

**UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

CAVIUM, INC.,  
*Petitioner,*

v.

ALACRITECH, INC.,  
*Patent Owner*

---

Case IPR2017-01707  
U.S. Patent No. 7,673,072

---

**PATENT OWNER'S PRELIMINARY RESPONSE  
PURSUANT TO 35 U.S.C. § 313 AND 37 C.F.R. § 42.107**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION .....	1
II. OVERVIEW OF THE '072 PATENT .....	3
A. The '072 Patent Specification .....	3
B. The '072 Patent Claims .....	4
III. OVERVIEW OF THE ASSERTED PRIOR ART .....	7
A. U.S. Patent No. 5,768,618 to Erickson et al. ("Erickson") .....	7
B. Andrew S. Tanenbaum, Computer Networks, 3rd ed. (1996) ("Tanenbaum") .....	9
IV. CLAIM CONSTRUCTION .....	10
A. This Petition Should Be Denied Because Petitioner Alleges Certain Claim Terms Are Indefinite .....	10
B. Petitioner's Proposed Terms for Construction Do Not Affect Alacritech's Non-Obviousness Argument in This Preliminary Response .....	11
V. THE BOARD SHOULD DENY THE PETITION BECAUSE IT FAILS TO DISCLOSE ALL REAL PARTIES IN INTEREST .....	12
A. The Relationship Between Cavium and QLogic is Sufficiently Close .....	13
B. Cavium Effectively Controls QLogic .....	14
C. Cavium Effectively Controls Dell .....	16
D. Dell Desires Review of the '072 Patent .....	17
E. Intel Has Effective Choice as to the Legal Theories and Proofs of Dell and Cavium .....	18
F. Finding QLogic, Dell, and Intel Are Real Parties in Interest Is Consistent with Legislative Intent .....	19
VI. THE BOARD SHOULD DECLINE INSTITUTION UNDER 35 U.S.C. § 325(D) BECAUSE ALL THE PRIOR ART HAS ALREADY BEEN CONSIDERED BY THE OFFICE .....	21

VII. THERE IS NO REASONABLE LIKELIHOOD THAT THE PETITIONER WILL PREVAIL UNDER GROUND 1 (THE ONLY GROUND).....22

A. There Is No Motivation to Combine Erickson and Tanenbaum ..... 22

B. Tanenbaum Fails to Disclose and Teaches Away [1.4] [9.4] or [15.4] “Dividing, by the Interface Device, the Data into Segments” ..... 23

C. Erickson Fails to Disclose [1.4] [9.4] or [15.4] “dividing, by the interface device, the data into segments” ..... 26

1. Erickson does not disclose any interface device that is capable of dividing the data into segments ..... 26

2. Petitioner’s reliance on its expert’s hindsight modifications of Erickson is baseless ..... 27

VIII. ALACRITECH RESERVES ITS RIGHTS UNDER THE PENDING OIL STATES CASE AT THE UNITED STATES SUPREME COURT ..... 30

IX. CONCLUSION ..... 30

**TABLE OF AUTHORITIES**

	<b><u>Page</u></b>
<b>Cases</b>	
<i>Alacritech, Inc. v. CenturyLink, Inc.</i> , 2:16-cv-00693-JRG-RSP (E.D. Tex.).....	1, 19
<i>Alacritech, Inc. v. Dell Inc.</i> , 2:16-cv-00695-RWS-RSP (E.D. Tex.).....	1, 19
<i>Alacritech, Inc. v. Wistron Corp.</i> , 2:16-cv-00692-JRG-RSP (E.D. Tex.).....	1, 19
<i>Benson &amp; Ford, Inc. v. Wanda Petroleum Co.</i> , 833 F.2d 1172 (5th Cir. 1987) .....	23
<i>Coalition for Affordable Drugs (ADROCA) LLC v. Acorda Therapeutics, Inc.</i> , Case IPR2015-00817, Paper 12 (Aug. 24, 2015).....	14
<i>Dynamic Drinkware LLC v. Nat’l Graphics, Inc.</i> , 800 F.3d 1375 (Fed. Cir. 2015) .....	3, 13, 17
<i>FedEx Corp. v. Ronald A. Katz Technology Licensing, L.P.</i> , Case CBM2015-00053, Paper 9 (Jun. 29, 2015).....	16
<i>Hewlett-Packard Co. v. U.S. Philips Corp.</i> , Case IPR2015-01505, Paper 16 (Jan. 19, 2016).....	3, 14
<i>Microsoft Corp. v. Biscotti</i> , IPR2014-01457, Paper, No. 9 (Mar. 9, 2015) .....	14
<i>Oil States Energy Servs. LLC v. Greene’s Energy Group, LLC</i> , Case No. 16-712 (U.S. Jun. 12, 2017).....	31
<i>Teva Pharmaceuticals USA, Inc. v. Indivio UK Limited</i> , Case IPR2016-00280, Paper 23 (Jun. 10, 2016).....	14
<b>Statutory Authorities</b>	
35 U.S.C. § 21 .....	1
35 U.S.C. § 103(a) .....	1, 2, 3
35 U.S.C. § 312(a)(2).....	18
35 U.S.C. § 313 .....	1
35 U.S.C. § 314.....	4
35 U.S.C. § 314(a) .....	3, 32
35 U.S.C. § 325(D) .....	30, 31
<b>Rules and Regulations</b>	
37 C.F.R. § 42.8(b)(1) .....	18
37 CFR § 42.24(a) .....	28
37 C.F.R. § 42.24(a)(i).....	29, 30

37 CFR § 42.24(A)(1) .....	28
37 CFR § 42.24(a)(2) .....	29
37 C.F.R. § 42.63.....	16
37 C.F.R. § 42.107(a) .....	1
37 C.F.R. § 42.108 .....	5
Office Patent Trial Practice Guide, 77 Fed. Reg. 48756 (Aug. 14, 2012) .....	passim
H.R. Rept. No 112-98 (2011) (Judiciary Committee Report on H.R. 1249, June 1, 2011).....	27
<b>Legislative Materials</b>	
157 Cong. Rec. S1034 (Mar. 1, 2011).....	27

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.