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20 **ATTORNEYS FOR DEFENDANT/COUNTER-CLAIMANT**  
21 **MICROSOFT CORPORATION**

22 **UNITED STATES DISTRICT COURT**  
23 **NORTHERN DISTRICT OF CALIFORNIA**  
24 **SAN FRANCISCO DIVISION**

25 ALACRITECH, INC.,

26 Plaintiff,

27 v.

28 MICROSOFT CORPORATION,

Defendant/Counter-Claimant.

) Case No. 3:04-cv-03284-JSW

) Assigned to the Honorable  
) Jeffrey S. White

) **DEFENDANT/COUNTER-CLAIMANT**  
) **MICROSOFT CORPORATION'S**  
) **ANSWER AND COUNTERCLAIMS**

) **DEMAND FOR JURY TRIAL**  
)  
)  
)

Complaint Filed: August 11, 2004

ANSWER

1  
2 Microsoft Corporation ("Microsoft"), through counsel, answers the Complaint of Alacritech,  
3 Inc. ("Complaint"), and sets forth affirmative and other defenses, and counterclaims, as follows:

4 1. Microsoft is without sufficient knowledge or information to admit or deny the  
5 assertions in paragraph 1 of the Complaint and accordingly denies them.

6 2. Microsoft admits that it is a corporation organized under the laws of the State of  
7 Washington, and that it has a place of business at 1065 La Avenida Avenue, Mountain View,  
8 California 94043; but paragraph 2 of the Complaint is otherwise denied.

9 3. Paragraph 3 of the Complaint is admitted.

10 4. Paragraph 4 of the Complaint is admitted.

11 5. Personal jurisdiction is admitted; but paragraph 5 is otherwise denied.

12 6. Venue is admitted; but paragraph 6 is otherwise denied.

13 7. Paragraph 7 of the Complaint incorporates other paragraphs of the Complaint, and  
14 Microsoft incorporates its response to those other paragraphs.

15 8. It is admitted that Alacritech is making a claim under 35 U.S.C. § 271 et seq.; but  
16 paragraph 8 of the Complaint is otherwise denied.

17 9. Microsoft admits that the front page of U.S. Patent 6,427,171 ("the '171 Patent")  
18 indicates that it was issued on July 30, 2002 and assigned to Alacritech, Inc.; but Microsoft is  
19 otherwise without sufficient knowledge or information to admit or deny the assertions in paragraph  
20 9 of the Complaint and accordingly denies them.

21 10. Microsoft admits that the '171 Patent is entitled "Protocol Processing Stack for Use  
22 With Intelligent Network Interface Device." Microsoft admits that it is developing a software  
23 product referred to as "Microsoft TCP Chimney." Microsoft otherwise denies the allegations  
24 contained in paragraph 10 of the Complaint.

25 11. Paragraph 11 of the Complaint is denied.

26 12. Paragraph 12 of the Complaint is denied.

27 13. Paragraph 13 of the Complaint is denied.







1 **Second Claim For Relief**

2 (Breach of Contract)

3 14. The allegations of Paragraphs 1-13 above are incorporated herein by reference.

4 15. Microsoft and Alacritech are parties to various agreements, including an agreement  
5 relating to Microsoft's Window NT™ Device Driver Development Kit (hereinafter the "End User  
6 License Agreement"), pursuant to which certain Microsoft software was provided to Alacritech  
7 under license.

8 16. The End User License Agreement is a valid, binding contract between Microsoft and  
9 Alacritech.

10 17. Upon information and belief, Alacritech has breached its obligations under the End  
11 User License Agreement by misusing the software provided pursuant to that agreement, including  
12 by reverse engineering such software.

13 18. Upon information and belief, Alacritech may have breached additional agreements  
14 with Microsoft by and through its reverse engineering activity.

15 19. Microsoft has performed its obligations under the End User License Agreement or  
16 has been excused from performing by Alacritech's breach of that agreement.

17 20. As a result of Alacritech's wrongful actions, Microsoft has suffered damages in an  
18 amount to be proven at trial.

