

FILED

JUN 26 2006

U. S. DISTRICT COURT  
EASTERN DISTRICT OF MO  
ST. LOUIS

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

AVANTE INTERNATIONAL  
TECHNOLOGY CORPORATION,

*Plaintiff,*

v.

DIEBOLD ELECTION SYSTEMS,  
SEQUOIA VOTING SYSTEMS, AND  
ELECTION SYSTEMS & SOFTWARE, INC.,

*Defendants.*

4 06CV00978TCM

Case No:

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Avante International Technology Corporation (“Avante”) brings this action for patent infringement against defendants Diebold Election Systems (“Diebold”), Sequoia Voting Systems (“Sequoia”) and Election Systems & Software, Inc. (“ES&S”), seeking damages and injunctive relief. Avante alleges as follows:

**JURISDICTION AND VENUE**

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, alleging infringement of United States Patent Nos. 6,892,944 (“the ‘944 patent”) and 7,036,730 (“the ‘730 patent”). A copy of the ‘944 and ‘730 patents are attached hereto as **Exhibits A and B**, respectively, and are incorporated herein by reference in their entirety.

2. This Court has exclusive subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Diebold, Sequoia and ES&S because Diebold, Sequoia and ES&S have conducted business in this district and have infringed, contributed to the infringement of, and/or actively induced others to infringe Avante's patents in this district as alleged in this Complaint.

4. Moreover, Diebold, Sequoia, and ES&S continue to conduct business in this district and infringe, contribute to the infringement of, and/or actively induce others to infringe Avante's patents asserted in this district.

5. Diebold, Sequoia and ES&S offered their infringing equipment for sale at least in St. Louis and St. Louis County, both of which reside in the Eastern District of Missouri. Evidence of Diebold, Sequoia and ES&S offers for sale are attached as **Exhibit C** (group exhibit). Upon information and belief, Diebold, Sequoia and ES&S are continuing to offer their infringing equipment for sale at least in St. Louis and St. Louis County.

6. Diebold has sold infringing equipment in at least St. Louis (400 touch screen voting units and about 160 optical scan units), St. Charles and Jefferson counties. Evidence of Diebold's sale of voting equipment is attached as **Exhibit D** (group exhibit). Upon information and belief, Diebold is continuing to sell infringing equipment in at least St. Louis, St. Charles and Jefferson counties.

7. ES&S has sold infringing equipment in at least St. Louis County (1,750 iVotronic machines and 500 Model 100 optical scan machines). Evidence of ES&S's sale of voting equipment is attached as **Exhibit E**. Upon information and belief, ES&S is continuing to sell infringing equipment in at least St. Louis County.

8. Venue is proper under 28 U.S.C. §§ 1391(b), 1391(c) and/or 1400(b), in that a substantial part of the events giving rise to Avante's claims occurred in the Eastern District of

Missouri and each defendant is subject to personal jurisdiction in the Eastern District of Missouri (and thus for purposes of venue each defendant resides in the Eastern District of Missouri).

### **PARTIES**

9. Avante is a corporation organized and existing under the laws of New Jersey, having its principal place of business at 70 Washington Road, Princeton Junction, NJ 08550-1012.

10. On information and belief and after a reasonable opportunity for further discovery, Diebold is a corporation existing under the laws of Ohio, having its principal place of business at 5995 Mayfair Road, North Canton, Ohio USA 44720-8077.

11. On information and belief and after a reasonable opportunity for further discovery, ES&S is a corporation existing under the laws of Delaware, having its principal place of business at 11208 John Galt Blvd, Omaha, Nebraska 68137.

12. On information and belief and after a reasonable opportunity for further discovery, Sequoia is a corporation existing under the laws of Delaware, having its principal place of business at 7677 Oakport St., Ste 800, Oakland, California 94621.

### **THE PATENTS-IN-SUIT**

13. The '944 patent entitled "Electronic voting apparatus and method for optically scanned ballot" was duly and legally issued on May 17, 2005.

