

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FEDERAL TRADE COMMISSION,
Plaintiff,
v.
QUALCOMM INCORPORATED,
Defendant.

Case No. 17-CV-00220-LHK

**ORDER DENYING QUALCOMM'S
MOTION FOR STAY PENDING
APPEAL**

Re: Dkt. No. 1495

The Court SUSTAINS the Federal Trade Commission's objections to Qualcomm's Exhibits C, D, and E that Qualcomm filed with Qualcomm's reply brief. Exhibits C, D, and E are offered in support of a new argument raised for the first time in Qualcomm's reply brief. *See Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) ("The district court need not consider arguments raised for the first time in a reply brief.").

In addition, the Court GRANTS the FTC's motion to strike Exhibit F. Exhibit F is not an exhibit from the January 2019 11-day bench trial in the instant case or part of the discovery or record in the instant case. Instead, Exhibit F is the entire 31-page slide deck for Qualcomm's April 16, 2019 opening statement for a jury trial in an entirely different case in the Southern District of California. Although Qualcomm's reply brief cites only one page from the entire slide

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1 deck, Qualcomm improperly seeks to insert the entire slide deck into this record. Moreover, the
2 single slide that Qualcomm’s reply brief cites is not responsive to any argument in the FTC’s or
3 amici’s briefs. Thus, the Court need not consider it. *Zamani*, 491 F.3d at 997. Nor has
4 Qualcomm authenticated the document that the slide purports to excerpt. Accordingly, Exhibit F
5 is stricken from the record.

6 Having reviewed the parties’ briefing on Qualcomm’s motion for stay pending appeal,
7 ECF Nos. 1495, 1500, 1506; amicus briefs in opposition to Qualcomm’s motion submitted by LG
8 Electronics, Inc. and ACT, the App Association, ECF Nos. 1501-1, 1503-2; the arguments and
9 evidence from the 11-day trial; the Court’s 233-page Findings of Fact and Conclusions of Law,
10 ECF No. 1490; the record in this case; and the relevant law, the Court hereby DENIES
11 Qualcomm’s motion for stay pending appeal.

12 **IT IS SO ORDERED.**

13 Dated: July 3, 2019

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16 LUCY H. KOH
17 United States District Judge
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