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7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 QUALCOMM INCORPORATED,

12 Plaintiff,

13 v.

14 BROADCOM CORPORATION,

15 Defendant.

Case No. 05CV1958-B (BLM)

**OPPOSITION TO QUALCOMM
INCORPORATED'S MOTION RE
REMAND PROCEEDINGS**

Date: April 30, 2008
Time: 10 a.m.
Judge: Hon. Barbara L. Major

16 AND RELATED COUNTERCLAIMS.
17

18 **I.**

19 **INTRODUCTION**

20 Responding Attorneys James Batchelder, Christian Mammen, and Kevin
21 Leung (collectively, "Responding Attorneys") hereby oppose certain aspects of the
22 Motion of QUALCOMM Regarding Remand Proceedings. The restrictions that
23 QUALCOMM proposes on discovery are unduly narrow, and would prevent the
24 Responding Attorneys from using the scope of information identified by Judge
25 Brewster as appropriate to defend themselves against QUALCOMM's allegations.
26 Moreover, QUALCOMM's demand that the proceedings be sealed would prevent
27 the Responding Attorneys from responding publicly to accusations that
28 QUALCOMM itself made through publicly-filed declarations and briefs. For these

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1 reasons, the Motion should be denied in part, as discussed below.

2 **II.**
3 **DISCUSSION**

4 QUALCOMM proposes five “clarifications” to the Court’s March 5, 2008
5 Order. The Responding Attorneys will address only those proposals to which they
6 object.

7 **A. QUALCOMM’s First Proposed Clarification Unduly Restricts**
8 **Discovery.**

9 Judge Brewster’s March 5, 2008 Order ruled that any communication
10 “pertaining to JVT” or related discovery “is not privileged information”:

11 “[T]he communications and conduct relevant to the topic area of
12 records (electronic or other) discovery pertaining to JVT and its
13 parents, its ad-hoc committees, and any other topic regarding the
14 standards-setting process for video compression technology is not
15 privileged information.”¹

16 QUALCOMM’s first proposed clarification ignores this ruling, seeking to
17 foreclose much of the discovery permitted by Judge Brewster’s ruling.
18 Specifically, QUALCOMM seeks to restrict the scope of discovery to documents
19 that meet all three of the following criteria: “(i) communications between
20 Qualcomm and the Responding Attorneys, (ii) relating to the selection of
21 custodians and the collection of documents for review and production on the
22 subjects identified by Judge Brewster at the end of his Order, [and] (iii) during the
23 discovery phase of this case.” While the Responding Attorneys agree that
24 discovery in this matter should be focused on the subject matter identified by Judge
25 Brewster, they disagree that the additional restrictions urged by QUALCOMM
26 would be either necessary or fair. Many other categories of documents that do not
27 satisfy all of the above-listed criteria are both relevant and within the scope

28 ¹ March 5, 2008 Order at 6.

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1 established in Judge Brewster's ruling. Those categories of documents are
2 reasonably necessary to the Responding Attorneys' efforts to defend themselves
3 and to respond to the declarations previously submitted by QUALCOMM, and they
4 would not be unduly burdensome for QUALCOMM to produce. A few examples
5 are listed below:

6 • Internal QUALCOMM emails, sent by or to QUALCOMM's in-house
7 legal staff or among employees such as the engineers, from the start of the
8 underlying litigation through trial, that reflect QUALCOMM's efforts (a) to
9 determine whether and to what extent it participated in JVT, (b) to determine
10 whether and to what extent QUALCOMM was aware of the H.264 standard as it
11 was being developed, (c) to locate and collect potentially responsive documents, or
12 (d) to identify custodians of records and 30(b)(6) witnesses.

13 • Documents describing QUALCOMM's protocols for searching for
14 documents and information in connection with litigation matters.

15 • Notes of QUALCOMM employees (including attorneys, paralegals
16 and others) regarding post-trial meetings with outside counsel (including, but not
17 limited to, the Responding Attorneys) regarding the discovery issues that arose in
18 the underlying litigation.

