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8	PROOFPOINT, INC.				
9	UNITED STATES DISTRICT COURT				
10	NORTHERN DISTRICT OF CALIFORNIA				
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12	PROOFPOINT, INC.,	Case No. CV 11-02288 LHK			
13	Plaintiff,	PLAINTIFF PROOFPOINT, INC.'S AMENDED COMPLAINT FOR			
14	v.	DECLARATORY JUDGMENT			
15	INNOVA PATENT LICENSING, LLC,				
16	Defendant.				
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18	Plaintiff Proofpoint, Inc. ("Proofpoint"), by	and through its attorneys, alleges as follows:			
19	INTROD	<u>UCTION</u>			
20	This is a civil action arising under to	he patent laws of the United States, 35 U.S.C.			
21	§§ 101, et seq., seeking declaratory judgment that United States Patent No. 6,018,761 (the "'761				
22	Patent") is invalid and not infringed by Proofpoint. Proofpoint brings this action to protect its				
23	email security products and services, including its	Proofpoint Protection Server and the Proofpoint			
24	Enterprise Protection TM , Proofpoint Messaging Security Gateway TM , Proofpoint on Demand TM , and				
25	Proofpoint Spam Detection™ products and services (the "Accused Proofpoint Products") from				
26	defendant InNova Patent Licensing, LLC's ("InNova") claims that Proofpoint's products and				
27	services infringed United States Patent No. 6,018,761 (the "'761 Patent"). A true and correct copy				
28	of the '761 Patent is attached hereto as Exhibit A,	and made a part hereof.			

1	2. On July 10, 2010, InNova filed an action in the United States District Court for the		
2	Eastern District of Texas, Civil Action No. 2:10-cv-251-DF-CE ("Texas Action"). On March 19,		
3	2011, InNova filed its First Amended Complaint alleging that twenty-nine defendants infringe the		
4	'761 Patent. Of the twenty-nine defendants, eight are residents of this judicial district, including		
5	seven of the ten named defendants who supply allegedly infringing e-mail products and services		
6	("Supplier Defendants"). Nineteen of the named defendants are customers ("Customer		
7	Defendants") of the ten Supplier Defendants, including twelve who are residents of the Eastern		
8	District of Texas. Although the Texas Action does not name Proofpoint as a defendant, InNova		
9	alleges that certain customers of Proofpoint infringe the claimed method of the '761 Patent by using		
10	one or more of the aforementioned Accused Proofpoint Products. These customers have sought		
11	indemnification from Proofpoint in relation to the Texas Action. Accordingly, Proofpoint brings		
12	this action to free its customers, its products and services, and itself from these unwarranted		
13	allegations of infringement.		
14	<u>PARTIES</u>		
15	3. Proofpoint is a corporation organized and existing under the laws of the State of		
16	Delaware. Proofpoint maintains its principal place of business at 892 Ross Drive, Sunnyvale,		
17	California 94089.		
18	4. On information and belief, Defendant InNova is a limited liability company		
19	organized and existing under the law of the State of Texas, identifying its principal place of		
20	business at 911 NW Loop 281, Suite 221-14, Longview, Texas 75604. InNova claims to own the		
21	'761 Patent.		
22	5. On information and belief, InNova is an agent and alter-ego of Robert Uomini who		
23	is the named inventor of the '761 Patent. Robert Uomini is a resident of this judicial district. On		

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JURISDICTION AND VENUE

information and belief, Robert Uomini maintains a residence at 62 Lenox Road, Kensington,

California 94707, which is within this judicial district.

SUBJECT MATTER JURISDICTION

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6. This Court has subject matter jurisdiction over Proofpoint's Declaratory Judgment

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27 28 claims this action, which arise under the patent laws of the United States, pursuant to 28 U.S.C. §§ 1331, 1338(a) 2201, and 2201.

- 7. On July 20, 2010, InNova filed the Texas Action in the United States District Court for the Eastern District of Texas. On March 19, 2011, InNova filed its First Amended Complaint alleging, *inter alia*, that certain customers of Proofpoint have infringed and are infringing the '761 Patent by using one or more of the aforementioned Accused Proofpoint Products. More specifically, InNova alleges that American International Group ("AIG"), Rent-A-Center, Inc. ("RAC"), and Wells Fargo & Company ("Wells Fargo") infringe the '761 Patent by using one or more Accused Proofpoint Products. InNova thus contends that the Accused Proofpoint Products themselves are infringing products. In spite of these allegations implicating the Accused Proofpoint Products, InNova did not include Proofpoint as a defendant in the Texas Action. In view of the fact that Proofpoint makes, sells, and offers for sale the Accused Proofpoint Products, the Texas Action has triggered indemnity requests by Proofpoint's customers. A true and correct copy of InNova's First Amended Complaint is attached hereto as Exhibit B.
- 8. Proofpoint denies that the '761 Patent is or has been infringed through the manufacture, use, sale, offer for sale, or importation of (i) any product or service – including the Accused Proofpoint Products – by Proofpoint or (ii) any Proofpoint product or service by its customers.
 - 9. Proofpoint further contends that the '761 Patent is invalid.
- 10. InNova's infringement allegations threaten actual and imminent injury to Proofpoint that can be redressed by judicial relief, and that injury is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. Such injury includes, among other things, (1) uncertainty as to whether manufacture, use, offer for sale, sale, or importation of the Accused Proofpoint Products is free from infringement claims based on the '761 Patent, (2) the injury to Proofpoint's efforts to market and sell its products and services including the Accused Proofpoint Products resulting from the Texas Action and the threat that other of Proofpoint's customers will be sued, and (3) the legal obligations flowing from Proofpoint's indemnity commitments to its customers.

