

1 ROBERT S. BREWER, JR. (SBN 65294)  
JAMES S. MCNEILL (SBN 201663)  
2 MCKENNA LONG & ALDRIDGE LLP  
750 B Street, Suite 3300  
3 San Diego, CA 92101  
Telephone: (619) 595-5400  
4 Facsimile: (619) 595-5450

5 WILLIAM F. LEE (admitted *pro hac vice*)  
JOHN J. REGAN (admitted *pro hac vice*)  
6 WILMER CUTLER PICKERING  
HALE AND DORR LLP  
7 60 State Street  
Boston, MA 02109  
8 Telephone: (617) 526-6000  
Facsimile: (617) 526-5000

9 MARK D. SELWYN (admitted *pro hac vice*)  
10 WILMER CUTLER PICKERING  
HALE AND DORR LLP  
11 1117 California Avenue  
Palo Alto, California 94304  
12 Phone: (650) 858-6000  
Fax: (650) 858-6100

13 Attorneys for Defendant/Counterclaim Plaintiff  
14 BROADCOM CORPORATION

15 UNITED STATES DISTRICT COURT  
16 SOUTHERN DISTRICT OF CALIFORNIA

17  
18 QUALCOMM INCORPORATED,  
19 Plaintiff,  
20 v.  
21 BROADCOM CORPORATION,  
22 Defendant.

Case No. 05 CV 01958 B (BLM)

**BROADCOM CORPORATION'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF ITS  
MOTION TO COMPEL**

Date: June 11, 2008  
Time: 10:00 a.m.  
Judge: Hon. Barbara L. Major

23 AND RELATED COUNTERCLAIMS  
24  
25  
26  
27  
28

1 **I. INTRODUCTION**

2 Despite the Court’s explicit caution that discovery in this Remand Proceeding be free of  
3 “anyone playing games with objections or other conduct,” and its clear instruction that the parties  
4 should work “informally” to complete document production in this Proceeding (Mar. 20, 2008 Tr.  
5 at 23, 28), Qualcomm Inc. (“Qualcomm”), as it did in the underlying proceeding, is blocking the  
6 legitimate and proper discovery efforts of Broadcom Corporation (“Broadcom”), and the Court’s  
7 interest in the efficient and timely progress of discovery.

8 In response to Broadcom’s April 11, 2008 Third Set of Requests for Production, Nos.  
9 116-125, Rule 30(b)(6) Notice of Deposition, and individual deposition notices of Viji  
10 Raveendran and A. Chris Irvine, Qualcomm has propounded lengthy, hyper-technical objections  
11 that seek to: (1) improperly limit discovery in this Remand Proceeding solely to the Responding  
12 Attorneys’ document collection and production efforts; and (2) exclude from discovery any  
13 internal Qualcomm conduct or communications regarding discovery in the underlying  
14 proceeding. Qualcomm’s objections are particularly troubling, given that it was Qualcomm,  
15 through the publicly-filed October 2007 OSC declarations of its four employees, that first sought  
16 to criticize the actions and inactions of the Responding Attorneys, and now seeks to shield from  
17 discovery any information about Qualcomm that is relevant to whether the Responding Attorneys,  
18 in fact, acted improperly. Qualcomm should not be permitted to have it both ways. Because  
19 Qualcomm’s objections fundamentally mischaracterize the District Court’s March 5, 2008  
20 Remand Order and the scope of this Proceeding, and improperly seek to shield from discovery  
21 relevant and responsive information regarding Qualcomm’s own conduct, those objections should  
22 be overruled.

23 For the reasons set forth in detail below, Broadcom respectfully requests that the Court  
24 grant Broadcom’s motion to compel and order Qualcomm to: (1) produce all relevant and  
25 responsive documents and things in response to Request Nos. 116-125 for the time period of May  
26 1, 2005 through August 7, 2007; (2) produce a witness(es) in response to Broadcom’s Rule  
27  
28

1 30(b)(6) Notice; and (3) produce Ms. Raveendran and Ms. Irvine for deposition in response to  
 2 Broadcom's individual deposition notices.<sup>1</sup> Broadcom also respectfully requests that the Court  
 3 set specific dates governing the discovery in this Proceeding, so that Qualcomm cannot interpose  
 4 further delays. Broadcom requests that Qualcomm complete its document production within  
 5 fourteen (14) days of the Court's decision on this motion to compel, with deposition discovery  
 6 completed within 21 days thereafter. At that point, Qualcomm will have had Broadcom's  
 7 document requests for more than two months.

