

QUALCOMM INCORPORATED v. INTEL CORPORATION, Appeal Nos. 2020-1589, 2020-1590, 2020-1591, 2020-1592, 2020-1593, 2020-1594 (Fed. Cir. July 27, 2021). Before Moore, Reyna, and Stoll. Appealed from the PTAB.

Background:

Intel filed six *inter partes* reviews (IPRs) against Qualcomm's patent directed to a power tracker for a circuit that processes multiple radio frequency signals (e.g., signals transmitted on multiple carrier frequencies). In each IPR, Intel proposed a construction of the claim term "a plurality of carrier aggregated transmit signals" to mean "signals for transmission on multiple carriers...to increase the bandwidth for a user." Qualcomm proposed "signals...utilizing multiple component carriers which provide *extended transmission bandwidth for a user transmission*..." As such, Qualcomm and Intel never disputed that the signals were required to increase (or extend) the user bandwidth. In a parallel proceeding before the International Trade Commission (ITC), the ITC's construction also included the increased bandwidth requirement. In sum, all briefings by both parties in all six IPRs as well as the ITC's construction included the increased bandwidth requirement.

After the completion of briefing and during a two-hour oral hearing before the Board, one judge asked Intel a single question about the increased bandwidth requirement. Neither that judge nor the other two judges on the panel asked Qualcomm any questions on the matter. In fact, the Board ordered additional briefing the next day on a different claim construction issue, but it never requested any briefing on the increased bandwidth requirement. The Board then issued six final written decisions finding all challenged claims unpatentable based on the Board's construction that omitted any requirement that the signals increase or extend the user bandwidth. Qualcomm argued that it was not given notice of, or an adequate opportunity to respond to, the Board's construction, and thus the Board had violated Qualcomm's procedural rights under due process and the Administrative Procedure Act. Qualcomm appealed.

Issue/Holding:

Did the Board violate Qualcomm's procedural rights? Yes, vacated and remanded.

Discussion:

First, as a threshold matter, the Federal Circuit held that Qualcomm was prejudiced by the Board's procedural violation. Qualcomm argued throughout the IPRs that the prior art did not disclose the increased bandwidth requirement. By removing such requirement, the Board eliminated an element on which Intel bore the burden of proof.

Second, the oral hearing did not provide adequate notice to Qualcomm. The single question-answer exchange between one judge and Intel did not provide Qualcomm notice that the Board might depart from the agreed-upon requirement of the increased user bandwidth. Also, when the Board's additional briefing request was silent on the matter, Qualcomm had no reason to believe that the Board might depart from the agreed-upon requirement of the increased user bandwidth.

Third, Qualcomm's opportunity to seek rehearing did not provide an adequate opportunity to respond. To hold otherwise would require Qualcomm to first seek rehearing before appealing to the Federal Circuit, and the court re-emphasized that an aggrieved party should not be required to seek rehearing before seeking relief from a final decision.