

No. 20-2092, -2093

IN THE
United States Court of Appeals for the Federal Circuit

INTEL CORPORATION,
Appellant,

v.

QUALCOMM INCORPORATED,
Appellee.

Appeal from the United States Patent and Trademark Office, Patent Trial and
Appeal Board, in Nos. IPR2019-00128 and IPR2019-00129

**OPPOSITION TO PETITION FOR
REHEARING OR REHEARING *EN BANC***

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INTRODUCTION

The challenged order is a run-of-the-mill application of settled law and exercise of the panel’s “discretion,” Dkt. 25 at 2, to deny a deficient filing by a non-party seeking to participate in an appeal over which this Court lacks jurisdiction in the first place. In this Court, “[a] petition for rehearing *en banc* is rarely appropriate if the appeal was the subject of a nonprecedential opinion by the panel of judges that heard it.” Fed. Cir. R. 35, Practice Notes. That guidance applies directly here, given the panel’s conclusion that, based on the facts, Apple may not intervene, and the panel’s further conclusion, in the three other appeals that are the subject of Apple’s petition, that Apple’s attempt to intervene was untimely.¹ Apple is a sophisticated player, well versed in the nuances of *inter partes* review (“IPR”) proceedings, proudly stating it has filed more IPRs than anyone else. Here, Apple decided against filing its own IPR, and chose to forgo participating in Intel’s IPR—factual considerations upon which the panel grounded

¹ Apple filed a single paper that included a motion for reconsideration and a combined petition for panel and *en banc* rehearing. See Dkt. 27, Apple Inc.’s Combined Opposed Mot. for Reconsideration and Petition for Panel Rehearing Or Rehearing En Banc (“Pet.”). Further, Apple filed the same paper in four separate appeals. Qualcomm’s oppositions to reconsideration were similar across the four separate appeals, but they were not identical given the different facts and circumstances of the appeals. Likewise here, Qualcomm’s responses to Apple’s combined petition for panel or *en banc* rehearing are similar but not identical.

its order here. Apple also admittedly failed to file timely motions to intervene in three subject appeals—additional factual considerations. As such, Apple’s attempt to manufacture sweeping legal questions detached from the specific circumstances of this and the three other appeals cannot justify *en banc* review or panel rehearing.²

As the panel necessarily concluded, no precedential opinion was needed because its order did “not add[] significantly to the body of law.” Fed. Cir. R. 32.1(b). Indeed, even while asserting—wrongly—that the order improperly extended the Court’s precedents, Apple does not question the correctness of any precedential opinion.³ Given that Apple’s sole challenge is to a discretionary, non-precedential order, the petition presents no viable issue for the *en banc* Court to resolve, much less one that comes close to satisfying the standard for rehearing. Moreover, to even reach the questions Apple now attempts to frame, the Court would have to consider—and resolve in Apple’s favor—issues of standing and jurisdiction that not even Apple argues are appropriate for *en banc* review. Apple

² Given the panel’s denial of Apple’s motion to reconsider its own decision, *see* Dkt. 37, this opposition focuses principally on Apple’s failure to justify *en banc* review. But for the same reasons, Apple has not satisfied the demanding standard for either panel or *en banc* rehearing.

³ *See* Pet. 7-10 (arguing only that motions panel incorrectly applied precedents on intervention by entities who did not participate before agency); *id.* at 2, 12-16 (contending that motions panel erred by enforcing timeliness requirements “the Court has previously excused”).

provides no reason why the non-precedential order at issue justifies such an extraordinary expenditure of this Court's resources. In fact, Apple fails to identify a single instance in which this Court has *ever* granted rehearing to consider a motions panel's non-precedential order, whether on intervention or any other issue.

BACKGROUND

This is an appeal from an IPR involving two parties: appellant Intel Corporation—the sole petitioner below—and patent owner and appellee Qualcomm. The underlying IPR petitions, filed in 2018, challenged certain claims of a Qualcomm patent (the “’356 patent”) and expressly named Apple as a real party in interest. *See* Dkt. 18, Ex. 1 at 2, Ex. 2 at 2, Ex. 3 at 1, Ex. 4 at 1. Apple elected not to file any IPR of its own or seek to join Intel's petition in any respect.

