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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

QUALCOMM INCORPORATED,)	Case No. 05cv1958-B (BLM)
)	
Plaintiff,)	ORDER TO SHOW CAUSE WHY
)	SANCTIONS SHOULD NOT BE
v.)	IMPOSED
)	
BROADCOM CORPORATION,)	
)	
Defendant.)	
_____)	
)	
and RELATED COUNTERCLAIMS.)	
_____)	

On March 21, 2007, the District Judge entered an order finding, among other things, in favor of Broadcom Corporation ("Broadcom") and against Qualcomm Incorporated ("Qualcomm") on Broadcom's waiver defense regarding United States Patent Numbers 5,452,104 (the "'104 patent'") and 5,576,767 (the "'767 patent'"). Doc. No. 528. The District Judge then requested further briefing on the appropriate remedy for Qualcomm's waiver, and heard oral argument on that issue on June 25, 2007. Id. at 32-34.

On August 6, 2007, the District Judge issued a comprehensive order detailing the appropriate remedy for Qualcomm's waiver, namely, "that the '104 and '767 patents, their continuations, continuations-in-part,

1 divisions, reissues, or any other dependent or derivative patents of
2 either patent, shall be [] unenforceable." Doc. No. 593 at 2. In
3 arriving at this remedy, the District Judge found "by clear and
4 convincing evidence that Qualcomm[']s counsel participated in an
5 organized program of litigation misconduct and concealment throughout
6 discovery, trial, and post-trial before new counsel took over lead role
7 in the case on April 27, 2007." Id. at 32. Indeed, the District Judge
8 impugned Qualcomm's counsel and their claims that they carried out their
9 discovery obligations in good faith, explaining:

10 Qualcomm counsel's discovery responses demonstrate that
11 they were able to locate with alacrity company records from
12 December 2003 forward and find four or more Qualcomm
13 employees participating in proceedings of the [Joint Video
14 Team ("JVT")]. Yet inexplicably, they were unable to find
15 over 200,000 pages of relevant emails, memoranda, and other
16 company documents, hundreds of pages of which explicitly
17 document massive participation in JVT proceedings since at
18 least January 2002. These examples of Qualcomm counsel's
19 indefensible discovery conduct belie counsel's later implied
20 protestation of having been "kept in the dark" by their
21 client.

17 Id. at 38.

18 In light of the District Judge's findings, and based on its review
19 of the documents submitted in connection with Broadcom's Motion for
20 Sanctions [Doc. No. 540], this Court believes that the record evidence
21 provides a basis for finding that Qualcomm's attorneys violated this
22 Court's discovery and/or scheduling orders. As such, this Court is
23 inclined to consider the imposition of any and all appropriate sanctions
24 on Qualcomm's attorneys, including but not limited to, monetary
25 sanctions, continuing legal education, referral to the California State
26 Bar for appropriate investigation and possible sanctions, and counsel's
27 formal disclosure of this Court's findings to all current clients and
28 any courts in which counsel is admitted or has litigation currently

1 pending.

2 At the initial hearing on Broadcom's Motion for Sanctions,
3 Qualcomm's attorneys had neither explicit notice of nor an express
4 opportunity to be heard on the issue of attorney sanctions. Further,
5 none of Qualcomm's attorneys requested an opportunity to be heard on
6 this issue. In an abundance of caution, and in order to afford
7 Qualcomm's attorneys an adequate opportunity to be heard on the
8 potential imposition of attorney sanctions, the following Qualcomm
9 attorneys are ordered to appear before the Honorable Barbara L. Major
10 on August 29, 2007 at 9:30 a.m. in Courtroom A, United States District
11 Court, 940 Front Street, San Diego, California 92101 to show cause why
12 sanctions should not be imposed for their failure to comply with this
13 Court's orders: James R. Batchelder, Adam A. Bier, Craig H. Casebeer,
14 David E. Kleinfeld, Kevin K. Leung, Christian E. Mammen, Lee Patch, Kyle
15 Robertson, Victoria Q. Smith, Barry J. Tucker, Jaideep Venkatesan,
16 Bradley A. Waugh, Stanley Young, Roy V. Zemlicka, and any and all other
17 attorneys who signed discovery responses, signed pleadings and pre-trial
18 motions, and/or appeared at trial on behalf of Qualcomm. Although not
19 required to do so, the above-listed attorneys may file declarations
20 regarding the imposition of sanctions on or before August 22, 2007. All
21 declarations shall be filed in accordance with the Civil Local Rules.

22 **IT IS SO ORDERED.**

23 DATED: August 13, 2007

24 

25 BARBARA L. MAJOR
26 United States Magistrate Judge

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1 COPY TO:

2 HONORABLE RUDI M. BREWSTER
3 U.S. DISTRICT JUDGE

4 ALL COUNSEL

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