

Roy H. Wepner
 Arnold I. Rady
 LERNER, DAVID, LITTENBERG,
 KRUMHOLZ & MENTLIK, LLP
 600 South Avenue West
 Westfield, NJ 07090-1497
 Tel: 908.654.5000
 Fax: 908.654.7866

*Attorneys for Plaintiff Diebold, Incorporated
 in Civil Action No. 12-7640*

Document Filed Electronically

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEW JERSEY**

CONTENT EXTRACTION AND TRANSMISSION LLC,	:	Civil Action No. 12-2501-PGS-TJB
	:	
Plaintiff,	:	District Judge Peter G. Sheridan
	:	Magistrate Judge Tonianne J. Bongiovanni
v.	:	
WELLS FARGO BANK, NATIONAL ASSOCIATION,	:	
	:	
Defendant.	x	

CONTENT EXTRACTION AND TRANSMISSION LLC,	:	Civil Action No. 12-6960-MAS-LHG
	:	
Plaintiff,	:	District Judge Michael A. Shipp
	:	Magistrate Judge Lois H. Goodman
v.	:	
THE PNC FINANCIAL SERVICES GROUP, INC. and PNC BANK NATIONAL ASSOCIATION,	:	
	:	
Defendants.	x	

DIEBOLD, INCORPORATED,	:	Civil Action No. 12-7640-PGS-TJB
	:	
Plaintiff,	:	District Judge Peter G. Sheridan
	:	Magistrate Judge Tonianne J. Bongiovanni
v.	:	
CONTENT EXTRACTION AND TRANSMISSION LLC, MITCHELL MEDINA, CATHERINE ELIAS, and JEAN-MARC ZIMMERMAN,	:	
	:	
Defendants.	x	

**FIRST AMENDED COMPLAINT AND DEMAND
 FOR TRIAL BY JURY IN CIVIL ACTION NO. 12-7640**

Plaintiff Diebold, Incorporated ("Diebold"), an Ohio corporation having its principal place of business at 5995 Mayfair Road, North Canton, Ohio 44720, as and for its first amended

complaint against Defendants Content Extraction and Transmission LLC, a New Jersey corporation having its principal place of business at 38 Loft Drive, Martinsville, New Jersey 08836; Catherine Elias, an individual having a residence and place of business at 38 Loft Drive, Martinsville, New Jersey 08836; Mitchell Medina, an individual having a residence at 36 Mimosa Close, Runda Estate, Nairobi, Kenya; and Jean-Marc Zimmerman, an individual residing at 233 Watchung Fork, Westfield, New Jersey 07090 and having a place of business at 226 St. Paul Street, Westfield, New Jersey 07090, hereby alleges as follows:

NATURE OF THE ACTION

1. Diebold, Incorporated, a prominent manufacturer of automatic teller machines and related products ("ATMs"), brings this lawsuit to stop Defendants from misusing the judicial system by filing meritless patent infringement suits against Diebold's customers, and to obtain compensation for the damages suffered by Diebold. Although Diebold has been selling ATMs which can process checks deposited without envelopes for over two decades, and Diebold's name has clearly and publicly appeared on such ATMs, Defendants have never sued Diebold for infringement or even threatened to do so, despite the grant of Defendants' patents some 14-19 years ago. Instead, beginning in April 2012, Defendants have sued Diebold customers, one at a time, such that Defendants are able to take advantage of the significant costs of defending such lawsuits to extract substantial payments from the customers, thus bringing the case to a quick conclusion while avoiding a court ruling on the lack of merit of the patent infringement charge. As Defendants surely anticipated, the customers have sought from Diebold reimbursement of such payments, causing harm and injury to Diebold and its reputation. Accordingly, in this action, Diebold requests a declaratory judgment that Defendants' patents are invalid and unenforceable; that they are not infringed by the operation of Diebold's ATMs; and that any infringement claims against Diebold or its customers are barred by laches. In another count,

Diebold seeks a judgment that Defendants' course of conduct in asserting their patents constitutes tortious interference with Diebold's contractual relationships with customers, as well as Diebold's prospective business advantage. Diebold also charges Defendants with violating the Federal Racketeering Influenced and Corrupt Organization ("RICO") statute based on their systematic filing of suits, and extortion of payments based on invalid patents.

PARTIES

2. Plaintiff Diebold, Incorporated is a corporation organized and existing under the laws of the State of Ohio, having its principal place of business at 5995 Mayfair Road, North Canton, Ohio 44720.

3. Defendant Content Extraction And Transmission LLC ("CET") is a limited liability company organized and existing under the laws of the State of New Jersey, having its principal place of business at 38 Loft Drive, Martinsville, New Jersey 08836, and is subject to the jurisdiction of this Court pursuant to the laws of the State of New Jersey and Rule 4 of the Federal Rules of Civil Procedure. Defendant CET has waived any objection to personal jurisdiction, venue, or insufficiency of service pursuant to Fed. R. Civ. P. 12(h)(1)(A).

4. Defendant CET is a sham corporation functioning solely as an instrumentality for the benefit and purported protection of its owners and so-called "members." CET has no place of business other than the personal residence of Defendant Catherine Elias. Notwithstanding the requirement of Local Civil Rule 10.1(a) of the District of New Jersey that, "The initial pleading, motion, or other paper of any party filed in any cause other than criminal actions in this Court shall state in the first paragraph the street and post office address of each named party to the case or, if the party is not a natural person, the address of its principal place of business," none of the patent infringement complaints filed by CET against Diebold customers, in the District of New Jersey or elsewhere, contained a street or post office address for CET.

5. Defendant CET was formed effective as of November 2, 2011, the day before it filed its first suit, through a Certificate of Formation (a copy of which is annexed as Exh. 1), which lists as members/managers only Defendant Catherine Elias, her husband Ted Elias, and Bethany Zimmerman, the wife of Defendant Jean-Marc Zimmerman. Its agent for service of process is Defendant Jean-Marc Zimmerman. CET neither makes nor sells products, and offers no services. CET has no full-time employees. Dun & Bradstreet, which has a database of approximately 213 million companies, is able to provide no credit, financial, or other information regarding CET. In addition, Diebold will likely have evidentiary support, after a reasonable opportunity for further investigation or discovery as to matters uniquely in the possession of Defendants, to establish that CET has no assets other than the CET Patents identified below and the monies not yet distributed from payments received from adversary litigants; it has no tangible assets at all; it operates solely as a vehicle for litigation-related activities, receiving revenue obtained through its sole business, patent litigation, and distributing revenue to its shareholders and so-called members; it has little or no capitalization; and on information and belief, it disregards corporate formalities such as meetings of shareholders and directors.

6. Upon information and belief, Defendant Mitchell Medina ("Medina") is a citizen of the United States presently located in Nairobi, Kenya. Defendant Medina transacts and does business in New Jersey through an office and place of business at 38 Loft Drive, Martinsville, New Jersey 08836, and is subject to the jurisdiction of this Court pursuant to the laws of the State of New Jersey and Rule 4 of the Federal Rules of Civil Procedure. Defendant Medina has waived any objection to personal jurisdiction, venue, or insufficiency of service pursuant to Fed. R. Civ. P. 12(h)(1)(A).

