

Sean Li

From: Karineh Khachatourian <karinehk@rimonlaw.com>
Sent: Tuesday, October 09, 2018 8:50 AM
To: Cox, Brady; Hotze, Melissa; Sean Li; intel.alacritech.ipr; 'McPherson, Patrick D.'; Douglas, Christopher; Bradley, Kirk; 'benjamin.weed.PTAB@klgates.com'; 'erik.halverson@klgates.com'; Neilson, Derek; David Xue
Cc: Alacritech-IPR-Team
Subject: RE: Alacritech/Intel Oct. 2 call with Board

Hi Sean

For the 401 Petition, Cavium's position is the same as Intel's. Thanks.

From: Cox, Brady <Brady.Cox@alston.com>
Sent: Tuesday, October 9, 2018 8:48 AM
To: Hotze, Melissa <melissa.hotze@weil.com>; Sean Li <seanli@quinnemanuel.com>; Karineh Khachatourian <karinehk@rimonlaw.com>; intel.alacritech.ipr <intel.alacritech.ipr@weil.com>; 'McPherson, Patrick D.' <PDMcPherson@duanemorris.com>; Douglas, Christopher <Christopher.Douglas@alston.com>; Bradley, Kirk <Kirk.Bradley@alston.com>; 'benjamin.weed.PTAB@klgates.com' <benjamin.weed.PTAB@klgates.com>; 'erik.halverson@klgates.com' <erik.halverson@klgates.com>; Neilson, Derek <Derek.Neilson@alston.com>; David Xue <david.xue@rimonlaw.com>
Cc: Alacritech-IPR-Team <alacritech-ipr-team@quinnemanuel.com>
Subject: RE: Alacritech/Intel Oct. 2 call with Board

Hi Sean,

Adding on to the below response from Intel, while Dell was not a part of the conference call with the Board and does not know the full extent of what was discussed there (and is not yet joined to the IPRs at issue), Dell does not consent to the use of its designated confidential materials produced in the district court litigation in Intel's or Cavium's IPRs.

Best,
-Brady

From: Hotze, Melissa [<mailto:melissa.hotze@weil.com>]
Sent: Monday, October 8, 2018 7:31 PM
To: Sean Li <seanli@quinnemanuel.com>; 'Karineh Khachatourian' <karinehk@rimonlaw.com>; intel.alacritech.ipr <intel.alacritech.ipr@weil.com>; 'McPherson, Patrick D.' <PDMcPherson@duanemorris.com>; Douglas, Christopher <Christopher.Douglas@alston.com>; Bradley, Kirk <Kirk.Bradley@alston.com>; 'benjamin.weed.PTAB@klgates.com' <benjamin.weed.PTAB@klgates.com>; 'erik.halverson@klgates.com' <erik.halverson@klgates.com>; Cox, Brady <Brady.Cox@alston.com>; Neilson, Derek <Derek.Neilson@alston.com>; 'David Xue' <david.xue@rimonlaw.com>
Cc: Alacritech-IPR-Team <alacritech-ipr-team@quinnemanuel.com>
Subject: RE: Alacritech/Intel Oct. 2 call with Board

Sean,

First, as Intel has repeatedly stated, Intel does **not** agree that its protected information in the district court litigation can be used in the IPRs. See, e.g., January 11, 2018 Constant email. The Protective Order in the litigation specifically precludes such use. See, e.g., Protective Order at Paragraph 11 ("in no event shall any Party's Protected material be submitted, extracted, digested or otherwise referred to" in connection with an IPR "without written consent of the Party"). During the teleconference with the Board, Intel's referenced the litigation **only** in response to Judge Boudreau's question about 10-1-14 ("UDGE BOUDREAU: All right. And just to be clear, the indemnification agreement between

Intel and Dell has not been produced in the related District Court litigation either?"). To be unambiguously clear, Intel does **not** agree that Alacritech can use any of its protected information from the district court litigation in any IPR. Alacritech must first obtain permission from the Board for any additional discovery it seeks to use in these IPRs. As the Federal Circuit has explained, "[d]iscovery in inter partes review proceedings is more limited than in proceedings before district courts or even other proceedings before the PTO" and "[g]iven the time deadlines imposed on these proceedings, it was intended that the PTO would 'be conservative in its grants of discovery.'" *Wi-Fi One, LLC v. Broadcom Corp.*, 887 F.3d 1329, 1338 (Fed. Cir. 2018) (citations omitted).

