

Qualcomm Lawyers Late to Search Laptop

The Recorder
By [Jessie Seyfer](#)
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James M. Wagstaffe
IMAGE: Stephanie Turner/The Recorder

Five months before a second-year associate searched a Qualcomm witness' laptop during trial and found important e-mails that had not been turned over as discovery, the company's senior outside lawyers had already received a hint that such e-mails may have existed, according to the attorneys' declarations filed last week.

Yet the lawyers at Day Casebeer Madrid & Batchelder did not search the witness' laptop for evidence.

That failure represents one key breakdown in the discovery process in the case involving Broadcom, lawyers for Broadcom said Tuesday as they sought further sanctions against Qualcomm. A federal judge has already ordered San Diego-based mobile phone chip maker Qualcomm to pay its rival's legal fees in the case, and another magistrate judge will consider whether to sanction Qualcomm's outside counsel on Friday.

The e-mails are important because they suggest Qualcomm engineer Viji Raveendran interacted with an organization setting a technological standard for digital video compression. If the engineer was interacting with the standards body before 2003, then Qualcomm may have had no rights to enforce its patents against Broadcom.

In an August 2006 deposition, a Broadcom attorney first raised the fact that Raveendran's e-mail address was on a list from 2002 related to the standards-setting body. But attorneys for Qualcomm did not search her laptop for pre-2003 e-mails from the standard group.

Then in November 2006, Broadcom again raised the fact that Raveendran's e-mail address appeared on a list from December 2002 to receive information from a standard-setting body. Still, no lawyers searched Raveendran's computer.

"It is inexcusable that Qualcomm conducted no review of Ms. Raveendran's documents," attorneys for Broadcom wrote in a motion filed Tuesday.

Kerr & Wagstaffe partner James Wagstaffe, who represents Day Casebeer partner Lee Patch, stressed Tuesday that during discovery, the standards body issue was among "dozens and dozens" on the table. Wagstaffe also noted that Broadcom never asked for meet-and-confer meetings to hash out discovery disagreements, nor did the company ask the court to compel Qualcomm to hand over any evidence.

"I suspect Broadcom was focused on other things," he said, adding that his client, Patch, was not involved in pre-trial discovery issues.

Day Casebeer associate Kevin Leung asserted in his declaration that earlier searches of related documents — as well as an earlier Raveendran deposition — gave him no reason to believe searches of her e-mail archives were warranted.

But Leung, who handled many discovery issues for Qualcomm, declined to explain further, citing attorney-client privilege.

"In looking back, there are instances where I believe I could have asked more questions of Qualcomm, or could have requested that additional searches for documents could have been done," Leung wrote. "At all times, however, I acted in good faith."

A San Diego federal magistrate judge is set to consider Friday whether the outside Qualcomm attorneys



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deserve formal sanctions for their conduct in discovery. In its filing Tuesday, Broadcom's attorneys at Wilmer Cutler Pickering Hale and Dorr and McKenna Long & Aldridge asked the court to sanction Qualcomm as a company. Broadcom specifically declined to take a position as to whether any individual lawyers should be punished.

However, McKenna partner James McNeill took issue with the lack of declarations from any in-house Qualcomm lawyer.

"The finger-pointing among Qualcomm's outside law firms, and between Qualcomm and its attorneys, illustrates the importance of the discovery compliance program that Broadcom has proposed as a sanction," McNeill wrote. "The declarations taken together indicate that Qualcomm allowed discovery to proceed under the control of a relatively inexperienced associate at an outside firm, with little or no guidance or oversight from within Qualcomm itself."

DLA Piper partner William Boggs, who now represents Qualcomm in the case, declined to explain the company's interactions with its outside counsel on discovery. But in a filing late Tuesday, the company argued against sanctions.

"The discovery shortcomings in this case were not the product of bad faith, but the result of miscommunications, oversights, and misjudgments," the company argued. "In light of recent leadership changes in Qualcomm's legal department, and because these regrettable mishaps were an isolated occurrence, it is unnecessary to impose sanctions for the purpose of deterrence."

Despite the sheer volume of declarations filed in advance of Friday's hearing, key questions about the breakdown remain unanswered.

The Day Casebeer firm handled discovery on the case, and Shartsis Friese partner Joel Zeldin represents most of the attorneys there, including Leung. Zeldin declined to comment Tuesday about the cracks in the discovery process, but reiterated Leung's statements that the Day Casebeer firm had no reason to think such e-mails existed on the engineer's computer, based on her deposition and earlier searches.

Ultimately, some 200,000 Qualcomm documents were found that had not been turned over to Broadcom before trial.

The attorneys acted properly during the discovery process and shouldn't be sanctioned, Patch's attorney Wagstaffe said, but declined to provide specifics about what happened in discovery.

"The attorney-client privilege prevents the lawyers from explaining anything about their communications with their client about the discovery process," he said. "So it's really up to Qualcomm if they want to explain why these documents were not found in the discovery process."

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