14. The inventor of the '944 patent is Kevin Chung, the CEO of Avante.

15. Avante is the assignee of the '944 patent.

16. The '944 patent is valid and enforceable and has been at all times relevant to the instant action.

17. The '730 patent entitled "Electronic voting apparatus, system and method" was duly and legally issued on May 2, 2006.
18. Kevin Chung is also the inventor of the '730 patent.
19. Avante is the assignee of the '730 patent.
20. The '730 patent is valid and enforceable and has been at all times relevant to the instant action.

### **THE INFRINGERS**

#### **A. Diebold**

21. Diebold makes, uses, sells and offers for sale voting equipment including the AccuVote TS, AccuVote TSX and AccuVote OS.
22. The AccuVote TS and TSX are electronic voting equipment.
23. The AccuVote OS is an optical scanner.

#### **B. Sequoia**

24. Sequoia makes, uses, sells and offers for sale voting equipment including the AVC Edge, VeriVote Printer, AVC Advantage, Optical Scan 400C and Optech Insight.
25. The AVC Edge, VeriVote Printer, and AVC Advantage are electronic voting equipment.
26. The Optech Scan 400C and Optech Insight are optical scanners.

#### **C. ES&S**

27. ES&S makes, uses, sells and offers for sale the iVotronic, iVotronic LS, Real Time Audit Log, ES&S AutoMARK, Model 100 Precinct Ballot Counter and the Model 650 Central Ballot Counter.

28. The iVotronic, iVotronic LS, Real Time Audit Log and ES&S AutoMARK are electronic voting equipment.

29. The Model 100 Precinct Ballot Counter and the Model 650 Central Ballot Counter are optical scanners.

**COUNT I**  
**DIEBOLD PATENT INFRINGEMENT UNDER 35 U.S.C. § 271 OF THE '730 PATENT**

30. Avante incorporates by reference the allegation of paragraphs 1-29.

31. Diebold has directly or indirectly infringed the '730 patent at a minimum by making, using, selling, and/or offering for sale at least its AccuVote TS and/or AccuVote TSX. Images and a description of this equipment from Diebold's website is attached as **Exhibit F** (group exhibit).

32. Upon information and belief, Diebold has also contributed to the infringement of the '730 Patent, and/or actively induced others to infringe the '730 Patent, in this district and elsewhere in the United States.

33. Diebold has caused and will continue to cause Avante substantial damage and irreparable injury by virtue of its continuing such infringement.

34. Avante is entitled to recover from Diebold the damages sustained by Avante as a result of Diebold's wrongful acts in an amount subject to proof at trial and an injunction preventing Diebold from continuing its wrongful acts.

35. Diebold has had knowledge of the '730 patent since at least April 7, 2005.

36. On April 7, 2005, Avante informed Diebold that its voting equipment may fall within the claim scope of the publication that corresponded to the '730 patent, and included a copy of the published application with this letter. This complies with the notice requirements under 35 U.S.C. § 154(d).

37. Diebold did not respond, and, to date, has not denied that its equipment falls within the scope of the '730 patent.

38. Upon information and belief and after an opportunity for further discovery, Diebold's infringement of the '730 patent is willful and deliberate.

**COUNT II**  
**DIEBOLD PATENT INFRINGEMENT UNDER 35 U.S.C. § 271 OF THE '944 PATENT**

39. Avante incorporates by reference the allegation of paragraphs 1-38.

40. Upon information and belief, Diebold has directly or indirectly infringed the '944 patent at least by making, using, selling, and/or offering for sale its AccuVote OS. Images and descriptions of this equipment from Diebold's website is attached as **Exhibit G**.

41. Upon information and belief, Diebold has also contributed to the infringement of the '944 Patent, and/or actively induced others to infringe the '944 Patent, in this district and elsewhere in the United States.

42. Diebold has caused and will continue to cause Avante substantial damage and irreparable injury by virtue of its continuing such infringement.

43. Avante is entitled to recover from Diebold the damages sustained by Avante as a result of Diebold's wrongful acts in an amount subject to proof at trial and an injunction preventing Diebold from continuing its wrongful acts.

44. Diebold has had knowledge of the '944 patent since at least April 7, 2005.

45. Diebold, to date, has not denied that its equipment falls within the scope of the '944 patent.

46. Upon information and belief and after an opportunity for further discovery, Diebold's infringement of the '944 patent is willful and deliberate.

