

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ALACRITECH, INC., A California corporation,)	
)	
Plaintiff,)	2:16-cv-00693-JRG (LEAD CASE)
)	
v.)	2:16-cv-00692-JRG
)	
TIER 3, ET AL., WISTRON CORPORATION)	2:16-cv-00695-RWS
ET AL., DELL INC., A Delaware corporation,)	
)	JURY TRIAL DEMANDED
Defendants.)	
_____)	

CAVIUM, INC.'S MOTION TO INTERVENE

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTUAL BACKGROUND..... 2

 A. Alacritech’s Actions Have Caused Cavium To Become A Participant..... 2

 B. This Case Is At An Early Stage 3

 C. This Action Implicates QLogic Products Sold To Dell And Other QLogic Customers 4

 D. Cavium Has Agreed to Partially Indemnify Dell Against Claims That Its QLogic-Based Products Infringe Alacritech’s Patents 5

III. ARGUMENT 5

 A. Cavium Is Entitled To Intervene As A Matter Of Right..... 5

 1. Cavium’s Motion To Intervene Is Timely 6

 2. Cavium Has A Compelling Interest In The Litigation..... 7

 3. The Disposition Of This Action May Impair Cavium’s Ability To Protect Its Interests 9

 4. Cavium’s Interests Cannot Be Adequately Represented By Its Customer 10

 B. The Court Should Exercise Its Discretion To Permit Cavium To Intervene, If Cavium Is Not Entitled To Intervene As A Matter Of Right 11

IV. CONCLUSION..... 12

TABLE OF AUTHORITIES

Cases

Alabama v. U.S. Army Corps of Eng’rs, 229 F.R.D. 669, 672 (N.D. Ala. 2005)..... 10

Chandler & Price Co. v. Brandtjen & Kluge, Inc., 296 U.S. 53 (1935)..... 12

Chiles v. Thornburgh, 865 F.2d 1197 (11th Cir. 1989) 13

Codex Corp. v. Milgo Elec. Corp., 553 F.2d 735 (1st Cir. 1977)..... 13

Dayton Indep. Sch. Dist. v. U.S. Mineral Prods. Co.,
Civ. A. Nos. B-87-00507-.CA, B-88-00429-CA, 1989 WL 237732, at *4
(E.D. Tex. Feb. 14, 1989) 15

Diaz v. S. Drilling Corp., 427 F.2d 1118 (5th Cir. 1970)..... 10

Edwards v. City of Houston, 78 F.3d 983 (5th Cir. 1996) 14

Fisherman’s Harvest, Inc. v. U.S., 74 Fed. Cl. 681 (2006) 12

Honeywell Int’l, Inc. v. Audiovox Commc’ns Corp.,
No. Civ. A. 04-1337-KAJ et al., 2005 U.S. Dist. LEXIS 22933,
at *9-10 (D. Del. May 18, 2005)..... 10, 13, 14

IBM Corp. v. Conner Peripherals, Inc.,
No. C-93-20117, 1994 WL 706208, at *5 (N.D. Cal. Dec. 13, 1994)..... 12

Intellectual Ventures I LLC v. AT&T Mobility LLC,
2014 WL 4445953, at *2 (D. Del. Sept. 8, 2014) (Stark, J.) 12

Katz v. Lear Siegler, Inc., 909 F.2d 1459 (Fed. Cir. 1990) 13

LG Elecs. Inc. v. Q-Lity Computer, Inc., 211 F.R.D. 360 (N.D. Cal. 2002)..... 12, 13

N.Y. Pub. Interest Research Group, Inc. v. Regents of Univ. of State of N.Y.,
516 F.2d 350 (2d Cir. 1975) 15

Reid v. Gen. Motors Corp., 240 F.R.D. 257 (E.D. Tex. 2006)..... 15

Ross v. Marshall, 426 F.3d 745 (5th Cir. 2005) 10, 11, 14

Salem Eng’g Co. v. Nat’l Supply Co., 75 F. Supp. 993 (W.D. Pa. 1948)..... 16

Sec. & Exch. Comm’n v. U.S. Realty & Imp. Co., 310 U.S. 434 (1940) 15

Stallworth v. Monsanto Co., 558 F.2d 257 (5th Cir. 1977) 10, 11

State of Texas v. American Tobacco Co.,
No. 5-98CV-270, 1999 WL 1022129, at *2 (E.D. Tex. Nov. 5, 1999) 11, 16

Stauffer v. Brooks Bros., Inc., 619 F.3d 1321 (Fed. Cir. 2010) 9

Tegic Commc'ns Corp. v. Board Of Regents of the Univ. of Tex. Sys.,
458 F.3d 1335 (Fed. Cir. 2006) 12

Texas v. United States, 805 F.3d 653 (5th Cir. 2015)..... 10

U.S. Ethernet Innovations, LLC v. Acer, Inc.,
No. 6:09-cv-448, Dkt. No. 224 at 4 (E.D. Tex. May 10, 2010)..... 13

Rules

Fed. R. Civ. P. 24..... 14

Fed. R. Civ. P. 24(a)(2)..... 9

Fed. R. Civ. P. 24(b)(1)(B) 15

I. INTRODUCTION

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, Cavium, Inc. (“Cavium”) hereby moves to intervene in this action as of right, or, alternatively, with permission of the Court. Cavium seeks to intervene in this patent infringement action filed by Alacritech, Inc. (“Alacritech”) to protect its interests and the interests of its customer, Dell Inc. (“Dell”), a defendant in this action. Cavium’s interest in this litigation is based on the involvement of its wholly-owned subsidiary, QLogic Corporation (“QLogic”). Cavium seeks to intervene because some of Alacritech’s infringement allegations in the Complaint in this action specifically accuse some Dell products of infringement based in part on their use of QLogic network adapters, including, among others, QLogic 57840S-k quad port 10GbE blade KR NDC. Further, Cavium has agreed to defend and partially indemnify Dell as to Alacritech’s allegations of infringement against QLogic components that are incorporated into the accused Dell products. As such, Cavium has a substantial, direct financial interest in the outcome of this litigation. This Court has recently permitted Intel to intervene for similar reasons.

Cavium can offer technical knowledge and expertise that its customer lacks, as the designer and manufacturer of the QLogic technology targeted by Alacritech’s infringement allegations. Moreover, issues litigated in this action may affect other Cavium customers in the event that they are sued by Alacritech or its successors. Accordingly, Cavium should participate in litigating key issues such as claim interpretation and infringement based on its own components.

As this case is still at a very early stage, Cavium’s intervention would not prejudice any of the parties. Cavium, however, will suffer significant prejudice if it is not permitted to intervene to litigate the claims against its own products, as it could be subjected to indemnity liability and uncertainty regarding numerous QLogic products without its participation.

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.