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15   **UNITED STATES DISTRICT COURT**

16   **SOUTHERN DISTRICT OF CALIFORNIA**

17 QUALCOMM INCORPORATED,   Case No. 05 CV 01958 B (BLM)

18   Plaintiff,   **DEFENDANT BROADCOM**
                                               CORPORATION'S RESPONSE TO
19 v.   **OBJECTIONS OF RESPONDING**
                                               ATTORNEYS TO SANCTIONS
20 BROADCOM CORPORATION,   **ORDER OF MAGISTRATE JUDGE**

21   Defendant.

22 AND RELATED COUNTERCLAIMS   Date: No Hearing Date Assigned
                                               Judge: Hon. Rudi M. Brewster
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                                                          O5 CV 1958

1   On January 7, 2008, the Magistrate Judge issued an Order Granting in Part and Denying in

2 Part Defendant's Motion for Sanctions and Sanctioning Qualcomm, Incorporated and Individual

3 Lawyers [Doc. No. 718] (the "Sanctions Order"). The outside lawyers who were sanctioned each

4 filed objections to the Sanctions Order and requests for reconsideration by this Court. [Doc. Nos.

5 720, 721, 722, 723]. Plaintiff Qualcomm Incorporated ("Qualcomm") has not filed any objection

6 to the Sanctions Order, and the ten-day time period for any such objection has expired. *See* Fed.

7 R. Civ. P. 72(a). Pursuant to Federal Rule of Civil Procedure 72(a)[1] and Local Rule 7.1(e),

8 Defendant Broadcom Corporation ("Broadcom") responds as follows to the objections and

9 requests for consideration.

I.   SANCTIONS AS TO QUALCOMM

Because Qualcomm has not raised any objection to the Sanctions Order, the provisions of

the Sanctions Order applicable to Qualcomm should be upheld. As Rule 72(a) makes clear:

> A party may serve and file objections to the order [of a magistrate
> judge] within 10 days after being served with a copy. A party may
> not assign as error a defect in the order not timely objected to.

Because Qualcomm has not timely objected to any portion of the Sanctions Order, all sanctions

against Qualcomm should stand, notwithstanding the objections of the individual attorneys.[2]

The misconduct found by this Court in its Order on Remedy for Finding of Waiver [Doc.

No. 593], and by the Magistrate Judge in the Sanctions Order, demonstrates a corporate culture at

Qualcomm of disrespect for the company's obligations to the Court and to its adversaries. A

corporate solution—including the Magistrate Judge's proposed comprehensive CREDO

protocol—is necessary to remedy this corporate misconduct.

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[1] The Advisory Committee Notes to Rule 72(a) make clear that parties in Broadcom's position have an opportunity to respond to objections raised against the Magistrate Judge's order: "It also is contemplated that a party who is successful before the magistrate judge will be afforded an opportunity to respond to objections raised to the magistrate's ruling." Advisory Committee Notes (1983), Fed. R. Civ. P. 72.

[2] On February 1, 2007, Qualcomm paid Broadcom the monetary sanction ordered by the Magistrate Judge.

II. SANCTIONS AS TO INDIVIDUAL ATTORNEYS

The focus of Broadcom's motion for sanctions has been and continues to be Qualcomm and its employees, rather than any individual outside attorney. Broadcom does not take a position as to whether any specific outside attorney should be subject to sanctions. However, certain aspects of the objections raised by the individually-sanctioned attorneys attempt to question the appropriateness of the Sanctions Order. This response by Broadcom seeks to address those aspects of the attorneys' objections that relate to Qualcomm.

A. **Jurisdiction**

The individual attorneys have called into question whether the Sanctions Order exceeded the scope of the Magistrate Judge's authority under the Federal Rules, the Local Rules, and/or this Court's referral of Broadcom's sanctions motion. (*See, e.g.*, Objections of Responding Attorneys Batchelder, Mammen and Leung [Doc. No. 720], at ¶¶ 1, 17, 23, 32-34.) However, the referral to the Magistrate Judge was not as limited as the individual attorneys contend. On January 24, 2007, Broadcom made an oral motion for sanctions following Ms. Raveendran's testimony about the twenty-one emails that Qualcomm had failed to produce. (*See* Tr. Vol. VIII, Jan. 24, 2007, at 114:20-22.) This Court deferred the issue until the trial concluded (*id.* at 115:4-5), and then later referred the issue to the Magistrate Judge, stating that Broadcom would need to file a written motion laying out its basis for sanctions (Tr. Vol. X, Jan. 26, 2007, at 67:5-7).

Broadcom filed a sanctions motion before the Magistrate Judge that relied expressly on Federal Rule of Civil Procedure 37, Local Rule 83.1, and the Court's inherent authority as the basis for sanctions. (*See, e.g.*, Defendant Broadcom Corporation's Memorandum in Support of Its Motion for Sanctions [Doc. No. 540-1] at 2.) The Magistrate Judge therefore was plainly within her authority under the Court's referral to impose sanctions pursuant to each of the asserted authorities on which the referral was based.