## 8 **II. FACTUAL BACKGROUND**

9 On January 7, 2008, the Court issued its Order Granting In Part And Denying In Part  
 10 Defendant's Motion For Sanctions, And Sanctioning Qualcomm, Incorporated And Individual  
 11 Lawyers. (Docket No. 718.) In its Order, the Court ordered Qualcomm to pay Broadcom \$8.5  
 12 million dollars, and ordered five Qualcomm in-house attorneys, as well as six of Qualcomm's  
 13 former outside counsel (the "Responding Attorneys"), to participate in the development of a  
 14 comprehensive Case Review and Enforcement of Discovery Obligations ("CREDO") protocol,  
 15 which was designed to "identify the failures in the case management and discovery protocol  
 16 utilized by Qualcomm and its in-house lawyers" and to "prevent such failures in the future." (*Id.*  
 17 at 38, 41-42).

18 On January 22, 2008, the Responding Attorneys timely filed objections to the January 7,  
 19 2008 Order. (Docket Nos. 720, 721, 722, and 723.) Qualcomm did not file objections to the  
 20 Court's January 7, 2008 Order.<sup>2</sup> On March 5, 2008, the District Court issued an Order  
 21

---

22 <sup>1</sup> Broadcom is, as it has indicated in its Notices and during the subsequent parties' meet-  
 23 and-confer sessions, willing to work with Qualcomm and the Responding Attorneys to schedule  
 24 all such depositions at mutually convenient times and locations.

25 <sup>2</sup> On January 31, 2008, Qualcomm paid the \$8.5 million dollar sanction imposed in the  
 26 Court's January 7, 2008 Order. (*See* Saxton Decl., Ex. A. As used herein, "Saxton Decl." refers to  
 27 the Declaration of Kate Saxton in Support of Broadcom Corporation's Memorandum Of Points  
 28 And Authorities In Support Its Motion To Compel.) The fact that Qualcomm has paid the \$8.5  
 million dollar sanction does not eliminate the relevance of Qualcomm's internal conduct  
 concerning discovery in the underlying proceeding, as Qualcomm now suggests. As explained in  
 detail herein, Qualcomm's internal conduct regarding its compliance with its discovery

(footnote continued on next page)

05 CV 01958

1 Remanding In Part Order Of Magistrate Court Re Motion For Sanctions Dated January 7, 2008  
 2 (the “Remand Order”). In the Remand Order, the District Court vacated the Magistrate Court’s  
 3 January 7, 2008 Order regarding the Responding Attorneys and remanded the six Responding  
 4 Attorneys to the Magistrate Court for further hearings. (Remand Order at 2.) The District Court  
 5 found:

6 “The [self-defense] exception applying, the communications and  
 7 conduct relevant to the topic area of records (electronic or other)  
 8 discovery pertaining to JVT and its parents, its ad-hoc committees,  
 9 and any other topic regarding the standards-setting process for  
 video compression technology is not privileged information.” (*Id.*  
 at 6).

10 Thereafter, on March 20, 2008, the Magistrate Court held a status conference to discuss  
 11 further proceedings following the Remand Order. During that status conference, the Court stated  
 12 that it would hold an evidentiary hearing, and that the parties would be permitted to conduct  
 13 discovery in preparation for such a hearing. (Mar. 20, 2007 Tr. at 22-23.)<sup>3</sup> A follow-up status  
 14 conference was held on April 2, 2008, during which the Court set discovery deadlines for the  
 15 Remand Proceedings.