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	11.	Based on InNova's infringement allegations concerning Proofpoint's products and
servi	ces, InNo	ova has created in Proofpoint a reasonable apprehension that it will initiate a patent
infrir	ngement	suit against Proofpoint, alleging that Proofpoint infringes the '761 Patent.

12. As set forth above, an actual and justiciable controversy exists between Proofpoint and InNova as to whether the '761 Patent is invalid and/or infringed. On information and belief, absent a declaration of invalidity and/or non-infringement, InNova will continue to wrongfully assert the '761 Patent against Proofpoint and its customers, and thereby cause Proofpoint irreparable injury and damage.

PERSONAL JURISDICTION

- 13. On information and belief, this Court has personal jurisdiction, both general and specific, over Defendant based on its purposeful, systematic, and continuous contacts with this judicial district, as outlined below.
- 14. InNova has taken intentional and purposeful steps to enforce the '761 Patent against residents of this judicial district. In the Texas Action, InNova sued among others residents of this judicial district including Cisco IronPort Systems LLC, Cisco Systems, Inc., Google, Inc., Hewlett-Packard Company, McAfee, Inc., Symantec Corporation, Wells Fargo & Company, and Yahoo!, Inc. InNova's infringement allegations against all of the twenty-nine defendants in the Texas Action implicate one or more products and services supplied either by at least one of the seven Supplier Defendants that are residents of this judicial district or by Proofpoint. Thus, the brunt of the effects of InNova's infringement allegations in the Texas Action is felt in this judicial district. The locus of alleged infringing activity by the Supplier Defendants is unquestionably within this judicial district. Moreover, InNova's efforts to enforce the '761 Patent and enjoin these resident entities also adversely and foreseeably impact Proofpoint, which is also a resident of this judicial district.
- 15. On information and belief, InNova is an agent and alter-ego of Robert Uomini (the named inventor of the '761 Patent) and The Fractal Images Company, and both Robert Uomini and The Fractal Images Company are residents of this judicial district. On information and belief, Mr. Uomini maintains a residence at 62 Lenox Road, Kensington, California 94707, which is located

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within this judicial district, and Mr. Uomini owns the Fractal Images Company, which is also located at 62 Lenox Road, Kensington, California 94707.

- 16. On information and belief, Mr. Uomini attempted to monetize, enforce, and/or license the '761 Patent prior to forming InNova. On information and belief, Robert Uomini offered to sell the '761 Patent through Ocean Tomo Auctions LLC at The Ocean Tomo Spring 2009 Live IP Auction and Conference on March 27, 2009 in San Francisco, California. On information and belief, the formation of InNova represents a continuation and extension of Mr. Uomini's previous attempts to monetize, enforce, and/or license the '761 Patent and is believed to be a mere instrumentality of Mr. Uomini.
- 17. On information and belief, InNova acts as an agent and alter-ego of Mr. Uomini because he has sought to monetize, enforce, and/or license the '761 Patent by and through InNova. According to public patent assignment records maintained by the United States Patent and Trademark Office, Robert Uomini assigned the '761 Patent to InNova on June 24, 2010 and recorded this assignment on July 6, 2010 – just two weeks prior to the filing of the Texas Action. On information and belief, InNova's sole business activities are related to monetizing, enforcing and/or licensing the '761 Patent.
- 18. On information and belief, InNova acts as an agent and alter-ego of Robert Uomini because, among other things, Mr. Uomini directs, controls, and coordinates these activities from his home in Kensington, California and Mr. Uomini has been responsible for paying maintenance fees for the '761 Patent. According to the records maintained by the United States Patent and Trademark Office ("USPTO"), Mr. Uomini paid the 12th year maintenance fee on April 4, 2011. Before incorporating InNova, Mr. Uomini registered the InNova's website's domain name of www.innovapatentlicensing.com. According to records maintained by Network Solutions, this domain name was registered to The Fractal Images Company on May 26, 2010, which is believed to be an agent and alter-ego of Mr. Uomini.
- 19. On information and belief, Mr. Uomini incorporated InNova for the sole purpose of filing the Texas Action. According to records from the Texas Secretary of State, InNova's corporate formation documents were filed on June 9, 2010, less than six weeks before filing the

