

Federal judge rules Qualcomm withheld documents; must pay Broadcom legal fees.

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A federal judge has ruled that the company knowingly failed to turn over thousands of relevant documents in a patent trial against its bitter rival Broadcom and misled a standards body overseeing those patents.

Because of Qualcomm's "exceptional" misconduct, U.S. District Judge Rudi Brewster ruled that the company must pay all of Broadcom's legal expenses, including attorneys' fees and all additional costs, in a patent dispute over video compression technology. Those costs could run as high as \$10 million.

In January, a jury ruled that Qualcomm's two video compression patents were unenforceable. Broadcom complained after the trial concluded that Qualcomm had withheld relevant documents. Qualcomm's legal team later produced some 46,000 documents, apologizing for failing to make them available earlier.

While Qualcomm contended it was an honest mistake, Judge Brewster viewed it differently.

"The court concludes that the conduct of Qualcomm's employees before trial, and its employees and hired witnesses during pre-trial, trial and post-trial outlines misconduct even more extensive than the Court previously found," he wrote in his order.

The judge went further, impugning Qualcomm's business practices with regards to the standard-setting body overseeing the development of video compression technology.

He wrote that Qualcomm failed to disclose its relevant patents to the body even as its employees helped craft the new standard, which would require them to reveal its patents. The judge said evidence in the video compression trial made it clear that Qualcomm intentionally attempted to shield the patents from the standards body so it could then be "an indispensable licensor" of the technology and exact royalty revenues.

Judge Brewster said that through "constant stonewalling, concealment and repeated misrepresentations" the company attempted to hide its plan.

"The Court finds by clear and convincing evidence that Qualcomm, its employees, and its witnesses actively organized and/or participated in a plan to profit heavily by ...wrongfully concealing the patents...and then actively hiding this concealment from the Court, the jury and opposing counsel," he wrote.

In a prepared statement, Qualcomm acknowledged "the seriousness of the court's findings and reiterates its previous apology to the court for the errors made during discovery and for the inaccurate testimony of certain of its witnesses."

But the company said it disagreed with the judge's conclusion that Qualcomm had intended to mislead the technology standards body, called the Joint Video Team, arguing there were no patent disclosure obligations. Qualcomm added that it intends to appeal the ruling. Qualcomm declined to comment beyond its written statement.

Broadcom, for its part, said the judge's ruling was further proof of Qualcomm's attempts to unfairly compete unfairly in the marketplace.

"Based on his order, he views this as a large-scale, intentional plot," said David Rosmann, Broadcom's vice president of intellectual property litigation.

Steven M. Auvin, an intellectual property lawyer who has followed the case, said *an* order such as Judge Brewster's is exceptionally rare.

"I think the judge really had just enough and as a result came down hard on Qualcomm," Auvin said. "This is a judge who is clearly very angry at Qualcomm."

Further adding to Qualcomm's woes is that the decision comes just one day after the Bush administration let stand a ban on new phone models that use the company's wireless chips.

The irony is that Qualcomm once viewed the video-compression case as being a no-lose proposition with tremendous "upside." Qualcomm filed the complaint as away to return legal fire in its on-going, multi-prong legal battle with Broadcom over patents and licensing rights. The video-compression patents are not an essential part of Qualcomm's business but the company figured if its patents were deemed valid it would gain much-needed leverage over Broadcom to negotiate an advantageous licensing deal.

Now with the judge's ruling, analysts and industry watchers say Qualcomm, which has long prided itself on honest and ethical business practices, will see its reputation take a hit.

Auvin said Qualcomm, which is involved in a raft of lawsuits not only with Broadcom but also other rivals like Nokia, will now have other judges look more closely at its claims.

"Other parties who are up against Qualcomm will now raise this issue," he said. "It will probably do some damage to them for some period of time. Qualcomm is going to have grapple with that both from a legal and PR standpoint."

Qualcomm's shares fell \$1.28 to close at \$40.50 Tuesday.

Ed Snyder, a San Francisco-based analyst for Charter Equity Research, said the decision creates further uncertainty for Qualcomm, a fact that makes many investors nervous. He pointed out that more than 34 million shares of Qualcomm changed hands Tuesday, making it one of the most heavily traded stocks for the day.

"It has an impact on the public's perception," he said. "It's not good. It's just going to get tougher and tougher for these guys."

