

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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IN RE XIAOHUA HUANG'S PATENT  
INFRINGEMENT LITIGATION

XIAOHUA HUANG *PRO SE*  
*Petitioner,*

V.

HUAWEI TECHNOLOGY LTD.  
*Respondents.*

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On Writ of Certiorari to the United States Court of  
Appeals for the Federal Circuit and the US District  
Court of Eastern Texas

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**PETITION FOR A WRIT OF CERTIORARI**

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### QUESTION PRESENTED

As pointed out by District Judge J. Owen Forrester in *Sklar v. Clough*, 2007 U.S. Dist. LEXIS 49248 (N.D. Ga. July 6, 2007), "a district court may consider a hearsay statement in passing on a motion for summary judgment if the statement could be reduced to admissible evidence at trial or reduced to admissible form" (citation omitted).

Plaintiff Xiaohua Huang produced the schematics extracted from the accused chips through reverse engineering to prove the infringement. The Magistrate Judge used his own fraudulent statement that evidence were not brought during the Discovery and took Defendant Huawei's perjured testimony to dismiss the case.

Under Huawei Counsel's instruction Magistrate Judge Payne took the perjured declaration of Huawei and used his own fraudulent statements to make Sanction to Plaintiff Xiaohua Huang. Magistrate Judge Payne accused that Mr. Huang was not willing to hire Counsel and pay money to an attorney (who practiced in the US district of Eastern Texas) to sanction Mr. Huang to pay attorney fees to Defendant Huawei. This case may involve "Fraud on the Court", the Judgment of Federal Circuit and the Judgment of US district Court at Eastern Texas should be reviewed and reversed.

**PARTIES TO THE PROCEEDINGS**

Petitioner Mr. Xiaohua Huang was the plaintiff in the district court and the appellant in proceedings before the Federal Circuit.

Respondents Huawei Technology Ltd. was defendants in the district court and Appellee in proceedings before the Federal Circuit.

**LIST OF PARTIES AND  
RULE 29.6 STATEMENT**

Petitioner Xiaohua Huang is an individual, pro se. is the owner of US patent 6744653, 6999331 and RE45259.

Respondent is Huawei Technology Ltd. which sold networking switches and Routers containing TCAM IP and TCAM chips infringing US patents 6744653, 6999331 and RE45259

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### **OPINION BELOW**

Opinion below includes:

The decision by the panel of the US Court of Appeal for the Federal Circuit to case 17-1505 on June 8, 2018, the denial to Petition for rehearing en banc on August 8, 2018 and the U.S. District Court of Eastern Texas in the order 222, 213, 212, 204, 182, 172, 155, 146,134, 93 of case 2:15-cv-1413. Opinions below are incorporated in Appendix a1-a42.

### **JURISDICTION**

The court below entered judgment on June 8, 2018, and denied a timely rehearing petition en banc on August 8, 2018, which is incorporated in Appendix I. This Court has jurisdiction under 28 U.S.C. §1254(1).

### **STATUTORY PROVISIONS INVOLVED**

This case involves the “Fraud on the Court”. By Law the decision from “Fraud on the Court” should be reversed. Under Defendant Huawei Counsel Mr. Carter’s instruction Magistrate Judge Payne made Sanction to Plaintiff Mr. Huang based on Defendant’s perjured declaration. The instruction which Huawei’s Counsel Mr. Carter made to Magistrate Judge Payne and Magistrate Judge Payne’s response during Hearing on March 8, 2017 was deliberately omitted in the transcript provided by the District Court. Another reason that Magistrate Judge’s Sanction to Plaintiff is that Plaintiff Mr. Huang is not willing to share income with the Counsel practicing in the District Court.

Magistrate Judge dismissed the case based on his Fraudulent Statement and Defendant's perjured declaration, which were proved both contradicted to the factual material evidence.

