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., WISTRON CORP., and DELL, INC.
Petitioners,

v.

ALACRITECH, INC.,
Patent Owner.

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Case IPR2017-01406[1]
U.S. Patent No. 7,673,072
Title: FAST-PATH APPARATUS FOR TRANSMITTING DATA
CORRESPONDING TO A TCP CONNECTION

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**PETITIONER'S RESPONSE TO OBSERVATIONS
ON CROSS-EXAMINATION**

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[1] Cavium, Inc., which filed a Petition in Case IPR2017-01707, Wistron Corp.,

which filed a Petition in Case IPR2018-00329, and Dell Inc., which filed a Petition

in Case IPR2018-00375, have been joined as petitioners in this proceeding.

Petitioner Intel Corp. ("Intel") files its Response to Patent Owner's Motion for Observations on Cross-Examination. Paper 61 ("Motion"). The purpose of observations is to "draw the Board's attention to relevant cross-examination testimony of a reply witness because no further substantive paper is permitted after the reply." *See* Paper 12 ("Scheduling Order") at 5. "An observation (or response) is not an opportunity to raise new issues, re-argue issues, or pursue objections." Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48768 (Aug. 14, 2012). The Motion is replete with attorney argument, including new attorney argument, which is in violation of the Trial Practice Guide. The Board should thus decline to consider or enter these observations.

To the extent the Board considers the purported observations, the Board should give no weight to them because they include attorney argument, are not relevant to the issues identified, and/or mischaracterize Dr. Horst's testimony. Ultimately, each observation fails to contradict any of Petitioner's positions in this proceeding.

1. Response to Observation No. 1

Patent Owner improperly injects new attorney argument to contend for the first time that the first and second scripts do not perform the "transferring" and "dividing" limitations [e.g., limitations 1.3 and 1.4]. Paper No. 61 at 3; *see also* Paper No. 34 at 24-33 (PO Opposition containing no argument regarding transfer

then dividing). In addition, Patent Owner's citation to Dr. Horst's testimony should be ignored because Patent Owner mischaracterizes Dr. Horst's testimony. Dr. Horst testified that the network interface both transfers and divides the data. Ex. 2600 at 17:5-18:8; 19:20-20:16.

2. Response to Observation No. 2

Patent Owner's citation to Dr. Horst's testimony is irrelevant because it is incomplete and Patent Owner's characterization of the testimony is incorrect. The cited testimony does not support Patent Owner's argument because Patent Owner omitted the portion of Dr. Horst's testimony where he states that the windowing process is described in both his report and in Tanenbaum. Ex. 2600 at 13:21-14:4. Patent Owner further omits Dr. Horst's testimony that the code to handle window size is described in Stevens[2] and a POSA would have merely included that code in the TCP/IP script for Erickson. Ex. 2600 at 24:22-25:5. Importantly, it is also not relevant because none of the challenged claims are directed to windowing.

3. Response to Observation No. 3

Patent Owner's citation to Dr. Horst's testimony is irrelevant because it is incomplete and Patent Owner's characterization of the testimony is incorrect. The

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[2] While the transcript states Stevenson, it should be Stevens. Ex. 2600 at 24:22-25:5.

cited testimony does not support Patent Owner's argument about the alleged complexity of combining Erickson and Tanenbaum96 because Patent Owner omitted the portion of Dr. Horst's testimony where he states that the windowing process is described in both his report and in Tanenbaum. Ex. 2600 at 13:21-14:4. Patent Owner further omits Dr. Horst's testimony that the code to handle window size is described in Stevens[3] and a POSA would have merely included that code in the TCP/IP script for Erickson. Ex. 2600 at 24:22-25:5. The testimony cited by Patent Owner is accordingly not relevant to Patent Owner's argument that there was no reasonable expectation of success and is also incomplete because Dr. Horst testified to the contrary. Importantly, it is also not relevant because none of the challenged claims are directed to windowing.

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[3] While the transcript states Stevenson, it should be Stevens. Ex. 2600 at 24:22-25:5.

Dated: June 29, 2018

Respectfully submitted,

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