7. Defendant Medina is a named inventor on each of the CET Patents identified below. Medina has been actively involved in the business strategies employed by CET and other predecessor companies that have filed multiple patent infringement suits against corporations, and have demanded and received payments in amounts less than the costs that Defendants would have incurred in such actions for investigating and defending against the charge of patent infringement. Two of those prior companies were International Patent Holdings Ltd. and Millennium L.P., both of which were companies that owned the CET patents-in-suit prior to CET. In a complaint filed by Medina on May 14, 2009, he described International Patent Holdings Ltd. and Millennium L.P. as "Medina entities." In an affidavit dated July 29, 2009, Medina stated that Millennium L.P. "is my entity." In an affidavit dated July 29, 2009, Defendant Zimmerman referred to his representation in nearly 100 lawsuits since 2002 as having represented "entities controlled" by Defendant Medina, and also stated that he "represented Mitchell Medina," not such entities. In a patent infringement suit brought by another predecessor owner of the CET Patents, Eon-Net, LP, Defendant Medina was held responsible for a substantial portion of the conduct that formed the basis for massive sanctions, including the systematic disposal of corporate records. In addition, Diebold will likely have evidentiary support, after a reasonable opportunity for further investigation or discovery as to information uniquely in the possession of Defendants, which will establish that Defendant Medina has participated in the filing of and extraction of payments in sham patent litigation brought in the name of CET and has derived revenue from monies paid to CET as a result of such sham patent litigation, such that Defendant Medina, alone or in conjunction with the other individual Defendants, participates in or approves decisions of, dominates, and/or controls the affairs of Defendant CET and is the *alter ego* of Defendant CET.

8. Defendant Catherine Elias ("Elias") is an individual having a residence and an office and place of business at 38 Loft Drive, Martinsville, New Jersey 08836, and is subject to the jurisdiction of this Court pursuant to the laws of the State of New Jersey and Rule 4 of the Federal Rules of Civil Procedure. Defendant Elias has waived any objection to personal jurisdiction, venue, or insufficiency of service pursuant to Fed. R. Civ. P. 12(h)(1)(A).

9. Defendant Elias is a named inventor on the CET Patents described below. Defendant Elias, along with her husband, Ted Elias, are identified in the foregoing Certificate of Formation for CET as two of the three members/managers of Defendant CET. To the only extent CET has any place of business, it is housed in Defendant Elias's personal residence. In addition, Diebold will likely have evidentiary support, after a reasonable opportunity for further investigation or discovery as to matters uniquely within the control of Defendants, to establish that Defendant Elias has participated in the filing of and the extraction of payments in sham patent litigation brought in the name of CET; has received revenue that has passed through CET to Defendant Elias and others as a result of activities leading to payments by the defendants sued in the patent infringement actions brought by CET; such that alone or in conjunction with the other individual Defendants, Defendant Elias participates in or approves decisions of, dominates, and/or controls the affairs of Defendant CET and is the *alter ego* of Defendant CET.

10. Defendant Jean-Marc Zimmerman ("Zimmerman") is an attorney-at-law having an office and place of business at 226 St. Paul Street, Westfield, New Jersey 07090, and is subject to the jurisdiction of this Court pursuant to the laws of the State of New Jersey and Rule 4 of the Federal Rules of Civil Procedure. Defendant Zimmerman has waived any objection to personal jurisdiction, venue, or insufficiency of service pursuant to Fed. R. Civ. P. 12(h)(1)(A).

11. Defendant Zimmerman participated in the formation of CET by causing or enabling his wife, Bethany Zimmerman, to be named as a member/manager, and by serving as the agent for service of process on CET. Defendant Zimmerman has participated directly in the decisions to sue, the filing of suits, the activities and communications leading to the negotiation of payments in sham patent infringement actions brought in the name of CET. He has personally signed and filed the complaints in at least three sham patent infringement suits filed by CET as discussed further herein. Defendant Zimmerman was personally sanctioned in the foregoing suit brought by CET's predecessor, Eon-Net, as discussed in further detail herein. In addition, Diebold will likely have evidentiary support, after a reasonable opportunity for further investigation or discovery as to matters uniquely in the control of Defendants, to establish that Defendant Zimmerman has been and is the owner of a contingency or other interest in funds sought and received by CET and predecessor entities formed by one or more of the Defendants from third parties accused of infringing portions of a large patent portfolio in which Defendants Medina and/or Elias are named inventors, including the CET Patents, all or a portion of such funds having been passed through to Defendant Zimmerman and others, such that Defendant Zimmerman, alone or in conjunction with the other individual Defendants, participates in or approves decisions of, dominates and/or controls the affairs of Defendant CET and is the *alter ego* of Defendant CET.

JURISDICTION AND VENUE

12. Counts 1 and 2 of this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02 Subject matter jurisdiction over Counts 1 and 2 of this action is conferred upon this Court by 28 U.S.C. § 1338(a).

13. Count 3 of this action is so related to the claims set forth in Counts 1 and 4 that it forms part of the same case or controversy under Article III of the United States Constitution; is in the nature of unfair competition and is joined with substantial and related claims under the patent laws of the United States; and is between citizens of different states in which the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Accordingly, subject matter jurisdiction over Count 3 is conferred upon this Court by 28 U.S.C. §§ 1332(a), 1338(b), and 1367(a).

14. This Court has subject matter jurisdiction over Count 4 pursuant to 28 U.S.C. § 1331 and the Federal RICO Act, 18 U.S.C. §§ 1961 *et seq.*, which depends in part on the claims and facts asserted in Counts 1-3.

15. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) inasmuch as a substantial part of the events or omissions giving rise to the claims occurred within this judicial district. Venue with regard to the RICO claim is proper under 18 U.S.C. § 1965(a) inasmuch as Defendants reside, are found, have an agent, and/or transact their affairs in this judicial district.

BACKGROUND FACTS

The CET Patent Portfolio

16. Defendant CET owns and/or claims to be the owner of the following United States patents:

Patent No.	Issue Date
5,258,855 ("855 Patent")	11/2/93
5,369,508 ("508 Patent")	11/29/94
5,625,465 ("465 Patent")	4/29/97
5,768,416 ("416 Patent")	6/16/98
6,094,505 ("505 Patent")	7/25/00

Patent No.	Issue Date
7,259,887 ("887 Patent")	8/21/07
7,474,434 ("434 Patent")	1/6/09

The foregoing patents are hereinafter referred to as the "CET Patents."

17. The CET Patents are part of a family of patents (hereinafter the "Medina/Elias Patent Family"). Each of the patents in the Medina/Elias Patent Family, including the CET Patents, have substantially the same specification; have closely related claims; and claim the benefit of the filing date of U.S. Patent Application Serial No. 07/672,865, filed on March 20, 1991.

