, or should have known, about pending patent applications, especially the '629 application which was a continuation of the '744 patent that he and Mr. Dossas were attempting to license to Interwoven during the March 5, 2009 meeting.

75. On information and belief, by virtue of his position as Vertical's Chief Technology Officer and knowledge of the Interwoven TeamSite prior art, Mr. Valdetaro had a duty to disclose this material prior art to the PTO during the prosecution of the '629 patent.

76. On information and belief, by virtue of his position as Vertical's Chief Technology Officer, if he himself was not the person who should have disclosed the Interwoven TeamSite prior art to the PTO, Mr. Valdetaro would have known the appropriate person at Vertical to whom this information should be disclosed, and had a duty to disclose this relevant information to that person.

77. On information and belief, none of the persons involved in the prosecution of the '629 patent, including Mr. Valdetaro, Mr. McAuley and Mr. Stone, disclosed to the PTO any references identified by Interwoven related to its TeamSite prior art.

78. The TeamSite prior art is material and would have been relevant to the patentability of at least the '629 patent.

79. On information and belief, the TeamSite prior art was withheld from the PTO with the intent to deceive so that the '629 patent would have an increased likelihood of being issued.

80. The withholding of information material to patentability with intent to deceive constitutes inequitable conduct, which renders the '629 patent unenforceable.

### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays for judgment as follows:

1. Declaring that the claims of the patents-in-suit are invalid and/or unenforceable;

2. Declaring that no valid, and enforceable, claim of the patents-in-suit is infringed by Plaintiff;

3. Declaring that Vertical and each of its officers, employees, agents, alter egos, attorneys, and any persons in active concert or participation with them be restrained and enjoined from further prosecuting or instituting any action against the Plaintiff claiming that the patents-in-suit are valid, enforceable, or infringed, or from representing that the products or services of the Plaintiff infringe the patents-in-suit;

4. A judgment declaring this case exceptional under 35 U.S.C. § 285 and awarding Plaintiff its attorneys' fees and costs in connection with this case;

5. Awarding Plaintiff such other and further relief as the Court deems just and proper.

Dated: February 7, 2011

Respectfully submitted,

WHITE & CASE LLP

By: /s/ Bijal V. Vakil  
Bijal V. Vakil

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