

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**VOTER VERIFIED, INC.,**

**Plaintiff,**

**-vs-**

**Case No. 6:09-cv-1969-Orl-19KRS**

**ELECTION SYSTEM & SOFTWARE,  
INC.,**

**Defendant.**

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**ORDER**

This case comes before the Court on the Unopposed Plaintiff's Motion to Remove Case From Trial Docket and Cancel Pretrial Conference by Voter Verified, Inc. (Doc. No. 189, filed Aug. 5, 2011.) In the Unopposed Motion, Voter Verified, Inc. ("VVI") requests that the Court cancel the pretrial conference schedule for August 12, 2011, and remove the present case from its September 2011 trial calendar. VVI represents in such Motion that Defendant does not oppose the relief sought.

On July 28, 2011, the Court entered an Order granting summary judgment in favor of Election System & Software, Inc. ("ES&S") on the issue of noninfringement of claims 1-48, 50-55, 57-84, and 86-92 of United States Patent No. RE40,449 ("the '449 patent"). (Doc. No. 184.) On July 29, 2011, the Court entered an Order denying VVI's Third Motion for Summary Judgment and dismissing without prejudice ES&S's invalidity counterclaim with respect to claims 85 and 93 of the '449

patent.<sup>1</sup> (Doc. No. 185.) In light of these findings and the Court's previous rulings, there are no issues remaining for trial at this juncture. Accordingly, VVI's Unopposed Motion will be granted.

### **Conclusion**

Based on the foregoing, the Unopposed Plaintiff's Motion to Remove Case From Trial Docket and Cancel Pretrial Conference (Doc. No. 189, filed Aug. 5, 2011) is **GRANTED**. In light of this finding, the following motions are **DENIED as moot**:

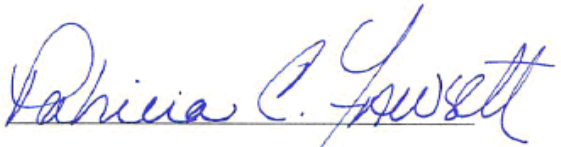
1. Defendants' Motion to Consolidate Cases for Trial and Incorporated Memorandum of Law by Premier Election Solutions, Inc. and Diebold, Incorporated (Doc. No. 173, filed July 13, 2011);
2. Defendants' Motion to Advance Date for Submission for Joint Final Pretrial Statement and Incorporated Memorandum of Law by Premier Election Solutions, Inc. and Diebold, Incorporated (Doc. No. 174, filed July 13, 2011);
3. Defendants' Motion to Quash Subpoenas Duces Tecum for Trial; Alternative Motion for Extension of Time to File a Motion for Protective Order or Motion for Continuance and Incorporated Memorandum of Law by Premier Election Solutions, Inc. and Diebold, Incorporated (Doc. No. 176, filed July 22, 2011);

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<sup>1</sup> ES&S has not objected to the Court's dismissal of the invalidity counterclaims. Instead, both ES&S represented to the Court that it "agree[s] with the Court's exercise of its discretion to dismiss the pending unresolved claims as moot." (Doc. No. 190 at 11, filed Aug. 5, 2011.) In addition Voter Verified, Inc. has represented that ES&S concurs in its request to remove the case from the trial docket and cancel the final pretrial conference, thus further indicating that ES&S does not oppose the dismissal of the invalidity counterclaims.

4. Defendants' Motion to Strike Plaintiff's Late-Served Supplement to Rule 26(a)(1) Disclosures and for Sanctions; and Incorporated Memorandum of Law by Premier Election Solutions, Inc. and Diebold, Incorporated (Doc. No. 177, filed July 22, 2011);
5. Defendants' First Motion in Limine and Incorporated Memorandum of Law by Premier Election Solutions, Inc. and Diebold, Incorporated (Doc. No. 178, filed July 13, 2011); and
6. Defendants' Renewed Motion to Disqualify Anthony Provitola From Serving as Trial Counsel and Incorporated Memorandum of Law by Premier Election Solutions, Inc. and Diebold, Incorporated (Doc. No. 180, filed July 25, 2011).

**DONE** and **ORDERED** in Orlando, Florida on August 8, 2011.

  
PATRICIA C. FAWSETT, JUDGE  
UNITED STATES DISTRICT COURT

Copies furnished to:

Counsel of Record