United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

QUALCOMM INC.,

Defendant.

IN RE QUALCOMM ANTITRUST LIT.

Case No. 17-cv-00220 LHK (NC)

Case No. 17-md-02773 LHK (NC)

ORDER ON PROPOSED PRIVILEGE RE-REVIEW PROTOCOLS

Re: Dkt. Nos. 411, 412 (in -2773)

In response to objections to Qualcomm's privilege log and concerns raised about the withholding of non-privileged documents, on March 16 I ordered Qualcomm to re-review certain log entries, to revise its log, to produce specified documents, and to confer with the FTC, class counsel, and Apple as to a protocol for a further review of privileged documents. Dkt. No. 385. The trial judge, too, expressed concerns about Qualcomm's document productions at the March 22 case management conference. Qualcomm separately has objected to certain of Apple's privilege assertions and its privilege log.

After conferring as directed, the parties plus Apple presented their competing proposals for a re-review protocol on March 27 in Dkt. No. 411. Then on March 28 the FTC and class counsel amended their proposal in Dkt. 412. All parties agree there is a basis for further re-review. Their difference is in the scope and timing of the process.

I held a hearing on the proposed re-review protocols on March 28 and now address the competing proposals. I find there is good cause to compel a further re-review of

withheld documents by both Qualcomm and Apple.

As to Apple documents, all the parties and Apple have agreed to a protocol set forth at case number 17-md-2773 LHK Dkt. No. 411 at page 9:5-20. I approve it.

As to Qualcomm documents, I approve the protocol proposed by the FTC and class counsel at Dkt. No. 411-1, with amendment to paragraph 4. The Court will not accept for in camera review documents submitted "from time to time" by plaintiffs, as suggested in paragraph 4 of the proposed protocol. Rather, Qualcomm, class counsel, and the FTC must submit joint status reports on April 16, May 16, June 18, and July 16 as to their progress on privilege re-review. In each of those reports, plaintiffs and the FTC may request in camera review of up to 50 document families. The report must also certify that counsel for the parties have met and conferred in person or by phone in an effort to resolve the privilege disputes for any document submitted in camera.

I decline the amendment proposed by FTC and class counsel in Dkt. No. 412, as more than is needed to remedy the problems presented.

Finally, I order class counsel by April 4 to file the Apple and Qualcomm re-review protocols, as modified by this order, as a proposed order.

Under the protocol, the re-review process should be complete by July 1. The parties will confer about the need for re-opening depositions. This order does not contemplate changing any other deadlines in the case. In other words, class briefing and expert discovery may proceed, even while this re-review protocol proceeds simultaneously.

IT IS SO ORDERED.

Dated: March 30, 2018

NATHANAEL M. COUSINS
United States Magistrate Judge