19  
20 **Third Claim For Relief**

21 (Misappropriation of Trade Secret)

22 21. The allegations of Paragraphs 1-20 above are incorporated herein by reference.

23 22. Microsoft has expended great effort and resources to create the software provided to  
24 Alacritech pursuant to the End User License Agreement and other agreements. In doing so,  
25 Microsoft has developed various advantageous techniques and mechanisms that are employed in  
26 Microsoft software, including the Microsoft software provided to Alacritech pursuant to the End  
27 User License Agreement.



1 **Fourth Claim For Relief**

2 (Conversion)

3 31. The allegations of Paragraphs 1-30 above are incorporated herein by reference.

4 32. Microsoft enjoys a property interest in the software it licensed to Alacritech pursuant  
5 to the End User License Agreement.

6 33. Upon information and belief, Alacritech has interfered with Microsoft's exclusive  
7 right to possess and/or control the use of its property, including its trade secrets, through its  
8 wrongful reverse engineering of Microsoft software, and its development and commercialization of  
9 a product and acquisition of United States Patents based on that reverse engineering.

10 34. As a result of the wrongful actions of Alacritech, Microsoft has suffered damages,  
11 the precise extent of which cannot be determined at this time. Microsoft is entitled to an award of  
12 damages sufficient to compensate it for the unjust enrichment caused by Alacritech's conversion.

13 35. The aforementioned acts of Alacritech were willful and malicious. Microsoft is  
14 therefore entitled to recover exemplary damages in an amount to be proven at trial.

15  
16 **Prayer for Relief**

17 WHEREFORE, Microsoft respectfully prays:

18 A. For a declaration of non-infringement, invalidity, and unenforceability with respect  
19 to each Alacritech Patent.

20 B. For a declaration that, to the extent that the accused products or software was used or  
21 manufactured by or for the United States government, Alacritech's claims of patent infringement  
22 are barred by 28 U.S.C. § 1498.

23 C. For a declaration that where the accused products or software has been used in  
24 conjunction with Alacritech's own products, Microsoft is not liable to Alacritech because of an  
25 implied or explicit license by Alacritech, or because of the doctrine of exhaustion.

26 D. That Alacritech's Complaint be dismissed in its entirety and that Alacritech take  
27 nothing.



1 E. That Alacritech be held to have breached the End User License Agreement and that  
2 Microsoft be awarded damages for that breach.

3 F. That Alacritech be held to have misappropriated Microsoft's trade secrets and that  
4 Microsoft be awarded damages for that misappropriation.

5 G. That Alacritech be held to have converted Microsoft's property and that Microsoft be  
6 awarded damages for that conversion.

7 H. That Alacritech be enjoined from reverse engineering Microsoft software and from  
8 disclosing or further making use of any trade secrets or confidential Microsoft information obtained  
9 by reverse engineering.

10 I. That Alacritech be ordered to turn over to Microsoft or destroy all copies of  
11 Microsoft trade secrets or confidential information and all documents that describe, disclose, or  
12 embody Microsoft trade secrets or confidential information.

13 J. That Alacritech be ordered to assign to Microsoft all patent rights, including but not  
14 limited to issued patents and pending patent applications, relating to technology developed using  
15 Microsoft trade secrets, or to Microsoft's property interfered with by Alacritech, including but not  
16 limited to all patent rights relating to Alacritech's SLIC Technology.

17 K. That Alacritech be deemed constructive trustee for Microsoft and be ordered to  
18 provide Microsoft an accounting for past profits and/or damages resulting from Alacritech's use of  
19 Microsoft trade secrets or property.

20 L. That Microsoft be awarded exemplary damages.

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1 M. That Microsoft have such other and further relief as this Court may deem just and  
2 proper.

3  
4 Dated: September 30, 2004

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10 Ali R. Sharifahmadian (admitted *pro hac vice*)

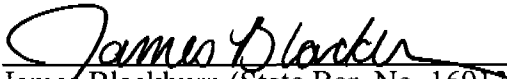
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1 **Jury Demand**

2 Microsoft demands trial by jury for all issues so triable.

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4  
5 Dated: September 30, 2004

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