The Patent Trial and Appeal Board (“Board”) instituted IPR proceedings on January 16, 2019. On April 16, 2019, Qualcomm and Apple announced an agreement to settle and dismiss with prejudice all worldwide litigation between them, including allegations that Apple products infringed the ’356 patent. *See id.*, Ex. 5; *see also* Order to Dismiss at 1, *Qualcomm Inc. v. Apple Inc.*, No. 3:17-cv-2398-DMS (MDD), Dkt. 255 at 1 (S.D. Cal. April 23, 2019) (the Court “DISMISSES WITH PREJUDICE this action in its entirety”). Qualcomm and Apple reached a six-year license agreement, including a two-year extension option and a multi-year chipset supply agreement. *See* Dkt. 18, Ex. 5.

On January 30, 2020, the Board issued final decisions finding that Intel had not shown that any challenged claim (claims 1–8, 10, 11, 17, and 18) were unpatentable. Dkt. 18, Ex. 1 at 41, 2 at 43. On July 27, 2020, Intel filed an appeal of the Board’s decision. Before briefing began, Qualcomm moved to dismiss the appeal due to Intel’s lack of standing. *See* Dkt. 10. On August 27, 2020, the motions panel issued a non-precedential order denying Qualcomm’s motion without prejudice, effectively deferring the standing question to the merits panel. Dkt. 25.

Meanwhile, Apple moved to intervene in the appeal. Dkt. 17. In its August 27 order deferring the question of Intel’s standing to the merits panel, the Court denied Apple’s motion to intervene. Dkt. 25. Citing Apple’s failure to participate in the IPR, the Court “declines to exercise its discretion to grant Apple’s motion.” *Id.* at 2. Apple sought reconsideration and panel and *en banc* rehearing. Dkt. 27 (“Pet.”). The motions panel denied reconsideration. Dkt. 37.

ARGUMENT

I. REHEARING IS NOT WARRANTED BECAUSE THE CHALLENGED DECISION IS A FACT-BOUND, DISCRETIONARY, AND NON-PRECEDENTIAL MOTIONS-PANEL ORDER.

A. The Panel’s Order Involved A Discretionary Application Of Undisputed Legal Principles.

Consistent with Federal Circuit Rules 35 and 40 and the accompanying practice notes, Apple’s intervention request does not warrant rehearing. In its

unpublished order, the motions panel simply applied settled law to the particular facts of this case, exercising its discretion to deny Apple's motion on the basis that Apple "could have joined or participated in the IPR proceedings but made no effort to do so." Dkt. 25 at 2. The Court's citations to *In re Opprecht*, 868 F.2d 1264, 1265 (Fed. Cir. 1989), and *In re Purdue Pharma L.P.*, No. 2018-1285, slip op. at 4 (Fed. Cir. Apr. 18, 2018), fully support that determination. Dkt. 25 at 2. Apple unquestionably could have participated in the IPR or filed its own. It did neither. And then Apple waited until after Intel's notice of appeal to seek to intervene solely because it fears that Intel may lack standing, *see* Dkt. 18 at 9, even though Apple knew all along that Qualcomm had never accused Intel of infringing the '356 patent, and Apple had more than a year earlier agreed to the settlement that formed part of the basis for Qualcomm's challenge to Intel's standing in this Court.

In addition to being plainly correct, the motions panel's discretionary order has little application outside the specific circumstances of this case. Such a narrow, situation-specific complaint does not warrant the full Court's attention. Moreover, even if Apple were correct that the motions panel erred in exercising its discretion (and it is not), a future panel in a different case would be free to depart from the order's non-precedential rationale.

That Apple now seeks to distinguish *Opprecht* and *Purdue*, Pet. 8, rather than argue they were wrongly decided, emphasizes the narrowness of Apple's

complaint. Apple acknowledges that neither case “stand[s] for a general prohibition against non-parties intervening on appeal,” *id.*, but argues the motions panel departed from them by applying such a prohibition. That is wrong. The motions panel neither created nor applied a sweeping rule that only a party that filed an agency proceeding can ever intervene on appeal. *Cf.* Pet. 6-7. Rather, considering the specific circumstances of this case, the panel stated that, “under the circumstances, the court declin[ed] to exercise its discretion to grant Apple’s motion.” Dkt. 25 at 2.