**COUNT III**  
**SEQUOIA PATENT INFRINGEMENT UNDER 35 U.S.C. § 271 OF THE '730 PATENT**

47. Avante incorporates by reference the allegation of paragraphs 1-46.

48. Upon information and belief, Sequoia has directly or indirectly infringed the '730 patent at least by making, using, selling, and/or offering for sale its AVC Edge and AVC Advantage when utilized with a printer (*e.g.*, the VeriVote Printer). Images and descriptions of this equipment from Sequoia's website is attached as **Exhibit H**.

49. Upon information and belief, Sequoia has also contributed to the infringement of the '730 Patent, and/or actively induced others to infringe the '730 Patent, in this district and elsewhere in the United States.

50. Sequoia has caused and will continue to cause Avante substantial damage and irreparable injury by virtue of its continuing such infringement.

51. Avante is entitled to recover from Sequoia the damages sustained by Avante as a result of Sequoia's wrongful acts in an amount subject to proof at trial and an injunction preventing Sequoia from continuing its wrongful acts.

52. Sequoia has had knowledge of the '730 patent since at least April 7, 2005.

53. On April 7, 2005, Avante informed Sequoia that its voting equipment may fall within the claim scope of the publication that corresponded to the '730 patent, and included a copy of the published application with this letter. This complies with the notice requirements under 35 U.S.C. § 154(d).

54. Sequoia did not respond, and, to date, has not denied that its equipment falls within the scope of the '730 patent.

55. Upon information and belief and after an opportunity for further discovery, Sequoia's infringement of the '730 patent is willful and deliberate.



**COUNT IV**  
**SEQUOIA PATENT INFRINGEMENT UNDER 35 U.S.C. § 271 OF THE '944 PATENT**

56. Avante incorporates by reference the allegation of paragraphs 1-55.

57. Upon information and belief, Sequoia has directly or indirectly infringed the '944 patent at least by making, using, selling, and/or offering for sale its Optical Scan 400C and/or its Optech Insight. Images and descriptions of this equipment from Sequoia's website is attached as **Exhibit I**.

58. Upon information and belief, Sequoia has also contributed to the infringement of the '944 Patent, and/or actively induced others to infringe the '944 Patent, in this district and elsewhere in the United States.

59. Sequoia has caused and will continue to cause Avante substantial damage and irreparable injury by virtue of its continuing such infringement.

60. Avante is entitled to recover from Sequoia the damages sustained by Avante as a result of Sequoia's wrongful acts in an amount subject to proof at trial and an injunction preventing Sequoia from continuing its wrongful acts.

61. Sequoia has had knowledge of the '944 patent since at least April 7, 2005.

62. To date, Sequoia has not denied that its equipment falls within the scope of the '944 patent.

63. Upon information and belief and after an opportunity for further discovery, Sequoia's infringement of the '944 patent is willful and deliberate.

**COUNT V**  
**ES&S PATENT INFRINGEMENT UNDER 35 U.S.C. § 271 OF THE '730 PATENT**

64. Avante incorporates by reference the allegation of paragraphs 1-63.



65. Upon information and belief, ES&S has directly or indirectly infringed the '730 patent at least by making, using, selling, and/or offering for sale its iVotronic, iVotronic LS, and/or ES&S AutoMARK products with a printer (e.g., Real Time Audit Log). Images and descriptions of this equipment from ES&S's website is attached as **Exhibit J** (group exhibit).

66. Upon information and belief, ES&S has also contributed to the infringement of the '730 Patent, and/or actively induced others to infringe the '730 Patent, in this district and elsewhere in the United States.

67. ES&S has caused and will continue to cause Avante substantial damage and irreparable injury by virtue of its continuing such infringement.

68. Avante is entitled to recover from ES&S the damages sustained by Avante as a result of ES&S's wrongful acts in an amount subject to proof at trial and an injunction preventing ES&S from continuing its wrongful acts.

69. ES&S has had knowledge of the '730 patent since at least April 7, 2005.

70. On April 7, 2005, Avante informed ES&S that its voting equipment may fall within the claim scope of the publication that corresponded to the '730 patent, and included a copy of the published application with this letter. This complies with the notice requirements under 35 U.S.C. § 154(d).

