UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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INTEL CORP., CAVIUM, INC., and WISTRON COPORATION,
Petitioner,

v.

ALACRITECH, INC.,
Patent Owner.
_____

Case IPR2017-01391[1] Patent 7,237,036 B2
Case IPR2017-01406 Patent 7,673,072 B2
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INTEL CORP., CAVIUM, INC., and DELL INC.,
Petitioner,

v.

ALACRITECH, INC.,
Patent Owner.
_____

Case IPR2017-01405[2] Patent 7,124,205 B2
Case IPR2017-01409 Patent 8,131,880 B2

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[1] Cavium, Inc., which filed petitions in Cases IPR2017-01707 and IPR2017-01718, and Wistron Corporation, which filed petitions in Cases IPR2018-00327 and IPR2018-00329, have been joined as petitioners in IPR2017-01391 and IPR2017-01406.

[2] Cavium, Inc., which filed petitions in Cases IPR2017-01735 and IPR2017-01736, and Dell, Inc., which filed petitions in Cases IPR2018-00336 and IPR2018-00338, have been joined as petitioners in IPR2017-01405 and IPR2017-01409.

IPR2017-01391 – Patent 7,237,036 B2
IPR2017-01405 – Patent 7,124,205 B2
IPR2017-01406 – Patent 7,673,072 B2
IPR2017-01409 – Patent 8,131,880 B2

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Before STEPHEN C. SIU, DANIEL N. FISHMAN, and
CHARLES J. BOUDREAU, *Administrative Patent Judges*.

BOUDREAU, *Administrative Patent Judge*.

ORDER[3]

Conduct of the Proceeding
37 C.F.R. § 42.5

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[3] This order addresses issues that are similar in all identified cases. We
exercise our discretion to issue one order to be filed in each case. The
parties are not authorized to use this style heading in subsequent papers.

IPR2017-01391 – Patent 7,237,036 B2
IPR2017-01405 – Patent 7,124,205 B2
IPR2017-01406 – Patent 7,673,072 B2
IPR2017-01409 – Patent 8,131,880 B2

On May 11, 2018, and May 23, 2018, Patent Owner, Alacritech Inc., contacted the Board by email to request permission to file motions to make certain corrections to its Contingent Motions to Amend in the above-captioned proceedings (i.e., IPR2017-01391 Paper 21; IPR2017-01405 Paper 20; IPR2017-01406 Paper 25; and IPR2017-01409 Paper 20). Exs. 3001, 3002.

With respect to IPR2017-01391, Patent Owner seeks to correct "misnumbered dependencies and an incorrect column heading" in the claim listing set forth in Exhibit C to its Contingent Motion to Amend. Ex. 3001. Patent Owner contends that the correct citations were provided in Exhibit A to the corresponding motion, which relates to the same patent and includes corresponding claim language and amendments. *Id.* Patent Owner further represents that Petitioner, Intel Corp. ("Intel"), does not oppose Patent Owner's motion to correct. *Id.*

With respect to IPR2017-01405, Patent Owner seeks to correct a "typographical error in the claim amendments . . . where the 'second third position' [in proposed substitute claim 41] was supposed to read the '[[second]] third portion.'" Ex. 3002. Patent Owner further represents that Intel does not oppose correction, on the condition that it will be permitted to raise arguments about the revised claim language in "its sur-reply." *Id.*[4]

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[4] We note in this regard that Petitioner has not requested, and we do not authorize at this time, the filing of a sur-reply to Patent Owner's Contingent Motion to Amend in any of the above-identified cases.

IPR2017-01391 – Patent 7,237,036 B2
IPR2017-01405 – Patent 7,124,205 B2
IPR2017-01406 – Patent 7,673,072 B2
IPR2017-01409 – Patent 8,131,880 B2

With respect to IPR2017-01406, Patent Owner seeks to correct an omitted "'and' before 'a media access control (MAC) layer address…' in proposed substitute claim 36" and to correct a typographical error in an Exhibit number. Ex. 3001. Patent Owner represents that "Petitioner has already responded to the contingent motion as if the error had been corrected" and further represents that Intel does not oppose Patent Owner's motion to correct. *Id.*

With respect to IPR2017-01409, Patent Owner contends that the citations for proposed substitute claim 61 in Exhibit A of its contingent motion "were inadvertently copied from another case and not updated to correctly identify the written description support." *Id.* Patent Owner further contends that "[t]he correct citations were provided in Exhibit A of Case IPR2017-01410, which relates to the same patent and includes corresponding claim language and amendments," and Patent Owner "would like to copy the citations from Exhibit A in Case IPR2017-01410 into the corresponding limitations of Exhibit A in Case IPR2017-01410." *Id.* According to Patent Owner, Intel opposes Patent Owner's request to correct. *Id.*

We have reviewed Patent Owner's requests and the referenced papers, and we authorize Patent Owner to file the requested corrections. We find that the corrections Patent Owner seeks to make in IPR2017-01391 and IPR2017-01405 are apparent from the documents themselves. Although the error in the IPR2017-01406 could be resolved either by addition of the word "and," as Patent Owner seeks, or by addition of the word "or," we note that

IPR2017-01391 – Patent 7,237,036 B2
IPR2017-01405 – Patent 7,124,205 B2
IPR2017-01406 – Patent 7,673,072 B2
IPR2017-01409 – Patent 8,131,880 B2

Petitioner contemplated and addressed both possibilities in its Response in Opposition to the Contingent Motion to Amend in that case (*see* IPR2017-01406 Paper 40, 10, 22–23), and as noted above, Patent Owner represents that Intel does not oppose correction.

Lastly, although we find that the errors in IPR2017-01409 would not necessarily have been apparent from the documents themselves, particularly because Exhibit A appears on its face to refer the correct *application* and merely cites the wrong *paragraphs* of that application (*see* IPR2017-01409, Paper 20, viii (citing "Exemplary Support in the '237 Application")), and although we also take notice of Intel's stated objection to the correction, we find that Petitioner also recognized that "[t]he majority of the substantive amendments are simply limitations borrowed from instituted claims of the 880 Patent in this IPR or in Case IPR2017-01410" and that "*completely different* portions of the original disclosure" are cited in IPR2017-01410 for the same amended limitations. IPR2017-01409 Paper 38, 2, 6. Patent Owner also raises arguments applicable to those citations. *See, e.g.*, *id.* at 6 ("These citations [from IPR2017-01410] also fail to specify 'a packet memory' or describe what it means for a header buffer to be 'separate from' a packet memory."). On the present record, we conclude that Petitioner would not be unfairly prejudiced by Patent Owner's proposed corrections.

In consideration of the foregoing, it is

ORDERED that Patent Owner shall be permitted to file corrected exhibits in its Contingent Motions to Amend in Cases IPR2017-01391,

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