



COURT AWARDS \$8.5 MILLION FOR E-DISCOVERY VIOLATION

In the latest surge in the rising tide of monetary sanctions for electronic discovery violations, on January 7, 2008 the United States District Court for the Southern District of Southern California required Qualcomm Incorporated to pay Broadcom Corporation \$8.5 million in litigation costs and referred six of Qualcomm's lawyers to the state bar disciplinary committee for the failure to produce relevant documents in Qualcomm's patent infringement case against telecommunications rival Broadcom.

A key issue in the case was whether Qualcomm had participated in an industry standards-setting initiative at a certain point in time. Qualcomm vehemently denied that it had - until Broadcom "stumbled" into the "right question" during cross-examination of one of Qualcomm's witnesses at trial, leading first to the production of twenty-one relevant e-mails and ultimately tens of thousands of what the Court called "decisive documents." This failure to produce relevant documents was part and parcel, the Court found, of "an effort to win [the] case and gain a strategic business advantage over Broadcom." And it wasn't just the failure to produce the documents that the Court found sanctionable - it was also that "Qualcomm failed to heed several warning signs that should have alerted it to the fact that its document search and production were inadequate." The conduct warranted not only Qualcomm's payment of Broadcom's litigation costs (Broadcom had prevailed at trial), but also resulted in the referral of the six most principally involved outside counsel for potential disciplinary action and a sharp rebuke for in-house counsel. The Court also directed Qualcomm to devise a "Case Review and Enforcement of Discovery Obligations ('CREDO') Program" to identify how and why the lapse occurred and to prevent future e-discovery violations. Finally, and even though Qualcomm had prevailed on the issue of the validity of its patents, the Court held that Qualcomm had waived its right to enforce them (including in part because of its litigation conduct).



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ADMISSIONS INFORMATION

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In holding as it did, the Court emphasized that especially in the digital age "when attorneys may not physically touch and read every document within the client's custody and control...attorneys and clients must work together to ensure that both understand how and where electronic documents, records, and e-mails are maintained and to determine how best to locate, review, and produce responsive documents." The lessons for corporate parties and their inside and outside lawyers are clear: the obligation to locate and produce relevant electronic documents runs deep, and if you fail to do so, it is at your own peril - monetary, business, and professional.

For more information regarding this case, or regarding our electronic discovery practice group, please contact Mitchell J. Banas, Jr. at 716.843.3803 or mbanas@jaeckle.com.