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11 Attorneys for Plaintiff
12 SPEX TECHNOLOGIES, INC.

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **SOUTHERN DIVISION**

16 SPEX TECHNOLOGIES, INC.,

17 Plaintiff,

18 v.

19 CMS PRODUCTS, INC.,

20 Defendant.

21 **Case No. 8:16-cv-01801**

22 **COMPLAINT FOR PATENT**
23 **INFRINGEMENT**

24 **JURY TRIAL DEMANDED**

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1 8. Venue in this district is proper under 28 U.S.C. §§ 1400(b) and 1391(b)
2 and (c), because Defendant is subject to personal jurisdiction in this district and has
3 committed acts of infringement in this district.

4 **FACTUAL BACKGROUND**

5 9. The Patents-in-Suit were originally assigned to Spyrus, Inc. ("Spyrus").
6 SPEX acquired full rights to the Patents-in-Suit from Spyrus.

7 **SPYRUS IS A PIONEERING ENCRYPTION COMPANY THAT HAS**
8 **DEVELOPED CRYPTOGRAPHIC PRODUCTS RELIED ON TO SECURE**
9 **SENSITIVE INFORMATION**

10 10. Spyrus was founded around October 1992 by two pioneering women.
11 The founding concept of Spyrus was to make cryptography more affordable and
12 usable for distributing and accessing electronic content.

13 11. Instead of building up the company with venture capital money, Spyrus
14 initially built itself up using small capital investments from friends and family.
15 Spyrus' first major achievement was to propose and win a contract with the
16 Department of Defense ("DoD") to design a specification for a hardware security
17 module ("HSM") to be used for encrypting sensitive communications. In 1993,
18 Spyrus released the LYNKS HSM based on an ARM processor.

19 12. In approximately 1993 or 1994, in partnership with Mykotronx, Spyrus
20 released the successor to the LYNKS HSM, the Fortezza Crypto Card, originally
21 named the Tessera Crypto Card. *See, e.g.,* <https://en.wikipedia.org/wiki/Fortezza>.
22 The Fortezza Crypto Card and its successor versions were capable of protecting
23 sensitive data, including classified data. The Fortezza Crypto Card was used in a
24 number of government and military applications.

25 13. Around 1996 or 1997, Spyrus began expanding on the cryptographic
26 technology embodied in the LYNKS HSM and Fortezza Crypto Card technologies.
27 In particular, Spyrus developed its Hydra series of products, which added
28 capabilities such as flash memory or modem functionalities to the family of LYNKS

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1 HS and Fortezza Crypto Card technologies. Spyrus' initial Hydra products were
 2 released around 1997. Spyrus' Hydra-based products are still sold today. Spyrus'
 3 Hydra-based products include the PocketVault P-3X, PocketVault P-384,
 4 PocketVault P-384E, Worksafe, Worksafe Pro and Secure Portable Workplace.

5 14. Spyrus' Hydra-based products have won awards and have been
 6 consistently praised. See, e.g.,
 7 <http://www.pcmag.com/article2/0,2817,2478715,00.asp> (editor rating of
 8 "Excellent" for the Worksafe Pro);
 9 <http://www.pcmag.com/article2/0,2817,2478716,00.asp> (editor rating of "excellent"
 10 for the Worksafe); [http://www.thessdreview.com/our-reviews/spyrus-worksafe-pro-
 11 wtg-secure-flash-drive-review-worlds-secure-flash-drive/3/](http://www.thessdreview.com/our-reviews/spyrus-worksafe-pro-wtg-secure-flash-drive-review-worlds-secure-flash-drive/3/) (Worksafe Pro was
 12 given an "Editor's Choice" award; called the "worlds most secure flash drive");
 13 [http://www.spyrus.com/spyrus-named-winner-in-2011-golden-bridge-awards-for-
 14 virtual-office-technology/](http://www.spyrus.com/spyrus-named-winner-in-2011-golden-bridge-awards-for-virtual-office-technology/) (Secure Pocket Drive named the winner in the Virtual
 15 Office Technology category of the 3rd Annual 2011 Golden Bridge Awards as well
 16 as the Security Products Guide's Tomorrow's Technology Today award and the GSN
 17 Homeland Security award); [http://www.darkreading.com/risk/nsa-approves-spyrus-
 18 hydra-pc-for-protection-of-classified-government-data/d/d-id/1132286?print=yes](http://www.darkreading.com/risk/nsa-approves-spyrus-hydra-pc-for-protection-of-classified-government-data/d/d-id/1132286?print=yes)
 19 (Hydra Privacy Card Series II was first commercial-off-the-shelf device approved
 20 by the DoD to protect confidential information at SECRET level and below);
 21 [http://www.businesswire.com/news/home/20060612005367/en/Info-Security-
 22 Products-Guide-Names-SPYRUS-Hydra](http://www.businesswire.com/news/home/20060612005367/en/Info-Security-Products-Guide-Names-SPYRUS-Hydra) (Hydra Privacy Card Series II won 2006
 23 Global Excellence in Secure and Removable Mass Storage Device Award from Info
 24 Security Products Guide); [http://www.scmagazine.com/spyrus-hydra-privacy-card-
 25 series-ii/review/1087/](http://www.scmagazine.com/spyrus-hydra-privacy-card-series-ii/review/1087/) (very positive review of Hydra Privacy Card Series II; "If you
 26 deal with sensitive data, especially on laptops, you need the Hydra").

