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

12  
 13 QUALCOMM INCORPORATED,

14 Plaintiff,

15 vs.

16 BROADCOM CORPORATION,

17 Defendant.

18 AND RELATED COUNTERCLAIMS.  
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CASE NO. 05-CV-1958-B(BLM)

**MEMORANDUM OF POINTS AND  
 AUTHORITIES OF RESPONDENT  
 STANLEY YOUNG IN PARTIAL  
 OPPOSITION TO QUALCOMM  
 INCORPORATED'S MOTION  
 REGARDING REMAND  
 PROCEEDINGS**

Date: April 30, 2008  
 Time: 10:00 a.m.  
 Judge: Hon.  
 Crtrm.:

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I.

**QUALCOMM'S PROPOSED LIMITS ON WHAT PRIVILEGED MATERIALS MAY BE USED WOULD EFFECTIVELY DENY RESPONDENT YOUNG THE ABILITY TO DEFEND HIMSELF**

By its motion, Qualcomm seeks to "[l]imit the disclosure of Qualcomm's privileged information to that which is necessary for the Responding Attorneys to respond to the OSC – *that is, communications between Qualcomm and the Responding Attorneys concerning the selection of custodians and the collection of documents for production during the discovery phase of this case; ....*" Qualcomm Memo. Ps&As at pg. 1:27-2:2 (emphasis supplied). Again at page 3, beginning with line 2, Qualcomm proposes the following:

"The appropriate scope of disclosure of privileged materials 'reasonably necessary' for the Responding Attorneys to 'vindicate innocence' would be (i) communications between Qualcomm and the Responding Attorneys, (ii) relating to the selection of custodians and the collection of documents for review and production on the subjects identified by Judge Brewster at the end of his order, (iii) during the discovery phase of this case." (*Id.* at p. 3:2-7.)

For reference, in his Remand Order, Judge Brewster described the scope of what he now views to be useable information:

". . . the communications and conduct relevant to the topic area of records (electronic or other) discovery pertaining to JVT and its parents, its ad-hoc committees, and any other topic regarding the standards-setting process for video compression technology . . ."

Remand Order at p. 6:1-6; *see also, id.* at 3:8-11 ("The objectors shall not be prevented from defending their conduct by the attorney-client privilege of Qualcomm . . . "); and at 5:22-27 ("The attorneys have a due process right to defend themselves under the totality of circumstances presented in this sanctions hearing where their alleged conduct regarding discovery is in conflict with that alleged by Qualcomm concerning performance of discovery responsibilities").

Qualcomm's proposed limitation about what privileged information may be used in self-defense is not appropriate and Qualcomm's motion in this respect should be denied for at least three reasons.

1 First, Qualcomm's proposed limitation would effectively emasculate the self-defense  
2 exception as it relates to Mr. Young and deny him entirely the benefit of Judge Brewster's Remand  
3 Order. Mr. Young was not involved in the "selection of custodians" or the "collection of  
4 documents for review and production" relating to the "JVT and its parents, its ad-hoc committees,  
5 and any other topic regarding the standards-setting process for video compression technology" as  
6 recited on page 6 of Judge Brewster's order. As such, he was not involved with any  
7 "communications" between Qualcomm and any of the Responding Attorneys on those subjects  
8 during "the discovery phase" of this case.

9 Rather, in its January 7, 2008 Order, this Court concluded from the record then before it  
10 that Mr. Young "did not conduct a reasonable inquiry into Qualcomm's discovery production  
11 before making specific factual and legal arguments to the Court." 1/7/08 Order at p.19:18-20. In  
12 the proceedings on remand, Mr. Young intends to demonstrate, based on a more complete record,  
13 that he should not be sanctioned for his conduct in connection with the factual and legal arguments  
14 referred to by the Court. One of Mr. Young's defenses will be that he acted reasonably and in good  
15 faith in light of the information that was made available to him. To present this defense, Mr.  
16 Young needs to avail himself of the self-defense exception to the attorney-client privilege. He will  
17 be prevented from so supplementing the record if the Court adopts Qualcomm's proposed  
18 limitation.

19 Second, the case *In Re: Nat'l Mortgage Equity Corp. v. Mortgage Pool Certificates Sec.*  
20 *Lit.*, 120 FRD 687, 692(C.D. Cal. 1988), does not support the narrow interpretation urged by  
21 Qualcomm. Under *Nat'l Mortgage*, it is the attorney, not the client who makes the determination  
22 as to what is "reasonably necessary." In upholding the use of the self-defense exception in that  
23 case, the District Court ordered that the lawyer be permitted to disclose otherwise confidential  
24 attorney-client communications which the lawyer "deems reasonably necessary to defend against  
25 said actions." (*Id.* at 692.) Allowing Qualcomm to unilaterally make the determination deprives  
26 Mr. Young of the opportunity and the ability to present those communications which he believes  
27 are "reasonably necessary" to appropriately defend against the Order to Show Cause.

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1 Third and finally, Qualcomm's proposed limitation rewrites Judge Brewster's Remand  
2 Order. Among other things, Qualcomm's proposed scope purports to exclude potentially  
3 exonerating communications internal to Qualcomm (*i.e.*, not between Qualcomm and the  
4 Responding Attorneys) and narrows the focus to only the acts of selecting custodians and  
5 collecting documents. The Remand Order is not so limited. Without prognosticating what the  
6 universe of documents might be as fairly encompassed by the Remand Order, it is readily apparent  
7 from just the two examples cited that Qualcomm's proposed scope is substantially more narrow  
8 than the scope set forth by Judge Brewster.

9 **II.**

10 **CONCLUSION**

11 Mr. Young respectfully submits that the limitation proposed by Qualcomm on what  
12 privileged information may be used in self-defense does not accurately reflect Judge Brewster's  
13 Remand Order and does not comport with existing case law reflecting the scope of materials  
14 which may be used by an attorney under the self-defense exception to the attorney-client privilege.  
15 Moreover, to accept Qualcomm's proposal would effectively deprive Mr. Young of the benefits of  
16 the self-defense exception. For these reasons, Qualcomm's motion with respect to the proposed  
17 limitation on what privileged information may be used in self-defense should be denied.

18 Mr. Young takes no position, either way, with respect to the other subjects of Qualcomm's  
19 motion and believes those matters should be resolved within the discretion of this Court.

20 DATED: April 16, 2008

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