16 On April 11, 2008, consistent with the Court’s April 2, 2008 order, Broadcom served its  
 17 Third Set of Requests for Production, Nos. 116-125, which seek, among other things, documents  
 18 and information concerning Qualcomm’s discovery conduct regarding the H.264 standard and its  
 19 JVT participation -- throughout fact discovery, pre-trial motions practice, trial, and post-trial  
 20 hearings in the underlying proceeding. (*See Saxton Decl., Ex. B.*) On that same day, Broadcom  
 21 also served a Rule 30(b)(6) Notice on Qualcomm, seeking testimony consistent with the topics  
 22 contained in Broadcom’s Requests, as well as individual deposition notices for Viji Raveendran  
 23 and A. Chris Irvine, each of whom testified in the underlying proceeding and each of whom

24 \_\_\_\_\_  
 (*footnote continued from previous page*)

25 obligations is certainly relevant for the issues before the Court in this Remand Proceeding,  
 26 regardless of whether Qualcomm has paid the \$8.5 million sanction.

27 <sup>3</sup> The Court further ruled that Qualcomm would be required to complete the CREDO  
 28 process, but stated that the Responding Attorneys were not required to participate further in the  
 CREDO process. (Mar. 20, 2008 Tr. at 50.)

1 submitted declarations regarding the Responding Attorneys' conduct as part of the Court's OSC.  
2 (*See Saxton Decl., Ex. E.*)<sup>4</sup>

3 On April 28, 2008, Qualcomm served its Objections and Responses to Broadcom's Third  
4 Set of Requests for Production, Nos. 116-125, as well as its objections and responses to  
5 Broadcom's Rule 30(b)(6) Notice and the individual notices of deposition for Ms. Raveendran  
6 and Ms. Irvine. (*See Saxton Decl., Ex. G.*) In its objections and responses, Qualcomm agreed  
7 only to a very limited production in response to Request Nos. 116-118, and refused to produce  
8 any documents in response to Request Nos. 119-125. (*Id.*) Qualcomm's objections and  
9 responses to Broadcom's document requests included, among other things:

- 10 • Objections as to the scope of this Remand Proceeding. In particular, Qualcomm's  
11 objections seek to limit discovery only to the "Responding Attorneys' performance  
12 of discovery responsibilities in the above-captioned action with respect to records  
13 discovery pertaining to JVT, its parents, its ad-hoc committees, and the standards  
14 setting process for video compression technology" and exclude from discovery  
15 any internal communications between or among Qualcomm and its employees,  
16 agents, and representatives. (*Id.*)
- 17 • A demand that, prior to requiring Qualcomm to produce any documents, the Court  
18 enter an order providing that "(1) any such privileged material will not be shared  
19 with or disclosed to anyone other than Responding Attorneys . . . and their  
20 counsel, Broadcom . . . and its counsel and the Court, (2) production of such  
21 documents does not waive any privilege and no one can assert that by reason of  
22 this production there has been any waiver of any privilege; (3) any court filings  
23 that disclose or reflect any such privileged material will be filed under seal; and (4)  
24 any discussion or argument relating to the content of such privileged material may  
25 only occur *in camera.*" (*Id.*)<sup>5</sup>

22 <sup>4</sup> Each of the Responding Attorneys also served requests for production on April 11, 2008.  
23 Those Requests included, among others, requests similar to those propounded by Broadcom.  
24 Qualcomm served requests for production on each of the Responding Attorneys, although  
25 Qualcomm stated in its cover letter that because Qualcomm had not yet decided to participate in  
26 this Remand Proceeding, each Responding Attorney should not, at this time, produce any  
27 documents in response to Qualcomm's requests. (*See Saxton Decl., Ex. F.*)

26 <sup>5</sup> Broadcom does not agree that Qualcomm's request for such an order is appropriate. As  
27 set forth in detail in Broadcom's Opposition to Qualcomm Inc.'s Memorandum of Points and  
28 Authorities In Support Of Qualcomm Inc.'s Motion Regarding Remand Proceedings (Docket No.  
783) Broadcom objects to any attempt by Qualcomm to exclude Broadcom from this Proceeding,  
and further objects to Qualcomm's attempts to seal this Proceeding.

