

EXHIBIT K

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 INTERWOVEN, INC.
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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA

<p>12</p> <p>13 INTERWOVEN, INC.,</p> <p>14 Plaintiff,</p> <p>15 vs.</p> <p>16 VERTICAL COMPUTER SYSTEMS, INC.</p> <p>17 Defendant.</p> <p>18</p> <p>19</p>	<p>Civil Case No.: 3:10-CV-04645</p> <p>PLAINTIFF'S MOTION TO ENJOIN DEFENDANT FROM PURSUING DUPLICATIVE LITIGATION</p> <p>Date: January 13, 2011 Time: 1:30 pm Courtroom 3 (17th Floor) Honorable Richard Seeborg</p>
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21 **I. INTRODUCTION**

22 Plaintiff Interwoven, Inc. ("Interwoven") moves to enjoin Defendant Vertical Computer
 23 Systems, Inc. ("VCS") from pursuing its later-filed claims in the United States District Court for
 24 the Eastern District of Texas, Civil Action No. 2:10-cv-490 ("the E.D. Texas Complaint"). (Bijal
 25 V. Vakil ("Vakil") Decl. ¶ 2.) In an obvious attempt to forum shop, thirty-two days after
 26 Interwoven filed this action for declaratory judgment of non-infringement and invalidity of two
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1 patents assigned to VCS, VCS filed an infringement suit asserting the very same patents against
2 Vertical in a forum well-known as more favorable to patent holders.

3 It is well-settled that there is a presumption in patent cases favoring the forum of a first-
4 filed declaratory judgment action over that of a later-filed, mirror-image infringement action.
5 *Electronics for Imaging, Inc. v. Coyle*, 394 F.3d 1341, 1347 (Fed. Cir. 2005) (finding abuse of
6 discretion where district court dismissed a first-filed declaratory judgment action in favor of a
7 later-filed infringement action); *Genentech, Inc. v. Eli Lilly and Co.*, 998 F.2d 931, 937 (Fed. Cir.
8 1993) (district court abused its discretion in dismissing first-filed declaratory judgment action)
9 *abrogated on other grounds by Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995). In the event that
10 there is a later filed action, the court in the first-filed action may enjoin the later-filing party from
11 pursuing the duplicative action. *Laboratory Corp. v. Chiron Corp.*, 384 F.3d 1326, 1332-33 (Fed.
12 Cir. 2004) (upholding district court's order enjoining later-filed, duplicative infringement action
13 so that first-filed declaratory judgment action could proceed); *Decker Coal Co. v. Commonwealth*
14 *Edison Co.*, 805 F.2d 834, 843 (9th Cir.1986) (finding that "[w]hen a district court has
15 jurisdiction over all parties involved, it may enjoin later filed actions.").

16 In light of VCS' blatant attempt at forum shopping and its disregard for judicial economy,
17 this Court should enjoin VCS from proceeding in the Eastern District of Texas, because:

- 18 • *Thirty two days after* Plaintiff Interwoven filed this action in the Northern District of
19 California (where it is headquartered), Defendant VCS tried to secure a more
20 favorable forum for itself by filing essentially the same action in the Eastern District
21 of Texas;
- 22 • The legal claims and issues raised by the E.D. Texas Complaint are entirely
23 duplicative of those raised against VCS in the first-filed action in this Court;
- 24 • It is undisputed that VCS *knew* of this action, in fact, it referenced this action in its
25 later-filed E.D. Texas Complaint;