Enforcement Of The CET Patents Against Diebold Customers

18. Defendants have been and are now engaged in a nationwide scheme to indiscriminately sue, *inter alia*, banks and other financial institutions (hereinafter collectively "banks") that purchase and use ATMs (for the convenience of their customers) for allegedly infringing the CET Patents and extorting payments from said banks. Instead of approaching ATM manufacturers like Diebold, Defendants simply sue banks, which do not manufacture ATMs, and which, in some cases, do not have the resources to investigate and defend claims of patent infringement.

19. On April 26, 2012, CET filed an action for patent infringement against Wells Fargo Bank, National Association ("Wells Fargo") in the United States District Court for the District of New Jersey, Civil Action No. 3:12-cv-2501. Annexed hereto as Exhibit 2 is a true copy of CET's complaint as filed against Wells Fargo.

20. In its complaint against Wells Fargo, CET alleged that the '855, '508, '465, '416, '887, and '434 Patents were duly and legally issued and that CET is the owner by assignment of all right, title, and interest in said patents. CET's complaint against Wells Fargo expressly

alleged infringement by Wells Fargo of CET's '855, '508, '465, and '416 Patents in connection with, *inter alia*, the processing of check and cash deposits made by customers of Wells Fargo at its ATMs using envelope-free deposit service, along with application programs.

21. Wells Fargo has purchased ATMs from Diebold which are capable of performing certain steps that can process check and cash deposits using envelope-free deposit service.

22. CET's complaint against Wells Fargo failed to identify any model(s) of the accused ATMs, or even the supplier(s) of the ATMs accused by CET of infringement, notwithstanding that such information is plainly visible on the customer interface of the Wells Fargo's ATMs; failed to identify the "application programs"; failed to identify the claims being asserted or even clearly state which of the patents cited in the complaint were being asserted and which were not; failed to identify a statutory act of infringement; and failed to plead the elements of inducement of infringement and contributory infringement. CET's complaint failed to identify any facts showing that CET conducted even the most fundamental comparison of elements of patent claims with the products and processes charged with patent infringement.

23. On or about October 17, 2012, Wells Fargo made demand of Diebold that it indemnify Wells Fargo in connection with CET's suit against Wells Fargo.

24. On or about May 16, 2012, CET filed an action for patent infringement in the United States District Court for the District of New Jersey against Bank of America Corporation and Bank of America, National Association (collectively "Bank of America"), Civil Action No. 3:12-cv-2924. Annexed hereto as Exhibit 3 is a true copy of CET's complaint as filed against Bank of America.

25. In its complaint against Bank of America, CET alleged that the '855, '508, '465, '416, '887, and '434 Patents were duly and legally issued and that CET is the owner by

assignment of all right, title, and interest in said patents. CET further alleged that Bank of America infringed the '855, '508, '465, and '416 Patents in connection with the processing of check and cash deposits made by Bank of America customers at its ATM machines, along with application programs.

26. Bank of America has purchased ATM machines from Diebold that are capable of performing certain steps that can process check and cash deposits using envelope-free deposit service.

27. CET's complaint against Bank of America failed to identify any model(s) of the accused ATMs, or even the supplier(s) of the ATMs accused of infringement, notwithstanding that such information is plainly visible on the customer interface of Bank of America's ATMs; failed to identify the "application programs"; failed to identify the claims being asserted or even clearly state which of the patents cited in the complaint were being asserted and which were not; failed to identify a statutory act of infringement; and failed to plead the elements of inducement of infringement and contributory infringement. CET's complaint failed to identify any facts showing that CET conducted even the most fundamental comparison of elements of patent claims with the products and processes charged with patent infringement.

28. On or about June 27, 2012, Bank of America made demand of Diebold that it indemnify Bank of America in connection with CET's suit against Bank of America.

29. On or about July 30, 2012, CET filed an action for patent infringement against San Diego County Credit Union in the United States District Court for the Southern District of California, Civil Action No. 3:12-cv-01878. Annexed hereto as Exhibit 4 is a true copy of CET's complaint as filed against San Diego County Credit Union.

30. In its complaint against San Diego County Credit Union, CET alleged that the '885, '508, '465, '416, '887, and '434 Patents were duly and legally issued and that CET was the owner by assignment of all right, title, and interest in said patents. CET also specifically alleged that San Diego County Credit Union infringed the '465 and '416 Patents in connection with the processing of check and cash deposits made by customers of San Diego County Credit Union at its ATMs using envelope-free deposit service, along with application programs.

31. San Diego County Credit Union has purchased ATM machines from Diebold that are capable of performing certain steps that can process check and cash deposits using envelope-free deposit service. At the time CET filed its suit against San Diego County Credit Union, Diebold was the sole supplier of ATMs to San Diego County Credit Union.

32. CET's complaint against San Diego County Credit Union failed to identify any model(s) of the accused ATMs, or even the supplier(s) of the ATMs, notwithstanding that such confirmation is plainly visible on the customer interface of the defendant's ATMs; failed to identify the "application programs"; failed to identify the claims being asserted or even clearly state which of the patents cited in the complaint were being asserted and which were not; failed to identify a statutory act of infringement; and failed to plead the elements of inducement of infringement and contributory infringement. CET's complaint failed to identify any facts showing that CET conducted even the most fundamental comparison of elements of patent claims with the products and processes charged with patent infringement.

33. On or about August 28, 2012, San Diego County Credit Union made demand of Diebold that it indemnify San Diego County Credit Union.

34. On or about November 8, 2012, CET filed an action for patent infringement against The PNC Financial Services Group, Inc. and PNC Bank National Association

(collectively "PNC") in the United States District Court for the District of New Jersey, Civil Action No. 3:12-cv-06960. Annexed hereto as Exhibit 5 is a true copy of CET's complaint as filed against PNC.

35. In its complaint against PNC, CET alleged that the '885, '508, '465, '416, '887, and '434 Patents were duly and legally issued and that CET was the owner by assignment of all right, title, and interest in said patents. CET also specifically alleged that PNC infringed the '885, '508, '465, and '416 Patents in connection with the processing of check and cash deposits made by customers of PNC at its ATMs using envelope-free deposit service, along with application programs.

36. PNC has purchased ATM machines from Diebold that are capable of performing certain steps that can process check and cash deposits using envelope-free deposit service. At the time CET filed suit against PNC, Diebold was the predominant supplier of ATMs to PNC.

37. CET's complaint against PNC failed to identify any model(s) of the accused ATMs, or even the supplier(s) of the ATMs, notwithstanding that such confirmation is plainly visible on the customer interface of the defendant's ATMs; failed to identify the "application programs"; failed to identify the claims being asserted or even clearly state which of the patents cited in the complaint were being asserted and which were not; failed to identify a statutory act of infringement; and failed to plead the elements of inducement of infringement and contributory infringement. CET's complaint failed to identify any facts showing that CET conducted even the most fundamental comparison of elements of patent claims with the products and processes charged with patent infringement.