- 1           •       Objections as to the proper time period for discovery. In particular, Qualcomm’s  
2           objections seek to limit the relevant time period for discovery to October 14, 2005  
3           through February 9, 2007. (*Id.*)

4           Qualcomm’s objections to Broadcom’s Rule 30(b)(6) Notice and individual notices set  
5           forth similar objections to those outlined above. (*See* Saxton Decl., Ex. H.) Qualcomm also  
6           refused to provide a witness in response to Broadcom’s Rule 30(b)(6) Notice or the individual  
7           notices of Ms. Raveendran and Ms. Irvine. (*Id.*)

8           On April 30, 2008 and May 1, 2008, counsel for Broadcom and Qualcomm met-and-  
9           conferred regarding Qualcomm’s objections to Broadcom’s Requests for Production, Rule  
10          30(b)(6) Notice, and individual notices. During those meet-and-confer sessions, Qualcomm  
11          maintained all of its objections to Broadcom’s Requests and Rule 30(b)(6) Notice. In response to  
12          Broadcom’s notices of Ms. Raveendran and Ms. Irvine, Qualcomm stated that it might consider  
13          producing Ms. Raveendran and Ms. Irvine for deposition if certain conditions were met, but that  
14          it believed such deposition requests were “premature” at this time, despite the fact that Broadcom  
15          stated that such depositions would only occur after Qualcomm had completed its document  
16          production.<sup>6</sup> At the end of the meet-and-confer process on May 1, 2008, Broadcom informed  
17          Qualcomm that it would move to compel the documents and deposition testimony that Qualcomm  
18          was refusing to provide.

---

19  
20  
21  
22  
23  
24  
25          <sup>6</sup> On May 5, 2008, Qualcomm served amended objections and responses to Broadcom’s  
26          Requests for Production and notices of deposition to Ms. Raveendran and Ms. Irvine. In  
27          particular, Qualcomm stated that it would provide certain documents in response to Request Nos.  
28          123 and 124 if the Court agreed to issue the order described above at page 7-8. Similarly,  
                Qualcomm stated that it would agree to produce Ms. Raveendran and Ms. Irvine for deposition  
                “depending on the resolution by the court of all outstanding issues as to both the scope of  
                discovery and Qualcomm’s privilege.” (*Id.*)

1 **III. ARGUMENT**

2 **A. Broadcom's Discovery Requests Are Within The Scope Of The Remand**  
 3 **Order.**

4 Broadcom's discovery requests are narrowly tailored to the scope of this Remand  
 5 Proceeding and to the central issue before this Court -- namely, whether the Responding  
 6 Attorneys should be sanctioned for the instances of discovery misconduct identified by the  
 7 District Court and Magistrate Court in their respective orders. Each of Broadcom's nine Requests  
 8 seek documents and information concerning Qualcomm's communications with the Responding  
 9 Attorneys, and between and among Qualcomm and its employees, agents, and representatives,  
 10 regarding topics that track those mentioned by the District Court in its Remand Order.

11 Specifically, Broadcom's request seeks documents and information concerning:

- 12 • The search for, collection, and production of documents concerning the H.264  
 13 standard and Qualcomm's participation in the JVT, ISO, IEC and ITU-T (Request  
 14 No. 116);
- 15 • The identification of custodians and search terms for the collection and production  
 16 of documents concerning the H.264 standard and Qualcomm's participation in the  
 17 JVT, ISO, IEC and ITU-T (Request No. 117);
- 18 • Preparation of Qualcomm's interrogatory responses and responses to requests for  
 19 production, and objections thereto, concerning the H.264 standard and  
 20 Qualcomm's participation in the JVT, ISO, IEC and ITU-T (Request No. 118);
- 21 • Identification and preparation of Qualcomm's Rule 30(b)(6) witnesses concerning  
 22 the H.264 standard and Qualcomm's participation in the JVT, ISO, IEC and ITU-T  
 23 (Request No. 119);
- 24 • Identification and preparation of Qualcomm's deposition and trial witnesses  
 25 concerning the H.264 standard and Qualcomm's participation in the JVT, ISO,  
 26 IEC and ITU-T (Request No. 120);
- 27 • Qualcomm's identification, location, and production of the document bates  
 28 numbered 1958QB1307481 – 1958QB1307483 (Request No. 121);<sup>7</sup>

