

Qualcomm battered by yet another Broadcom broadside

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The US CDMA chipset manufacturer Qualcomm got another almighty slap in the kisser yesterday when a federal judge not only upheld the earlier verdict of a trial jury finding that the company had infringed on three patents held by its arch-rival, Broadcom Corporation, but also doubled the amount Qualcomm must pay in restitution and damages.

Finding that Qualcomm's patent infringement – covering areas of wireless video processing, call hand-off and "push-to-talk" walkie-talkie functions – was "willful", deliberate and prolonged, Judge James Selna of the Federal District Court, Santa Ana, California, commented, "There is a spectrum of improper conduct for determining the amount to award. That Qualcomm's conduct was not at the most egregious end of the spectrum does not mean that no enhanced damages were due. The court finds that, on balance, the totality of the circumstances merits an increase in the damages award."

The judge then upped the amount Qualcomm must pay in damages and legal fees from US\$19.64 million to an eye-watering \$39.3 million.

This time the notoriously litigious Qualcomm has been well and truly hoist by its own petard. In recent months the company has taken three successive body blows with Broadcom winning legal victory after legal victory whilst Qualcomm, coming under the most intense scrutiny by lawyers and judges, has been pilloried for dissembling, concealing evidence and refusing to stop selling products containing technology that infringed Broadcom's patents whilst legal actions and trials were underway.

Only last week, George W. Bush himself, Qualcomm's last best hope of an easy way out of its sea of troubles, upheld a ban imposed by the US International Trade Commission (ITC) on the importation of mobile handsets containing the company's chips. This prohibition is the result of another finding that Qualcomm has been infringing on a Broadcom patent on battery technology.

San Diego-headquartered Qualcomm is also fighting overseas as well as on its home front. In the US the company is in dispute with Nokia as well as Broadcom and is also embroiled in litigation over alleged anti-competitive practices in Korea, and potentially much more damagingly, faces a full-scale investigation by the European Commission. As would-be imperial powers have learned throughout history, fighting on several fronts simultaneously is foolish in the extreme. It dilutes resources, distracts from fundamentals and often leads to ignominious defeat.

Qualcomm has always been very quick on the draw to go to law in the past, giving those it litigates against little or no quarter and pushing, always, for maximum restitution and damages. It's scarcely surprising then that many of the companies that have been hammered in the past, together with current competitors and some industry observers and analysts will be revelling in schadenfreude as Qualcomm, for once, finds the boot is on the other foot.

Edward Snyder, an analyst with Charter Equity Research says, "Things are not going well for Qualcomm on the legal front.

The setbacks and the continuing disputes could soon begin significantly to weaken the company's market position."

Interestingly, and surely not coincidentally, Qualcomm yesterday parted company with its bellicose general counsel Louis Lupin. Mr. Lupin had been at Qualcomm for 12 years and was the embodiment of the company in the law courts, instigating and leading Qualcomm's frequent – oh, so frequent – attacks on competitors.

In a statement, Qualcomm insists that Mr. Lupin's sudden departure has absolutely nothing to do with the three big and bruising defeats it has suffered in recent months and avers that his going "will not affect Qualcomm's legal strategy."

To misquote Shakespeare, "Methinks this company doth protest too much", and I'm not alone.

Others too beg leave to doubt this version of events and the indications are that the company, having had a taste of its own medicine in recent weeks and finding it a bitter pill indeed, has decided that it may be time to moderate its propensity to get its retaliation in first by going for the nuclear option every time it faces a potential patents or intellectual property problem.

So, is Qualcomm about to beat its swords into ploughshares? Well, Charles Golvin, a principal analyst with Forrester Research thinks it might be. He says, "'It's a way of making a statement with other players that Qualcomm is trying to do the right thing – to be a good partner and a good, above-board competitor." And Mark McKechnie of American Technology Research probably hits the nail on the head when he says, "It's not a big stretch to guess that Lou Lupin took the hit. Qualcomm was embarrassed the court held against them essentially for misconduct."

Well, US District Judge Rudi Brewster did recently rule that Qualcomm had effectively waived any right it had to defend and enforce two patents because the company deliberately withheld them from the body responsible for determining the H264 video standard. Judge Brewster said Qualcomm was "holding hostage the entire industry" and its actions "suggested extremely sophisticated foul play."

Meanwhile, Broadcom yesterday petitioned the court to make the sales injunction against Qualcomm permanent. A decision is expected soon.

In a sort of mitigation, Michael King, the research director at Gartner, says "Qualcomm is going through a maturation process. There are going to be times when they have to play nice with the competition. Up to now they haven't had to do that."

No, but many think it's about time Qualcomm grew up.