38. On or about November 14, 2012, CET filed an action for patent infringement against JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association (collectively

"JPMorgan Chase") in the United States District Court for the District of Delaware, Civil Action No. 1:12-cv-01462. Annexed hereto as Exhibit 6 is a true copy of CET's complaint as filed against JPMorgan Chase.

39. In its complaint against JPMorgan Chase, CET alleged that the '885, '508, '465, '416, '887, and '434 Patents were duly and legally issued and that CET was the owner by assignment of all right, title, and interest in said patents. CET also specifically alleged that JPMorgan Chase infringed the '885, '508, '465, and '416 Patents in connection with the processing of check and cash deposits made by customers of JPMorgan Chase at its ATMs using envelope-free deposit service, along with application programs.

40. JPMorgan Chase has purchased ATM machines from Diebold that are capable of performing certain steps that can process check and cash deposits using envelope-free deposit service.

41. CET's complaint against JPMorgan Chase failed to identify any model(s) of the accused ATMs, or even the supplier(s) of the ATMs, notwithstanding that such confirmation is plainly visible on the customer interface of the defendant's ATMs; failed to identify the "application programs"; failed to identify the claims being asserted or even clearly state which of the patents cited in the complaint were being asserted and which were not; failed to identify a statutory act of infringement; and failed to plead the elements of inducement of infringement and contributory infringement. CET's complaint failed to identify any facts showing that CET conducted even the most fundamental comparison of elements of patent claims with the products and processes charged with patent infringement.

42. On or about December 3, 2012, JPMorgan Chase made demand of Diebold that it indemnify JPMorgan Chase.

**COUNT 1 — DECLARATORY JUDGMENT
OF INVALIDITY, UNENFORCEABILITY, AND LACHES**

43. This count seeks a declaratory judgment that the CET Patents are invalid under several provisions of the Patent Code, 35 U.S.C. §§ 1 *et seq.*; that the CET Patents are unenforceable due to misuse; and that any claims for infringement of the CET Patents by Diebold or its customers is barred by laches.

44. Diebold repeats and realleges the preceding allegations as though fully set forth herein.

45. Diebold has, for many years, manufactured and sold, within the United States, ATMs that have optional components or modules that provide the capability of processing check and cash deposits without envelopes. Diebold also offers and supplies to some of its customers software used in the operation of Diebold ATMs that process check and cash deposits without envelopes.

46. Commencing in or about 1991, Diebold manufactured and sold its "i Series" ATMs, which could be purchased with a device allowing checks, without envelopes, to be fed into the ATM (hereinafter "check acceptor"), including models 1062i, 1070i, 1072i, 1073i, and 1074i. Diebold concurrently offered and provided to customers software designed to be used with these ATMs.

47. Commencing in or about 1994, Diebold manufactured and sold its "ix Series" ATMs, which could be purchased with a check acceptor, including models 1062ix, 1070ix, 1072ix, 1073ix, and 1074ix. Diebold concurrently offered and provided to customers software designed to be used with these ATMs.

48. Commencing in or about 2003, Diebold manufactured and sold its "Opteva" ATMs, which could be purchased with check acceptors and/or a device allowing cash, without

an envelope, to be fed into the ATM (hereinafter "cash acceptor"), including Opteva models 720, 740, 750, 750 Drive Up, 760, 828, and 868. Diebold concurrently offered and provided to customers software designed to be used with these ATMs.

49. Each of the foregoing ATMs clearly identified Diebold as the supplier and was used by Diebold customers openly and publicly, such that members of the public could readily ascertain that such ATMs had check acceptors and/or cash acceptors.

50. One or more of the foregoing ATMs were in use by Diebold's customers during the terms of the CET Patents. For example, Diebold's Opteva models were in public use at least nine years prior to CET's first assertion of the CET Patents against Diebold customers.

51. By virtue of at least its manufacture and sale of ATMs having the capability of conducting steps for processing check and cash deposits without envelopes, Diebold has made more than meaningful preparations to conduct activity that has been accused of infringement of the CET Patents, based on the assertions of patent infringement that have been made against Diebold's customers by CET.

52. CET has committed affirmative acts related to the enforcement of its patent rights, including the filing and pursuit of actions for patent infringement against customers of Diebold, including at least Wells Fargo, Bank of America, San Diego County Credit Union, PNC, and JPMorgan Chase.

53. By virtue of the foregoing, Diebold has suffered injuries in fact; namely, an invasion of a legally protected interest in selling its ATM machines free of any baseless claims of patent infringement, which interest is concrete and particularized, and is imminent as well as actual in view of CET's filing of at least five suits against Diebold ATM customers. The foregoing injuries to Diebold are directly and causally connected to CET's conduct; namely, the

assertion of its patent rights against at least Wells Fargo, Bank of America, San Diego County Credit Union, PNC, and JPMorgan Chase.

54. By virtue of at least the foregoing, there is a definite and concrete controversy between Diebold and CET, touching the legal relations of the parties that have adverse legal interests in the validity, enforceability, and infringement of the CET Patents, which is real and substantial, and which admits of specific relief through a decree of a conclusive character; namely, a declaratory judgment of invalidity, unenforceability, and/or noninfringement.

55. The foregoing controversy between Diebold and CET extends, at a minimum, to the '855, '508, '465, and '416 Patents, which were expressly accused of infringement in CET's above-identified suits against Diebold's customers.

56. The foregoing controversy also extends to the '887 and '434 Patents, which were expressly listed and asserted to have been duly and legally issued in CET's complaints against Diebold's customers.

57. The foregoing controversy also extends to the '505 Patent because it has the same specification as the remaining CET Patents and claims related to the remaining CET Patents; and because it was expressly asserted, along with the remaining CET Patents, in at least four other actions filed by CET in the United States District Court for the District of New Jersey in 2011 and 2012; namely, *Content Extraction & Transmission LLC v. Executive Technologies, Inc. d/b/a Searchexpress*, Civil Action No. 3:11-cv-6472; *Content Extraction & Transmission LLC v. Banctec, Inc.*, Civil Action No. 3:11-cv-7635; *Content Extraction & Transmission LLC v. Capsys Technologies LLC*, Civil Action No. 3:11-cv-7502; and *Content Extraction & Transmission LLC v. LSSP Corp. d/b/a eDRAWER*, Civil Action No. 3:12-cv-0863.

58. The CET Patents, and each of the claims thereof, are invalid under 35 U.S.C. § 101 for failure to claim patentable subject matter because the claims are directed to unpatentable abstract ideas.

59. The CET Patents, and each of the claims thereof, are invalid under 35 U.S.C. §§ 102 and/or 103, because the subject matter of each of those claims was anticipated by the prior art, or because the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the alleged invention was made to a person having ordinary skill in the art to which said subject matter pertains.

60. The CET Patents, and each of the claims thereof, are invalid under 35 U.S.C. § 112, first paragraph, for at least the reason that the specification does not contain a written description of the claimed subject matter, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, at least to the extent the claims are construed in a manner that would purportedly cover the products and methods against which such claims have been asserted.

