

Filed: October 29, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTEL CORPORATION and CAVIUM, LLC,¹
Petitioner

v.

ALACRITECH, INC.,
Patent Owner

Case IPR2018-00401
U.S. Patent No. 7,945,699

PETITIONER CAVIUM LLC'S NOTICE OF APPEAL

¹ Cavium, LLC (formerly Cavium, Inc.), which filed a Petition in Case IPR2018-00401, and Intel Corp., who filed a Petition in Case IPR2018-01352, have been joined as petitioners in this proceeding.

Pursuant to 35 U.S.C. § 142 and in accordance with 37 C.F.R. § 90.2, Cavium, LLC (“Cavium”) hereby provides notice that it appeals to the United States Court of Appeals for the Federal Circuit from the Board’s Order Dismissing the Petition, Vacating Institution of *Inter Partes* Review, and Terminating *Inter Partes* Review (“Order”) entered on June 4, 2019 (Paper 60). Please note that the Order in this matter has been sealed to the public, and currently only the Parties and Board have access to it. Therefore, it is not attached to this Notice.

Decisions under 35 U.S.C. § 315(b) are reviewable under *Wi-Fi One, LLC v. Broadcom Corp.*, 878 F.3d 1364, 1367 (Fed. Cir. 2018) (en banc) (“We therefore hold that the time-bar determinations under § 315(b) are appealable.”).² Further, the Federal Circuit has allowed for appeal of other Board decisions beyond final written decisions. *See, e.g., Arthrex, Inc. v. Smith & Nephew, Inc.*, 880 F.3d 1345 (Fed. Cir. 2018).

For the limited purpose of providing the Director of the United States Patent and Trademark Office with the information requested under 37 C.F.R. §

² The issue of the appealability of institution decisions involving § 315(b) is also pending before the United States Supreme Court (*Dex Media, Inc. v. Click-to-Call Tech., LP*, No. 18-916 (S.Ct. June 24, 2019)) and the Federal Circuit (*Ventex Co., Ltd. v. Columbia Sportswear N. Am.*, No. 19-1705).

90.2(a)(3)(ii), Cavium expects that the issues on appeal may include the following, along with any underlying findings, determinations, rulings, opinions, orders, decisions, or other related issues:

- The Board’s determination that Cavium’s IPR Petition is time-barred under 35 U.S.C. § 315(b) based on its finding that Dell Inc. (“Dell”) is a real party in interest and Cavium and Dell are privies after granting institution and proceeding through hearing;

- The Board’s determination that Dell is a real party in interest; and
- The Board’s determination that Cavium and Dell are privies.

Cavium reserves the right to challenge any finding or determination supporting or relating to the issues listed above. Cavium also reserves the right to challenge any other issues decided against Cavium in any order, decision, ruling, or opinion by the Board in the above-captioned proceeding.

Pursuant to 35 U.S.C. § 142 and 37 C.F.R. §§ 90.2(a), 90.3(a), and 90.3(b)(1), this Notice is being timely filed with the Director of the United States Patent and Trademark Office within 63 days of the Board’s Decision Granting in Part and Denying in Part Petitioner’s Request for Rehearing (Paper 65), and a copy of this Notice is being concurrently filed with the Patent Trial and Appeal Board. In addition, a copy of this Notice is being filed with the Clerk of the United States Court of Appeals for the Federal Circuit, along with an electronic copy of the Notice and

the required docketing fee, which are being served electronically on the Court by
CM/ECF and pay.gov.

Dated: October 29, 2019

Respectfully Submitted,

/s/ David T. Xue

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CERTIFICATE OF FILING

The undersigned hereby certifies that, in addition to being electronically filed through PTAB E2E, a true and correct copy of the above-captioned PETITIONER CAVIUM LLC'S NOTICE OF APPEAL is being sent via priority mail on October 29, 2019, to the Director of the United States Patent and Trademark Office, at the following address:

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel, 10B20
Madison Building East
600 Dulany Street
Alexandria, VA 22314

The undersigned also hereby certifies that a true and correct copy of the above-captioned PETITIONER CAVIUM LLC'S NOTICE OF APPEAL and the filing fee is being filed via CM/ECF with the Clerk's Office of the United States Court of Appeals for the Federal Circuit on October 29, 2019.

Date: October 29, 2019

/s/ David T. Xue
David T. Xue
Reg. No. 54,554

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2019, a copy of **PETITIONER CAVIUM LLC'S NOTICE OF APPEAL** was served by filing this document through the PTAB's E2E Processing System as well as delivering a copy via electronic mail upon the following counsel of record:

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