

Filed October 23, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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INTEL CORPORATION, CAVIUM, LLC, and DELL INC.,<sup>1</sup>  
Petitioner

v.

ALACRITECH, INC.,  
Patent Owner

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Case IPR2018-00234  
U.S. Patent No. 8,805,948

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**PETITIONERS' UNOPPOSED MOTION TO PRESERVE THE RECORD  
PENDING APPEAL**

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<sup>1</sup> Cavium, LLC (formerly Cavium, Inc.) (“Cavium”) which filed a Petition in Case IPR2018-00403, and Dell Inc. (“Dell”), which filed a Petition in Case IPR2018-01307, have been joined as petitioners in this proceeding.

## **I. RELIEF REQUESTED**

Pursuant to the Board’s authorization dated October 21, 2019 (*see* Paper 77), Petitioner Intel Corporation (“Intel”), Cavium, and Dell (collectively “Petitioners”) respectfully request that the Board (i) preserve the record for appeal by maintaining the confidentiality of Exhibits 1414, 1422-24, 1449, 1452, 1502, 1504, 1506, 2038, 2501, 2503, and 2601 and Papers 42, 45, 49, 50, 53, 65, 66, 71, and 75 and (ii) provide the parties an opportunity to file a motion to expunge those documents within 45 days after all appeal rights have been exhausted or within 45 after the deadline to file a notice of appeal if no such notice is filed. Petitioners have conferred with Patent Owner, Alacritech, Inc. (“Alacritech”), and Alacritech does not oppose this Motion. Alacritech reserves its right to oppose any motions to expunge.

## **II. BACKGROUND**

The Board entered a stipulated protective order on October 2, 2018 and a revised protective order on December 20, 2018. *See* Ex. 2401 at 33:2-6; Paper 33.

During the course of this proceeding, Intel filed motions to seal all or portions of Exhibits 1414, 1422-1424, 1449, 1452, 1504, and 1506 and Papers 45, 53, 66, and 71 (which cited those Exhibits) as containing confidential business information. *See* Papers 36, 46, 55, 62, 68, 73, and 74. Cavium moved to seal Exhibit 1502 as containing confidential business information. *See* Paper 58. Alacritech moved to

seal Exhibits 2038, 2501, 2503, and 2601 and Papers 42, 49, 50, and 75 (which cited those Exhibits) as containing confidential business information or information designated as such by another party. *See* Papers 17, 43, 51, 61, and 76. The motions to seal are pending before the Board. Additionally, the Board filed Paper 65, the transcript from the oral hearing on March 4, 2019, under seal because it included confidential information. *See* Paper 65 at 51:18-52:10. The parties submitted redactions to the Board on May 31st. *See* Paper 67 (redacted version of the transcript).

On June 4, 2019, the Board entered an Order Dismissing the Petition, Vacating Institution of *Inter Partes* Review, and Terminating *Inter Partes* Review (“Order”) (Paper 66). The Board denied Petitioners’ Motion for Reconsideration on August 28, 2019. (Paper 71). On October 14, 2019, Intel contacted the Board and the parties to seek preservation of the record and an extension for the deadline to file motions to expunge. The Board authorized Petitioners to file this motion on October 21, 2019. (Paper 77).

Petitioners have not yet decided whether to appeal the Board’s Order to the U.S. Court of Appeals for the Federal Circuit. The deadline to file a notice of appeal is October 30, 2019.

### III. ARGUMENT

Petitioners seek to extend the default deadline for unsealing Exhibits 1414, 1422-24, 1449, 1452, 1502, 1504, 1506, 2038, 2501, 2503, and 2601 and Papers 42, 45, 49, 50, 53, 65, 66, 71, and 75 in order to maintain the record intact until the resolution of any appeal, should any Petitioner choose to file one. Confidential information that is subject to a protective order will ordinarily become public 45 days after final judgment unless a motion to expunge is filed. 37 C.F.R. § 42.56; Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,761 (Aug. 14, 2012). However, Petitioners have 63 days from entry of judgment to file a notice of appeal. 37 C.F.R. § 90.3. Petitioners cannot move to expunge their confidential information because the Federal Circuit may need the current record to evaluate a possible appeal.

Additionally, the Federal Circuit Rules require the Board to retain the record of this proceeding pending appeal. Federal Circuit Rule 17(a) states that “[t]he agency must retain the record[.]” Federal Circuit Rule 17(d) is entitled “Access of Parties and Counsel to Original Record” and requires the parties and their counsel have access to both the sealed and unsealed portions of the record “[w]hen a petition for review or notice of appeal is filed[.]”

Accordingly, Petitioners request that the entire docket in this case be preserved pending a possible appeal, including preservation of all sealed documents

in non-public form. The Board has previously granted similar requests. *See Arctic Cat, Inc. v. Polaris Indus. Inc.*, IPR2014-01427, Paper 62 at 2 (PTAB Mar. 8, 2016) (ordering “any documents currently under seal in non-public form will be maintained as such until the conclusion of any and all appeals”); *IBM Corp. v. Intellectual Ventures II LLC*, IPR2014-00786, Paper 49 at 2-3 (PTAB Nov. 20, 2015) (ordering the record to be maintained and undisturbed pending the outcome of any appeal); *see also Illumina, Inc. v. The Trustees of Columbia University in the City of New York*, IPR2012-00006, Paper 133 at 3 (PTAB Apr. 25, 2014); *Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, IPR2013-00128, Paper 93 at 2-3 (PTAB Sept. 10, 2014); *Chevron North America, Inc. v. Milwaukee Elec. Tool Corp.*, IPR2015-00595, Paper 82 at 3 (PTAB Sept. 7, 2016); *Merck Sharp & Dohme Corp. v. Mayne Pharm. Int’l Pty Ltd.*, IPR2016-01186, Paper 75 at 4 (PTAB Feb. 8, 2018); *Acrux DDS Pty Ltd. v. Kaken Pharm. Co.*, IPR2017-00190, Paper 101 at 2-3 (PTAB Dec. 21, 2018).

Petitioners further request that the Board extend the deadline for filing a motion to expunge under 37 C.F.R. § 42.56 to allow the confidentiality of the sealed documents to be preserved, such that the parties may file motions to expunge within 45 days after all appeal rights have been exhausted or within 45 after the deadline to file a notice of appeal if no such notice is filed. *See, e.g., Kayak Software Corp. v. IBM Corp.*, IPR2016-00608, Paper 67 at 43-44 (PTAB Aug. 7, 2017); *L-3*

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