Second, Alacritech's requests below are nothing more than an attempt to obtain additional discovery prior to obtaining authorization from the Board. The Board specifically warned Alacritech about attempting to obtain additional discovery prior to a decision on its motion. 10/2/2018 Rough Transcript at 27:13-15 ("Just to be clear, we're not authorizing the additional discovery at this point, only a motion for additional discovery.") As Intel has explained repeatedly, Alacritech has not shown that it is entitled to the indemnity agreements and information requested below under the *Garmin* factors. Intel intends to explain this in detail to the Board in Intel's opposition to Alacritech's motion for additional discovery in IPR2018-00226 and IPR2018-00234. Alacritech has done nothing more than speculate that the indemnity agreements (the existence of which are in the public record) will provide any additional "useful" information. This is insufficient to obtain discovery in an IPR. *See e.g., Wi-Fi One*, 887 F.3d at 1340 (declining to find Board abused its discretion in concluding that production of the indemnity and JDG agreements, among other things, was not warranted where Patent Owner alleged Petitioner was time barred based on parties it indemnified because nothing existed but a "mere possibility" that something useful would be found).

Thanks,

Melissa



Melissa Hotze

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From: Sean Li <seanli@quinnemanuel.com>
Sent: Sunday, October 7, 2018 12:22 PM
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Cc: Alacritech-IPR-Team <alacritech-ipr-team@quinnemanuel.com>
Subject: Alacritech/Intel Oct. 2 call with Board

Counsel,

During the Oct. 2, 2018 call with the Board Intel's counsel represented that Intel's standard terms and conditions are available on the Internet publicly. *See* Rough Tr. at 20:23-25 ("Also, Intel's standard terms and conditions which govern

sales to other parties are available on the Internet publicly.”). We cannot locate such allegedly standard terms and it was not clear to us whether Intel is claiming that those terms are applicable to any of its relationships with its customers in the underlying suits. Please provide us the link for the terms and conditions, and confirm that an identical contract was entered into with each of the defendants in the underlying cases, with no other terms or conditions. Additionally, Intel did not deny during the Board teleconference that there are separate memorializations of its agreement to indemnify each of the defendants in the underlying cases. *See Rough Tr., passim; see also id.* at 26:8 *et seq.* In fact, Intel has admitted that its indemnity in the underlying cases is only applicable to certain claims and patents, which is undoubtedly not memorialized in any of the mentioned generic agreements. As such, please identify the nature and scope of the documentation memorializing Intel’s relationships with each of the defendants specific to the underlying cases. We request the same of Cavium for its indemnity of any defendant in the underlying cases.

Also, both Intel and Cavium referenced commercial agreements with Dell (but not the other defendants) without referencing their full names and dates. *See Rough Tr.* at 20:19-21 (“We checked with Dell, and they said they did produce that indemnity agreement, the sales agreement that governs indemnity between Intel and Dell”); *id.* at 24:22-25:1 (“And in answer to your question about agreements between Cavium and Dell that may or may not discuss indemnification, my recollection and understanding is that those documents were produced in the litigation long ago.”). We request Intel and Dell provide us the full names and dates and bates numbers of those agreements. Additionally, please confirm that Intel and Cavium have not produced their commercial agreements with any of the Wistron and CenturyLink entities.

Finally, please confirm that Dell or Cavium no longer object to the use of any documents and information designated under the PO in the underlying cases in connection with Petitioners’ IPRs. We were surprised by Petitioners’ representations about protected material from the underlying cases during the Board call given that Petitioners have previously and repeatedly objected to Alacritech’s use of any such information designated in the underlying cases. We assume that by referencing litigation productions, Dell and Cavium have no intentions to object our use of those agreements or any other protected information from the underlying cases going forward and will proceed with that understanding in future filings unless told otherwise.

In light of the short briefing schedule, please let us know your response by the end of the day Monday.

Best regards,
Ziyong (Sean) Li
Associate,
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