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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 ALACRITECH, INC.,) Case No.: C04-03284 JSW
16)
17 Plaintiff,)
18)
19 v.)
20)
21 MICROSOFT CORPORATION,)
22)
23 Defendant.)
24)
25) Before the Honorable Jeffrey S. White
26) Hearing Date: March 25, 2005
27) Hearing Time: 9:00 a.m.
28) Place: Courtroom 2, 17th Floor

29 I, Dr. Kevin Almeroth, declare and state as follows:

Exhibit 17
Almeroth
(WITNESS) (DATE)
5-4-18
Holly Thuman, CSR 6834

30 **Materials Reviewed**

31 In addition to the materials reviewed as set forth in my prior declaration (Declaration
32 Of Dr. Kevin Almeroth In Support Of Alacritech's Motion For Preliminary Injunction of

1 Microsoft's Infringement Of Claim 1 of U.S. Patent No. 6,697,868"), I have reviewed
2 documents including the following:

3 a. Second Revised Exhibit A To Joint Claim Construction And Prehearing Statement
4 Re Preliminary Injunction (the "Joint Claim Construction Statement").

5 b. Defendant/Counterclaimant Microsoft Corporation's Opposition To Alacritech's
6 Motion For Preliminary Injunction ("Microsoft's Opposition").

7 c. Declaration of James Pinkerton In Support Of Microsoft's Opposition To
8 Alacritech's Motion For Preliminary Injunction ("Chesson Declaration").

9 d. Declaration of Dr. Gregory L. Chesson In Support Of Microsoft's Opposition To
10 Alacritech's Motion For Preliminary Injunction ("Chesson Declaration").

11 e. Exhibits A-Q to the Chesson Declaration.

12 f. The "Microsoft Press Computer Dictionary", third edition, pg. 256, copyright
13 1997, pages 254 - 256, 293, 307, 383 (Exhibit A to this Declaration).

14 g. U.S. Patent No. 6,141,705 to Anand, et al. (Exhibit B to this Declaration).

15 h. U.S. Patent No. 5,058,110 to Beach et al. (Exhibit C to this Declaration).

16 i. U.S. Patent No. 6,034,963 to Minami et al. (Exhibit D to this Declaration).

17
18 **Construction of Claim 1 of the '868 Patent**

19 1. I have reviewed Alacritech's proposed claim construction that is set forth in
20 the Joint Claim Construction Statement and find that construction to be reasonable. In
21 particular, I note that:

22
23 A. Instructions

24 2. The term "instruction" (an "instruction" of the type that is "executable on a
25 processor") has a well-understood meaning in the electrical engineering and computer
26 science arts. The '868 patent discloses a microprocessor as one example of a "processor,"
27 and more particularly identifies a Pentium as an example of a microprocessor. A Pentium is,

1 however, just one example of a microprocessor. There are many other examples of
2 microprocessors. Each such microprocessor has its own “instruction set.” The “instruction
3 set” of a microprocessor defines at a very detailed level each particular “instruction” that the
4 microprocessor can execute and what the microprocessor will do when it executes that
5 instruction. An “instruction” of the type that can be executed on a processor as the term
6 “instruction” is used in Claim 1 of the ‘868 patent therefore has a very clear and well-
7 understood meaning to one of ordinary skill in the art. One of ordinary skill in the art, given
8 the type of microprocessor, would know to consult the “instruction set” of the
9 microprocessor. From that instruction set, one of ordinary skill would be able to explain in
10 detail the exact form and effect of the “instructions” that are executable by the
11 microprocessor.

12 3. The “set of instructions” of Claim 1 of the ‘868 patent is “executable on a
13 processor.” If a “set of instructions” is “executable on a processor,” then the processor must
14 have read the instructions or received the instructions from a processor-readable medium. It
15 is impossible for a processor to “execute” an instruction if the instruction only exists in the
16 abstract. The instruction has to be stored somewhere in order for the processor to be able to
17 obtain it, decode it, and execute it. That place where the instruction is stored must be a real-
18 world, processor-readable, tangible object, otherwise the processor would not be able to
19 obtain the instruction. The “set of instructions” of Claim 1 of the ‘868 patent that is
20 “executable on a processor” therefore is necessarily stored in a tangible media.