### **INTRODUCTION**

During the year 2000 to 2002 Plaintiff Xiaohua Huang invented the advanced design of content addressable memory (TCAM) which can increase the speed of Internet Router and Switches up to hundreds of times, which were granted as US patent 6744653, 6999331 and RE45259 ("patent-in-suit"). Defendant Huawei Technologies incorporated the TCAM IP and chips designed based on "patents-in-suit" in its high speed internet Routers and Switches, then achieved huge success and generated multi hundreds billions USD profits over the world, in United States Huawei generated multi billion USD profits through using the "patent-in-Suits".

From 2011 to 2015 Mr. Huang collected adequate evidence to prove that Huawei technology Ltd has used his "Patents-in-Suit" in its networking products. In August14, 2015 Plaintiff Mr.Huang filed complaint against Huawei in US District Court of Eastern Texas for patent infringement and accused 7 super high speed Routers and Switches listed in Huawei's website, the case number is 2:15-cv-1413.

The Magistrate Judge Roy Payne in the District Court took the perjured declaration of Defendant Huawei and made fraudulent



statements that all the evidence proving infringement were not produced during Discovery, then recommended to dismiss the case. The District Judge Gillstrap adopted and confirmed Magistrate Judge's recommendation.

Plaintiff Mr. Huang filed Appeal to the US Court of Appeal for the Federal Circuit. Under Huawei Counsel Mr. Carter's instruction Magistrate Judge Roy Payne sanctioned Plaintiff Mr. Huang to pay Defendant Huawei's attorney fees and costs completely based on Defendant Huawei's perjured declaration and Magistrate Judge Payne's own fraudulent statements, which are contradicted to the factual material evidence.

The panel in the US Court of Appeal for the Federal Circuit only took Huawei's perjured declaration and Magistrate Judge Roy Payne's fraudulent statement and affirmed the District Judge's Judgment to dismiss the case and the Sanction to Plaintiff Mr. Huang to pay Defendant's attorney fees and cost.

Both US court of Appeal for the Federal Circuit's decision and the District Court's decision should be reversed.

#### **STATEMENT OF THE CASE**

Mr.Huang filed complaint with "reverse engineering drawing description" as Exhibit F (a154-164) and "eFlexCAM brochure" as Exhibit E on August 14, 2015. On November 24, 2015 Mr. Huang sent Huawei "P.R. 3-1 Asserted Claims and infringement contentions" with Exhibit F and E

and claimed TCAM chips IDT75K7234 etc. in Huawei's Routers and Switches infringed RE45259 patent, claimed TCAM IP of eSilicon in Huawei's Routers and Switches infringed 6744653 and 6999331 patents.

Defendant Huawei emailed Rule 11 letter on March 22, 2016 to Plaintiff and filed rule 11 motion on May 23, 2016 to claim that Huawei's products using TCAM IP of eSilicon not sold in USA, thus Huawei did not infringe US patent 6744653 and 6999331. Plaintiff Huang found that all Huawei's networking products using TCAM sold in China are also sold in USA, which proved Huawei's testimony is not true and perjured. Mr. Huang filed motion for leave to add those newly found the more than 80 Huawei's products into the infringement contention, Magistrate Judge Payne denied Mr. Huang's motion.

On September 29, 2016 Defendant Huawei filed MSJ of non-infringement with four schematic made by eSlicon on July, 2016 to claim the TCAM licensed to Huawei(HiSilicon) are different from the eFlexCAM brochure, so Huawei did not infringe US patent 6744653 and 6999331. The District Court granted Huawei's MSJ of non-infringement on Nov.22, 2016. Defendant Huawei filed Motion for attorney fees on January 31, 2017 based on Huawei Counsel's perjured testimony. The District Court granted Defendant Huawei's motion for attorney fees.

Plaintiff Mr.Huang appealed to US Court of

Appeal for the Federal Circuit. Panel in Federal Circuit took Defendant's fraudulent statement, perjured testimony and the District's fraudulent statement, made more fraudulent statements to affirm District's decision without considering factual material evidence and declaration which Plaintiff Huang produced.

