

No. 19-16122

United States Court of Appeals for the Ninth Circuit

FEDERAL TRADE COMMISSION,
Plaintiff – Appellee,

v.

QUALCOMM INCORPORATED, A DELAWARE CORPORATION,
Defendant – Appellant.

Appeal from the U.S. District Court
for the Northern District of California
The Honorable Lucy H. Koh (No. 5:17-cv-00220-LHK)

CONSENT MOTION TO EXPEDITE APPEAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Qualcomm Incorporated (“Qualcomm”) states that it has no parent corporation and that no publicly held corporation owns 10% or more of Qualcomm’s stock.

CONSENT MOTION TO EXPEDITE APPEAL

Pursuant to 28 U.S.C. §1657(a), Federal Rules of Appellate Procedure 27 and 31(a)(2), and Circuit Rule 27-12, Defendant-Appellant Qualcomm Incorporated (“Qualcomm”) respectfully moves to expedite the briefing and hearing schedule for this appeal. Qualcomm has contemporaneously filed a Motion for Partial Stay of the permanent injunction that the District Court entered as part of its judgment. A copy of the District Court’s final judgment is attached to the Motion for Partial Stay. Plaintiff-Appellee, the Federal Trade Commission (“FTC”), consents to Qualcomm’s request to expedite the appeal.

1. There is “good cause” to expedite this appeal. 28 U.S.C. § 1657(a); Cir. R. 27-12. As described at length in Qualcomm’s contemporaneously filed Motion for Partial Stay, Qualcomm will suffer irreparable harm from the injunction as it stands, necessitating prompt resolution of the appeal. Cir. R. 27-12 (“good cause” includes when “in the absence of expedited treatment, irreparable harm may occur”). Indeed, the accompanying stay motion sets forth some of Qualcomm’s substantial grounds for appeal and identifies the irreparable harm Qualcomm faces if the injunction remains in effect pending appeal.

While an expedited appeal is not an adequate substitute for the partial stay Qualcomm is seeking, it is justified by the same factors that warrant stay relief. Further, this appeal is entitled at least to priority hearing and submission because the FTC sought, and the District Court granted, a permanent injunction. *See* Cir. R. 34-3(3) (“Civil appeals in the following categories will receive hearing or submission priority: . . . (3) Applications for temporary or permanent injunctions”).

2. Qualcomm promptly perfected the appeal, and transcripts of all District Court proceedings have been completed. *See* Cir. R. 27-12.

3. Qualcomm proposes, and the parties have agreed to, the following briefing schedule:

- **August 9, 2019:** Qualcomm files Appellant’s Opening Brief and Excerpts of Record;
- **October 4, 2019:** Plaintiff-Appellee files its Answering Brief;
- **October 25, 2019:** Qualcomm files Appellant’s Reply Brief.

The parties have further agreed to Qualcomm’s request that this Court schedule oral argument as soon as practicable after the completion of the briefing.

4. Counsel for the FTC consented to Qualcomm's request for expedition on July 8, 2019. The FTC's counsel also requested that Qualcomm inform the Court that, in agreeing to this motion, the FTC does not concede that Qualcomm would incur irreparable injury absent expedition or that the District Court's injunction should be stayed pending appeal.

CONCLUSION

For these reasons, and those explained in Qualcomm's Motion for Partial Stay, this Court should expedite this appeal, pursuant to Cir. R. 27-12, schedule briefing in accordance with the parties' agreement, and set the appeal for oral argument as soon as practicable after briefing is completed.

July 8, 2019

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Circuit Rules 27-1(1)(d) and 32-3(2) because it contains 446 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 27-1(1)(d).

Pursuant to Federal Rule of Appellate Procedure 27(d)(1)(E), this document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 Century Schoolbook 14-point font.

July 8, 2019

/s/ Thomas C. Goldstein
Thomas C. Goldstein

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on July 8, 2019. All participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Thomas C. Goldstein
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