

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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| ALACRITECH INC., <i>Plaintiff,</i> | JURY TRIAL DEMANDED |
| v. | |
| TIER 3, INC., SAVVIS COMMUNICATIONS CORP., AND CENTURLINK COMMUNICATIONS, LLC, <i>Defendants,</i> | Case No. 2:16-cv-693-JRG-RSP (LEAD CASE) |
| WISTRON CORPORATION, WIWYNN CORPORATION, AND SMS INFOCOMM CORPORATION, <i>Defendants,</i> | Case No. 2:16-cv-692-JRG-RSP |
| DELL INC., <i>Defendant,</i> | Case No. 2:16-cv-695-JRG-RSP |
| INTEL CORPORATION, <i>Intervenor,</i> | |
| CAVIUM, INC., <i>Intervenor.</i> | |

**DEFENDANTS WISTRON CORPORATION, WIWYNN CORPORATION, AND SMS
INFOCOMM CORPORATION'S RESPONSES TO PLAINTIFF'S SECOND SET OF
COMMON INTERROGATORIES TO DEFENDANTS AND INTERVENORS
(NOS. 9-11)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants Wistron Corporation, Wiwynn Corporation, and SMS Infocomm Corporation (collectively, "Wistron") object and respond to Plaintiff Alacritech Inc.'s ("Alacritech" or "Plaintiff") Second Set of Common Interrogatories Nos. 9-11 ("Interrogatories").

GENERAL STATEMENTS AND OBJECTIONS

The responses provided here are submitted on behalf of Wistron, and reflect Wistron's continuing investigations of facts and discovery of information and documents relating to the claims and defenses at issue in this case. Accordingly, Wistron's responses to these Interrogatories are based upon Wistron's current knowledge and reasonable beliefs. Wistron

Wistron further objects to this Interrogatory to the extent that it seeks to shift Alacritech's burden to prove entitlement to an earlier filing date for each of the asserted claims. See *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1328 (Fed. Cir. 2008) (placing the burden on the Plaintiff to come forward with evidence proving entitlement to claim priority to an earlier filing date after Defendant had satisfied its initial burden of production by coming forward with anticipatory prior art).

Subject to and without waiving the specific objections and the General Statement and Objections, Wistron responds as follows:

Alacritech bears the burden of proving that it is entitled to a filing date before the filing date of the application that issued as each patent in suit, and has conclusively failed to carry that burden by not identifying with specificity support for each asserted claim in the applications to which Alacritech claims priority in response to Defendants' Interrogatory No. 8 to Alacritech. Accordingly, Alacritech has admitted that it is not entitled to a priority date for any asserted claim before the filing date of the application that issued as the asserted patent containing such claim.

Pursuant to Fed. R. Civ. P. 33(d), Wistron refers to its Invalidity Contentions and Intel's Invalidity Contentions served on February 7, 2017 as well as any supplements or other invalidity contentions later served, the Declaration of Mr. Mark Lanning Regarding Claim Construction served in this case, and any other expert reports or declarations that may be served by Wistron pursuant to the schedule set by the Court.

Further, Wistron responds that priority application, Provisional Patent Application No. 60/061,809, does not provide adequate support, written description, and enablement for the