



1 In the motion presently before the Court, Broadcom Corporation  
2 ("Broadcom") asks this Court to reconsider its ruling regarding the  
3 Court's jurisdiction pending Qualcomm Incorporated's ("Qualcomm")  
4 appeal. Doc. No. 820.

5 On May 5, 2008, Qualcomm filed a notice of appeal of Judge  
6 Brewster's March 5, 2008 "Order Remanding in Part Order of Magistrate  
7 Court re Motion for Sanctions Dated 1/07/08" ("Remand Order"). Doc. No.  
8 790. On May 19, 2008, attorneys Batchelder, Mammen, Leung and Patch  
9 filed notices of cross appeal. Doc. Nos. 797, 798. On its own motion,  
10 this Court issued an order on May 29, 2008, vacating all pending hearing  
11 dates because the Court concluded that, as a result of the appeal and  
12 cross appeals, jurisdiction has been transferred from this Court to the  
13 United States Court of Appeals for the Federal Circuit. Doc. No. 812.

14 On June 6, 2008, Broadcom filed a motion for reconsideration of  
15 that order. Doc. No. 820. Qualcomm filed a timely response [Doc. No.  
16 825], Responding Attorney Young filed a statement of non-opposition  
17 [Doc. No. 826], and Responding Attorneys Batchelder, Mammen and Leung  
18 jointly filed a statement of non-opposition [Doc. No. 821]. Broadcom  
19 filed a reply on June 27, 2008 [Doc. No. 829], and the Court took the  
20 matter under submission pursuant to Civil Local Rule 7.1(d)(1) [Doc. No.  
21 828].

22 Having reviewed the briefing submitted, and for the reasons set  
23 forth below, Broadcom's motion is **DENIED**.

#### 24 **DISCUSSION**

25 As an initial matter, the Court notes that Broadcom brings its  
26 motion pursuant to Rule 60(b)(1) of the Federal Rules of Civil Procedure  
27 and Civil Local Rule 7.1(i)(1). Broadcom Mem. at 4. Rule 60 provides  
28 that "[o]n motion and just terms, the court may relieve a party or its

1 legal representative from a final judgment, order, or proceeding for the  
2 following reasons ... mistake, inadvertence, surprise, or excusable  
3 neglect..." Fed. R. Civ. P. 60(b)(1). Civil Local Rule 7.1(i)(1)  
4 applies where a party has previously applied for relief and seeks  
5 reconsideration of the court's order denying relief. CivLR 7.1(i)(1).  
6 Neither rule is applicable to this case because this Court's May 29,  
7 2008 order was not a final, appealable order<sup>1</sup> nor was it issued  
8 following application by either party. However, because the Court  
9 appreciates that the federal and local rules do not provide a clear  
10 procedure for seeking reconsideration of a court's *sua sponte* order, the  
11 Court will exercise its inherent authority to reconsider its own orders  
12 before they become final, see U.S. v. Martin, 226 F.3d 1042, 1049 (9th  
13 Cir. 2000) (confirming that district court has inherent jurisdiction and  
14 authority to modify, alter or revoke its own orders before they become  
15 final, "absent some applicable rule or statute to the contrary"), and  
16 consider Broadcom's motion.

17 Broadcom argues that this Court retains jurisdiction to proceed  
18 with the remand proceedings for two reasons. First, Broadcom contends  
19 that Qualcomm's notice of appeal was defective because it referred to  
20 a non-appealable interlocutory order. Broadcom Mem. at 3. Second,  
21 Broadcom submits that Qualcomm forfeited its right to appellate review  
22 of Judge Brewster's March 5, 2008 Remand Order because Qualcomm did not  
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24 <sup>1</sup> The Advisory Committee Notes following Rule 60 clarify that "[t]he addition  
25 of the qualifying word 'final' emphasizes the character of the judgments, orders or  
26 proceedings from which Rule 60(b) affords relief; and hence interlocutory judgments are  
27 not brought within the restrictions of the rule, but rather they are left subject to  
28 the complete power of the court rendering them to afford such relief from them as  
justice requires." Fed. R. Civ. P. 60 Advisory Committee Notes (1946 Amendment).

1 timely object to this Court's sanctions order, the review of which  
2 resulted in Judge Brewster's Remand Order. Id. at 4. For these  
3 reasons, Broadcom requests that the Court vacate its May 29, 2008 order  
4 and resume the remand proceedings. Id. at 3-5.

5 The Court has considered all of the briefing and legal argument  
6 submitted, including the briefing filed with the Federal Circuit  
7 addressing Broadcom Corporation's Emergency Motion to Dismiss Appeal of  
8 Qualcomm Incorporated (copies of which were attached to the pleadings  
9 filed in this Court).<sup>2</sup> As both parties acknowledge,

10 Where the deficiency in a notice of appeal, by reason of  
11 untimeliness, lack of essential recitals, or reference to a  
12 non-appealable order, is clear to the district court, it **may**  
13 disregard the purported notice of appeal and proceed with the  
14 case, knowing that it has not been deprived of jurisdiction.  
15 If the district court is in doubt as to whether the notice of  
16 appeal is inoperative by reason of some such defect, it **may**  
17 decline to act further until the purported appellee obtains  
18 dismissal of the appeal in the court of appeals.

