

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INTEL CORPORATION,  
Petitioner,

v.

ALACRITECH, INC.,  
Patent Owner.

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Case IPR2017-01705  
Patent 7,673,072 B2

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Before STEPHEN C. SIU, DANIEL N. FISHMAN, and  
WILLIAM M. FINK, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION  
Denying Institution of *Inter Partes* Review  
*37 C.F.R. § 42.108*

## I. INTRODUCTION

Intel Corporation (“Petitioner”) requests *inter partes* review of claims 1–21 of U.S. Patent No. 7,673,072 B2 (“the ’072 patent,” Ex. 1001) pursuant to 35 U.S.C. §§ 311 *et seq.* Paper 1 (“Pet.”). Alacritech, Inc. (“Patent Owner”) filed a preliminary response. Paper 6 (“Prelim. Resp.”). Institution of an *inter partes* review is authorized by statute only when “the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a); *see* 37 C.F.R. § 42.108. Upon consideration of the Petition and Preliminary Response, we conclude the information presented fails to show there is a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least one of claims 1–21 of the ’072 patent.

### A. Related Matters

We are informed that the ’072 patent is presently related to the following: *Alacritech, Inc. v. CenturyLink, Inc.*, Case No. 2:16-cv-00693-JRG-RSP (E.D. Tex.); *Alacritech, Inc. v. Wistron Corp.*, Case No. 2:16-cv-00692-JRG-RSP (E.D. Tex.); and *Alacritech, Inc. v. Dell Inc.*, Case No. 2:16-cv-00695-RWS-RSP (E.D. Tex.). Pet. 3.

### B. The ’072 Patent (Ex. 1001)

The ’072 patent describes a system and method for protocol processing of communicated information in computer networks. Ex. 1001, 2:21–24.

*C. Illustrative Claim*

Independent claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method comprising:
  - establishing, at a host computer, a transport layer connection, including creating a context that includes protocol header information for the connection;
  - transferring the protocol header information to an interface device;
  - transferring data from the network host to the interface device, after transferring the protocol header information to the interface device;
  - dividing, by the interface device, the data into segments;
  - creating headers for the segments, by the interface device, from a template header containing the protocol header information; and
  - prepending the headers to the segments to form transmit packets.

*Id.* at 97:17–31.

*D. Asserted Grounds of Unpatentability*

Petitioner asserts that claims 1–21 are unpatentable under 35 U.S.C. 103(a) over Connery.<sup>1</sup> Pet. 39.

II. DISCUSSION

*A. Claim Construction*

In an *inter partes* review, we construe claim terms in an unexpired patent according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b). Consistent with the broadest reasonable construction, claim terms are

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<sup>1</sup> US Patent 5,937,169, issued August 10, 1999 (“Connery,” Ex. 1043).

presumed to have their ordinary and customary meaning as understood by a person of ordinary skill in the art in the context of the entire patent disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

At this juncture of the proceeding, we determine that it is not necessary to provide an express interpretation of any term of the claims.

*B. Cited Prior Art Reference*

*Connery (Ex. 1043)*

Connery describes a system and method of sending data from a data source executing a network protocol. Ex. 1043, 2:46–47.

*C. Obviousness over Connery*

Petitioner contends claims 1–21 are unpatentable under 35 U.S.C. § 103(a) as obvious over Connery. Pet. 14. Relying on the testimony of Dr. Robert Horst, Petitioner argues that Connery describes all of the claim limitations. *Id.* (citing Ex. 1003).

Claim 1 recites “creating headers for the segments, by the interface device, from a template header” and “prepending the headers to the segments.” Petitioner argues that “[t]he earliest filed priority application, Provisional Patent Application No. 60/061,809 [the ’809 application] filed on October 14, 1997 . . . does not include a written description of these limitations” and that written description support for the cited claim limitations “first appears in the later Provisional Patent Application No. 60/098,296 [the ’296 application] filed on August 27, 1998 . . . and not in the 1997 Provisional.” Pet. 29. Hence, Petitioner argues that the ’072 patent is entitled to a priority date of August 27, 1998, but is not entitled to priority

to October 14, 1997. Petitioner's proposed grounds of unpatentability rely on Connery, which has a priority date of October 29, 1997.

Patent Owner argues that the '809 application discloses a "buffer fifo" in which "TCP/IP headers" are created and that "data is dmad from host memory into the frame to create an MSS-sized segment." Prelim. Resp. 18–19 (quoting Ex. 1031 .060-.061). Patent Owner further argues that "this functionality [of concatenating headers to the payload when forming a TCP or IP packet] would have been easily understood by a POSA as implicit in the packet creation process." Prelim. Resp. 16. Hence, Patent Owner argues that one of ordinary skill in the art would have known that headers are concatenated to payload data.

As Patent Owner also indicates, Petitioner's expert (Dr. Robert Horst) explains that "[b]y the mid 1990s, TCP/IP was a firmly entrenched standard and was a widespread networking protocol" and that "detailed descriptions of the protocols . . . were widely available." Ex. 1003 ¶ 26. Dr. Horst also testifies that it was known to those of ordinary skill in the art that "application data [is] accompanied by an application header [and that the] application header-data combination becomes the application data of a TCP segment." *Id.* ¶ 27. Dr. Horst provides further evidence that it was known to those of ordinary skill in the art that a header may be prepended (i.e., attached in the front of) data. *Id.* (citing Ex. 1008 ("Stevens") .034, Fig. 1.7). As Patent Owner indicates, Stevens discloses that it would have been known to those of ordinary skill in the art that any of an "application header" (i.e., application header-data combination, as Stevens discloses) is prepended to "user data" and that any of a TCP header, IP header, or Ethernet header (i.e., a "header") is attached (or prepended) to "application

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