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21 **Attorneys for Plaintiff, AUTHENEX, INC.**

22 **UNITED STATES DISTRICT COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

24 AUTHENEX, INC, a Delaware
25 corporation,

26 Plaintiff,

27 vs.

28 EMC CORPORATION, a
Massachusetts corporation; VASCO
DATA SECURITY
INTERNATIONAL, INC., a
Delaware corporation; and VASCO
DATA SECURITY, INC., a
Delaware corporation,

Defendants.

Case No.: CV 10-01251-MRP (VBKx)

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

AND

DEMAND FOR JURY TRIAL

BY 
2010 MAR 15 AM 11:28
CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

1 Plaintiff Authenex, Inc. alleges for its First Amended Complaint the
2 following:

3
4 **JURISDICTION AND VENUE**

5 1. This is an action for patent infringement arising under 35 U.S.C. § 1,
6 *et seq.* This Court has subject matter jurisdiction over this matter based on 28
7 U.S.C. §§ 1338(a) and 1331.

8 2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391
9 and 1400(b).

10 3. This Court has personal jurisdiction over Defendants by virtue of
11 their systematic, continuous, and routine contact with California. For example,
12 Defendants have office locations throughout California and have significant sales
13 to California-based businesses and organizations. Defendants have sold and
14 offered for sale infringing products within this Judicial District, as well as others
15 throughout the United States.

16
17 **THE PARTIES**

18 4. Plaintiff Authenex, Inc. (“Authenex”) is a Delaware Corporation
19 with its principal place of business at 800 Charcot. Ave., San Jose, California
20 95131.

21 5. Upon information and belief, Defendant EMC Corporation (“EMC”)
22 is a Massachusetts corporation with its principal place of business in Hopkinton,
23 Massachusetts.

24 6. Upon information and belief, Defendant VASCO Data Security
25 International, Inc. (“VDSII”) is a Delaware corporation with its principal place of
26 business in Oakbrook Terrace, Illinois.

1 7. Upon information and belief, Defendant VASCO Data Security, Inc.
2 (“VDSI”) is a wholly owned subsidiary of VDSII incorporated in Delaware and
3 having its principal place of business in Westborough, Massachusetts.
4

5 **PATENT-IN-SUIT**

6 8. United States Patent No. 7,519,989 (“the ‘989 patent”), entitled
7 “Token Device that Generates and Displays One-Time Passwords and that
8 Couples to a Computer for Inputting or Receiving Data for Generating and
9 Outputting One-Time Passwords and Other Functions,” was duly and lawfully
10 issued April 14, 2009. Authenex has all right, title and interest to the ‘989 patent.
11 A true and correct copy of the ‘989 patent is attached hereto as Exhibit A.
12

13 **DEFENDANTS’ INFRINGING PRODUCTS**

14 9. On information and belief, Defendant EMC markets, sells, offers to
15 sell, and induces others to use the RSA SecurID 800 Hybrid Authenticator (“RSA
16 800”) in this District and other parts of the United States. The RSA 800 infringes
17 one or more claims of the ‘989 patent.

18 10. EMC advertises security products on its website at
19 <http://www.emc.com/products/category/security.htm> and provides a link to
20 “RSA, The Security Division of EMC.” Once a user clicks on that link, they are
21 taken to the www.rsa.com website, where the EMC logo prominently appears at
22 the top of every webpage, along with identification of RSA as “The Security
23 Division of EMC.” The webpage that describes the RSA 800 (located at
24 <http://www.rsa.com/node.aspx?id=1215>) also prominently displays the EMC
25 logo at the top and identifies RSA as “The Security Division of EMC.”

26 11. EMC stated in its earnings call of February 3, 2010 that: “Our RSA
27 security revenues in Q4 were \$164 million, up 7% sequentially. This business is
28 executing well this year. Even in a tough environment, growth was positive in

1 2009 and paced the year up 4% overall as information centric security continues
2 to be a top customer priority.”

3 12. On information and belief, Defendants VDSII and VDSI market,
4 sell, offer to sell, and induce others to use the DIGIPASS 860 Hybrid USB
5 Security Device (“DIGIPASS 860”) to customers in this District and other parts
6 of the United States. The DIGIPASS 860 infringes one or more claims of the
7 ‘989 patent.