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- Texas Action. On information and belief, the formation and registration of InNova as a Texas company appears to have been effected for no other purpose than "creating" jurisdiction for the Texas Action. On information and belief, Mr. Uomini and InNova named twelve Customer Defendants who are residents of the Eastern District of Texas for the purpose of pursuing a favorable venue for the Texas Action. On information and belief, neither Robert Uomini nor InNova had or has any meaningful contacts with Texas other than the facts that InNova was incorporated in Texas and that InNova filed the Texas Action.
- 20. On information and belief, Robert Uomini as principal and alter-ego of InNova, took substantial actions in preparing for litigation in California prior to the filing of the Texas action.
- 21. On information and belief, Robert Uomini is subject to general and specific jurisdiction in this judicial district in light of his substantial, continuous, and systematic contacts with California and this judicial district. On information and belief, Mr. Uomini is a resident of this judicial district and he owns and operates business entities in this judicial district, including The Fractal Images Company and ChiaraMail. On information and belief, ChiaraMail offers a Dynamic Mail Content product whose End-User License Agreement specifies that the license shall be governed by the laws of the State of California.
- 22. On information and belief, Mr. Uomini purposefully, systematically, and continuously directs activities in California and this judicial district, including directing, controlling, and coordinating its activities relating to enforcement of the '761 Patent against residents of this judicial district as outlined above. On information and belief, Mr. Uomini has purposefully directed actions toward California and residents of this judicial district as outlined above.

VENUE

23. Venue in this District is proper under 28 U.S.C. §§ 1391(b) and (c) because a substantial part of the events giving rise to the claims occurred in this judicial district and because InNova is subject to personal jurisdiction in this judicial district. One of the products at issue in the Texas Action is a hosted email security service, Proofpoint on DemandTM, which is a product hosted and operated by Proofpoint in this judicial district. Therefore, use of Proofpoint on

1	Demand TM occurs within this judicial district and venue is proper. Additionally, InNova is subjec		
2	to personal jurisdiction in this judicial district as outlined above.		
3	INTRA-DISTRICT ASSIGNMENT		
4	24. For the purposes of Civil L.R. 3-2(c), this Intellectual Property action may be		
5	assigned to any division of this District.		
6	<u>FIRST CLAIM</u>		
7	(Non-Infringement of United States Patent No. 6,018,761)		
8	25. Proofpoint incorporates paragraphs 1-23 above as if fully set forth herein.		
9	26. An actual, immediate, and justiciable case or controversy exists between Proofpoint		
10	and InNova as to Proofpoint's alleged infringement of the claims of the '761 Patent.		
11	27. Proofpoint does not and has not infringed, directly or indirectly, willfully or		
12	otherwise, any valid and enforceable claim of the '761 Patent, either literally or under the doctrine		
13	of equivalents.		
14	28. On information and belief, InNova is precluded under the doctrine of prosecution		
15	history estoppel from asserting or construing, whether literally or by the doctrine of equivalents,		
16	any claim of the '761 Patent in a way that would read upon any product or service made, used, solo		
17	offered for sale, or imported by Proofpoint.		
18	SECOND CLAIM		
19	(Invalidity of United States Patent No. 6,018,761)		
20	29. Proofpoint incorporates paragraphs 1-23 above as if fully set forth herein.		
21	30. An actual, immediate, and justiciable case or controversy exists between Proofpoint		
22	and InNova as to validity of the claims of the '761 Patent.		
23	31. On information and belief, the claims of the '761 Patent are invalid for failure to		
24	meet one or more conditions of patentability specified in Title 35 of the United States Code,		
25	including but not limited to 35 U.S.C. §§ 41, 101, 102, 103, 112, 115, 116 and/or 256.		
26	PRAYER FOR RELIEF		
27	WHEREFORE, Proofpoint prays for judgment as follows:		
28	1. Declaring that Proofpoint and its customers have not infringed and are not		

1 infringing, directly, indirectly or contributorily, any valid and enforceable claim of the '761 Patent; 2 2. Declaring that each of the claims of the '761 Patent is invalid; 3. 3 Declaring that each of the claims of the '761 Patent is unenforceable and/or barred; 4. Ordering that InNova and each of its officers, employees, agents, alter egos, 4 5 attorneys, and any person in active concert or participation with them be restrained and enjoined 6 from further prosecuting or instituting any action against Proofpoint or its customers claiming that 7 the '761 Patent is valid, enforceable, or infringed, or from representing that any of Proofpoint's products or services, or others' use thereof, infringes the '761 Patent; 8 9 5. Declaring this case exceptional under 35 U.S.C. § 285 and awarding Proofpoint its 10 attorneys' fees and costs in connection with this case; and 11 6. Awarding Proofpoint such other and further relief as the Court deems just and 12 proper. 13 14 Dated: June 23, 2011 CARR & FERRELL LLP 15 / Robert J. Yorio 16 CHRISTOPHER P. GREWE 17 Attorneys for Plaintiff 18 PROOFPOINT, INC. 19 20 21 22 23 24 25 26 27 28

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