

## Judicial Bias Doomed \$1B Qualcomm IP Row, Fed. Circ. Told

By Erica Teichert

*Law360, Washington (February 3, 2014, 3:59 PM ET)* -- Gabriel Technologies Corp. urged a Federal Circuit panel Monday to revive its \$1 billion GPS technology patent suit against Qualcomm Inc., claiming the lower court was biased and relied on “snippets” of disputable evidence to justify ruling against the bankrupt company.

Gabriel maintained that two California federal judges ignored substantial evidence that proved their infringement claims weren't time-barred and were brought in good faith against Qualcomm, but the judges were biased against the company very early in the proceedings.

According to Gabriel's attorney Michael E. Salzman, the district court focused on “snippets” of deposition testimony that showed company executives were suspicious that SnapTrack Inc. — now part of Qualcomm — had ripped off its GPS technology patents and ignored other portions of the deposition that said the initial concerns were unfounded.

“The district court judge made a mistake looking at one sound bite and not another sound bite,” Salzman said. “The inference is very clear if you read between the lines that [the judge] thought these people were fakers from the very beginning.”

But even if the judge correctly tossed the \$1 billion intellectual property suit in summary judgment, Gabriel claimed the \$12.4 million attorneys' fee award to Qualcomm must be overturned, as there is evidence showing the company brought its allegations in good faith.

However, Judges Alan D. Lourie and Raymond T. Chen both saw major flaws in Gabriel's case that could point to bad faith, including communication between Gabriel employees noting their lack of evidence and the company's inability to determine who actually invented the technology-in-question.

“Don't we have evidence that one of your attorneys said 'We have no case, just a lot of talk'?” Judge Lourie asked. “This is documentation of what your people thought of your case.”

Still, Gabriel's counsel Robert G. Knaier maintained the court could only award attorneys' fees if there was no evidence supporting Gabriel's claims.

But Qualcomm claimed the Gabriel emails, depositions and evidence illustrate the fact that Gabriel brought a massive, baseless suit in the hopes of a settlement payday only to see Qualcomm “methodically dismantle” their allegations.

“Their executives admitted that their strategy was to extract a lay down settlement from Qualcomm,” said Steven M. Strauss, counsel for Qualcomm. “This is the poster child for an exceptional case.”

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.

Gabriel maintained on Monday that it wasn't on notice that its claims were deficient despite the judge's rulings.

On Oct. 12, 2012, 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.

Qualcomm noted that the \$12.4 million in attorneys' fees only cover their expenses after the bond hearing.

Gabriel filed for Chapter 11 bankruptcy in February 2013, and told the three-judge panel it's unsure whether Qualcomm could even collect the attorneys' fees if the decision is affirmed.

Judges Alan D. Lourie, Haldane Robert Mayer and Raymond T. Chen sat on the panel for the Federal Circuit.

Gabriel is represented by Michael E. Salzman, Ronald Abramson and Peter A. Sullivan of Hughes Hubbard & Reed LLP and Kenneth M. Fitzgerald, Keith M. Cochran and Robert G. Knaier of Chapin Fitzgerald LLP.

Qualcomm is represented by Steven M. Strauss, Jeffrey S. Karr, Lori R. Mason and Timothy S. Teter of Cooley LLP.

The cases are Gabriel Technologies Corp. et al. v. Qualcomm Inc. et al., case numbers 13-1058 and 13-1205, in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by David McAfee. Editing by John Quinn.

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