61. The CET Patents are unenforceable due to patent misuse for at least the reasons set forth above and in Counts 3 and 4 of this First Amended Complaint.

62. Laches bars any claim of infringement by CET based on the CET Patents, at least to the extent such claim of infringement is based on any Diebold ATMs with check acceptors and/or cash acceptors operated using Diebold-supplied software. Such laches precludes recovery against Diebold for any act of alleged infringement that has occurred prior to such time, if ever, that CET sues Diebold for infringement. Such laches defense is available to Diebold's

customers and precludes any recovery against Diebold customers at least to the extent CET's infringement claim is based on the use of Diebold ATMs with Diebold-supplied software. CET and its predecessors cannot excuse their unreasonable delay in first asserting their patents against Diebold and/or its customers, where the asserted patents issued as much as 19 years ago; where several of the asserted patents had already expired before CET began to assert them; and where Diebold's ATMs with check acceptors and/or cash acceptors have been openly marketed and openly and publicly used with Diebold-supplied software for at least two decades with Diebold identified on such ATMs as the supplier/manufacturer.

63. Diebold has no adequate remedy at law.

COUNT 2 — DECLARATORY JUDGMENT OF NONINFRINGEMENT

64. This count seeks a declaratory judgment that none of the Diebold ATMs with check acceptor and/or cash acceptor options, including any or all of the software Diebold offers to customers for licensing for use with said ATMs, which have been made and sold by Diebold and used by Diebold's customers, during the period of enforceability of the CET Patents have infringed or are infringing such patents.

65. Diebold repeats and realleges the allegations of the preceding paragraphs as though fully set forth herein.

66. Neither Diebold nor any of its ATM customers has directly infringed, induced infringement, or contributorily infringed any valid and enforceable claim of the CET Patents in connection with Diebold's "i Series" ATMs with check acceptor option, including any or all of the software Diebold offers to customers for licensing for use with said ATMs.

67. Neither Diebold nor any of its ATM customers has directly infringed, induced infringement, or contributorily infringed any valid and enforceable claim of the CET Patents in

connection with Diebold's "ix Series" ATMs with check acceptor option, including any or all of the software Diebold offers to customers for licensing for use with said ATMs.

68. Neither Diebold nor any of its ATM customers has directly infringed, induced infringement, or contributorily infringed any valid and enforceable claim of the CET Patents in connection with Diebold's "Opteva" Series ATMs with check acceptor option, including any or all of the software Diebold offers to customers for licensing for use with said ATMs.

69. Neither Diebold nor any of its ATM customers has directly infringed, induced infringement, or contributorily infringed any valid and enforceable claim of the CET Patents in connection with Diebold's "Opteva" Series ATMs with cash acceptor option, including any or all of the software Diebold offers to customers for licensing for use with said ATMs.

70. Diebold has no adequate remedy at law.

COUNT 3 — TORTIOUS INTERFERENCE

71. This count seeks pecuniary and injunctive relief from Defendants' tortious interference with Diebold's contractual relations with its ATM customers and Diebold's prospective business advantage with existing and potential future customers.

72. Diebold repeats and realleges the preceding allegations as though fully set forth herein.

73. Diebold is a party to contracts of sale with customers of Diebold's ATMs, pursuant to which Diebold supplies, services, and stands behind its ATM machines and software. Among the parties to such contracts with Diebold are Wells Fargo, Bank of America, San Diego County Credit Union, PNC, and JPMorgan Chase. Defendants are not and have never been parties to those contracts.

74. In addition to Diebold's contractual relations with customers, Diebold has real and reasonable prospective advantageous business relations with the foregoing customers as well as

potential customers, pursuant to which Diebold has sought and will seek to provide such actual and prospective customers with additional ATM machines. Diebold customers which have not been sued by Defendants have become aware of such suits and have expressed concern about same to Diebold, thus causing damage to Diebold's reputation and causing lost sales that Diebold may never be able to ascertain or calculate.

75. Based at least on the fact that ATMs sold by Diebold clearly, openly, and publicly identify Diebold as the supplier of such ATMs, Defendants had knowledge, when they sued Diebold's customers, that contractual relationships and/or business relationships existed between Diebold and its ATM customers providing Diebold with advantageous business relations. Defendants knew or should have known that such business relationships between Diebold and San Diego County Credit Union related not only to ATM machines and related products previously sold to San Diego County Credit Union, but also included Diebold's need to maintain goodwill and provide support to encourage San Diego County Credit Union to purchase additional ATMs and other products from Diebold in the future. Because Diebold was the sole supplier of check-accepting ATMs to San Diego County Credit Union at the time Defendants filed suit against it, any investigation or inspection of any of that bank's ATMs would have made clear to Defendants that Diebold was the supplier and was a party to contracts of sale and had an ongoing business relationship with that bank that would have been impacted by the lawsuit Defendants filed. Similarly, with regard to PNC, since Diebold was the predominant supplier of check-accepting ATMs to PNC at the time Defendants' suit against PNC was filed, Defendants knew or should have been aware that Diebold had an agreement with PNC relating to the sale of such ATMs to PNC and that there was an ongoing business relationship between Diebold and PNC whereby Diebold sought to encourage additional business and sale of Diebold products by

maintaining goodwill and support for ATM machines previously sold. At a minimum, Defendants should have known that Diebold had entered contracts of sale with its customers, and that it was likely that Diebold warranted that its ATMs and software were delivered free of any rightful claim of any third person by way of patent infringement.

76. By virtue of their acts as aforesaid; namely, the filing of a number of unfounded and sham lawsuits against Diebold customers without reciting any details regarding the acts committed by Diebold customers giving rise to said suits, creating the impression that the mere purchase of a Diebold ATM could cause the purchaser to be subject to liability, Defendants have interfered with, disrupted, and negatively impacted Diebold's contractual relations and business activities and relationships and Diebold's prospective business advantage with the customers CET has sued, as well as Diebold's relations with other actual and prospective ATM customers. Such acts of interference have been intentional, knowing, and malicious.

77. As a direct and proximate consequence of Defendants' acts of interference, and because of the business relationships between Diebold and its customers, Diebold has been requested to provide and has provided compensation to such of its customers who have made payments to CET. Absent Defendants' acts of interference, in all reasonable probability, Diebold would not have received demands for indemnification, would not have been asked to provide compensation to customers who have made payments to CET, and would not have incurred the burden and expense associated with the foregoing.

78. Defendants' acts of interference have been committed in objective and subjective bad faith and with malice for at least the reasons set forth above and the additional reasons set forth below.

