

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

ALACRITECH, INC.,

Plaintiff,

v.

CENTURYLINK, INC., *et al.*,

Defendants,

and

INTEL CORPORATION, *et al.*,

Intervenors.

Case No. 2:16-cv-693-JRG-RSP

LEAD CASE

JURY TRIAL DEMANDED

**PLAINTIFF, DEFENDANT IN INTERVENTION, AND COUNTERCLAIM-
PLAINTIFF'S ANSWER AND COUNTER-COUNTERCLAIMS TO INTERVENOR
AND COUNTERCLAIM-DEFENDANT INTEL CORPORATION'S COUNTERCLAIMS
FOR DECLARATORY JUDGMENT OF PATENT INVALIDITY**

Plaintiff, Defendant in Intervention, and Counterclaim-Plaintiff Alacritech, Inc. ("Alacritech") responds to Intervenor and Counterclaim-Defendant Intel Corporation's ("Intel") Answer and Counterclaims for Declaratory Judgment of Patent Invalidity (Dkt. No. 120). Any allegation Alacritech does not expressly admit should be deemed denied.

COUNTERCLAIMS FOR INVALIDITY

1. Alacritech admits that Intel purports to seek declaratory judgment of invalidity of U.S. Patent Nos. 7,124,205 ("the '205 Patent"); 7,237,036 ("the '036 Patent"); 7,337,241 ("the '241 Patent"); 7,673,072 ("the '072 Patent"); 7,945,699 ("the '699 Patent"); 8,131,880 ("the '880 Patent"); 8,805,948 ("the '948 Patent"); and 9,055,104 ("the '104 Patent") (together, "the Asserted Patents") in Intel's Answer to Alacritech's Counterclaims. Alacritech denies the remaining allegations in Paragraph 1.

COUNTERCLAIMS FOR PATENT INFRINGEMENT

In these counterclaims for patent infringement under 35 U.S.C. § 271 in response to both Intel Corporation's ("Intel") intervention in Case No. 2:16-cv-00692 to defend Dell, and Intel's Answer and Counterclaims (Dkt. 120) filed in the same matter, Plaintiff Alacritech, Inc. ("Alacritech"), by and through its undersigned counsel, complains and alleges as follows against Intervenor Intel, based on Alacritech's own personal knowledge and upon information and belief with respect to Intel's actions:

THE PARTIES

1. Alacritech incorporates by reference Paragraphs 1 and 2 of its Counterclaims for Patent Infringement filed on December 13, 2016 (Dkt. 94) as if set forth fully herein.

NATURE OF THE ACTION

2. Alacritech incorporates by reference Paragraphs 3 and 4 of its Counterclaims for Patent Infringement filed on December 13, 2016 (Dkt. 94) as if set forth fully herein.

JURISDICTION AND VENUE

3. Alacritech incorporates by reference Paragraphs 5 through 8 of its Counterclaims for Patent Infringement filed on December 13, 2016 (Dkt. 94) as if set forth fully herein.

FACTUAL BACKGROUND

4. Alacritech incorporates by reference Paragraphs 9 through 29 of its Counterclaims for Patent Infringement filed on December 13, 2016 (Dkt. 94) as if set forth fully herein.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 7,124,205

5. Alacritech incorporates by reference Paragraphs 30 through 43 of its Counterclaims for Patent Infringement filed on December 13, 2016 (Dkt. 94) as if set forth fully herein.

6. Intel has additionally directly infringed and is currently directly infringing the '205 patent by making, using, selling, offering for sale, and/or importing into the United States, without authority, products, methods, equipment, and/or services that practice one or more claims of the '205 patent in connection with infringing RSC, InfiniBand, RoCE and/or RoCEv2 functionality, including but not limited to the Intel Ethernet Converged Network Adapter X520-DA1, Intel QLE 7340 Host Channel Adapter, QLE 7342 Host Channel Adapter, QMX 7342 Host Channel Adapter, FDR InfiniBand ConnectX-3 I/O Module (Single Port) (Product No. AXX1FDRIBIOM) with Mellanox Connect X-3 FDR/10GbE Controller, FDR InfiniBand ConnectX-3 I/O Module (Dual Port) (Product No. AXX2FDRIBIOM) with Mellanox Connect X-3 FDR/10GbE Controller, Single Port QDR InfiniBand I/O Expansion Module (Product No. AXXIBQDRIOMOD) based on the Mellanox InfiniHost MT25408, Single Port QDR Infiniband I/O Expansion Module (Product No. AXXIBQDRIOMV) based on the Mellanox InfiniHost MT25408, and I/O Expansion Module (Product No. AXXIBQDRSR169X) based on the Mellanox InfiniHost MT25408; any other activities, products and/or services involving the products identified above; and any other activities, products and/or services that practice and/or support similarly infringing RSC, InfiniBand, RoCE, and/or RoCEv2 functionality (incorporated, collectively, as additional products previously defined as "the '205 Accused Products" in Paragraph 33 of Alacritech's Counterclaims for Patent Infringement filed on December 13, 2016 (Dkt. 94)).