19 • Notes regarding internal QUALCOMM pre-trial and post-trial
20 interviews of witnesses, including declarants Viji Raveendran and Christine Irvine.

21 • Periodic reports identifying categories of documents uploaded by
22 QUALCOMM paralegals to QUALCOMM litigation databases.

23 • Documents relating to Jordan Isailovic (the "consultant"
24 QUALCOMM hired to monitor and report on JVT), including his engagement
25 agreement, invoices, sign-offs for payment of his invoices, and documents from
26 QUALCOMM's post-trial production relating to him.

27 The Court need not establish boundaries for discovery in the abstract.
28 Pursuant to the Court's recent Order, the Responding Attorneys served their request

1 for documents from QUALCOMM on April 11; a copy of that request is attached
2 hereto as Exhibit A. Thus, the Court can hear any substantive objection to specific
3 requests. The unduly narrow restrictions that QUALCOMM proposes should be
4 rejected.

5 **B. The Court Should Reject QUALCOMM's Fourth Proposed**
6 **Clarification That All Papers Be Filed Under Seal.**

7 QUALCOMM's fourth proposed clarification would require the Responding
8 Attorneys to file under seal any declarations or briefs that disclose relevant
9 attorney-client communications. The Court should reject this request.
10 QUALCOMM itself publicly filed declarations and a brief that were highly critical
11 of the Responding Attorneys, and the Responding Attorneys should be allowed to
12 respond in the same manner.

13 **C. QUALCOMM's Fifth Proposed Clarification Would be Appropriate**
14 **Only if the Responding Attorneys Were Assured that They Can File**
15 **Their Papers Without Sealing Them and Use All Available Documents**
16 **and Information to Defend Themselves Fully in any State Bar**
17 **Proceeding.**

18 The Responding Attorneys' primary concern is that they be able to use all
19 materials and information, whether or not otherwise privileged, to defend
20 themselves in these proceedings and in State Bar proceedings. Accordingly,
21 Responding Attorneys do not object to QUALCOMM's request that these
22 proceedings not be deemed a waiver of QUALCOMM's privilege, so long as
23 QUALCOMM has agreed in writing that the Responding Attorneys have the right,
24 under the self-defense exception to the attorney-client privilege or otherwise, to use
25 relevant attorney-client communications to defend themselves in any State Bar
26 proceedings.

27 **III.**

28 **CONCLUSION**

For the reasons set forth above, the Court should deny QUALCOMM's motion to narrowly restrict the scope of discovery. Instead, the Court should be

1 predisposed to permit discovery generally falling within the scope described in
2 Judge Brewster's March 5, 2008 Order, and should rule on objections to specific
3 requests. The Court also should deny QUALCOMM's request that portions of the
4 record be sealed and should preserve the Responding Attorneys' ability to use all
5 materials before the State Bar.

6 DATED: April 16, 2008

SHARTSIS FRIESE LLP

7
8 By: /s/ Joel Zeldin
JOEL ZELDIN

9 Attorneys for Non-Parties
10 JAMES R. BATCHELDER, CHRISTIAN
E. MAMMEN, and KEVIN K. LEUNG

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9 SOUTHERN DISTRICT OF CALIFORNIA

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11 QUALCOMM INCORPORATED,

12 Plaintiff,

13 v.

14 BROADCOM CORPORATION,

15 Defendant.

Case No. 05CV1958-B (BLM)

**RESPONDING ATTORNEYS'
REQUEST FOR PRODUCTION
TO DOCUMENTS TO
QUALCOMM INCORPORATED**

16 AND RELATED COUNTERCLAIMS.
17

18 PROPOUNDING PARTY: Responding Attorneys James Batchelder, Christian
19 Mammen, and Kevin Leung

20 RESPONDING PARTY: QUALCOMM Incorporated

21 SET NO.: ONE

22 Pursuant to the Court's Order Setting Status Hearing dated April 3, 2008,
23 Responding Attorneys James Batchelder, Christian Mammen, and Kevin Leung
24 request that, within thirty days of the date of service of this request, QUALCOMM
25 Incorporated respond to these requests for production of documents and at that time
26 produce the documents and things described for inspection and copying at Shartsis
27 Friese LLP, One Maritime Plaza, 18th Floor, San Francisco, CA 94111, subject to
28 the following definitions and instructions.