79. The patent infringement suits filed by CET and the other Defendants were sham and objectively baseless actions based on complaints that were factually and legally defective and filed in bad faith for at least the following reasons:

- a. Each complaint CET filed against the customer banks failed to contain legally sufficient factual and legal bases to support charges of patent infringement insofar as they failed to identify the infringing instrumentalities, *i.e.*, the brands, manufacturers, or even categories of ATMs at issue and the methods, procedures, software, or other specific information regarding the operation of said ATMs. The CET complaints failed to present any information demonstrating that CET had conducted an investigation as required by Fed. R. Civ. P. 11 or possessed a reasonable basis to file suit. This fact was called to the attention of CET by Bank of America in an August 3, 2012 filing; yet CET never amended its complaint against Bank of America to remedy these deficiencies, and thereafter filed substantially identical complaints against PNC and JPMorgan Chase with the identical deficiencies.
- b. The fact that CET's allegations of induced infringement and contributory infringement were blatantly insufficient at least for failing to allege knowledge of the patents and knowledge of the infringement. This fact was called to the attention of CET by Bank of America in an August 3, 2012 filing; yet CET never amended its complaint against Bank of America to remedy these deficiencies, and thereafter filed substantially identical complaints against PNC and JPMorgan Chase with the identical deficiencies.

- c. That in each of the suits filed by CET against Diebold customers, the complaint identified two of the CET Patents, the '887 and '434 Patents, and alleged that they were duly and legally issued and that CET was the owner of all right, title, and interest in such patents, yet it never alleged that such patents were infringed, making CET's claims as to those two patents manifestly baseless and insufficient.
- d. That with regard to two more of CET's patents, the '855 and '508 Patents, since they had expired in 2010, and in view of a clear case of laches that would have been apparent had Defendants conducted any meaningful investigation, there could be no claim for past or future damages as to those two patents.
- e. With further regard to CET's '855 and '508 Patents, even if the filing of suits under the expired '855 and '508 Patents could have been construed as giving the defendant banks in those suits knowledge of the patents and purported knowledge of the infringement thereof, to support a claim for infringement during the period following the filing of such complaints, there could have been no such claim for induced infringement or contributory infringement as to CET's '855 and '508 Patents, which had expired before CET filed any suits.
- f. That CET's complaints failed to even allege a statutory act of infringement under 35 U.S.C. § 271, such as making, using, selling, offering to sell, or importing.
- g. That three related patents in the Medina/Elias Patent Family had been held invalid under 35 U.S.C. § 101 by Judge Hochberg of this Court on a motion to dismiss in a case brought by Glory Licensing LLC ("Glory"), a predecessor owner of the CET Patents; that Glory had abandoned its appeal of that ruling without even having filed a brief; and that Bank of America had filed a motion to dismiss on

August 3, 2012, demonstrating that the same rationale applied to the CET Patents at issue, yet CET continued to file new lawsuits.

80. In or about 2000, Defendants Medina, Elias, and/or Zimmerman formed a Cayman Islands entity known as Millennium, LP ("Millennium"). Defendants Medina, Elias, and/or Zimmerman, alone or in combination with each other, dominated and controlled Millennium, and/or were the alter ego of Millennium.

81. Between 2000 and 2010, Millennium filed at least 59 patent infringement suits asserting various patents within the Medina/Elias Patent Family, including several of what would later become the CET Patents, including the '855, '508, '465, '416, and '505 Patents.

82. Upon information and belief, all or substantially all of those suits were concluded by payments sometimes characterized as representing a "nuisance" value, in which Defendants Medina, Elias, and Zimmerman, along with Millennium, took advantage of the high cost that those sued parties would pay for defending such actions, as compared with the amount paid to Millennium. Such payments were obtained before any of the sued parties presented a challenge to the validity of the patents at issue.

83. In or about 2001, Defendants Medina, Elias, and/or Zimmerman formed an Island of Nevis entity known as Eon-Net, L.P. ("Eon-Net"). Defendants Medina, Elias, and/or Zimmerman, alone or in combination with each other, dominated and controlled Eon-Net and/or were the alter ego of Eon-Net.

84. Commencing in or about 2001, Defendants Medina, Elias, and Zimmerman began to assert through Eon-Net certain patents from the Medina/Elias Patent Family against a large number of defendants. These included U.S. Patent Nos. 6,683,697 ("the '697 Patent"), 7,075,673

("the '673 Patent"), and 7,184,162 ("the '162 Patent"). In all, Defendants Medina, Elias, Zimmerman, and Eon-Net asserted such patents in at least 46 lawsuits.

85. In pursuing the foregoing suits, Defendants Medina, Elias, and Zimmerman, along with Eon-Net, obtained numerous quick payments by exploiting the high cost to defend complex litigation in order to extract lower payments, and before any meaningful challenge to the validity of the patents could be mounted.

86. In one such patent infringement suit that Eon-Net and Defendants Medina, Elias, and Zimmerman brought, they could not obtain a quick payment, *Eon-Net LP v. Flagstar Bancorp*, Civil Action No. C05-2129 (W.D. Wash.). In that case, Eon-Net and Defendant Zimmerman were correctly found by the district court and/or by the United States Court of Appeals for the Federal Circuit to have acted in bad faith based upon various matters, including: having filed numerous complaints that were virtually identical but which failed to give adequate notice of the acts that were alleged to be infringing; having demonstrated indicia of extortion by demanding payments that were small relative to the high cost of patent litigation; by having failed to perform a reasonable pre-filing investigation; by having destroyed documents relevant to the action; by having failed to participate in good faith in claim construction proceedings; by having maintained a purported document retention policy by which Defendants did not retain any documents at all; by claiming that their patents covered virtually all web-based commerce, a contention that was unsupportable; by suppressing evidence that the defendant had previously been licensed; by demonstrating disdain for the judicial system; by having avoided challenges to the validity of their patents; by having exercised the ability to impose disproportionate discovery costs on the defendants sued, at least in part because accused infringers often possess enormous amounts of potentially relevant documents that must be ultimately collected and produced; and

by having placed little if anything at risk in such suits, because Eon-Net was a nonpracticing entity that did not engage in business activities, such that Eon-Net did not face any business risk resulting from any possible loss of patent protection as a result of its enforcement activities.

87. In or about 2009, Defendants Medina, Elias, and/or Zimmerman formed another Island of Nevis entity known as Glory Licensing LLC ("Glory"). Upon information and belief, Defendants Medina, Elias, and/or Zimmerman dominated and controlled the affairs of Glory and/or were the alter ego of Glory.

88. In 2009, Glory filed a series of at least seven suits alleging infringement of one or more of a group of patents within the Medina/Elias Patent Family, including U.S. Patent Nos. 7,570,383 ("the '383 Patent"); 7,672,007 ("the '007 Patent"); and 7,619,768 ("the '768 Patent").

89. On May 16, 2011, in the action entitled *Glory Licensing LLC v. Toys "R" Us, Inc.*, Civil Action No. 09-4252, the United States District Court for the District of New Jersey ruled on a motion to dismiss that each of the '383, '768, and '007 Patents were invalid under 35 U.S.C. § 101. On a motion for reconsideration, in an order dated June 30, 2011, the Court adhered to that ruling and denied reconsideration.

