

Gabriel Fights \$12M Atty Fee In \$1B IP Row In Fed. Circ.

By **David McAfee**

Law360, Los Angeles (August 12, 2013, 6:48 PM ET) -- Gabriel Technologies Corp. on Friday asked the Federal Circuit to reverse a district court's "extraordinary" award of \$12.4 million in attorneys' fees under the Patent Act and California's Uniform Trade Secret Act, arguing that the district court abused its discretion in finding the case exceptional.

The appeal brief comes six months after a California federal judge awarded Qualcomm Inc. \$12.4 million in attorneys' fees against Gabriel, finding that Gabriel's claims against Qualcomm in a \$1 billion intellectual property dispute were objectively baseless and made in bad faith. The order came after an October ruling in favor of Qualcomm that ended the 2008 dispute over allegations that SnapTrack Inc. — now part of Qualcomm — claimed Gabriel Technologies predecessor Locate Networks Inc.'s trade secrets as its own.

Plaintiffs Gabriel and Trace Technologies LLC say the \$12 million award must be reversed because the linchpin for the award was the court's determination that the plaintiffs had no basis to pursue their inventorship and trade secret claims after a bond ruling years ago.

"In the district court's view, when Judge Anello predicted in 2010 that defendants might prevail and recover their attorneys' fees, plaintiffs should have dismissed the case," the brief says. "However, Judge Anello's early-stage bond ruling became a self-fulfilling prophecy — as the district court became unwilling to consider any contrary evidence."

In a separate appeal, Gabriel and Trace assert that the district court committed material errors of law on the merits and incorrectly disposed of the case through its summary judgment rulings. But the plaintiffs on Friday sought to address why a fee award would be inappropriate even if the summary judgment orders were to be upheld.

Gabriel Technologies first filed its complaint in October 2008 seeking \$1 billion in damages and alleging 11 causes of action against Qualcomm focused on ownership rights to numerous Qualcomm patents relating to GPS technologies. The companies worked together under a joint development agreement, according to the complaint.

Several of Gabriel Technologies' claims were dismissed early in the lengthy litigation, and the court granted Qualcomm summary judgment on the remaining claims in October 2012.

The court noted in its October order that it had warned Gabriel Technologies early on in the proceedings

that the claims lacked merit, but Gabriel Technologies pursued the litigation for an extended period of time without being able to remedy basic deficiencies, such as the inability to name alleged inventors to support claims of inventorship or identify trade secrets to support claims of misappropriation.

On Oct. 12, Qualcomm filed a motion for attorneys' fees, nearly all of which were awarded in February.

U.S. District Judge Anthony J. Battaglia awarded Qualcomm and its subsidiary a total of \$12.4 million in attorneys' fees against Gabriel Technologies, including an \$800,000 interest-accruing bond that was posted by the plaintiffs and will be distributed to the defendants once the order becomes final. The plaintiffs will pay the remaining amount of \$11.6 million to the defendants, according to court documents.

Additionally, the judge awarded the defendants \$64,000 in attorneys' fees against plaintiffs' local counsel, Wang Hartmann Gibbs & Cauley PLC.

Representatives for the parties didn't immediately return requests for comment on Monday.

Plaintiffs are represented by Kenneth M. Fitzgerald, Robert G. Knaier and Keith M. Cochran of Chapin Fitzgerald LLP.

Defendants are represented by Steven Marc Strauss of Cooley LLP.

The case is Gabriel Technologies Corp. et al. v. Qualcomm Inc. et al., case number 2013-1205, in the United States Court of Appeals for the Federal Circuit.

--Editing by Sarah Golin.