---

26 <sup>7</sup> These bates numbered pages are a series of three additional emails between Ms.  
 27 Raveendran and the JVT experts group, including an email from Ms. Raveendran to the JVT  
 28 experts' list-serve, in which she asks to be included on the list-serve. (*See Saxton Decl., Ex. C.*)  
 These emails, which were produced on August 7, 2007, contradict Ms. Raveendran's sworn

(footnote continued on next page)

05 CV 01958

- 1 • Documents produced, transmitted, or provided by Qualcomm to any other Person  
2 in connection with this Remand Proceeding (Request No. 123);
- 3 • Documents produced, transmitted, or provided to Qualcomm by any other Person  
4 in connection with this Remand Proceeding (Request No. 124);
- 5 • Documents Qualcomm intends to reference or rely on during this Remand  
6 Proceeding (Request No. 125).

7 In its Remand Order, the District Court did not, as Qualcomm seems to suggest, limit  
8 discovery in this Remand Proceeding solely to “the Responding Attorneys’ performance of  
9 discovery responsibilities in the above-captioned sanction with respect to records discovery  
10 pertaining to the JVT, its parents, its ad-hoc committees, and the standards-setting process for  
11 video compression technology.” (See Saxton Decl., Ex. I, at 3.) Rather, in concluding that the  
12 self-defense exception applied, the District Court considered *all* “failure[s] of discovery” during  
13 all phases of the underlying proceeding (Remand Order at 5), not just those failures related to the  
14 Responding Attorneys document collection efforts, as discoverable subject matter in this  
15 Proceeding. Those other failures include an incomplete investigation into discovery responses,  
16 statements made in briefs and motions that lacked foundation, and inadequate selection and  
17 preparation of Rule 30(b)(6) witnesses. (See August 6, 2007 Waiver Order at 23; January 7, 2008  
18 Sanctions Order at 13.)

19 Indeed, in holding that the self-defense exception applies, the District Court specifically  
20 concluded that, in addition to “the topic area of records (electronic and other) discovery,” “*any*  
21 *other topic* regarding the standards-setting process for video compression technology” was not  
22 “privileged information,” and therefore was discoverable subject matter and could be used by the  
23 Responding Attorneys in defending their conduct in response to the OSC. (*Id.* at 5-6, emphasis  
24 added.) Thus, by its very terms, the Remand Order and the scope of discovery for this  
25 Proceeding necessarily include not only Qualcomm’s discovery conduct related to its document

26 \_\_\_\_\_  
(footnote continued from previous page)

27 testimony at trial that some other party likely signed her up for the JVT expert’s list-serve. (See  
28 Saxton Decl., Ex. D.)

1 collection efforts, but also its discovery conduct related to its interrogatory objections and  
2 responses, the selection and preparation of its Rule 30(b)(6) witnesses and individual deposition  
3 witnesses, its pre-trial motions practice, and its trial and post-trial conduct concerning the H.264  
4 standard and Qualcomm's participation in the JVT, ISO, IEC and ITU-T.

5 Broadcom's discovery requests seek precisely this type of information. Request Nos.  
6 116-117 and 121 seek information concerning document collection and production, which the  
7 District Court explicitly stated is within the scope of discovery for this Proceeding. (*See* Remand  
8 Order at 6, "records (electronic or otherwise)" related discovery is not privileged.) Request Nos.  
9 118-120 seek document and information concerning Qualcomm's interrogatory responses and  
10 witness preparation regarding the H.264 standard and Qualcomm's participation in its  
11 development, which the District Court also stated was within the scope of discovery for this  
12 Proceeding. (*See id.* at 6, "any other topic regarding the standards-setting process for video  
13 compression technology is not privileged information.") Finally, Request Nos. 123-125 seek  
14 information provided to Qualcomm, or by Qualcomm, to any other party in this Proceeding, or  
15 which Qualcomm intends to rely on in this Proceeding. (*See* Saxton Decl., at Ex. B at 9.) This  
16 information is also certainly within the scope of the Remand Order, which explicitly references  
17 Qualcomm's decision to file publicly on October 3, 2007 (only 9 days before the OSC hearing)  
18 the four Qualcomm declarations "exonerative of Qualcomm and critical of the services and  
19 advice of their retained counsel," and which the Responding Attorneys could not rebut because of  
20 Qualcomm's privilege assertions. (Remand Order at 5.)