90. Although Glory lodged an appeal to the United States Court of Appeals for the Federal Circuit from the foregoing rulings, Appeal No. 2011-1429, no appeal brief was filed by Glory, and Glory's appeal was dismissed on August 25, 2011.

91. At the time Defendants filed their suits against Wells Fargo, Bank of America, San Diego County Credit Union, PNC, and JPMorgan Chase, they were aware of all of the foregoing facts but, nonetheless, filed the aforementioned suits against Wells Fargo, Bank of America, San Diego County Credit Union, PNC, and JPMorgan Chase.

92. On or about August 3, 2012, Bank of America filed a motion to dismiss the suit against it on the basis that the CET Patents asserted against Bank of America were invalid under 35 U.S.C. § 101 for substantially the same reasons found in the *Glory v. Toys "R" Us* action.

93. Notwithstanding Bank of America's motion, and notwithstanding all of the events that preceded it as set forth herein, Defendants maintained their actions against Wells Fargo, Bank of America, San Diego County Credit Union, and filed additional actions against PNC and JPMorgan Chase.

94. Subsequent to the filing of Bank of America's motion, Defendants extracted payments from Bank of America and San Diego County Credit Union. Defendants extracted such payments with the knowledge that at least San Diego County Credit Union was seeking indemnification from Diebold and/or other suppliers. Annexed hereto as Exhibit 7 is a true copy of a September 10, 2012 Joint Motion For Extension Of Time, which stated that a reason for the extension was so that counsel for San Diego County Credit Union could "contact suppliers of the accused products/services." Thus, these payments were even more egregiously obtained than were the payments in the *Eon-Net* actions, because Defendants CET, Medina, Elias, and/or Zimmerman knew that the amounts being paid by the parties they sued would cost those parties less because they would seek compensation from Diebold and other suppliers.

95. The foregoing facts, including the pattern of conduct exhibited under corporate shells that preceded CET, establish that Defendants' suits against Diebold's customers were brought with malice and subjective bad faith. Rather than vindicate any legitimate patent rights, and attempt to recover damages based on the customers' usage of the alleged inventions purportedly covered by the patents, Defendants sued Diebold's customers with the knowledge and intent that the customers would make a nuisance payment to Defendants having no

relationship to the customers' usage of the alleged inventions purportedly covered by the patents, or any other bona fide damage claim, and that the customers would do so irrespective of the merits of the patent infringement claims simply because the cost of investigating and defending against the patent infringement claims far exceeded Defendants' payment demands; because the customer banks were perceived by Defendants to have the financial wherewithal to make the payments; and (in at least certain instances) because Defendants knew and expected that the customer banks could seek and obtain compensation from Diebold and/or other suppliers.

96. By virtue of all of the foregoing, Defendants have tortiously interfered with the contractual relations and prospective business advantage of Diebold in bad faith in violation of the laws of New Jersey and California. Such violations will continue unless and until Defendants are restrained by the Court.

97. Diebold has no adequate remedy at law.

**COUNT 4 — FEDERAL RACKETEER
INFLUENCED AND CORRUPT ORGANIZATIONS ACT**

98. This count seeks treble damages for violation of the federal RICO statute by Defendants in connection with their use of baseless patent suits filed in bad faith to extort payments from Diebold ATM customers to Diebold's detriment and damage.

99. Diebold repeats and realleges the preceding allegations as though fully set forth herein.

100. This is an action for civil relief for RICO violations under 18 U.S.C. §§ 1961 *et seq.*

101. Each of the Defendants is a "person" within the meaning of 18 U.S.C. § 1961(3).

102. Defendants, along with other companies that have owned and/or enforced rights in the Medina/Elias Patents, including but not limited to International Patent Holdings Ltd.,

Millennium, Eon-Net, and Glory, constitute one or more "enterprises" within the meaning of 18 U.S.C. § 1961(4) (hereinafter "Enterprise"). Although the corporate shell or name under which Defendants operate periodically changes, based on information and belief, the same individuals remain continuously associated with and involved in directing and/or controlling the Enterprise.

103. Through the predicate acts set forth herein, Defendants have engaged in "racketeering activity" within the meaning of 18 U.S.C. § 1961(1). Such racketeering activity has included extortion which is chargeable under state law and punishable by imprisonment for more than one year within the meaning of 18 U.S.C. § 1961(1)(A). Such extortion includes violation of N.J.S.A. § 2C:20-5(c) insofar as Defendants have exposed or publicized asserted facts; namely, allegations of patent infringement, tending to impair the business reputation of Diebold's customers and Diebold itself. Such extortion under state law also includes violation of § 518 of the California Penal Code, insofar as Defendants have obtained property from another with the other's consent; namely, payments in response to baseless patent infringement suits filed in bad faith, which have been induced by wrongful use of fear, or under color of official right; namely, the fear of having to incur extraordinary legal expenses to investigate and defend against baseless claims, and the color of official right constituting the assertion of United States patents and utilization of United States district courts. More particularly, after filing sham patent infringement suits against Diebold's customers, Defendants made payment demands seeking dollar amounts from the banks that bore no relationship to any amount based on an investigation and calculation of an infringement damage claim. Rather, such payment demands by CET presented a dollar amount driven by the respective banks' perceived ability to pay and which was substantially less than the costs that would be incurred by defendant banks to investigate CET's claims, and successfully defend in court against those claims.

104. Based on information and belief, such demands for payment by CET were accompanied by time limitations on acceptance by the defendant banks, thus pressuring the defendant banks to simply pay off Defendants and be rid of the case quickly and at a relatively low cost as compared to the extraordinary costs of investigating and defending, irrespective of the merits of the claims or lack thereof. For example, in the Bank of America case, the case was dismissed with prejudice on October 12, 2012, the day of a scheduled hearing on Bank of America's motion to dismiss CET's complaint for invalidity of CET's patents. With respect to the timing of the dismissal with prejudice of the San Diego County Credit Union case, the dismissal followed repeated extensions of time postponing the date for San Diego County Credit Union to respond to the complaint and publicly state its defenses and/or grounds to dismiss. (*See, e.g.*, Exh. 7.) The motion for dismissal was actually filed on November 7, 2012, 12 days after the final extension expired for San Diego County Credit Union to respond to the complaint. Such time limitations and rapid dismissals impeded Diebold from taking affirmative action to intervene or become formally involved in said litigations. The timing of the dismissals also avoided any court decision that would be unfavorable to CET.

105. Defendants' predicate acts as set forth herein also include racketeering activity within the meaning of 18 U.S.C. § 1961(1)(B), including acts indictable under several sections of Title 18 of the United States Code. Such acts include violations of 18 U.S.C. § 1951 (relating to extortion). Upon information and belief, Defendants have used telephone, facsimile, e-mail, and/or U.S. mail across state lines to extort payments in baseless patent infringement suits brought against customers of Diebold and others. Defendants' acts constitute "extortion" within the meaning of 18 U.S.C. § 1951(b)(2) insofar as Defendants have obtained property from another with the consent of the other; namely, payments in response to baseless patent litigation,

which payments have been induced by the wrongful use of actual and threatened fear under color of official right; namely, the fear of incurring exorbitant defense fees, and the official right constituting United States patents and use of the process of United States district courts.