71. ES&S did not respond, and, to date, has not denied that its equipment falls within the scope of the '730 patent.

72. Upon information and belief and after an opportunity for further discovery, ES&S's infringement of the '730 patent is willful and deliberate.

**COUNT VI**  
**ES&S PATENT INFRINGEMENT UNDER 35 U.S.C. § 271 OF THE '944 PATENT**

73. Avante incorporates by reference the allegation of paragraphs 1-72.

74. ES&S has directly or indirectly infringed the '944 patent by making, using, selling, and/or offering for sale its Model 100 Precinct Ballot Counter and/or the Model 650 Central Ballot Counter. Images and descriptions of this equipment from ES&S's website is attached as **Exhibit K** (group exhibit).

75. Upon information and belief, ES&S has also contributed to the infringement of the '944 Patent, and/or actively induced others to infringe the '944 Patent, in this district and elsewhere in the United States.

76. ES&S has caused and will continue to cause Avante substantial damage and irreparable injury by virtue of its continuing such infringement.

77. Avante is entitled to recover from ES&S the damages sustained by Avante as a result of ES&S's wrongful acts in an amount subject to proof at trial and an injunction preventing ES&S from continuing its wrongful acts.

78. ES&S has had knowledge of the '944 patent since at least April 7, 2005.

79. To date, ES&S has not denied that its equipment falls within the scope of the '944 patent.

80. Upon information and belief and after an opportunity for further discovery, ES&S's infringement of the '944 patent is willful and deliberate.

WHEREFORE, Avante respectfully requests that the Court enter a judgment as follows:

A. That Diebold, Sequoia and ES&S have infringed the '944 and '730 patents under 35 U.S.C. § 271;

B. Permanently enjoining and restraining Diebold, Sequoia and ES&S, their officers, directors, agents, servants, employees, licensees, successors, assigns, those in active concert and

participation with them, and all persons acting on their behalf or within their control under 35 U.S.C. § 283 from further acts that infringe the '940 and '730 patents, including, but not limited to, making, using, selling, offering to sell, importing, exporting, advertising, or otherwise using, contributing to the use of, or inducing the use of all infringing equipment produced by Diebold, Sequoia and ES&S;

C. Requiring Defendants to:

1. Send a copy of any decision in this case in favor of Avante to each person or entity to whom Diebold, Sequoia and ES&S have sold or otherwise distributed any products found to infringe the '944 and '730 patents, or induced to infringe the '944 and '730 Patents, and informing such persons or entities of the judgment and that the sale or solicited commercial transaction was wrongful;

2. Recall and collect from all persons and entities that have purchased wholesale or are a distributor of any and all products found to infringe the '944 and '730 patents that were made, offered for sale, sold, or otherwise distributed by Diebold, Sequoia and ES&S, or anyone acting on its behalf;

3. Destroy or deliver to Avante all infringing equipment produced by Diebold, Sequoia and ES&S; and

4. File with the Court and serve upon Avante, within thirty (30) days after entry of final judgment in this case, a report in writing and subscribed under oath setting forth in detail the form and manner in which Diebold, Sequoia and ES&S have complied with the Court's orders as prayed for.

D. Awarding Avante patent infringement damages and pre-judgment interest pursuant to 35 U.S.C. § 284 including, but not limited to, lost profits and/or a reasonable royalty;

E. Awarding Avante treble damages for willful infringement pursuant to 35 U.S.C. § 284;

F. Declaring the case exceptional and awarding Avante reasonable costs and attorneys fees pursuant to 35 U.S.C. § 285;

G. Granting Avante such other and further relief as justice and equity may require.

**JURY DEMAND**

Avante requests a jury trial.

Respectfully submitted,  
AVANTE INTERNATIONAL TECHNOLOGY COMPANY

By its attorneys,  
SIMMONS COOPER LLC

Dated: June 26, 2006

By: 

Paul A. Lesko – E.D.Mo. Bar No.51914  
Jill Rogers-Manning – *pro hac vice*  
707 Berkshire Blvd.  
P.O. Box 521  
East Alton, Missouri 62024  
(618) 259-2222  
(618) 259-2251 – *facsimile*