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DEFINITIONS AND INSTRUCTIONS

1
2 1. "DOCUMENTS" includes all documents or electronically stored
3 information, as described in Rule 34(a)(1)(A) of the Federal Rules of Civil
4 Procedure.

5 2. "COMMUNICATIONS" includes all written forms of communication
6 or correspondence, including emails, electronic messages, letters, and memoranda,
7 including memoranda and notes reporting or summarizing oral communications.

8 3. The "LITIGATION" means the above-captioned lawsuit filed by
9 QUALCOMM against Broadcom.

10 4. "PARTICIPATION" and variants thereof shall be construed broadly to
11 include attendance, active or passive monitoring, membership, and submission of
12 materials (including without limitation technical proposals).

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

13
14
15 All notes and memoranda written by QUALCOMM employees concerning
16 interviews of any of the following individuals, that took place at any time from
17 October 1, 2005 through August 6, 2007, and that related to the LITIGATION:
18 James Determan, Harinath Garudadri, Christine Irvine, Scott Ludwin, Roger
19 Martin, Sandip Minhas, Viji Raveendran, Yuriy Reznik, Amnon Silberger, Edward
20 Tiedemann, Kent Walker, and Jay Yun.

REQUEST FOR PRODUCTION NO. 2:

21
22 All DOCUMENTS that describe QUALCOMM's procedures, policies, or
23 preferred practices for searching for documents and information in connection with
24 litigation matters that were in effect at any time from 2003 through 2007.

REQUEST FOR PRODUCTION NO. 3:

25
26 All COMMUNICATIONS between or among QUALCOMM personnel
27 (including but not limited to QUALCOMM's in-house legal staff), or between
28 QUALCOMM personnel and outside counsel in the LITIGATION, that were

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1 written at any time between July 1, 2005 and January 31, 2007, and that evidence
2 the respective roles that QUALCOMM and its outside counsel in the LITIGATION
3 would or should play in handling any one or more discovery tasks arising in the
4 LITIGATION.

5 **REQUEST FOR PRODUCTION NO. 4:**

6 All COMMUNICATIONS between or among QUALCOMM personnel
7 (including but not limited to QUALCOMM's in-house legal staff), or between
8 QUALCOMM personnel and outside counsel in the LITIGATION, that were
9 written at any time between July 1, 2005 and January 31, 2007, and that evidence
10 QUALCOMM's efforts to determine whether and to what extent QUALCOMM
11 PARTICIPATED in the JVT.

12 **REQUEST FOR PRODUCTION NO. 5:**

13 All COMMUNICATIONS between or among QUALCOMM personnel
14 (including but not limited to QUALCOMM's in-house legal staff), or between
15 QUALCOMM personnel and outside counsel in the LITIGATION, that were
16 written at any time between July 1, 2005 and January 31, 2007, and that evidence
17 QUALCOMM's efforts to determine whether and to what extent QUALCOMM
18 was aware of the development of the H.264 standard during the period that standard
19 was under development (*i.e.*, December 2001 through May 2003).

20 **REQUEST FOR PRODUCTION NO. 6:**

21 All COMMUNICATIONS between or among QUALCOMM personnel
22 (including but not limited to QUALCOMM's in-house legal staff), or between
23 QUALCOMM personnel and outside counsel in the LITIGATION, that were
24 written at any time between July 1, 2005 and January 31, 2007, and that either
25 pertain to QUALCOMM locating, searching for, providing or producing any
26 DOCUMENT or DOCUMENTS in connection with the LITIGATION, or pertain
27 to any request or suggestion by outside counsel in the LITIGATION that
28 QUALCOMM do so.

