

Judge delays Qualcomm case over patent

by Kathryn Balint

SAN DIEGO - An administrative law judge has ordered a stay in Qualcomm's patent-infringement case against cell phone maker Nokia at the U.S. International Trade Commission.

Robert Barton Jr. did not explain in his order issued Monday why he was postponing the case, which was scheduled to go to trial next week. His order puts the case on hold "until further notice" at the ITC in Washington, D.C.

Last year, San Diego-based Qualcomm asked the ITC, a quasi-judicial federal agency, to bar the U.S. import and sale of Nokia phones that Qualcomm says infringe on its patents.

Neither Qualcomm nor Nokia knew Tuesday why the judge delayed the case over three power-control patents or what it could mean for the future of the case.

Qualcomm and Nokia said the judge's action was done unilaterally and not at the request of either party.

Qualcomm vice president and legal counsel, Alex Rogers, said Qualcomm is going to seek clarification from the judge as to his intent.

"A stay, without explanation or without any understanding of what the schedule is going to be is, in our experience, unusual," Rogers said.

The decision comes about six weeks before conflict between the two companies is expected to escalate with the end of a key contract. Nokia and Qualcomm have been licensing each other's technology but have been unable to reach a new agreement, which could have ramifications for the entire cell phone industry.

Qualcomm Chief Financial Officer William Keitel said Tuesday that Qualcomm will probably fail to reach a new licensing agreement with Nokia and will have to use legal means to enforce its patents, according to Bloomberg News. Keitel made the remarks at Merrill Lynch's Communications Forum in New York. Talks with Nokia are at a "stalemate," he said.

The administrative law judge's order states that the ITC trial, which had been scheduled to begin Monday, "will be rescheduled at a later date."

"Further," the judge's order said, "this proceeding is stayed until further notice."

Finland-based Nokia, the world's largest maker of cell phones, touted the judge's order by issuing a news release.

"We would like to believe that some of our defense arguments factored into the judge's position," said William Plummer, vice president of external affairs for Nokia.

Bill Davidson, Qualcomm's vice president for global marketing and investor relations, noted that the judge had not changed any other scheduled dates in the case. For instance, he said, the administrative law judge's recommendation to the commission is due June 12, and the commission is scheduled to make a decision by Sept. 12.

"To read anything into it, from our viewpoint, is premature, although Nokia seems to have done so," Davidson said.

James Faucette, an analyst who covers both companies for Pacific Crest Securities in Portland, Ore., said it's hard to say what the action means without an explanation from the judge. "Honestly, I really don't know," he said.

Michael Cohen, director of research for San Diego-based Pacific American Securities, said he thinks the judge's order simply might have been the result of his schedule being too busy to hold the trial next week.

Qualcomm, developer of wireless technology and maker of chips for cell phones, and Nokia have been longtime rivals. Yet the two have had an agreement to share patented technology.

Nokia, along with five other telecommunications companies, complained in 2005 to European authorities that Qualcomm had abused its power and was overcharging for use of its patented technology. Qualcomm denied the charges and fired back with legal action of its own.

Qualcomm filed a patent-infringement lawsuit against Nokia in federal court in San Diego in 2005. And last year it filed its complaint against Nokia with the ITC.

In that case, Qualcomm initially alleged that Nokia infringed on six patents. Since then, it dropped three patents from the case. The three remaining patents in question relate to power conservation in cell phones.

The federal case, which involves the same patents that are in dispute in the ITC case, has been stayed while the commission investigates Qualcomm's complaint against Nokia.

Nokia has said in trade commission documents that it is requesting arbitration. In the documents, Nokia said that the two companies' 2001 agreement to share patented technology calls for arbitration, and it believes this dispute falls under that agreement. In trade commission documents, Qualcomm disagreed.

The two companies may have a showdown on another front when their agreement to share technology expires April 9. Nokia has said that it will not pay Qualcomm royalties for use of its technology after the agreement expires - a potential savings of millions of dollars for Nokia. Qualcomm has vowed to sue Nokia if it uses Qualcomm technology after the agreement expires.

Nokia has said that Qualcomm uses Nokia-patented technology in its cell phone chips.

Cohen of Pacific American Securities said the delay in the ITC case could be a setback for Qualcomm. If the judge had decided in its favor before April 9, that might have given the wireless giant more leverage in its negotiations with Nokia.

"I see the delay as not good for Qualcomm," he said.

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