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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 QUALCOMM INCORPORATED,
14 Plaintiff,
15 Vs.
16 BROADCOM CORPORATION,
17 Defendant,

CASE NO. 05CV1958-B (BLM)

OBJECTIONS OF NON-PARTY ADAM
BIER TO SANCTIONS ORDER OF
MAGISTRATE JUDGE AND REQUEST FOR
RECONSIDERATION BY DISTRICT
COURT

18 and RELATED COUNTERCLAIMS.

19 Pursuant to Rule 72(a) of the Federal Rules of Civil Procedure and 28 U.S.C. §636(b),
20 non-party Adam Bier hereby respectfully objects to the Magistrate Judge's Order Granting in Part
21 and Denying in Part Defendant's Motion for Sanctions and Sanctioning Qualcomm, Incorporated
22 and Individual Lawyers dated January 7, 2008 (the "Sanctions Order") and requests
23 reconsideration by the district court. Mr. Bier joins and incorporates herein by reference the
24 objections stated in paragraphs 1-5, 7-15, 17-25, 29-31, 33, and 35-36 of the Objections of
25 Responding Attorneys Batchelder, Mammen and Leung to Sanctions Order of Magistrate Judge
26 and Request for Reconsideration by District Court ("Batchelder, Mammen and Leung
27 Objections"), concurrently filed with this Court.

28 Mr. Bier further objects as follows:

1 (1) Mr. Bier objects to the Magistrate Judge's findings at pages 28-29 and 44 of the
2 Sanctions Order on the grounds that they are erroneous and contrary to law. Specifically, and in
3 addition to the objections to those findings set forth at ¶ 29 of the Batchelder, Mammen and
4 Leung Objections, to the extent that the court implies that Mr. Bier failed to alert senior attorneys
5 about the August 6, 2002 email, such findings are clearly erroneous and contrary to law in that
6 they disregard the factual evidence submitted.¹ Further, to the extent that those findings form a
7 basis for the court's imposition of sanctions against Mr. Bier, such sanctions violate Mr. Bier's
8 right to due process because Qualcomm's assertion of the attorney-client privilege has prevented
9 him from introducing evidence to more fully explain what occurred.²

10 (2) Mr. Bier further objects to the statement on page 44 of the Sanctions Order that
11 "The three attorneys [including Mr. Bier] decided not to produce the emails to Broadcom" as
12 clearly erroneous.³ To the extent that the statement forms a basis for the court's imposition of
13 sanctions against Mr. Bier, such sanctions are contrary to law.

14 (3) Mr. Bier objects to the statement on page 12 of the Sanctions Order that
15 "Throughout the remainder of March 2007, Bier repeatedly declined to update Broadcom on
16 Qualcomm's discovery search" to the extent that statement forms a basis for the court's imposition
17 of sanctions against him. The statement is clearly an erroneous mischaracterization of the record
18 and the imposition of sanctions on such basis is contrary to law.⁴

19 (4) Mr. Bier objects to the Sanctions Order on due process grounds and as contrary to
20 law to the extent that the court failed to consider and evaluate his knowledge, intent, and conduct
21

22 ¹ See Declaration of Non-Party Adam Bier in Response to Order to Show Cause Why
23 Sanctions Should Not Be Imposed Provided in Response to Court Order Dated September 28,
24 2007, docket no. 686, (October 3, 2007) ("Bier Decl.") at ¶ 25. Mr. Bier's time entry for January
25 of present recollection regarding the circumstances surrounding the discovery and discussion of
the August 6, 2002 email cannot be explained without revealing privileged attorney-client
information

26 ² *Id.*

27 ³ See Bier Decl. at ¶ 32. The decision not to produce the emails at that time was made by
Mr. Bier's supervising attorneys.

28 ⁴ See Bier Decl. at ¶ 54, Ex. F.

CERTIFICATE OF SERVICE

I, the undersigned, declare:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within entitled action. My business address is Chapman, Popik & White, 650 California Street, 19th Floor, San Francisco, CA 94108.

On January 22, 2008, I served the following document(s):

OBJECTIONS OF NON-PARTY ADAM BIER TO SANCTIONS OF MAGISTRATE JUDGE AND REQUEST FOR RECONSIDERATION BY DISTRICT COURT

 X **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope with postage fully prepaid, in the United States mail, at San Francisco, California

 BY FEDERAL EXPRESS OVERNIGHT DELIVERY: I caused each envelope, with delivery fees provided for, to be deposited in a box regularly maintained by Federal Express.

 X **BY E-FILING:** by transmitting via e-filing the document(s) listed above to the Case Management/Electronic filing system, such document(s) will be served to the addresses set forth below:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on
January 22, 2008 at San Francisco, California.

/s/ Connie Jo Stephenson
Connie Jo Stephenson