1 **REQUEST FOR PRODUCTION NO. 7:**

2 All COMMUNICATIONS between or among QUALCOMM personnel
3 (including but not limited to QUALCOMM's in-house legal staff), or between
4 QUALCOMM personnel and outside counsel in the LITIGATION, that were
5 written at any time between July 1, 2005 and January 31, 2007, and that evidence
6 any verbal response or physical act by QUALCOMM in response to any document-
7 related request or suggestion by outside counsel in connection with the
8 LITIGATION.

9 **REQUEST FOR PRODUCTION NO. 8:**

10 All COMMUNICATIONS between or among QUALCOMM personnel
11 (including but not limited to QUALCOMM's in-house legal staff), or between
12 QUALCOMM personnel and outside counsel in the LITIGATION, that were
13 written at any time between July 1, 2005 and January 31, 2007, and that evidence
14 efforts by QUALCOMM or its counsel to identify custodians of DOCUMENTS
15 potentially relevant to the LITIGATION and/or potentially responsive to discovery
16 requests the LITIGATION.

17 **REQUEST FOR PRODUCTION NO. 9:**

18 All COMMUNICATIONS between or among QUALCOMM personnel
19 (including but not limited to QUALCOMM's in-house legal staff), or between
20 QUALCOMM personnel and outside counsel in the LITIGATION, that were
21 written at any time between July 1, 2005 and January 31, 2007, and that evidence
22 efforts by QUALCOMM or its counsel in connection with the LITIGATION to
23 identify individuals likely to have DOCUMENTS concerning the JVT and/or the
24 H.264 standard.

25 **REQUEST FOR PRODUCTION NO. 10:**

26 All COMMUNICATIONS between or among QUALCOMM personnel
27 (including but not limited to QUALCOMM's in-house legal staff), or between
28 QUALCOMM personnel and outside counsel in the LITIGATION, that were

1 written at any time between July 1, 2005 and January 31, 2007, and that evidence
2 efforts by QUALCOMM or its counsel to identify or prepare the appropriate
3 individuals who would testify in the LITIGATION, pursuant to Rule 30(b)(6),
4 concerning QUALCOMM's PARTICIPATION in the JVT and other standards-
5 setting organizations.

6 **REQUEST FOR PRODUCTION NO. 11:**

7 All notes and memoranda written by QUALCOMM personnel regarding
8 meetings or other communications with attorneys who represented QUALCOMM
9 in the LITIGATION, that took place after the trial of the LITIGATION concluded,
10 and that concerned any of the discovery issues that arose in the LITIGATION.

11 **REQUEST FOR PRODUCTION NO. 12:**

12 All reports prepared by or at the direction of QUALCOMM in-house legal
13 personnel, from July 1, 2005 through January 31, 2007, that identify categories of
14 documents uploaded to any QUALCOMM litigation database in connection with
15 the LITIGATION.

16 **REQUEST FOR PRODUCTION NO. 13:**

17 All COMMUNICATIONS between any QUALCOMM personnel and Jordan
18 Isailovic relating to the JVT.

19 **REQUEST FOR PRODUCTION NO. 14:**

20 All DOCUMENTS concerning the engagement or retention of Jordan
21 Isailovic for any purpose relating to meetings or proceedings of the JVT or relating
22 to development of the H.264 standard, including but not limited to any engagement
23 agreement, invoices, and DOCUMENTS sufficient to identify the individuals who
24 approved such invoices for payment and the dates on which invoices were
25 approved.

26 **REQUEST FOR PRODUCTION NO. 15:**

27 All COMMUNICATIONS written by any QUALCOMM personnel prior to
28 August 6, 2007, that refer to Jordan Isailovic by first name, last name, full name,

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1 nickname, or any combination thereof.

