

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

ALACRITECH, INC.,)	
)	
)	
Plaintiff,)	
)	
v.)	2:16-cv-00693-RWS-RSP (LEAD CASE)
)	
TIER 3, ET AL., WISTRON CORPORATION,)	2:16-cv-00692-RWS-RSP
ET AL., DELL INC.,)	
)	2:16-cv-00695-RWS-RSP
Defendants)	
)	
and)	
)	
INTEL CORPORATION, CAVIUM, INC.,)	
)	
Intervenors.)	
_____)	

**STIPULATION AND JOINT MOTION TO
STAY LITIGATION PENDING IPR PROCEEDINGS**

Plaintiff Alacritech, Inc.; Intervenors Intel Corporation and Cavium, Inc.; and Defendants Dell, Inc., Wistron Corporation, Wiwynn Corporation, SMS InfoComm Corporation, CenturyLink Communications LLC, Tier 3, Inc., and Savvis Communications Corp. hereby stipulate and request as follows:

1. Intel has filed the following IPR petitions currently pending before the Patent Trial and Appeal Board: IPR2017-01391; IPR2017-01392; IPR2017-01393; IPR2017-1395; IPR2017-1402; IPR2017-01405; IPR2017-01406; IPR2017-01409; IPR2017-01410; IPR2017-1559; IPR2017-01705; IPR2017-01713; IPR2018-00226; IPR2018-00234.

2. Cavium has filed the following IPR petitions currently pending before the Patent Trial and Appeal Board: IPR2017-1707; IPR2017-1711; IPR2017-1714; IPR2017-01734; IPR2017-01735; IPR2017-01718; IPR2017-01728; IPR2017-01733; IPR2017-01732; IPR2017-01705; IPR2017-01736; IPR2017-01737 and IPR2017-01729.

3. The Patent Trial and Appeal Board has instituted IPR proceedings based on the following petitions to date: IPR2017-01391, IPR2017-01392, IPR2017-01393, IPR2017-01405, IPR2017-01406, IPR2017-01409, and IPR2017-01410.

4. The parties agree that these cases should be stayed until the Patent Trial and Appeal Board issues either a final written decision or a decision not to institute IPR on each of the following IPR proceedings: IPR2017-01391; IPR2017-01392; IPR2017-1395; IPR2017-1402; IPR2017-01405; IPR2017-01406; IPR2017-01409; IPR2017-01410; IPR2017-01707; IPR2017-01713; IPR2018-00226; IPR2018-00234; IPR2017-01734; IPR2017-01735; IPR2017-01718; IPR2017-01728; IPR2017-01733; IPR2017-01732; IPR2017-01705; IPR2017-01736; IPR2017-01737 and IPR2017-01729. The stay should extend until the last of the final written

Joint Memorandum

decisions or decisions not to institute IPR in the foregoing IPR proceedings has issued. The parties reserve their right to seek modification of the stay for good cause.¹

5. If this motion is granted, each of the Intervenors and Defendants agree to be estopped to the same extent for each IPR as the party who filed that IPR.

6. Cavium also agrees that its miscellaneous action seeking discovery from third party Crown Point (*Cavium, Inc. v. In re: Subpoena to CrownPoint Transactions LLC*, No. 2:17-MC-00002-JRG-RSP) shall be stayed for the duration of the stay of the above-entitled litigation.

7. Intel also agrees that it will promptly file an unopposed motion to withdraw its pending motion to strike Alacritech's amended infringement contentions (Dkt. 431).²

8. The parties further agree that all other discovery and pretrial proceedings shall be immediately stayed pending resolution of this motion. The parties and Crown Point further agree to take reasonable measures to preserve the fact discovery at issue in the parties' various pending motions to compel up to and including lifting of the stay of litigation, regardless of whether they dispute the discoverability and/or relevance of such evidence. As part of this agreement, Intel has agreed that it shall produce supplemental evidence identifying certain additional products including one or more of the accused Ethernet controllers sold from 2010 once the stay is lifted.³

¹ Alacritech reserves the right to move the Court to lift the stay for good cause before all petitions filed by all parties are resolved. Defendants reserve the right to oppose such a request.

² Intel has further agreed to withdraw its first subpoena to Dr. Almeroth and based thereon Alacritech shall withdraw its motion for a protective order (Dkt. 371) as moot.

³ Alacritech and Intel reserve all rights and objections with respect to such further production of fact evidence.

9. Intel intends to file a motion to amend its invalidity contentions to add “Connery System” art. Alacritech opposes the motion. The parties agree that while Intel may file its motion before or during the pendency of the stay, Alacritech’s opposition shall not be due until at least 21 days after the stay has been lifted (or on a schedule otherwise agreed to by the parties). By so agreeing, Alacritech reserves all rights, arguments, and objections to the Connery System art including to the timing of Intel’s request to add the prior art and the parties stipulate that extending the deadline of Alacritech’s opposition shall not be the basis for any argument or finding regarding the lack of prejudice to or diligence by Alacritech.

10. Defendants agree that they shall provide updated financial information to reflect sales and revenue/profits relating to the accused products received during the time period of the stay within no more than forty-five (45) days of lifting the stay.

Dated: December 4, 2017

Respectfully submitted,

/s/ Garland T. Stephens

Garland T. Stephens, Lead Attorney (24053910)
Douglas W. McClellan (24027488)
Melissa L. Hotze (24049831)
Justin L. Constant (24067551)
Richard D. Eiszner (65891)
WEIL, GOTSHAL & MANGES LLP
700 Louisiana, Suite 1700
Houston, TX 77002
Telephone: (713) 546-5000
Facsimile: (713) 224-9511
garland.stephens@weil.com
doug.mcclellan@weil.com
melissa.hotze@weil.com
justin.constant@weil.com
richard.eiszner@weil.com

John M. ...

Anne Marie Cappella (181402)
Jeremy Jason Lang (255642)
Amanda K. Branch (300860)
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, CA 94065
Telephone: (650) 802-3000
Facsimile: (650) 802-3100
anne.cappella@weil.com
jason.lang@weil.com
amanda.branch@weil.com

William Sutton Ansley (80085)
WEIL, GOTSHAL & MANGES LLP
1300 Eye Street, N.W., Suite 900
Washington, DC 20005
Telephone: (202) 682-7000
Facsimile: (202) 857-0940
sutton.ansley@weil.com

Harry L. Gillam, Jr. (07921800)
Gillam & Smith LLP
303 S. Washington Ave.
Marshall, TX 75670
Telephone: (903) 934-8450
Facsimile: (903) 934-9257
gil@gillamsmithlaw.com

David Folsom (07210800)
Jackson Walker L.L.P.
6002 Summerfield Dr., Suite B
Texarkana, TX 75503
Telephone: (903) 255-3250
Facsimile: (903) 255-3265
dfolsom@jw.com

Counsel for Intervening Party
INTEL CORPORATION

/s/ Karineh Khachatourian

Karineh Khachatourian (CA Bar No. 202634)
Megan Whyman Olesek (CA Bar No. 191218)
Daniel T. McCloskey (CA Bar No. 191944)
Duane Morris LLP

Joint Motion to Stay

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