21 Broadcom's discovery requests seek to achieve fundamental fairness in the Remand  
22 Proceeding by preventing Qualcomm, contrary to this Court's directives, from again lobbying in  
23 evidence "at the last minute." (Mar. 20, 2008 Tr. at 33.) Qualcomm's efforts to shield these  
24 categories of relevant information from discovery are improper, contrary to the Remand Order  
25 and purpose of this Proceeding, and should be rejected.

1           **B. Qualcomm's Objections Improperly Seek To Limit The Scope Of This**  
2           **Proceeding And Should Be Rejected.**

3           Despite the clear and unambiguous language of the Remand Order, which is indicative of  
4 Judge Brewster's intentions, Qualcomm, through its objections, impermissibly seeks to limit or  
5 restrict discovery in this Proceeding in, at least, four fundamental ways:

6           *First*, Qualcomm seeks to limit discovery in this Proceeding *solely* to the document  
7 collection and production efforts of the Responding Attorneys, and shield from discovery any of  
8 its own discovery conduct in the underlying proceedings. (*See, e.g.*, Saxton Decl., Ex. G  
9 at 5:1-8.) As the Court is well-aware, the discovery failures in the underlying proceeding were  
10 not limited to document collection and production, but included failures related to Qualcomm's  
11 interrogatory objections and responses, the selection and preparation of Qualcomm's Rule  
12 30(b)(6) witnesses and individual deposition witnesses, pretrial motions practice, and  
13 Qualcomm's trial and post-trial conduct. (*See* August 6, 2007 Waiver Order at 23; January 7,  
14 2008 Sanctions Order at 13.).

15           To determine the cause of, and responsibility for, these discovery failures, discovery in  
16 this Proceeding must necessarily include Qualcomm's internal actions, inactions, and  
17 communications throughout the underlying proceeding, not just the limited issue of the  
18 Responding Attorneys document collection and production conduct. To the extent that  
19 Qualcomm possesses internal documents, knowledge, and communications regarding its  
20 responses to Broadcom's JVT-related discovery efforts which explain why or how these  
21 discovery failures occurred, or which take responsibility or indicate accountability for such  
22 failures (which would stand, of course, in sharp contrast to the statements in the four Qualcomm  
23 declarations submitted in response to the OSC), this information is probative of whether the  
24 Responding Attorneys are culpable, and should be produced.

25           Similarly, internal Qualcomm communications regarding Qualcomm's willingness (or  
26 refusal) to comply with its discovery obligations are relevant to the scope of this Remand  
27 Proceeding -- regardless of whether such communications reflect discussions with the  
28 Responding Attorneys or purely internal communications at Qualcomm. Such communications

1 could provide exculpatory statements or information that are important to the Court's  
2 determination of whether any sanctions should issue against the Responding Attorneys -- which is  
3 why the Responding Attorneys want to see them as well. Moreover, Qualcomm's internal  
4 communications and conduct may challenge the credibility of Qualcomm or its witnesses when  
5 weighed against the public statements and declarations they have already made. Qualcomm's  
6 efforts to narrow discovery to entirely exclude *its own conduct* regarding the discovery failures  
7 identified by this Court and the District Court, and to limit discovery only to the document  
8 collection efforts of the Responding Attorneys, should therefore be rejected.