8 13. The DIGIPASS 860 product is described at [http://www.vasco.com/
9 products/digipass/digipass_pki/digipass_pki_keys/digipass_860.aspx](http://www.vasco.com/products/digipass/digipass_pki/digipass_pki_keys/digipass_860.aspx). Visitors
10 clicking on “About VASCO” are taken to [http://www.vasco.com/company/
11 short_overview/short_overview.aspx](http://www.vasco.com/company/short_overview/short_overview.aspx). At that url, “VASCO” is identified as
12 “VASCO Data Security International, Inc.”

13 14. VDSII’s most recent 10Q SEC filing states: “Our Strong User
14 Authentication is delivered via our hardware and software DIGIPASS security
15 products (collectively DIGIPASSES), most of which incorporate an electronic
16 signature capability, which further protects the integrity of electronic transactions
17 and data transmissions.”

18 15. Upon information and belief, reliable third party sources on the
19 Internet identify the “DIGIPASS” line of products as being sold by VDSII. For
20 example, VDSII’s company profile on the Yahoo! Finance website at
21 <http://finance.yahoo.com/q/pr?s=VDSI> states: “[VDSII’s] DIGIPASS product
22 line exists as a family of authentication devices and software libraries for
23 authenticating users to any network, including the Internet.”

24
25 **First Claim for Relief**

26 **INFRINGEMENT OF U.S. PATENT NO. 7,519,989**

27 16. Plaintiff incorporates by reference paragraphs 1 through 15 above,
28 as though fully set forth herein.

1 17. Upon information and belief, Plaintiff alleges that Defendants have
2 infringed and are currently infringing the '989 patent, have contributed and are
3 currently contributing to the infringement of the '989 patent, and/or have actively
4 induced and are actively inducing others to infringe the '989 patent, by
5 committing acts defined in 35 U.S.C. § 271 as unlawful. All such acts have been
6 without authority or license from Plaintiff.

7 18. Upon information and belief, Defendants' infringement, inducement
8 of infringement and/or contributory infringement of the '989 patent has been and
9 continues to be willful and deliberate, and without regard for Plaintiff's rights in
10 the '989 patent.

11 19. As a consequence of Defendants' infringement complained of
12 herein, Authenex has been damaged and will continue to sustain damages by
13 such acts in an amount to be determined at trial and will continue to suffer
14 irreparable loss and injury.

15
16 **PRAYER FOR JUDGMENT AND RELIEF**

17 WHEREFORE, Plaintiff demands a trial by jury and requests judgment
18 against Defendants as follows:

19 A. Pursuant to 35 U.S.C. § 271, a determination that Defendants have
20 directly infringed, contributorily infringed, and/or actively induced infringement
21 of U.S. Patent No. 7,519,989;

22 B. Pursuant to 35 U.S.C. § 283, an order that Defendants be
23 permanently enjoined from infringing the '989 patent through the manufacture,
24 use, import, offer for sale, and/or sale of the infringing products, or through
25 inducing or contributing to the making, use, importation, offering for sale, and/or
26 sale of the infringing products;

27 C. Pursuant to 35 U.S.C. § 284, an award of damages adequate to
28 compensate Plaintiff for infringement of the '989 patent, but in no event less than

1 a reasonable royalty, together with prejudgment interest, costs and disbursements
2 as fixed by the Court;

3 D. Pursuant to 35 U.S.C. § 284, an award increasing damages up to
4 three times the amount found or assessed for infringement of the '989 patent by
5 Defendants due to the willful and deliberate nature of the infringement;

6 E. Pursuant to 35 U.S.C. § 285, a determination that this is an
7 exceptional case and entry of judgment for Plaintiff's costs with an assessment of
8 interest and reasonable attorney fees, as well as expert witness fees and costs;

9 F. Award of pre-judgment interest; and

10 G. Such other and further relief as the Court deems equitable and just.

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Date: March 15, 2010

Respectfully submitted,

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AUTHENEX, INC.**

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DEMAND FOR JURY TRIAL

Plaintiff Authenex hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Date: March 15, 2010

Respectfully submitted,

THE PITCOCK LAW GROUP
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By: Marc E. Hankin
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**Attorneys for Plaintiff,
AUTHENEX, INC.**