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Qualcomm's Antitrust War and The Patent Licensing Issues

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October 11, 2017 – The article, "Qualcomm's Antitrust War and The Patent Licensing Issues," written by Michael Salzman, was published in IP Watchdog.

The antitrust war Qualcomm is now defending on three continents against government regulators as well as Apple and its iPhone manufacturers, Compal, Foxconn, Pegatron, and Wistron, is fascinating on so many levels. On the international political plane, Qualcomm continues to portray itself as the poster child for Trumpian complaints that American companies are the victims of unfair treatment by governments in Asia and Europe. In Washington, the case against Qualcomm is the ping-pong ball in the short-staffed Federal Trade Commission's one Democrat vs. one Republican (there are an unprecedented three vacancies on the five-member Commission) doctrinal battle over how aggressively to apply antitrust law to owners of standard-essential patents (SEPs), with acting chairwoman Maureen Ohlhausen using her defense of Qualcomm as a plank in her campaign platform as she seeks to be designated by President Trump to take the chair on a permanent basis.

Even at ground level, where American courts in San Diego and San Jose are now being called on to apply the law laid out in prior court decisions to the particular facts of the smartphone chip market, the multipronged attack on Qualcomm's patent licensing practices offers an unusually rich platter of meaty issues to feast upon for those who advise patent licensors and licensees. Leaving aside the implications for the smartphone industry and the market for cellular baseband processors that Qualcomm now dominates, the new precedents that will be set in court—if the parties don't settle or a Republican-controlled FTC doesn't withdraw its case—will have broad and deep implications for patent owners and users—much as the *US v. Microsoft* case has had since it was decided almost two decades ago.

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