



## Lawyers Say Qualcomm Lied

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By [Zusha Elinson](#)  
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SAN FRANCISCO — Lawyers in the Qualcomm discovery scandal claim that their former client misled and stonewalled them, ultimately leading to the failure to turn over a mountain of relevant evidence and harsh sanctions from the court.

The allegations were made in briefs filed Monday by lawyers from the **now-defunct Day Casebeer Batchelder & Madrid**, who for the first time are telling their side of what has become the most infamous discovery fiasco in recent times.

Qualcomm Inc. was sanctioned by San Diego Magistrate Judge Barbara Major in January 2008 for intentionally withholding "tens of thousands of e-mails" in an infringement case against Broadcom Corp. involving video compression technology patents. The company's lawyers — six from Day Casebeer and one from Heller Ehrman — were also sanctioned for assisting "Qualcomm in committing this incredible discovery violation," either knowingly or recklessly, Major wrote at the time.

The sanctions **were later lifted** while the lawyers got a chance to defend themselves. The lawyers argue they shouldn't be penalized — they were misled by their client.

The Day Casebeer lawyers claim that they repeatedly prodded Qualcomm about whether the company had participated in industry meetings at which video compression standards were discussed. If the company had, then Qualcomm may have had no rights to enforce its patents against Broadcom.

"Qualcomm's failure to disclose was not limited to two or three people: Numerous individuals, including engineers in Qualcomm's Digital Cinema group, managers of Qualcomm's Standardization Group, and even attorneys in Qualcomm's legal department, received inquiries from responding attorneys or Qualcomm paralegals about JVT participation and related subjects, but failed to provide critical information they had," wrote Joel Zeldin, the Shartsis Friese partner who represents three of the Day Casebeer lawyers: partners James Batchelder and Christian Mammen and associate Kevin Leung.

H. Sinclair Kerr Jr., a Kerr & Wagstaffe lawyer for former Day Casebeer lawyer Lee Patch, put it more succinctly. "Mr. Patch asked the right people the right questions at the right time and got wrong — no, false — answers."

However, questions remain about just how Qualcomm was able to pull the wool over their lawyers' eyes, said Diane Karpman, a legal ethics expert with Karpman and Associates in Los Angeles.

"The lawyers present a strong and powerful argument that they did everything they could do, and yet you have to say to yourself, 'Why wasn't it more fruitful; why wasn't the harvest more bountiful?'" Karpman said after reading the 88-page brief. "How was it that all this information was missed?"

Qualcomm didn't respond to requests for comment. But Qualcomm employees filed declarations last year critical of their lawyers, leading the court to rule that the lawyers could pierce attorney-client privilege and



Lee Patch  
Image: Jason Doiy/The Recorder

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Read the briefs filed in defense of the former Day Casebeer lawyers. Joel Zeldin's brief on behalf of James Batchelder, Christopher Mammen and Kevin Leung, in two parts: one ([.pdf](#)) and two ([.pdf](#)). Merri Baldwin's brief for Adam Bier: ([.pdf](#)) H. Sinclair Kerr's brief for Lee Patch: ([.pdf](#))

defend themselves.

## WHAT MEETING IN AUSTRIA?

The controversial evidence came to light as Day Casebeer was prepping Qualcomm engineer Viji Raveendran for the trial in 2007. Associate Adam Bier — who is represented separately by Merri Baldwin of Chapman, Popik & White — discovered 21 e-mails on Raveendran's laptop referring to the standards-setting meetings, which turned out to be just the tip of the iceberg. Broadcom's lawyers from Wilmer Cutler Pickering Hale and Dorr pushed the issue after the trial, leading to the avalanche of e-mails about Qualcomm's involvement in what is known as the joint video team or the JVT.

The Day Casebeer lawyers claim in Monday's court filings that Raveendran and others should have told them about it much earlier. In one of several examples of alleged stonewalling by Qualcomm, Day Casebeer's Leung claims he was told by another Qualcomm employee in 2006 that "Raveendran may have been involved," but that she told him she hadn't been.

According to Zeldin's brief, at Raveendran's deposition, she even "denied that there even was a JVT meeting in Klagenfurt, Austria — even though she traveled to Austria, for the first and only time in her life, to attend those meetings."

Qualcomm's in-house lawyers, including former General Counsel Louis Lupin, who resigned from Qualcomm shortly after the scandal surfaced in 2007, are also blamed. Zeldin's brief says that Qualcomm lawyers, like in-house patent lawyer Thomas Rouse, didn't disclose the fact that Qualcomm was comparing its patents to the new standards.

Zeldin also points the finger at Qualcomm's paralegals and document retention system, saying that Qualcomm was the one that should have found the mountain of documents.

"The approach dictated by Qualcomm, of searching for documents from a central repository, might have worked but for one important problem: The Qualcomm paralegals did not search the 'Livelink' archive established in 2002 by Qualcomm's Digital Cinema engineering group," Zeldin writes.

Legal ethicist Karpman said that the sum is a "pretty big indictment of a client." But beyond that, the filing doesn't shed much light.

"I don't think anything is any more clear," Karpman said. "There's just a lot of finger pointing going on, which is of course what you'd expect to occur — these lawyers are fighting for their reputations."

Stanley Young, the former Heller lawyer who was involved, has yet to file his papers. There will be two more rounds of briefings before a hearing in January to determine whether the lawyers should be sanctioned.

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