

## Lawyers deny hiding papers for Qualcomm

by Bruce V. Bigelow - CNS

The 14 lawyers who face sanctions for "exceptional misconduct" in a Qualcomm patent lawsuit said they acted in good faith and never sought to conceal evidence from Broadcom or mislead anyone in the case.

Many of the lawyers said they were shocked to learn that more than 200,000 relevant documents were found on the computers of Qualcomm engineers months after the trial ended, according to statements filed late Wednesday in San Diego federal court.

It was apparent "that some of the newly collected documents were inconsistent with positions and arguments that had been advanced on Qualcomm's behalf," attorney Lee Patch conceded in his declaration.

The prospects of punitive action against so many corporate lawyers, including prominent "name" partners, is extraordinary, according to legal experts watching the process.

In its lawsuit, Qualcomm alleged that Broadcom, a rival chipmaker in Irvine, Calif., was infringing on two of its video-compression patents. A jury found in January that Broadcom did not infringe on Qualcomm's patents - and moreover - that Qualcomm had withheld information from key professional groups that set digital video standards.

U.S. District Judge Rudi Brewster, who presided over the trial, ruled in August that Qualcomm, its employees and its witnesses had actively concealed hundreds of thousands of relevant documents.

Brewster referred his finding of "exceptional misconduct" to U.S. Magistrate Barbara Major, who ordered the 14 lawyers representing Qualcomm to show why judicial sanctions should not be imposed on them. Such sanctions range from paying heavy fines, to being ordered to notify their other clients and courts of their misbehavior or a referral to the California Bar Association for possible disbarment.

Patch and other lawyers who represented Qualcomm said they went into trial believing the San Diego wireless giant had no involvement in setting technical standards at issue in the case.

Patch and Christian E. Mammen, who are partners at the Cupertino, Calif., law firm of Day Casebeer Madrid & Batchelder, also acknowledged, however, they did not immediately disclose 21 e-mails uncovered during trial that were at odds with the facts they had presented on Qualcomm's behalf.

"There are instances where I now believe that I should have made different decisions than I in fact made," Mammen said in a statement he filed.

Several lawyers named in Major's order said in their statements that they had little or no involvement in the misconduct that Brewster described in a scathing, 54-page ruling.

Statements filed by San Diego lawyers David Kleinfeld, Barry Tucker and Heidi Gutierrez assert that they were not involved with Broadcom's requests for documents, investigating facts of the case, presentation of testimony, or the formulation of legal arguments in the case. All three work for the Heller Ehrman law firm.

In statements filed by Qualcomm, several Qualcomm engineers pointed the finger at their lawyers by calling into question their witness interviews and request for documents.

"It was not my understanding that I was to conduct my own independent investigation into my own or anyone else's documents regarding any litigation issues," Qualcomm engineer Viji Raveendran said.

Other statements, however, suggest that Qualcomm's involvement in setting technical standards - which was a key theme in Brewster's ruling - did not surface suddenly in midtrial with 21 e-mails.

Broadcom lawyers began to allege "inequitable conduct" against Qualcomm in September, months before the trial began. Such conduct is defined in patent law as an act of fraud, deceit or willful misconduct committed by a patentee to obtain a patent.

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