

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION, WISTRON CORPORATION,
DELL INC., and CAVIUM, INC.,
Petitioner,

v.

ALACRITECH, INC.,
Patent Owner.

Cases IPR2017-01391 (Patent 7,237,036 B2)
IPR2017-01392 (Patent 7,337,241 B2)
IPR2017-01393 (Patent 9,055,104 B2)
IPR2017-01405 (Patent 7,124,205 B2)
IPR2017-01406 (Patent 7,673,072 B2)
IPR2017-01409 (Patent 8,131,880 B2)
IPR2017-01410 (Patent 8,131,880 B2)¹

¹ Cavium, Inc., which filed petitions in Cases IPR2017-01707, IPR2017-01714, IPR2017-01718, IPR2017-01728, IPR2017-01735, IPR2017-01736, and IPR2017-01737, has been joined as a petitioner in these proceedings. Wistron Corporation, which filed petitions in Cases IPR2018-0327, IPR2018-00328, and IPR2018-00329, has been joined as a petitioner in IPR2017-01391, IPR2017-01392, and IPR2017-01406, respectively. Dell Inc., which filed petitions in Cases IPR2018-00336, IPR2018-00338, IPR2018-00339, IPR2018-00371, IPR2018-00372, IPR2018-00374 and IPR2018-00375, has been joined as a petitioner in these proceedings. This Order applies to each referenced case. The parties are not authorized to use this heading style.

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

FISHMAN, *Administrative Patent Judge*.

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

In an e-mail message to the Board, Patent Owner (Alacritech, Inc.) requested a conference call seeking authorization to file a motion for additional discovery and associated supplemental briefing in light of the recent decision of the U.S. Court of Appeals for the Federal Circuit in *Applications In Internet Time v. RPX Corp.*, No. 2017-1698, 1028 WL 3625165 (Fed. Cir. July 9, 2018) (the “*AIIT*” decision). Patent Owner alleges that the additional discovery is necessary to understand details of indemnification agreements between Petitioner Intel Corp. and other parties.

We conducted a conference call on Monday, August 20, 2018, including: counsel for Petitioners Intel Corp. and Dell Inc., counsel for Patent Owner, and Judges Siu, Fishman, and Boudreau. In the conference call, Patent Owner argues the *AIIT* decision necessitates further discovery and briefing to determine the details of indemnification agreements between Intel Corp., Dell Inc., and any other potential real parties-in-interest or privies. Patent Owner admitted they did not know what was in the indemnification agreements and that it was possible that there could be

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nothing of particular interest.² Petitioner (Intel Corp.) responded, in essence, that there is nothing in the details of any indemnification agreements that affects these proceedings before the Board and that the existence of the indemnification agreement between Intel Corp. and Dell Inc. is readily admitted and of record. Counsel for Intel Corp. and Dell Inc. acknowledged that Dell Inc. is a real party-in-interest in these proceedings, at least by virtue of Dell Inc. joining as a party to these proceedings.

Accordingly, Patent Owner's request for additional discovery and associated supplemental briefing is *denied*.

PETITIONER:

Garland T. Stephens
Adrian Percer
Jeremy Jason Lang
WEIL, GOTSHAL & MANGES LLP
garland.stephens@weil.com
Adrian.percer@weil.com
jason.lang@weil.com

Patrick McPherson
David T. Xue

² Patent Owner's request is likely insufficient to meet the requirements of our *Garmin* factors that require more than such speculation to grant additional discovery. *See Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, 2013 WL 11311697, at *3–4 (PTAB Mar. 5, 2013) (precedential). However, as discussed *infra*, we need not analyze the *Garmin* factors because Patent Owner's request is denied for other reasons.

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Karineh Khachatourian
DUANE MORRIS LLP
pdmcperson@duanemorris.com
dtxue@duanemorris.com
karinehk@duanemorris.com

Christopher TL Douglas
ALSTON & BIRD LLP
christopher.douglas@alston.com

PATENT OWNER:

James M. Glass
Joseph M. Paunovich
Brian E. Mack
QUINN EMANUEL URQUHART & SULLIVAN LLP
jimglass@quinnemanuel.com
joepaunovich@quinnemanuel.com
brianmack@quinnemanuel.com

Mark Lauer
SILICON EDGE LAW GROUP LLP
mark@siliconedgelaw.com