21
22 B. A TCP Connection

23 4. Microsoft proposes construing terms of Claim 1 in a manner that contradicts
24 the evidence and leads to confusion. For example, Microsoft proposes construing “a TCP
25 connection” to mean: “A logical communication path identified by a pair of sockets pursuant
26 to the Transmission Control Protocol.” Such a logical path would extend across a network
27 and into a computer at both endpoints, each endpoint identified by an Internet Protocol (IP)

1 address that specifies the computer's location on the network and a TCP port within that
2 computer. Such a logical path could not be offloaded from a processor to an intelligent TCP
3 offload mechanism, as recited in Claim 1, because for that connection the endpoints would
4 not change and so the logical path would not change. Moreover, a logical path would not
5 involve a processor or an offload mechanism, because a logical path would not include
6 specific physical devices such as a particular network, router, processor or offload
7 mechanism. On the other hand, I find that Alacritech's construction of a TCP connection as
8 a combination of information to be reasonable, because that body of information can be
9 offloaded, i.e., transferred.

10 5. Such a logical communication path would also seem to describe User
11 Datagram Protocol (UDP), which is connectionless. A UDP port, like a TCP port, is simply a
12 number for an application that is using UDP or TCP, respectively. Microsoft's proposed
13 construction of a logical path identified by endpoints thus ignores the main differentiation
14 between TCP and UDP, that TCP guarantees reliable transfer of data by establishing a
15 connection, i.e., a body of information that a processing mechanism uses to manage
16 communication between applications over a network.

17 6. Another problem with Microsoft's proposed construction is that the term
18 "sockets" has several meanings in the network communications world. "Sockets" or
19 "Berkeley Sockets" is an application programming interface (API) for applications that use
20 various network protocol services, such as TCP/IP, instead of being part of the TCP/IP
21 protocol. I believe that Microsoft's proposed construction of TCP connection to include the
22 word "sockets" leads to confusion rather than clarity. Even Microsoft's expert Dr. Chesson
23 appears confused by these multiple meanings in his declaration, referring in ¶¶ 47, 48, 58, 62
24 and his claim chart in §6 of his Declaration to the functions socket() and connect(), which do
25 not refer to IP addresses and TCP ports but instead refer to the sockets API that runs above
26 TCP.

27 7. Moreover, Microsoft's proposed construction would render the term following

1 “a TCP connection” superfluous, as it is simply a restatement of “identified by a pair of
2 sockets.” In contrast, Alacritech’s proposed construction of “a TCP connection” is supported
3 by RFC 793 as well as the intrinsic evidence, as demonstrated by Alacritech’s citations in the
4 Second Revised Joint Claim Construction Chart.

5
6 C. Establishing a TCP Connection

7 8. Similarly, Microsoft’s proposed construction of “establishing a TCP
8 connection” points to RFC 793 for support, but the pages it cites from the RFC do not
9 contain the words “establish” or “establishing,” despite multiple references to establishing a
10 TCP connection elsewhere in the same document. See, e.g., RFC 793, pages 4, 10, 11, 12,
11 21, 27, 30 and 31.

12
13 D. Offloading a TCP Connection from the Processor

14 9. Moreover, Microsoft’s proposes to construe “offloading the TCP connection
15 from the processor” to mean “allocating processing for the TCP connection from the
16 processor,” substituting “*processing* for the TCP connection” in place of “*the TCP*
17 *connection*.” Neither intrinsic nor extrinsic evidence supports such a rewriting of this
18 phrase. The disclosure cited by Alacritech in the Joint Claim Construction supports
19 Alacritech’s proposed construction of offloading a TCP connection.

20 10. Microsoft’s construction also fails to consider that offloading of other TCP
21 processing was known at both the filing date and issue date of the ‘868 patent. For example,
22 U.S. Patent No. 6,141,705 to Anand, et al., which was considered during prosecution of the
23 ‘868 patent, and discloses a peripheral hardware device and its driver that together can
24 offload other TCP processing, states: “For instance, many NICs are capable of independently
25 performing tasks otherwise performed by the CPU in software at an appropriate network
26 layer, such as checksum calculation/verification; data encryption/decryption; message digest
27 calculation; TCP segmentation; and others.” U.S. Patent No. 6,141,705, column 2, lines 44-

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