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 7,237,036

7. Alacritech incorporates by reference Paragraphs 44 through 57 of its Counterclaims for Patent Infringement filed on December 13, 2016 (Dkt. 94) as if set forth fully herein.

8. Intel has additionally directly infringed and is currently directly infringing the '036 patent by making, using, selling, offering for sale, and/or importing into the United States, without authority, products, methods, equipment, and/or services that practice one or more claims of the '036 patent in connection with infringing RSC functionality, including but not limited to the Intel Ethernet Converged Network Adapter X520-DA1; any other activities, products and/or services involving the products identified above; and any other activities, products and/or services that practice and/or support similarly infringing RSC functionality (incorporated, collectively, as additional products previously defined as "the '036 Accused Products" in Paragraph 47 of Alacritech's Counterclaims for Patent Infringement filed on December 13, 2016 (Dkt. 94)).

COUNT III

INFRINGEMENT OF U.S. PATENT NO. 7,337,241

9. Alacritech incorporates by reference Paragraphs 58 through 71 of its Counterclaims for Patent Infringement filed on December 13, 2016 (Dkt. 94) as if set forth fully herein.

10. Intel has additionally directly infringed and is currently directly infringing the '241 patent by making, using, selling, offering for sale, and/or importing into the United States, without authority, products, methods, equipment, and/or services that practice one or more claims of the '241 patent in connection with infringing RSC, LSO, RoCE and/or RoCEv2 functionality, including but not limited to the Intel 82541PR Gigabit Ethernet Controller, Intel 82572GI Gigabit Ethernet Controller, Intel 82576GB Gigabit Ethernet Controller, Intel 82580EK Gigabit Ethernet Controller, Ethernet Converged Network Adapter X520-DA1, FDR InfiniBand ConnectX-3 I/O Module (Single Port) (Product No. AXX1FDRIBIOM) with Mellanox Connect X-3 FDR/10GbE Controller, and FDR InfiniBand ConnectX-3 I/O Module (Dual Port) (Product

No. AXX2FDRIBIOM) with Mellanox Connect X-3 FDR/10GbE Controller; any other activities, products and/or services involving the products identified above; and any other activities, products and/or services that practice and/or support similarly infringing RSC, LSO, RoCE, and/or RoCEv2 functionality (incorporated, collectively, as additional products previously defined as “the ‘241 Accused Products” in Paragraph 61 of Alacritech’s Counterclaims for Patent Infringement filed on December 13, 2016 (Dkt. 94)). The ‘241 Accused Products are non-limiting examples that were identified based on publicly available information, and Alacritech reserves the right to identify additional infringing activities, products and services, including, for example, on the basis of information obtained during discovery.

COUNT IV

INFRINGEMENT OF U.S. PATENT NO. 7,673,072

11. Alacritech incorporates by reference Paragraphs 72 through 85 of its Counterclaims for Patent Infringement filed on December 13, 2016 (Dkt. 94) as if set forth fully herein.

12. Intel has additionally directly infringed and is currently directly infringing the ‘072 patent by making, using, selling, offering for sale, and/or importing into the United States, without authority, products, methods, equipment, and/or services that practice one or more claims of the ‘072 patent in connection with infringing LSO functionality, including but not limited to the Intel 82541PR Gigabit Ethernet Controller, Intel 82572GI Gigabit Ethernet Controller, Intel 82576GB Gigabit Ethernet Controller, Intel 82580EK Gigabit Ethernet Controller, and Intel Ethernet Converged Network Adapter X520-DA1; any other activities, products and/or services involving the products identified above; and any other activities, products and/or services that practice and/or support similarly infringing LSO functionality (incorporated, collectively, as additional products previously defined as “the ‘072 Accused

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