Nor was the motions panel’s exercise of discretion contrary to *Opprecht* or *Purdue*. In *Opprecht*, the Court noted that “[t]he grant or denial of a request to intervene ... is discretionary with the court” and held that on “the facts of the case at bar,” allowing party status to “a person who took no part whatsoever in the administrative appeal, although limited participation is authorized by statute, who made no contribution to the record before the PTO, and asserts no deficiency therein, is contrary to general principles of intervention.” 868 F.2d at 1265-66. Apple seeks to distinguish *Opprecht* because it involved an “ex parte reexamination,” rather than an adversarial proceeding, Pet. 8, but that fact only supports the panel’s similar exercise of discretion here. Apple, which concurrently filed numerous other IPR petitions against Qualcomm, had even more opportunity than the movant in *Opprecht* to participate in this adversarial proceeding or file its

own. And although Apple seeks to distinguish *Purdue* because the original party there possessed standing to appeal, *id.*, the Court’s holding regarding intervention had nothing to do with that fact. *See Purdue*, Slip Op. at 4. Accordingly, nothing in the panel’s discretionary order here is contrary to *Opprecht* or *Purdue*.

B. The Mandatory-Intervention Rule For Which Apple Advocates Is Unsupportable, Particularly In The IPR Context.

If anyone is seeking a categorical rule, it is Apple, which insists that any real party-in-interest, or anyone else claiming to be interested in an IPR, may intervene on appeal as “a matter of right,” regardless of circumstances. Pet. 10. Indeed, although it has not requested *en banc* review on this issue, *see id.* at 1, Apple openly faults the motions panel for invoking any discretion at all. *Id.* at 10, 12.

Apple advocates for this absolute rule based on inapt authority. Incorrectly contending the motions panel committed “legal error” and “misapplied the law,” *id.* at 10-11, Apple asserts it was “[e]ntitled” to have its motion evaluated under “the requirements for intervention as a matter of right under Rule 24(a)(2)” of the Federal Rules of Civil Procedure. *Id.* at 10. But Rule 24 applies to district, not appellate, courts. *See Fed. R. Civ. P. 1*. As Apple’s own cited authority reiterates, the “Federal Rules of Civil Procedure, of course, apply *only* in the federal district courts.” *Int’l United Auto Workers Local 283 v. Scofield*, 382 U.S. 205, 217 n.10 (1965) (emphasis added). Thus, although certain “policies” underlying certain

aspects of Rule 24 “may” apply to appellate intervention, *id.*, the entirety of its express language does not.

Rather, Federal Rule of Appellate Procedure 15, which governs Apple’s request in *this* Court, requires “*leave* to intervene[.]” Fed. R. App. P. 15(d) (emphasis added). “Determining whether to give leave of court requires an exercise of discretion....” *FilmTec Corp. v. Hydranautics*, 67 F.3d 931, 935 (Fed. Cir. 1995) (discussing district courts’ discretion regarding leave to amend). Apple cites no precedent that “[e]ntitle[s],” Pet. 10, it to deliberately lay in the weeds during the entire IPR and then interject itself on appeal at a time of its own choosing. To the contrary, the statute stating who “shall have the *right* to intervene” in the specific context of IPR appeals, 35 U.S.C. § 143 (emphasis added), refers only to the PTO Director and mentions no other allegedly interested non-parties. There was no misapplication of Rule 15 here.

