

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ALACRITECH, INC.,

Plaintiff,

v.

TIER 3, INC., ET AL.,

WISTRON CORPORATION, ET AL.,

DELL INC.,

Defendants,

and

INTEL CORPORATION,

Intervenor.

2:16-cv-00693-JRG-RSP (LEAD CASE)

2:16-cv-00692-JRG-RSP

2:16-cv-00695-RWS-RSP

**ALACRITECH'S FIRST AMENDED AND SUPPLEMENTAL PATENT INITIAL
DISCLOSURES FOR INTEL**

Plaintiff Alacritech, Inc. (“Alacritech” or “Plaintiff”) submits its First Amended and Supplemental Patent Rule (“P.R.”) 3-1 and 3-2 Disclosures to Defendant Intel Corporation (“Intel” or “Defendant”).

Plaintiff submits these Disclosures based upon information it has acquired to date, as it presently understands this information and the significance thereof, without yet having had the full benefit of formal discovery. Accordingly, Plaintiff reserves the right to modify, amend, retract, and/or further supplement the disclosures made herein as additional evidence and information becomes available, after the Court has construed the Asserted Patents and as otherwise allowed by the Local Rules and Federal Rules of Civil Procedure.

I. ALACRITECH'S FIRST AMENDED AND SUPPLEMENTAL PATENT INITIAL DISCLOSURES

Alacritech amends and supplements its prior Patent Rule (“P.R.”) 3-1 and 3-2 Disclosures to Defendant Intel Corporation (“Intel” or “Defendant”) with respect to U.S. Patent No. 7,124,205 (“the ’205 patent”), U.S. Patent No. 7,237,036 (“the ’036 patent”), U.S. Patent No. 7,337,241 (“the ’241 patent”), U.S. Patent No. 7,673,072 (“the ’072 patent”), U.S. Patent No. 8,131,880 (“the ’880 patent”), U.S. Patent No. 8,805,948 (“the ’948 patent”), U.S. Patent No. 9,055,104 (“the ’104 patent”), and U.S. Patent No. 7,945,699 (“the ’699 patent”) (collectively, the “Asserted Patents”).

Although Alacritech has produced documents to Intel, to date, Intel has not completed its document production to Alacritech. Accordingly, Alacritech’s investigation regarding infringement is ongoing, and these disclosures are therefore based on information that Alacritech has been able to obtain to date regarding the function and operation of the Accused Instrumentalities (as defined in the attached P.R. 3-1(c) claim charts), together with Alacritech’s present understanding of the meaning and scope of the asserted claims.¹ Alacritech reserves the right to supplement and/or amend its disclosures as additional information is ascertained through discovery and after the Court has construed the Asserted Patents.

¹ In many portions of Alacritech’s 3-1 and 3-2 disclosures, Alacritech has gone beyond the disclosure requirements required by P.R. 3-1 and 3-2. These additional disclosures and citations are made for the benefit of Intel. Alacritech in no way confines its contentions to the specific citations of evidence and explicitly reserve the right to rely on additional or different evidence as the case moves forward through fact discovery, expert discovery, and trial. Furthermore, any omission of any other specific citation to the Accused Instrumentalities or documents related thereto does not constitute a waiver of Alacritech’s right to raise any issues related to the Accused Instrumentalities or other documents related thereto at a later date.

A. RULE 3-1 DISCLOSURES

(a) Asserted Claims

Alacritech asserts that Intel has infringed and continues to infringe, has contributed to and continues to contribute to the infringement of, and has actively induced and continues to actively induce others to infringe at least the following claims of the Asserted Patents:

Claims 1, 3-11, 13, 16, 22, 24-33, 35, and 36 of the '205 patent;

Claims 1-7 of the '036 patent;

Claims 1-10, 12-19, and 22 of the '241 patent;

Claims 1-5, and 7-19 of the '072 patent;

Claims 1, 5-10, 12, 14, 16, 17, 20-23, 27, 28, 32, 34, 35, 37-39, 41-43, 45 and 55 of the '880 patent;

Claims 1, 3, 6-9, 11, 14-17, 19, 21, and 22 of the '948 patent;

Claims 1, 6, 9, 12, 15, and 22 of the '104 patent; and

Claims 1-3, 6, 7, 10, 11, 13, 16 and 17 of the '699 patent.