2 **REQUEST FOR PRODUCTION NO. 16:**

3 All DOCUMENTS requested by any other person or entity in connection
4 with the instant remand proceedings.

5 **REQUEST FOR PRODUCTION NO. 17:**

6 All DOCUMENTS written at any time between July 1, 2005 and January 31,
7 2007 that were given or sent to QUALCOMM by a participant in these proceedings
8 other than Batchelder, Mammen, Leung or their counsel at any time after
9 August 12, 2007.

10 **REQUEST FOR PRODUCTION NO. 18:**

11 All DOCUMENTS that QUALCOMM intends to use or rely on in
12 connection with the instant remand proceedings.

13 **REQUEST FOR PRODUCTION NO. 19:**

14 All DOCUMENTS concerning QUALCOMM's evaluation and modification
15 of procedures, policies, or preferred practices for searching for documents and
16 information in connection with litigation matters that took place after the trial of the
17 LITIGATION, including but not limited to internal COMMUNICATIONS and
18 COMMUNICATIONS with attorneys from Day Casebeer Madrid & Batchelder
19 LLP and about the evaluation and modification of such procedures, policies, or
20 preferred practices.

21
22 DATED: April 11, 2008 SHARTSIS FRIESE LLP

23 By: 
24 _____ JOEL ZELDIN

25 Attorneys for Non-Parties
26 JAMES R. BATCHELDER, CHRISTIAN E.
27 MAMMEN, and KEVIN K. LEUNG
28

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PROOF OF SERVICE

I, Cristina Pelayo, declare:

I am a citizen of the United States and employed in the City and County of San Francisco, California by Shartsis Friese LLP at One Maritime Plaza, Eighteenth Floor, San Francisco, California 94111. I am over the age of eighteen years and am not a party to the within-entitled action.

On April 4, 2008, at Shartsis Friese LLP located at the above-referenced address, I served on the interested parties in said cause the attached **RESPONDING ATTORNEYS' REQUEST FOR PRODUCTION OF DOCUMENTS TO QUALCOMM INCORPORATED**

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid in accordance with the firm's practice, of which I am familiar, of collection and processing correspondence for mailing on the same day to the person(s) at the address(es) set forth below:
- by consigning the document(s) listed above to Federal Express for guaranteed delivery on the next business day to the person(s) at the address(es) set forth below:
- by personal delivery by messenger service of the document(s) above to the person(s) at the address(es) set forth below:
- by facsimile transmission pursuant to Rule 2008 of the California Rules of Court on this date before 5:00 p.m. (PST) of the document(s) listed above from sending facsimile machine main telephone number (415) 421-2922, and which transmission was reported as complete and without error to facsimile number(s) set forth below:
- by transmitting via e-mail the document(s) listed above to the Case Management/Electronic filing system, such document(s) were electronically served on the addressee(s) set forth below:

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14 I declare under penalty of perjury that the foregoing is true and correct.

15 Executed on April 11, 2008, in San Francisco, California.

17 
18 _____
Cristina Pelayo

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PROOF OF SERVICE

I, Cristina Pelayo, declare:

I am a citizen of the United States and employed in the City and County of San Francisco, California by Shartsis Friese LLP at One Maritime Plaza, Eighteenth Floor, San Francisco, California 94111. I am over the age of eighteen years and am not a party to the within-entitled action.

On April 16, 2008, at Shartsis Friese LLP located at the above-referenced address, I served on the interested parties in said cause the attached **OPPOSITION TO QUALCOMM INCORPORATED'S MOTION RE REMAND PROCEEDINGS**

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid in accordance with the firm's practice, of which I am familiar, of collection and processing correspondence for mailing on the same day to the person(s) at the address(es) set forth below:
- by consigning the document(s) listed above to Federal Express for guaranteed delivery on the next business day to the person(s) at the address(es) set forth below:
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- by transmitting via e-filing the document(s) listed above to the Case Management/Electronic filing system, such document(s) were electronically served on the addressee(s) set forth below:

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