Apple cites no case establishing that everything in Federal Rule of Civil Procedure 24 is fully incorporated into and directly governs appellate intervention, much less in the specialized context of IPR appeals.⁴ To the contrary, even if

⁴ Every case Apple cites involved an appeal from a district court order denying intervention, thus squarely presenting Federal Rule of Civil Procedure 24 disputes; they did not involve intervention on appeal under Federal Rule of Appellate Procedure 15. See *Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173, 1176 (9th Cir. 2011); *South Dakota v. U.S. Dep’t of Interior*, 317 F.3d 783, 784-85 (8th Cir. 2003); *Massachusetts School of Law at Andover, Inc. v. U.S.*, 118 F.3d

Apple’s proposed mandatory-intervention rule could be supported in another context (which it cannot), the unmistakable implication of the AIA’s Section 143—that nobody other than the Director has the “right” to intervene in an IPR appeal—is one of many circumstances that render IPRs different. Apple’s effort to prosecute this appeal in Intel’s stead, *see* Pet. 7-8, 16 n.7; Dkt. 18 at 3 & n.2, is also inappropriate because the statutes governing this Court’s jurisdiction to hear IPR appeals state that only a “party” to the IPR may appeal. *See* 35 U.S.C. § 319; 28 U.S.C. § 1295(a)(4)(A). Those case-specific and IPR-specific factors make Apple’s arguments for intervention uniquely weak, further demonstrating the unsuitability of this case as a vehicle to resolve any broader question regarding mandatory intervention.

Far from justifying any mandatory-intervention rule, Apple’s argument is a case-specific complaint that it should be permitted to intervene now because it purportedly “had no reason ... to participate in the relevant [IPRs]” before the Board. Pet. 2, 7. That mundane factual argument cannot justify the extraordinary exercise of *en banc* review. And indeed it is wrong. Apple points to no fact relating to Intel’s lack of standing that is any more apparent now than it would

776, 779 (D.C. Cir. 1997); *Sierra Club v. Espy*, 18 F.3d 1202, 1203 (5th Cir. 1994); *Am. Maritime Transp., Inc. v. United States*, 870 F.2d 1559, 1560 (Fed. Cir. 1989).

have been at some earlier time when Apple could properly have become involved in the IPR. Apple admits that it “was identified as a real party-in-interest in the proceedings before the Board,” and that the IPR “undisputedly” involved “Apple’s interests.” *Id.* at 6, 7. By Apple’s own terms, it had ample reason to participate in the IPR proceedings by joinder, filing its own IPR, or co-filing with Intel. Having elected (with full knowledge of all relevant facts) not to participate below, Apple made a strategic decision, on the facts of this case, to allow Intel to carry its water. It must now abide by that decision. The fact that Intel cannot appeal because it lacks standing gives Apple no right to now change its mind.

Indeed, Apple is uniquely ill-situated to complain about an inability to protect its rights in an IPR. Not only has Apple filed 26 other IPR petitions against Qualcomm—many of which are now on appeal, *see, e.g., supra* at ii—Apple recently boasted to the Supreme Court that “[s]ince 2012, [it] has filed 676 IPR petitions”—“the most of any party” in the world. Br. for Apple as Amicus Curiae at 19, *United States v. Arthrex, Inc.*, No. 19-1434 *et al.* (U.S. filed Dec. 2, 2020)). Apple’s regret at having failed to file yet another IPR cannot justify overriding the statutory and jurisdictional requirements for becoming an appellant or intervenor before this Court, much less adopting Apple’s absolute rule that every party asserting any interest may intervene in every IPR appeal.

C. Apple’s Untimeliness In Seeking To Intervene In The Other Three Appeals For Which It Seeks Rehearing Further Weighs Against *En Banc* Review.

Apple has filed the exact same petition for panel rehearing and rehearing *en banc* across four separate appeals. Dkt. 25. But in the three other appeals, Apple filed its motions to intervene well into the appeal—filing its motion as late as 110 days after that appeal began. The rules provide parties 30 days to move to intervene, which Apple was well beyond in the other three appeals. The motions panel denied Apple’s motions for this additional reason that they failed to comply with Rule 15. *See Qualcomm Inc. v. Intel Corp.*, No. 20-1587, Dkt. 45 at 2 (Fed. Cir. Aug. 27, 2020) (denying Apple’s motion to intervene because “Apple failed to timely file its motion to intervene *and* did not attempt to join or participate in the underlying proceedings in any way.” (emphasis added)); *Intel Corp. v. Qualcomm Inc.*, No. 20-1828, Dkt. 46 at 2 (Aug. 27, 2020) (same); *Intel Corp. v. Qualcomm, Inc.*, No. 20-1664, Dkt. 45 at 2 (Aug. 27, 2020) (same). Apple’s untimeliness presents an independent reason why its petition does not come close to satisfying the standard for or warranting *en banc* review.⁵

⁵ Apple also complains that the order did not address or provide detailed explanations on every issue Apple’s motion raised. *See* Pet. 5-6, 10-11. The Court has no obligation to do so, *see, e.g., U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1556 (Fed. Cir. 1997), and that case-specific complaint would not warrant rehearing in any event.

