

Albright Says Broadcom Atty's Bluff Helped Sink Transfer Bid

By **Andrew Karpan**

Law360 (February 22, 2022, 8:57 PM EST) -- U.S. District Judge Alan Albright singled out an in-house lawyer at Broadcom for getting "called on his two-seven off-suit," using the bad Texas Hold 'em hand to illustrate why the California chipmaker's bid to move a patent infringement suit out of his court isn't in the cards.

Monday's nearly 40-page ruling was the latest from the Western District of Texas judge to reject a tech company's effort to pull a patent suit out of his highly scrutinized docket. This time the bad news was for Broadcom Inc., a chipmaker with customers that include Apple, Motorola, Hewlett-Packard and IBM.



Judge Alan Albright

The decision was good news for a patent-holding company called Monterey Research LLC, which sued Broadcom last year. The patents the company owns once belonged to a now-bankrupt chipmaking company called Spansion LLC, which previously sued video-game maker Nintendo Co. Ltd. and computer manufacturer Acer Inc., among others, for alleged infringement.

For Judge Albright, deciding where to send Monterey's lawsuit came down, in part, to whose lawyers he trusted more. And the case from Broadcom wasn't very convincing, he wrote.

"Quite simply, the court does not find Broadcom's evidence to be very reliable or credible," wrote Judge Albright, who has attracted more patent cases than almost any other judge in the country.

In Monday's decision, the judge aimed many of these criticisms at Ryan Phillips, a former Kilpatrick Townsend & Stockton LLP attorney who now directs intellectual property litigation at Broadcom. Phillips had not done his homework when getting deposed to make Broadcom's case for transferring the lawsuit to a federal court in the Northern District of California, Judge Albright repeatedly averred.

"It is telling that Mr. Phillips did little to no research himself, but then added mitigating phrases to reduce the importance of any potential Texas witnesses," Judge Albright said of the deposition transcripts he had read.

Reached directly, Phillips declined to comment on the ruling, as did a lawyer for Monterey Research. Lawyers at Kilpatrick Townsend who are representing Broadcom in the case did not respond to a request for comment.

Phillips' deposition testimony figured prominently in Monday's ruling, with the Waco judge quoting from it at length.

At one point, Phillips had testified that it's "likely" some product design work takes place at Broadcom's facilities in Austin, Texas. But later, Phillips testified that "almost all of our products I've worked on in almost every litigation have been done at other facilities, so I don't know exactly what happens in Austin."

"It is at that juncture that Mr. Phillips gets called on his two-seven off-suit," the judge wrote, in reference to getting dealt a two card and a seven card of different suits in a game of Texas Hold 'em poker. The judge wasn't impressed with how Phillips chose to play this bad hand.

"The court does not find Mr. Phillips to be a very credible witness and takes each of his statements with a grain of salt," the judge wrote, adding in a footnote that Phillips appeared to be based neither in Texas nor California, but in Colorado. The judge suggested that Phillips hadn't investigated the matter properly on behalf of his employer.

"Mr. Phillips outsourced the investigation, gathered facts, and then added in key disclaimers to discredit employees in Austin, Texas and emphasize employees in the [Northern District of California] or elsewhere," he wrote.

Instead, Judge Albright believed Monterey Research's case that a Broadcom engineer named Ananth Natarajan would figure importantly in the patent lawsuit and that Natarajan had recently moved to Austin.

During depositions, Phillips had tried to characterize Natarajan's involvement in the design of one of the relevant Broadcom chips as "minimal," but Phillips wasn't able to back the statement up. When asked to "identify any document describing Ananth Natarajan's work ... as minimal," Phillips had declined.

"WDTX is more convenient for Ananth Natarajan because he is a Texas employee with relevant knowledge," Judge Albright wrote, italicizing the phrase "Texas employee" for emphasis.

The patents-in-suit are U.S. Patent Nos. 6,459,625 and 6,651,134.

Monterey Research is represented by Charles Everingham IV of Ward Smith & Hill PLLC and Jonas McDavit, Alan Kellman, Jordan Malz, Ryan Thorne, Jennifer Przybylski, Eliyahu Balsam, Benjamin Rodd and Alexandra Kochian of Desmarais LLP.

Broadcom is represented by Paige Arnette Amstutz of Scott Douglass & McConnico LLP and Russell A. Korn, Joshua H. Lee, Kristopher L. Reed and Edward J. Mayle of Kilpatrick Townsend & Stockton LLP.

The case is Monterey Research LLC v. Broadcom Incorporated et al., case number 6:21-cv-00541, in the U.S. District Court for the Western District of Texas.

--Editing by Jill Coffey.

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