Filed: January 10, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORP. and CAVIUM, INC.,
Petitioner,

v.

ALACRITECH, INC.,
Patent Owner.

Case IPR2017-01392[1]
U.S. Patent No. 7,337,241

PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY

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[1] Cavium, Inc., which filed a Petition in Case IPR2017-01728, has been joined as a petitioner in this proceeding.

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I. INTRODUCTION

As shown by the attached declarations, the Defendants and Intervenor Cavium had no role in preparing and filing the Petitions.[2] Ex. 1110; Ex. 1111. Defendants are not real parties-in-interest (RPIs) and no amount of discovery will show otherwise.

Discovery in *inter partes* review ("IPR") is "less than what is normally available in district court patent litigation" because "Congress intended *inter partes* review to be a quick and cost effective alternative to litigation." *Apple Inc. v. Achates Reference Publishing, Inc.*, IPR2013-00080, Paper 18 at 3 (PTAB April 3, 2013). The Board must therefore be "conservative in authorizing additional discovery." *Id.* Additional discovery should only be permitted when such discovery is "necessary in the interest of justice." *Id*. at 4. And the requested discovery must be premised on more than "mere possibility." *Id*. There must be "factual evidence or support" underlying a request for additional discovery that demonstrate that "something useful [to the proceeding] will be found." *Id*. Alacritech, despite all of its rhetoric, has failed entirely to satisfy this standard.

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[2] IPR2017-01391, IPR2017-01392, IPR2017-01393, IPR2017-01405, IPR2017-01406, IPR2017-01409, IPR2017-01410.

Alacritech's Motion, which is premised on nothing more than Alacritech's "belief," is precisely the type of "fishing expedition" the PTAB has cautioned against. Alacritech's "evidence" is nothing more than vague and speculative allegations regarding indemnification and joint defense. Alacritech has failed to make any evidentiary showing—and any effort to do so is futile.

II. INTEL IS THE REAL PARTY IN INTEREST

The RPI is "the party that desires review of the patent"—that is, the party "at whose behest the petition has been filed." Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756 at 48,759 (Aug. 14, 2012). "For example, a party that funds and directs and controls an IPR ... petition or proceeding constitutes a 'real part-in-interest.'" *Id*. at 58,760. The RPI requirement exists to ensure that a non-party is not "litigating through a proxy." *Ricoh Americas Corp. v. MPHJ Tech. Invest., LLC*, IPR2015-01178, Paper 8 at 1 (PTAB Aug. 6, 2015). Moreover, the RPI analysis is a narrowly tailored inquiry into the "relationship between a party and a proceeding;" not the relationship between parties. *Id*.

Attached hereto, Intel has submitted sworn declarations from both its in-house counsel, S. Christopher Kyriacou, and its lead attorney, Garland Stephens, stating that Intel was solely responsible for filing these Petitions—(1) Intel alone made the decision to file the Petitions, (2) Defendants and Cavium did not direct, control, request or suggest that Intel file the Petitions, (3) Intel received no input

and did not consult with any other entity or person in preparing the Petitions, (4) Intel did not share any drafts or summaries of the Petitions prior to filing the Petitions, and (5) Intel paid all costs associated with the Petitions. Ex. 1110, ¶¶ 3-7; Ex. 1111, ¶¶ 2-4.

After Intel intervened in the three Alacritech Litigations ("Litigations"), Alacritech filed counterclaims against Intel accusing Intel of infringement. Ex. 1112. Intel has a direct interest in invalidating these patents and, in its own capacity, without consultation with any of the Defendants, filed these Petitions to protect that interest. Ex. 1110, ¶ 4; Ex. 1111, ¶¶ 2-3.

III. THE REQUESTED DISCOVERY IS NOT "NECESSARY IN THE INTEREST OF JUSTICE"

The Board has articulated five factors that are relevant to determining whether Alacritech is entitled to additional discovery. *Garmin Int'l, Inc. v. Cuozzo Speed Techs*, IPR2012-00001, Paper 26 at 6 (PTAB March 5, 2013). Alacritech has failed to meet its burden in showing such discovery is necessary.

A. *Garmin* Factor 1: No "Useful Information" Exists

1. Alacritech's Arguments are Based on Speculation

Under the first factor, Alacritech must present evidence "tending to show beyond speculation that in fact something useful will be uncovered." *Garmin*, Paper 26 at 6. Alacritech's "evidence" only shows (1) indemnification obligations and (2) a joint defense in the Litigations. Neither of these supports Alacritech's

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