Alacritech reserves the right to supplement and/or amend its disclosures to identify additional claims infringed by Intel that are revealed through discovery, or in response to Intel's P.R. 3-4 production, or as permitted under the Patent Rules.

(b) Accused Instrumentalities

Intel infringes Alacritech's patented technologies across many different parts of its business, including in the network adapters, network controllers, and other network products that it makes, uses, and/or sells, and in the associated consulting and support services that it provides to its customers (as disclosed in the P.R. 3-1(c) claim charts) that are capable of and/or configured to perform infringing Receive Side Coalescing ("RSC") functionality (also referred to

by other names, including but not limited to Receive Segment Coalescing, Large Receive Offload, or Generic Receive Offload), perform infringing LSO functionality (also referred to by other names, including but not limited to Large Send Offload or Generic Segmentation Offload), and/or practice the InfiniBand and/or RoCE/RoCEv2 protocols.

Based on the information that it has been able to obtain to date, Alacritech separately identifies each Intel Accused Instrumentality for each Asserted Claim applicable to Intel in Alacritech's P.R. 3-1(c) First Amended and Supplemental claim charts attached as Exhibits 1 to 10. Alacritech reserves the right to supplement and/or amend this disclosure to identify and accuse additional Intel Accused Instrumentalities released, developed, or made available by Intel after the date on which these disclosures are served, or of which Alacritech was not aware at the time of these disclosures.

(c) Claim Charts

Alacritech's First Amended and Supplemental claim charts identifying specifically where each element of each Asserted Claim applicable to Intel is found within each Intel Accused Instrumentality are attached as Exhibits 1 to 10. The charts are based on information currently known to Alacritech and contain illustrative (not exhaustive) examples of presently-known infringement of the Asserted Claims.

(d) Literal Infringement and Doctrine of Equivalents

Based on its present understanding of the meaning and scope of the claim language, and the information currently known to it concerning the Accused Instrumentalities, and without notice of any non-infringement position from Intel, Alacritech asserts that Intel literally infringes each element or step of the Asserted Claims. However, to the extent any claim element or step is found to be not literally present in or performed by the Accused Instrumentalities, based on the

Court's claim construction or Intel's arguments, such claim element or step is satisfied under the doctrine of equivalents because any difference between such claim element or step and the element or step of the Accused Instrumentalities is insubstantial. In other words, the element or step of the Accused Instrumentalities performs substantially the same function, in substantially the same way, to achieve substantially the same result. As Alacritech has not received full discovery from Intel and the Court has not construed the Asserted Claims, Alacritech reserves the right, in response to discovery, Intel's P.R. 3-4 production, or as permitted under the Patent Rules, to supplement and/or amend its contentions to further detail Intel's infringement under the doctrine of equivalents as necessary.

(e) Priority Dates

Asserted Claims 3, 9, 10, 16, 22, 24-33, and 35 of the '205 patent are entitled to a filing priority date no later than September 29, 2000. The Asserted Claims of the '104 patent are entitled to a filing priority date no later than April 22, 2002. All other Asserted Claims of the Asserted Patents are entitled to a filing priority date no later than October 14, 1997. For each Asserted Claim, Alacritech reserves the right to assert priority to earlier conception and reduction to practice dates than the earliest filing priority date.

(f) Alacritech Instrumentalities

Alacritech is still investigating this matter, however, at this time Alacritech is not relying on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality of its own practices the claimed inventions. Alacritech reserves the right to supplement and/or amend this disclosure to identify any apparatus, product, device, process, method, act, or other instrumentality of its own that practices the Asserted Claims of which Alacritech was not aware at the time of these disclosures.

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