9 *Second*, Qualcomm impermissibly seeks to narrowly restrict relevant discovery regarding  
10 the misconduct in the underlying proceeding to the time period from October 14, 2005 (the date  
11 the complaint was filed) until February 9, 2007 (the hearing date on Broadcom's equitable  
12 defense of waiver). (*See, e.g.*, Saxton Decl., Ex. G at 4:16-20.) Qualcomm's proposed date  
13 restriction is inconsistent with the purpose of this Proceeding and would, if accepted, likely  
14 exclude relevant information necessary for the Responding Attorneys to defend their conduct in  
15 the underlying proceeding. The appropriate date restriction for any discovery conduct in the  
16 underlying proceeding is May 1, 2005 (or the date on which Qualcomm likely first contemplated  
17 filing this action against Broadcom) through August 7, 2007, the date Qualcomm produced the  
18 last three improperly withheld emails regarding Ms. Raveendran's sign-up for participation in the  
19 JVT. (*See* Saxton Decl., Ex. C.) Given that Qualcomm's allegations in the underlying  
20 proceeding were predicated on the essentiality of the patents-in-suit to the H.264 standard,  
21 Qualcomm's pre-filing investigation (or the lack thereof) regarding its participation in the JVT is  
22 relevant to this Proceeding. Similarly, given that Qualcomm's production of the withheld  
23 documents did not even begin until April 2007, and concluded on August 7, 2007, it is August 7,  
24 2007, not February 9, 2007, which is the proper end date for discovery in this Proceeding. The  
25 Court should therefore deny Qualcomm's request to limit discovery in this Proceeding to the  
26 period of October 14, 2005 through February 9, 2007.

27 *Third*, Qualcomm continues to demand a protective order limiting the public and  
28 Broadcom's access to information produced in this Proceeding. Qualcomm's request is

1 inconsistent with the Remand Order and this Court's directives regarding filing under seal. In  
2 holding in the Remand Order that the self-defense exception applied, the District Court  
3 particularly relied upon Qualcomm's decision to file publicly four declarations of certain  
4 Qualcomm employees, all of which were "exonerative of Qualcomm and critical of the services  
5 and advice of their retained counsel. *None were filed under seal.*" (Remand Order at 5,  
6 emphasis added.) This Court has also considered the issue of whether this Remand Proceeding  
7 should be conducted under seal, and has specifically stated that any associated filings are "not  
8 under seal." (Mar. 20, 2008 Tr. at 31.) Qualcomm's continued efforts to selectively seal this  
9 Proceeding are inconsistent with Qualcomm's decision to file its OSC declarations and associated  
10 brief publicly, without merit, and should be rejected.

11 *Finally*, despite the Court's clear directive that Qualcomm must provide adequate and  
12 timely notice of its intended participation in this Proceeding, Qualcomm continues to seek to  
13 shield such information from discovery by Broadcom and the Responding Attorneys. For  
14 example, Qualcomm has categorically refused to produce any documents or information in  
15 response to Request No. 125, which seeks any documents or information Qualcomm intends to  
16 rely on in this Proceeding. (*See Saxton Decl., Ex. G.*) Qualcomm's refusal to produce any such  
17 information stands in stark contrast to this Court's clear statements at the March 20, 2008 hearing  
18 that Qualcomm would not, as part of this Proceeding, be permitted to "at the last minute" rely on  
19 information not previously provided to the parties. (*Id.* at 33 ("I'm not going to let Qualcomm do  
20 that again. So if you're not participating, you're not calling witnesses. You're not engaging in  
21 the process.")) Such conduct would be improper and prejudicial to Broadcom and the Responding  
22 Attorneys and should not be permitted.

### 23 **III. CONCLUSION**

24 For the foregoing reasons, Broadcom respectfully requests that the Court grant  
25 Broadcom's motion to compel and order Qualcomm to: (1) produce all relevant and responsive  
26 documents and things in response to Request Nos. 116-125 for the time period of May 1, 2005  
27 through August 7, 2007 within 14 days of an Order granting Broadcom's motion to compel; (2)  
28 produce a witness(es) in response to Broadcom's Rule 30(b)(6) Notice; and (3) produce Ms.

1 Raveendran and Ms. Irvine for deposition in response to Broadcom's individual deposition  
2 notices, all on the terms stated by Broadcom in its discovery requests and this Memorandum.

3 Dated: May 15, 2008

MCKENNA LONG & ALDRIDGE LLP

4 WILMER CUTLER PICKERING  
5 HALE AND DORR LLP

6 By: s/James S. McNeill  
7 James McNeill

8 Attorneys for Defendant/Counterclaim Plaintiff  
9 BROADCOM CORPORATION  
E-mail: [jmcneill@mckennalong.com](mailto:jmcneill@mckennalong.com)

10 SD:22165290.1

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28