The Sanctions Order was also within the Magistrate Judge's authority under the local rules and the applicable law. Under Local Rule 72.1, the Magistrate Judge may properly hear any non-dispositive motion pursuant to 28 U.S.C. § 636(b)(1)(A). Likewise, the Magistrate Judge is

1   expressly authorized under the Local Rules to "Perform any additional duty not inconsistent with

2   the Constitution and laws of the United States." L.R. 72.1(h)(10). Nor are there prescribed

3   limitations when courts are fashioning sanctions to remedy abuses of the judicial process: "[T]he

4   Civil Rules place virtually no limits on judicial creativity" in designing an appropriate sanction.

5   *Anderson v. Beatrice Foods Co.*, 900 F.2d 388, 394 (1st Cir. 1990). Thus, the Sanctions Order

6   was within the scope of the Magistrate Judge's authority under the applicable law, under the

7   Local Rules, and under this Court's referral.

8   To the extent that the Court determines that its referral of Broadcom's sanctions motion to

9   the Magistrate Judge did not adequately include the range of sanctionable conduct and bases for

10   sanctions that the Magistrate Judge considered, Broadcom respectfully submits that the

11   appropriate remedy is to remand the sanctions issue to the Magistrate Judge, expressly granting

12   the Magistrate Judge the authority to consider and impose any and all existing or additional

13   sanctions against Qualcomm that the Magistrate Judge concludes are necessary to assure the

14   proper administration of justice.

15   For example, the Magistrate Judge made a number of findings regarding false testimony

16   offered and/or facilitated by Qualcomm:

17 / 18
- Qualcomm employee Christine Irvine "testified falsely that Qualcomm had never been involved in the JVT" (Sanctions Order at 6);

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- Qualcomm employee Ludwin "testified falsely that Qualcomm only began participating in the JVT in late 2003" (*id.*);

20 / 21
- "Qualcomm's misconduct . . . prevented Broadcom from correcting the false statements" (*id.* at 13);

22 / 23
- "[T]he suppressed documents . . . belonged to (or were shared with) numerous, current Qualcomm employees, several of whom testified (falsely) at trial and in depositions" (*id.* at 25);

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- "Qualcomm employees were integral participants in hiding documents and making false statements to the court and jury" (*id.* at 38).

25   Broadcom respectfully requests that any remand include the express authority to consider the full

26   scope of remedies for these false statements, including the involvement of Qualcomm's

27   employees and in-house attorneys in inducing or encouraging Qualcomm's witnesses to testify

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1 falsely. (*See id.* at 18 n.5 (explaining that Magistrate Judge's review did not include sanctions

2 "relating to false statements" made during trial).)

3   The Magistrate Judge also noted that, as a result of the invocation of the attorney-client

4 privilege, "the Court does not have access to all of the information necessary to reach an informed

5 decision regarding the actual knowledge of the attorneys." (*Id.* at 25 n.8.) Broadcom respectfully

6 suggests that any remand should make clear that the Magistrate Judge has the authority to

7 consider whether any exception or waiver to the attorney-client privilege—including the crime-

8 fraud exception and/or waiver as a result of Qualcomm's submission of declarations by its

9 witnesses and paralegal [Docs. Nos. 681, 683-84, and 692]—is applicable as a result of the

10 Magistrate Judge's new factual findings concerning Qualcomm's conduct before, during, or

11 following trial.

12 B. **Interpretation of *Rambus***

13   Finally, Broadcom notes that certain of the outside attorneys have objected to certain

14 findings of the Sanctions Order as "based on an incorrect reading of[] *Rambus Inc. v. Infineon*

15 *Techs. AG*, 318 F.3d 1081, 1102-05 (Fed. Cir. 2003), regarding the circumstances giving rise to a

16 duty to disclose intellectual property to a standards body." (Objections of Responding Attorneys

17 Batchelder, Mammen and Leung [Doc. No. 720], at ¶¶ 30; *see also* Objections by Responding

18 Attorney Lee Patch [Doc. No. 721], at ¶ 34; Objections of Non-Party Adam Bier [Doc. No. 722],

19 at 1 (incorporating objections of other attorneys).) This Court has **three** times previously

20 addressed the applicability of the *Rambus* decision to the facts and circumstances of Qulacomm's

21 nondisclosure to the JVT—at summary judgment, in determining the appropriate jury instruction,

22 and in its order finding that Qualcomm's misconduct resulted in waiver [Doc. No. 593.].[3] In

23 addition, Qualcomm has raised this same issue in its appeal of this Court's wavier decision to the

24 Federal Circuit. (*See* Brief of Plaintiff-Appellant [Qualcomm], No. 2007-1545, -1569 at 27.)

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27 [3] Broadcom incorporates by reference the arguments concerning *Rambus* in Defendant Broadcom Corporation's Opposition to Qualcomm's Motion for Summary Adjudication (Nov. 20, 2006; filed under seal), and in Defendant Broadcom Corporation's Trial Brief Concerning Waiver and Inequitable Conduct [Doc. No. 504].

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1   Broadcom respectfully submits that there is no need to litigate the meaning of *Rambus* for a

2   fourth time before this Court.

3   **CONCLUSION**

4   Broadcom respectfully requests that this Court affirm the Sanctions Order in its entirety as

5   it applies to Plaintiff Qualcomm Incorporated.

6   Alternatively, to the extent that this Court concludes that the Magistrate Judge lacked

7   clear authority under its referral or applicable law to consider the full range of sanctions for

8   Qualcomm's misconduct prior to, during, and following trial, Broadcom respectfully requests that

9   the Court remand any further issues to the Magistrate Judge with express authorization to impose

10   sanctions for all parts of Qualcomm's misconduct under any applicable law.

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12   Dated: February 5, 2008   MCKENNA LONG & ALDRIDGE LLP

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