

1 Tharan Gregory Lanier (SBN 138784)  
 Gregory L. Lippetz (SBN 154228)  
 2 Jane L. Froyd (SBN 220776)  
 JONES DAY  
 3 1755 Embarcadero Road  
 Palo Alto, CA 94303  
 4 Telephone: 650-739-3939  
 Facsimile: 650-739-3900  
 5 tglanier@jonesday.com  
 glippetz@jonesday.com  
 6 jfroyd@jonesday.com

7 Attorneys for Defendants  
 DIEBOLD INC. and PREMIER ELECTION  
 8 SOLUTIONS, INC.

Darin W. Snyder (SBN 136003)  
 Luann L. Simmons (SBN 203526)  
 David S. Almeling (SBN 235449)  
 O'MELVENY & MYERS LLP  
 Two Embarcadero Center, 28<sup>th</sup> Floor  
 San Francisco, CA 94111-3823  
 Telephone: (415) 984-8700  
 Facsimile: (415) 984-8701  
 dsnyder@omm.com  
 lsimmons@omm.com  
 dalmeling@omm.com

Attorneys for Plaintiff  
 ARTIFEX SOFTWARE, INC.

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 ARTIFEX SOFTWARE INC.,

12 Plaintiff,

13 v.

14 DIEBOLD INC., an Ohio corporation,  
 PREMIER ELECTION SOLUTIONS, INC.,  
 15 a Delaware corporation,

16 Defendants.

Case No. C 08-04837 SC

**JOINT REQUEST TO CONTINUE  
 THE HEARING DATE FOR  
 DEFENDANT DIEBOLD INC.'S  
 FRCP 12(B)(6) MOTION TO DISMISS  
 PLAINTIFF'S CLAIM AGAINST  
 DIEBOLD, INC.; PROPOSED  
 ORDER**

17  
 18 WHEREAS, on January 30, 2009, Defendant Diebold Inc. filed a motion to dismiss  
 19 Plaintiff Artifex Software Inc.'s ("Plaintiff") claim for copyright infringement against Diebold  
 20 Inc.;

21 WHEREAS, the hearing for this motion is currently scheduled for April 3, 2009;

22 WHEREAS, Plaintiff and Defendants Diebold Inc. and Premier Election Solutions, Inc.  
 23 (together "Defendants") have agreed in principle to settle this Action and are finalizing the  
 24 language of a settlement agreement that fully and finally resolves all claims, disputes, and  
 25 differences in this Action;

26 WHEREAS, the parties estimate that they will be able to file a stipulation of dismissal  
 27 within 30 days;

28 WHEREAS, on March 30, 2009, the Court postponed the Case Management Conference

1 in this Action from April 3, 2009 to May 29, 2009; and

2 WHEREAS, the parties agree that to conserve judicial resources, the hearing for  
3 Defendant Diebold Inc.'s FRCP 12(b)(6) motion to dismiss Plaintiff's claim for copyright  
4 infringement against Diebold Inc. should not go forward on April 3, 2009.

5 THE PARTIES HEREBY JOINTLY REQUEST that the hearing for Defendant Diebold's  
6 FRCP 12(b)(6) Motion to Dismiss Plaintiff's Claim Against Diebold, Inc. be continued from  
7 April 3, 2009 at 10:00 a.m. to May 29, 2009 at 10:00 a.m., in the above-entitled Court, located at  
8 Courtroom 1, 17th Floor, 450 Golden Gate Avenue, San Francisco, California, 94102.

9 Dated: April 1, 2009

JONES DAY

10

11

By:           /s/ Gregory L. Lippetz            
Gregory L. Lippetz

12

13

Attorneys for Defendant  
DIEBOLD INC. and PREMIER ELECTION  
SOLUTIONS, INC.

14

15

16

In accordance with General Order No. 45, Rule X, the above signatory attests that  
17 concurrence in the filing of this document has been obtained from the signatory below.

18

19

Dated: April 1, 2009

O'MELVENY & MYERS LLP

20

21

By:           /s/ Luann L. Simmons            
Luann L. Simmons

22

23

Attorneys for Plaintiff  
ARTIFEX SOFTWARE INC.

24

25

26

27

28


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**[PROPOSED] ORDER**

Pursuant to the parties' joint request, the hearing for Defendant Diebold's FRCP 12(b)(6) Motion to Dismiss Plaintiff's Claim Against Diebold, Inc. is hereby postponed until May 29, 2009 at 10:00 am.

IT IS SO ORDERED

Dated: April 2, 2009

The Hon.  Judge  
United States District Court  
Northern District of California