II. APPLE’S INTERVENTION MOTION FAILS FOR NUMEROUS ALTERNATIVE GROUNDS THAT ARE UNWORTHY OF *EN BANC* REVIEW.

Apple argues the *en banc* Court should resolve (1) whether a party must participate in the IPR as a “precondition” to intervention, and (2) whether appellate intervention is necessarily timely if a party moves “as soon as it learns that its interests might no longer be protected” and existing parties will not be prejudiced. Pet. 1. As explained above, these issues do not warrant further review. But even if they did, Apple’s motion would provide an unsuitable vehicle for addressing them, because the denial of intervention was appropriate for numerous additional factual reasons specific to this case.

To begin with, as Apple neglects to mention in its rehearing petition, Apple argued that the “basis” for its original intervention motion was that “Apple can establish Article III standing and invoke this Court’s appellate jurisdiction,” regardless of Intel’s standing. Dkt. 18 at 3; *see id.* at 14 (arguing that “[t]he same facts establishing Apple’s standing ... also demonstrate that it has the interest required to intervene...”). Thus, fully half the motion was devoted to Apple’s attempt to prove its own standing based on the particular facts of this case. *Id.* at 5-13. Apple had to assert this argument because, unlike a more typical intervenor, it seeks to sustain this appeal without the participation of the actual appellant, Intel. Apple’s entire purpose in seeking intervention is simply to raise Intel’s arguments

if Intel is found to lack standing. *See* Pet. 16 n.7 (“Apple intends to join Intel in the briefing on the merits of the appeal, rather than submitting separate briefs”); Dkt. 40 at 3-4 (arguing that the “alleged standing defect” is “the only barrier to [Intel’s] representing Apple’s interest”). And, as Apple stated in its intervention motion, it could not do so without proving it has independent Article III standing. *See, e.g., Phigenix, Inc. v. ImmunoGen, Inc.*, 845 F.3d 1168, 1171-72 (Fed. Cir. 2017).

In opposing Apple’s motion, Qualcomm argued that it was unnecessary to decide Apple’s standing because intervention was inappropriate for other reasons given the specific facts of this case. *See* Dkt. 23 at 5-9. The motions panel seems to have agreed. But Qualcomm also explained Apple could not establish standing because of many of the same facts that led Qualcomm to challenge Intel’s standing. *Id.* at 9-19. Thus, Apple’s own motion and requested relief underlying its rehearing petition was expressly premised on whether it has standing. *See supra* at 12-13. A finding that Apple lacks standing would therefore render all its other arguments irrelevant. But Apple nowhere argues that the fact-specific question of its standing warrants *en banc* review.⁶

⁶ To the contrary, when Qualcomm moved to dismiss Apple’s affirmative appeals against Qualcomm for Apple’s lack of standing, the Court denied those motions without prejudice to raising the issue before each merits panel, just as the