106. Defendants have engaged in a continuous "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5) inasmuch as Defendants have committed far more than two acts of racketeering activity, and the last of a substantial number of predicate acts occurred within less than ten years after the commission of a prior act of racketeering activity. Continuously between November 2011 and November 2012, Defendants filed at least 12 baseless actions for patent infringement under the CET Patents, including actions against Wells Fargo, Bank of America, San Diego County Credit Union, PNC, and JP Morgan Chase. Previously, between 2000 and 2009, Enterprise members Millennium, Eon-Net, Glory, Medina, Elias, and Zimmerman continuously filed in excess of 100 patent infringement suits for the same purpose, *i.e.*, to extort payments from defendants under the threat of having to incur enormous legal fees to investigate and defend such actions. Upon information and belief, such pattern of racketeering activity will continue unless restrained by the Court, because the cost of filing new infringement actions is minimal and, in any event, is more than funded by payments from earlier actions. More specifically, Defendants have been following a course of conduct calculated to avoid suing a party like Diebold, with sufficient incentive and resources to defend the lawsuit on the merits, and which would place Defendants' asserted patents at risk of being declared invalid. Instead, Defendants have been suing Diebold's customers, one by one. Each filed complaint fails to present specifics as to the activities or products accused of infringement and the particular patent claims infringed. After filing, Defendants enter into discussions with the Diebold customer, indicating a willingness to accept payment of an amount substantially less than the

funds required for the customer to investigate and litigate the case to judgment, and substantially less than the damages that could be asserted by Defendants if its patents were found valid and infringed. On information and belief, Defendants knew prior to filing the lawsuits against Diebold's customers that this course of conduct would likely have the results already obtained in the suits filed against Bank of America and San Diego County Credit Union, and in many if not most of the cases described above brought by the prior corporate entities comprising the Enterprise, which were dismissed prior to any decision of the court addressing the merits of Defendants' patents.

107. Defendants have violated 18 U.S.C. § 1962(b) through the foregoing pattern of racketeering activity by which Defendants acquired and maintained the foregoing Enterprise that is engaged in interstate commerce, *i.e.*, baseless patent litigation initiated and used as a vehicle to extract payments across state lines. Such actions across state lines included:

- a. In CET's suit against Wells Fargo, during the period May 8-9, 2012, Defendants caused a summons and factually and legally defective complaint to be transmitted in bad faith via interstate e-mail, facsimile, or mail to a process server located at 503 S. Pierre Street, Pierre, South Dakota 57501.
- b. In CET's case against San Diego County Credit Union, on or about July 30, 2012, Defendants caused a factually and legally defective complaint to be transmitted in bad faith across state lines via interstate e-mail, facsimile, or mail to the Southern District of California for the filing of that suit. On or about August 9, 2012, Defendant Zimmerman caused an application for admission *pro hac vice* to be transmitted across state lines via e-mail, facsimile, or mail to the Southern District of California. And, on information and belief, in or about November 2012,

Defendants communicated with regard to payment demands across state lines, via interstate telephone and/or e-mail, with the defendant located in the Southern District of California.

- c. In their suit against JPMorgan Chase, on or about November 15, 2012, Defendants caused a factually and legally defective complaint to be sent in bad faith from Defendants' offices in New Jersey across state lines via interstate e-mail, facsimile, or mail to local counsel in Wilmington, Delaware, and thereafter to a process server located at 1001 North Jefferson Street, Wilmington, Delaware 19801.
- d. Upon information and belief, in or about October 2012, Defendants negotiated a payment from Bank of America with the bank's lawyers in New York and/or North Carolina across state lines via interstate telephone and/or e-mail.

108. Defendants have violated 18 U.S.C. § 1962(c) by conducting and participating in, directly or indirectly, the conduct of the Enterprise's affairs through a pattern of racketeering activity. Such activities have affected and are affecting interstate commerce, including the interstate commerce in ATMs between Diebold, which is headquartered in Ohio, and its customers including Wells Fargo, Bank of America, San Diego County Credit Union, PNC, and JPMorgan Chase, to which Diebold has sold ATM machines for installation and use in numerous other states.

109. Diebold is a "person" within the meaning of 18 U.S.C. § 1961(3), since, as a corporation, it is an entity capable of holding a legal or beneficial interest in property.

110. Diebold is a person injured in its business or property within the meaning of 18 U.S.C. § 1964(c). Diebold's damages have included payments made to customer banks, such

payments being the direct result of payments made by customer banks to CET under CET's threats that without such payments, such banks would have to prosecute the litigations and incur massive expenses to investigate and defend against baseless patent infringement claims.

111. Defendants' federal RICO violations will continue unless and until restrained by the Court.

112. Diebold has no adequate remedy at law.

WHEREFORE, Diebold demands judgment against Defendants as follows:

- A. a declaration that the CET Patents are invalid;
- B. a declaration that the CET Patents are unenforceable;
- C. a declaration that CET's claims for patent infringement against (i) Diebold and (ii) Diebold customers at least insofar as they have used Diebold-supplied ATMs with check and/or cash acceptor option with any or all of the software Diebold offers to customers for licensing with said ATMs, are barred by laches;
- D. a declaration that neither (i) Diebold nor (ii) Diebold customers insofar as they have used Diebold-supplied ATMs with check and/or cash acceptor option operated with software Diebold offers to its customers with said ATMs, have infringed or are infringing any valid and enforceable claim of the CET Patents;
- E. an award of compensatory damages to Diebold on account of Defendants' acts of tortious interference;
- F. an award of punitive damages to Diebold on account of Defendants' acts of tortious interference;
- G. an award of threefold the damages sustained by Diebold in accordance with 18 U.S.C. § 1964(c);

H. an award of Defendants' profits;

I. a preliminary and permanent injunction enjoining Defendants, their officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with them, from suing Diebold or from threatening to sue or suing any of its customers for infringement of any of the CET Patents or any other patents within the Medina/Elias Patent Family, and from continuing to prosecute existing suits against Diebold customers, and/or from continuing their acts of tortious interference and violation of the RICO statute;

J. a declaration that this action is exceptional within the meaning of 35 U.S.C. § 285 and an award to Diebold of its reasonable attorney fees;

K. an award to Diebold of its reasonable attorney fees pursuant to 18 U.S.C. § 1964(c);

L. an award of Diebold's costs; and

M. such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), plaintiffs hereby demand a trial by a jury on all issues so triable.

Respectfully submitted,

LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
*Attorneys for Plaintiff Diebold, Incorporated
in Civil Action No. 12-7640*

Dated: February 21, 2013

By: s/ Roy H. Wepner
Roy H. Wepner
Tel: 908.654.5000
E-mail:rwepner@ldlkm.com
litigation@ldlkm.com