

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

ALACRITECH, INC.,

Plaintiff,

v.

CENTURYLINK, INC., et al.,

Defendants,

INTEL CORPORATION,

CAVIUM, INC.

Intervenors.

Case No. 2:16-cv-693-JRG

LEAD CASE

Jury Trial Demanded

INTEL CORPORATION'S MOTION TO INTERVENE IN
ALACRITECH INC. V. WISTRON CORP.,
CASE NO. 2:16-CV-692

TABLE OF CONTENTS

| | Page |
|--|-------------|
| I. FACTUAL BACKGROUND..... | 3 |
| II. ARGUMENT | 5 |
| A. Intel Is Entitled To Intervene As A Matter Of Right | 5 |
| 1. Intel’s motion to intervene is timely | 6 |
| 2. Intel has a compelling interest in the Wistron case..... | 7 |
| 3. The disposition of this action may impair Intel’s ability to protect its interests | 9 |
| 4. The named defendant cannot adequately represent Intel’s interests..... | 10 |
| B. Alternatively, the Court Should Exercise Its Discretion to Permit Intel to Intervene | 12 |
| III. CONCLUSION..... | 13 |

TABLE OF AUTHORITIES

| | Page(s) |
|--|--------------|
| Cases | |
| <i>Alabama v. U.S. Army Corps of Eng’rs</i> , 229 F.R.D. 669 (N.D. Ala. 2005) | 7 |
| <i>Chandler & Price Co. v. Brandtjen & Kluge, Inc.</i> , 296 U.S. 53 (1935)..... | 8 |
| <i>Chiles v. Thornburgh</i> , 865 F.2d 1197 (11th Cir. 1989) | 7, 9 |
| <i>Codex Corp. v. Milgo Elec. Corp.</i> , 553 F.2d 735 (1st Cir. 1977)..... | 10 |
| <i>Dayton Indep. Sch. Dist. v. U.S. Mineral Prods. Co.</i> , Civ. A. Nos. B-87-00507-.CA, B-88-00429-CA, 1989 WL 237732 (E.D. Tex. Feb. 14,1989) | 12 |
| <i>Diaz v. S. Drilling Corp.</i> , 427 F.2d 1118 (5th Cir. 1970) | 6 |
| <i>Edwards v. City of Houston</i> , 78 F.3d 983 (5th Cir. 1996) | 10 |
| <i>Fisherman’s Harvest, Inc. v. U.S.</i> , 74 Fed. Cl. 681 (2006) | 9 |
| <i>Honeywell Int’l, Inc. v. Audiovox Commc’ns Corp.</i> , No. Civ. A. 04-1337-KAJ et al., 2005 U.S. Dist. LEXIS 22933 (D. Del. May 18, 2005)..... | 5, 8, 10, 11 |
| <i>IBM Corp. v. Conner Peripherals, Inc.</i> , No. C-93-20117, 1994 WL 706208 (N.D. Cal. Dec. 13, 1994)..... | 8, 9 |
| <i>Intellectual Ventures I LLC v. AT&T Mobility LLC</i> , 2014 WL 4445953 (D. Del. Sept. 8, 2014) (Stark, J.) | 8 |
| <i>Katz v. Lear Siegler, Inc.</i> , 909 F.2d 1459 (Fed. Cir. 1990) | 10 |
| <i>Lemelson v. Larami Corp.</i> , No. 80CIV6081, 1981 WL 319072 (S.D.N.Y. Mar. 23, 1981) | 9 |
| <i>LG Elecs. Inc. v. Q-Lity Computer, Inc.</i> , 211 F.R.D. 360 (N.D. Cal. 2002)..... | 8 |
| <i>N.Y. Pub. Interest Research Group, Inc. v. Regents of Univ. of State of N.Y.</i> , 516 F.2d 350 (2d Cir. 1975) | 12 |
| <i>Reid v. Gen. Motors Corp.</i> , 240 F.R.D. 257 (E.D. Tex. 2006) | 13 |

Ross v. Marshall,
426 F.3d 745 (5th Cir. 2005) 6, 7, 10

Salem Eng’g Co. v. Nat’l Supply Co.,
75 F. Supp. 993 (W.D. Pa. 1948)..... 13

Sec. & Exch. Comm’n v. U.S. Realty & Imp. Co.,
310 U.S. 434 (1940)..... 12

Stallworth v. Monsanto Co.,
558 F.2d 257 (5th Cir. 1977) 6

State of Texas v. Am. Tobacco Co.,
No. 5-98CV-270, 1999 WL 1022129 (E.D. Tex. Nov. 5, 1999) 7, 12

Stauffer v. Brooks Bros., Inc.,
619 F.3d 1321 (Fed. Cir. 2010) 5

Tegic Commc’ns Corp. v. Bd. Of Regents of the Univ. of Tex. Sys.,
458 F.3d 1335 (Fed. Cir. 2006) 8

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

Travelsource Corp. v. Old Republic Int’l Corp.,
No. 85 C 8116, 1986 WL 3848 (N.D. Ill. Mar. 14, 1986) 7

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

Statutes

Fed. R. Civ. P. 24..... 9

Fed. R. Civ. P. 24(a)(2)..... 2, 5, 13

Fed. R. Civ. P. 24(b)(1)(B) 2, 5, 12, 13

Fed. R. Civ. P. 24(c) 2

Fed. R. Civ. P. 24, Advisory Committee Notes, 1966 Amendments..... 9

**INTEL CORPORATION’S MOTION TO INTERVENE IN
ALACRITECH INC. V. WISTRON CORPORATION, ET AL.**

Pursuant to Federal Rule of Civil Procedure 24, Intel Corporation (“Intel”) hereby moves to intervene in this action as of right, or alternatively, with permission of the Court. Intel seeks to intervene in this patent infringement action filed by Alacritech, Inc. (“Alacritech”) against, Wistron Corporation, Wiwynn Corporation, SMS Infocomm Corporation, (collectively, “Wistron”), to protect its interests and the interests of its customer Wistron in this action.

Intel seeks to intervene in this case because Alacritech has counterclaimed against Intel for infringement in response to Intel’s intervention in the copending *Alacritech v. Dell* case (No. 2:16-cv-695-JRG) (consolidated with this case for pretrial issues). Alacritech has not limited its counterclaims against Intel in the Dell case to products Intel sells to Dell. In infringement contentions served December 24, 2016, Alacritech also accused Intel of infringing the same claims of the same patents Alacritech has asserted against Wistron by selling the same Intel products identified in Alacritech’s infringement contentions against Wistron. These products were not previously at issue in the Dell case.

Alacritech accuses Intel of directly and indirectly infringing, which means that Intel’s sales to Wistron, and Wistron’s use of these Intel products are at issue in both cases. Alacritech’s allegations concerning Intel products in the Wistron case overlap completely with allegations against Intel—the same claims of the same patents are asserted against the same Intel products—in the Dell case.

Because of this overlap, the same Intel “property or transaction” (Intel products sold to, and purchased by, Wistron) is the subject of both actions, and Intel’s claims and defenses in the Dell case share common questions of law and fact with the Wistron case. Accordingly, Intel

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.