27 15. The Patents-in-Suit, and Spyrus' technology, have been licensed in the
 28 past by Kingston Digital, Inc. and PNY Technologies, Inc.

1 Flash Drive, CE Secure Vault3 FIPS Flash Drive, CE Secure Vault Flash Drive, CE
2 Secure DiskVault Traveler Edition and CE Secure Encrypted External Drive.

3 24. Defendant has been and now is directly infringing one or more claims
4 of the '802 patent under 35 U.S.C. §271(a), in this judicial District and elsewhere in
5 the United States, by, among other things, making, using, selling, offering to sell
6 and/or importing into the United States for subsequent sale or use hardware
7 encrypting storage solutions that include, for example, (a) a cryptographic processor
8 for performing security operations on data; (b) mass storage memory, such as flash
9 or magnetic storage; (c) an interface between the cryptographic processor and the
10 mass storage memory; (d) an interface with the host computer (*e.g.*, a USB or SATA
11 interface); and (e) a mediating interface that ensures that data communicated
12 between the host computer and mass storage memory passes through the
13 cryptographic processor. An exemplary chart showing how Defendant infringes the
14 '802 patent is attached as Exhibit C.¹ Exhibit C is based on the public information
15 available to Plaintiff, and Plaintiff reserves the right to amend Exhibit C based on
16 information obtained through discovery. Accordingly, the aforementioned products
17 infringe the '802 patent literally and/or under the doctrine of equivalents.

18 25. Defendant actively, knowingly, and intentionally induces, and
19 continues to actively, knowingly, and intentionally induce, infringement of the '802
20 patent under 35 U.S.C. §271(b) by its customers and end users.

21 26. Defendant has had knowledge of and notice of the '802 patent and its
22 infringement since at least the filing of this complaint.

23 27. Defendant has induced its customers and end users to infringe the '802
24 patent by using hardware encrypting storage solutions to (a) communicate with a
25 host computer to exchange data with the hardware encrypting storage solution; (b)

26 _____
27 ¹ Plaintiff reserves the right to assert additional claims of the '802 patent against
28 Defendant as the litigation proceeds. For example, Plaintiff expressly reserves the
right to assert additional claims in its infringement contentions to be served during
the discovery process.

1 perform security operations on the data; (c) store or retrieve the data; and (d) mediate
2 communications so that data must first pass through the hardware encrypting
3 processor. *See, e.g.*, Ex. C. For example, Defendant encourages its customers and
4 end users to perform infringing methods by the very nature of the products. When
5 using the infringing products, security operations are performed on all data passed
6 between Defendant's infringing products and the customer's or end user's computer.

7 28. Defendant specifically intends its customers and/or end users infringe
8 the '802 patent, either literally or by the doctrine of equivalents, because Defendant
9 has known about the '802 patent and how Defendant's products infringe the claims
10 of the '802 patent but Defendant has not taken steps to prevent infringement by its
11 customers and/or end users. Accordingly, Defendant has acted with the specific
12 intent to induce infringement of the '802 patent.

13 29. Accordingly, Defendant has induced, and continues to induce,
14 infringement of the '802 patent under 35 U.S.C. §271(b).

15 30. Defendant has been and continues to infringe one or more of the claims
16 of the '802 patent through the aforesaid acts.

17 31. Defendant has committed these acts of infringement without license or
18 authorization.

19 32. Plaintiff is entitled to recover damages adequate to compensate for the
20 infringement.

21 **COUNT II**

22 **(DEFENDANT'S INFRINGEMENT OF THE '135 PATENT)**

23 33. Paragraphs 1 through 20 are incorporated by reference as if fully
24 restated herein.

25 34. United States Patent No. 6,003,135, entitled "Modular Security
26 Device," issued on December 14, 1999 from United States Patent Application No.
27 08/869,120 filed on June 4, 1997. A true and correct copy of the '135 patent is
28 attached as Exhibit B.