19 Ruby v. Sec'y of U. S. Navy, 365 F.2d 385, 389 (9th Cir. 1966) (emphasis  
20 added). While this Court has doubts about whether the Federal Circuit  
21 will entertain Qualcomm's appeal of the Remand Order, it is not entirely  
22 clear that the Remand Order was non-appealable. In light of the unusual  
23 posture of this case, the Federal Circuit may decide that the Remand  
24 Order was final as to Qualcomm or that appellate jurisdiction is  
25 appropriate under the collateral order doctrine described in Cohen v.  
26 Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). Because uncertainty  
27 exists as to whether Qualcomm's notice of appeal is deficient and  
28 because the issue is pending in the Federal Circuit, the Court declines  
to act further until the Federal Circuit has ruled. Ruby, 365 F.2d at

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<sup>2</sup> As of the date of this order, this Court has not been notified of any  
ruling by the Federal Circuit on Broadcom's emergency motion.

1 389.

2 In regard to Broadcom's second argument, Broadcom is correct that  
3 "a party who fails to file timely objections to a magistrate judge's  
4 nondispositive order with the district judge to whom the case is  
5 assigned forfeits its right to appellate review of that order." Simpson  
6 v. Lear Astronics Corp., 77 F.3d 1170, 1174 (9th Cir. 1996). However,  
7 the reality of the proceedings in this case, again, are not as  
8 procedurally clear as Broadcom suggests. As Qualcomm explains more  
9 thoroughly in the response it filed with the Federal Circuit, Qualcomm  
10 admits that it did not have objections to this Court's order sanctioning  
11 Qualcomm and six outside attorneys and, therefore, did not file  
12 objections with the district judge. Qualcomm Resp., Ex. A at 9.  
13 However, in response to the outside attorneys' objections to being  
14 denied the opportunity to submit privileged materials as part of their  
15 defense, Judge Brewster found that the self-defense exception to  
16 Qualcomm's attorney-client privilege applied.<sup>3</sup> See Doc. No. 744. Only  
17 then did Qualcomm have concerns about how the Remand Order would be  
18 applied and whether Qualcomm would be required to disclose attorney-  
19 client privileged documents. Qualcomm Resp., Ex. A at 10, 12 n.7. In  
20 light of these facts, this Court cannot say with absolute certainty that  
21 Qualcomm was required to have filed objections with the district judge  
22 before appealing and, thus, forfeited its right to appeal, Simpson, 77  
23 F.3d at 1174, or that it is clear that this Court has not been deprived  
24 of jurisdiction, Ruby, 365 F.2d at 389.

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27 <sup>3</sup> The issue of the whether or not the self-defense privilege applied was not  
28 squarely addressed in this Court's sanctions order because the Court previously had  
ruled on that issue, finding that the exception did not apply [see Doc. No. 669].

1 Furthermore, it has long been established that the rule that the  
2 district court is divested of jurisdiction once a notice of appeal is  
3 filed is judge-made and that "its purpose is to promote judicial economy  
4 and avoid the confusion that would ensue from having the same issues  
5 before two courts simultaneously." Natural Res. Def. Council, Inc. v.  
6 Southwest Marine Inc., 242 F.3d 1163, 1166 (9th Cir. 2001); Masalosal  
7 v. Stonewall Ins. Co., 718 F.2d 955, 956 (9th Cir. 1983); 20 James Wm.  
8 Moore, Moore's Federal Practice, § 303.32[1] (3d ed. 2000) (same); Gilda  
9 Industries, Inc. v. U.S., 511 F.3d 1348, 1352 (Fed. Cir. 2008) (same).  
10 In this case, Judge Brewster already entered a final judgment, which  
11 Qualcomm has appealed. See Doc. Nos. 595, 621. The outcome of that  
12 appeal may impact the necessity for, or scope of, the remand proceedings  
13 before this Court. Therefore, this Court finds that judicial economy  
14 favors not departing from the general rule that a notice of appeal  
15 divests the district court of jurisdiction to proceed.

16 **CONCLUSION**

17 For the foregoing reasons, the Court **DENIES** Broadcom's Motion for  
18 Reconsideration and declines to proceed with the remand proceedings at  
19 this time.

20 **IT IS SO ORDERED.**

21 DATED: July 7, 2008

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23 BARBARA L. MAJOR  
24 United States Magistrate Judge

25 COPY TO:

26 HONORABLE RUDI M. BREWSTER  
27 U.S. DISTRICT JUDGE

28 ALL COUNSEL