

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

AUTHENEX, INC.,
Plaintiff-Appellant,

v.

EMC CORPORATION,
Defendant-Appellee.

2011-1264

Appeal from the United States District Court for the
Central District of California in case no. 10-CV-1251,
Senior Judge Mariana R. Pfaelzer.

ON MOTION

O R D E R

Authenex, Inc. moves to stay the briefing schedule or
for an extension of time to file its opening brief.

Authenex states that the district court has not entered a final judgment and that counterclaims for declaratory judgments of noninfringement and invalidity remain pending. Because these claims remain pending, the appellant acknowledges that its appeal is premature. See *Pause Tech. v. TiVO Inc.*, 401 F.3d 1290 (Fed. Cir. 2005)

(dismissing appeal when counterclaim regarding invalidity remained pending; after case was fully briefed, granting leave to seek remedial action at district court and allowing reinstatement of appeal under same docket number if within 30 days of dismissal a party appealed from a district court final judgment).

Accordingly,

IT IS ORDERED THAT:

(1) Authenex is directed to show cause within 14 days of the date of filing of this order why this appeal should not be dismissed for lack of jurisdiction.*

(2) The briefing schedule is stayed. The motions are denied as moot.

FOR THE COURT

MAY 04 2011

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Jeremy S. Pitcock, Esq.
Chris R. Ottenweller, Esq.

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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

MAY 04 2011

**JAN HORBALY
CLERK**

* Authenex may of course timely file a new appeal if and when the district court enters a final judgment deciding all claims.