1 35. On information and belief, Defendant has made, used, offered for sale,
2 sold and/or imported into the United States products that infringe various claims of
3 the '135 patent, and continues to do so. By way of illustrative example, these
4 infringing products include, without limitation, Defendant's hardware encrypting
5 storage solutions, including but not limited to Defendant's hardware encrypting
6 storage solutions, including but not limited to Defendant's CE Secure Vault FIPS
7 Flash Drive, CE Secure Vault3 FIPS Flash Drive, CE Secure Vault Flash Drive, CE
8 Secure DiskVault Traveler Edition and CE Secure Encrypted External Drive.

9 36. Defendant has been and now is directly infringing one or more claims
10 of the '135 patent under 35 U.S.C. §271(a), in this judicial District and elsewhere in
11 the United States, by, among other things, making, using, selling, offering to sell
12 and/or importing into the United States for subsequent sale or use hardware
13 encrypting storage solutions that include, for example, (a) a security portion
14 including (i) a cryptographic processor for performing security operations on data;
15 and (ii) an interface to the memory portion; (b) a memory portion including (i) mass
16 storage memory, such as flash or magnetic storage; and (ii) an interface to the
17 security portion; (c) an interface with the host computer (*e.g.*, a USB or SATA
18 interface); and (d) a means for operably connecting the security module and/or the
19 target module to the host computing device in response to an instruction from the
20 host computing device. An exemplary chart showing how Defendant infringes the
21 '135 patent is attached as Exhibit D.² Exhibit D is based on the public information
22 available to Plaintiff, and Plaintiff reserves the right to amend Exhibit D based on
23 information obtained through discovery. Accordingly, the aforementioned products
24 infringe the '135 patent literally and/or under the doctrine of equivalents.

25
26 _____
27 ² Plaintiff reserves the right to assert additional claims of the '135 patent against
28 Defendant as the litigation proceeds. For example, Plaintiff expressly reserves the
right to assert additional claims in its infringement contentions to be served during
the discovery process.

1 37. Defendant actively, knowingly, and intentionally induces, and
2 continues to actively, knowingly, and intentionally induce, infringement of the '135
3 patent under 35 U.S.C. §271(b) by its customers and end users.

4 38. Defendant has had knowledge of and notice of the '135 patent and its
5 infringement since at least the filing of this complaint.

6 39. Defendant has induced its customers and end users to infringe the '135
7 patent by using hardware encrypting storage solutions to (a) communicate with a
8 host computer to exchange data with the hardware encrypting storage solution; (b)
9 perform security operations on the data; (c) mediate communications so that data
10 must first pass through the hardware encrypting processor; and (d) operably connect
11 the hardware encrypting storage solution in to the host computer in response to an
12 instruction from the host computer. *See, e.g.,* Ex. D. For example, Defendant
13 encourages its customers and end users to perform infringing methods by the very
14 nature of the products. When using the infringing products, security operations are
15 performed on all data passed between Defendant's infringing products and the
16 customer's or end user's computer.

17 40. Defendant specifically intends its customers and/or end users infringe
18 the '135 patent, either literally or by the doctrine of equivalents, because Defendant
19 has known about the '135 patent and how Defendant's products infringe the claims
20 of the '135 patent but Defendant has not taken steps to prevent infringement by its
21 customers and/or end users. Accordingly, Defendant has acted with the specific
22 intent to induce infringement of the '135 patent.

23 41. Accordingly, Defendant has induced, and continues to induce,
24 infringement of the '135 patent under 35 U.S.C. §271(b).

25 42. Defendant has been and continue to infringe one or more of the claims
26 of the '135 patent through the aforesaid acts.

27 43. Defendant has committed these acts of infringement without license or
28 authorization.

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44. Plaintiff is entitled to recover damages adequate to compensate for the infringement.

PRAYER FOR RELIEF

Wherefore, SPEX Technologies, Inc., respectfully requests the following relief:

- a) A judgment that Defendant has infringed the '802 patent;
- b) A judgment that Defendant has infringed the '135 patent;
- c) A judgment that awards Plaintiff all appropriate damages under 35 U.S.C. § 284 for Defendant's past infringement, and any continuing or future infringement of the Patents-in-Suit, up until the date such judgment is entered, including interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary, to adequately compensate Plaintiff for Defendant's infringement;
- d) An adjudication that this case is exceptional within the meaning of 35 U.S.C. § 285;
- e) An adjudication that Plaintiff be awarded the attorneys' fees, costs, and expenses it incurs in prosecuting this action; and
- f) An adjudication that Plaintiff be awarded such further relief at law or in equity as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: September 28, 2016

Respectfully submitted,
RUSS, AUGUST & KABAT

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