Moreover, as Qualcomm also explained in opposing Apple’s intervention, *see* Dkt. 23 at 7-8, Apple’s stated rationale for intervening—that Intel’s lack of standing “would prevent Intel from adequately representing Apple’s interests,” Pet. 4—is self-defeating. It is settled law that intervention cannot resurrect an appeal this Court has no Article III jurisdiction to decide in the first place. *See, e.g., United States ex rel. Tex. Portland Cement Co. v. McCord*, 233 U.S. 157, 163-64 (1914) (intervention “presuppose[s] an action duly brought,” and cannot “cure” a “vice in the original suit”); *Ericsson Inc. v. InterDigital Commc’ns Corp.*, 418 F.3d 1217, 1221 (Fed. Cir. 2005) (noting “well-settled law” requiring “an existing suit within the Court’s jurisdiction” as a prerequisite to intervention (applying Fifth Circuit law)); *Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275, 283 (D.C. Cir. 1993) (“The general rule is that [i]ntervention presupposes the pendency of an action in a court of competent jurisdiction,” which “is routinely applied to dismiss an intervenor where the court lacks jurisdiction over the original action.”) (quoting Charles A. Wright, et al., *Fed. Practice & Procedure* § 1917, at 457 (2d ed. 1986)); *Simmons v. I.C.C.*, 716 F.2d 40, 46 (D.C. Cir. 1983) (refusing to permit “late-filing party, by appearing as an intervenor in an existing (but jurisdictionally defective) suit instead of filing independently, to perfect an appeal beyond” the deadline for

Court did with the question of Intel’s standing here. *See* Orders, *Apple v. Qualcomm*, Nos. 20-1683, 20-1763, 20-1827 (Fed. Cir. Aug. 27, 2020).

filing its own notice of appeal). Accordingly, if Intel were found to lack standing, this Court would lack jurisdiction over the underlying appeal, and Apple's intervention would be unnecessary and improper. And if Intel were found to have standing, then Apple's intervention is likewise unnecessary because Apple admits it seeks to intervene only to save the appeal and would not file a separate brief or make any arguments of its own. Pet. 16 n.7; Dkt. 40 at 3-4. In short, Apple's fear that Intel lacks standing is one of many reasons, wholly apart from the issues on which Apple seeks rehearing *en banc*, why Apple **cannot** intervene.

Finally, the *en banc* Court would have to resolve whether non-party Apple even has a right to seek rehearing the first place. Federal Rule of Appellate Procedure 35(b) provides that only “[a] party may petition for a hearing or rehearing en banc,” (emphasis added), and Apple cites no case where a non-party was ever permitted to invoke such review.⁷ This case demonstrates the soundness of that restriction. In two discretionary orders that created no precedent, the motions panel denied both Apple's intervention motion and its motion for reconsideration of that denial. That is where this matter should end.

CONCLUSION

For the foregoing reasons, rehearing should be denied.

⁷ Apple's contention that denial of intervention is “a final judgment” ripe for *en banc* review, Pet. 3 n.2, rests on inapposite authority involving a **lower court's** denial of intervention.

Dated: December 15, 2020

Respectfully submitted

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CERTIFICATE OF INTEREST

Case No. 2020-2092, -2093

Intel Corporation v. Qualcomm Incorporated

Filing Party/Entity: Qualcomm Incorporated

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: December 15, 2020

Signature: /s/ I. Sasha Mayergoyz

Name: I. Sasha Mayergoyz

1. Represented Entities (Fed. Cir. R. 47.4(a)(1)) – Provide the full names of all entities represented by undersigned counsel in this case.

Qualcomm Incorporated

2. Real Party in Interest (Fed. Cir. R. 47.4(a)(2)) – Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.

None

3. Parent Corporations and Stockholders (Fed. Cir. R. 47.4(a)(3)) – Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.

None

4. Legal Representatives – List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None

5. Related Cases – Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court’s decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

Although the questions are not all identical, for completeness Qualcomm notes that Apple has petitioned for panel rehearing or rehearing *en banc* in the following pending cases:

Qualcomm Inc. v. Intel Corp., Nos. 20-1587, -1588, -1654
(consolidated);

Intel Corp. v. Qualcomm Inc., No. 20-1664;

Intel Corp. v. Qualcomm, Inc., Nos. 20-1828, -1867 (consolidated).

6. Organizational Victims and Bankruptcy Crimes – Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None

**CERTIFICATE OF COMPLIANCE WITH
TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS,
AND TYPE-STYLE REQUIREMENTS**

Case No. 2020-2092, -2093

Intel Corporation v. Qualcomm Incorporated

I certify that the foregoing filing is proportionately spaced in 14-point font and, according to the word processing program in which it was generated, contains 3,753 words excluding parts of the document exempted by Federal Circuit Rule 27(d).

Date: December 15, 2020

/s/ I Sasha Mayergoyz

I. Sasha Mayergoyz