### **SUMMARY OF ARGUMENT**

Plaintiff Mr. Huang did adequate pre-litigation investigation, and produced the solid evidence to prove Huawei's infringement to "Patent-in-Suit". The District Judges and Panel of Federal Circuit only took Huawei's perjured declaration and made fraudulent statements to made wrongful decision. The Judges in the District Court were upset that "Plaintiff Mr. Huang was not willing to share the incomes with the Counsel" who practiced in the District Court. The Magistrate Judge made decision under the instruction of Huawei's Counsel Mr. Carter. This case involved the "Fraud on the Court".

### **ARGUMENT**

#### **I. PLAINTIFF MR. HUANG DID ADEQUATE PRE-SUIT INVESTIGATION**

##### **1. Invention of "patents-in-suits"**

In 2000 Mr. Huang invented high speed and low power Ternary Content Addressable Memory (TCAM) Design which "employs a differential sense amplifier to reduce voltage swing of the match line(Hitline) to increase speed and reduce power for search operation" associated with "hit ahead

hierarchical priority encoding logic and circuit”. High speed networking Router and Switches have to use TCAM for high speed information look up. Mr. Huang’s inventions were granted as US patent 6744653, 6999331 and RE45259, have provided the highest speed and lowest power TCAM design since the year 2001, which were recognized by Cisco Executives (a107-a111).

## **2. Finding Infringement of US patent RE45259**

In 2000 Mr. Huang found CMOS Micro Device Inc. (CMOS) in California to develop TCAM chip. In 2004 IDT reviewed Huang’s TCAM design. Netlogic acquired TCAM business of IDT in 2009, Netlogic was acquired by Broadcom in 2011 by \$ 3.7billion. From 2011 to 2015 Mr. Huang used Wuxi Hengyu (a subsidiary of CMOS) and Cellixsoft to do reverse engineering of TCAM chips IDT75K72234, IDT75S10005, IDT75S10010 and NL9512 of Broadcom (IDT and Netlogic) (a154-a164), the extracted layout and schematics of the chips in “Reverse engineering drawing description” (a154-a164) shown identical “hit ahead hierarchical priority encoding logic and circuit design” which read the claim1,13 and other claims of RE45259 (a167-a184). Huawei’s accused NE40 Routes etc. have used TCAM chips of Broadcom(IDT and Netlogic), Huawei has infringed US patent RE45259.

## **3. Finding Infringement of US patent 6744653 and 6999331**

In 2011 Mr. Huang found a brochure of eFlexCAM on SDS's website. The brochure of SDS's eFlexCAM describes a TCAM structure: "A low power version of eFlexCAM employs a differential sense amplifier to reduce voltage swing of the Hit line and further reduce power required for search operations" which is a same structure as Huang's invention and read the claims 1 and 9 of '331 Patent claims 1, 8, 11, 15 of '653 Patent, eFlexCAM was sold in 0.18um, 0.13um, 90nm, 65nm and 40 nm process. SDS was acquired by eSilicon Corporation in 2011. In 2011 HiSilicon Technologies (a subsidiary of Huawei) licensed eSilicon's 40nm TCAM IP for its network-application ASICs, HiSilicon's network-application ASICs are used for Huawei's networking products, Huawei has infringed US patents 6744653 and 6999331.

#### **4. Infringement contention**

Plaintiff Mr. Huang reviewed "Reverse Engineering Drawing Description" (a154-a164) and "Brochure of eFlexCAM" with Lawyers and experts, obtained positive feedback on infringement.

### **II. DISTRICT COURT'S SUMMARY JUDGMENT IS ERRONEOUS**

#### **1. That Huawei Infringed US patent RE45259 is firmly proved**

Magistrate Payne's Order Dkt.134 state: "Mr. Huang has not otherwise raised a triable issue of fact ... Mr. Huang highlights several alleged

reverse engineering records, but the Court must GRANT Huawei's motion to strike....these records because Mr. Huang failed to produce them during discovery. Accordingly, it is RECOMMENDED that Huawei's motion for summary judgment be GRANTED."

Mr. Huang brought up "reverse engineering records" during the discovery. 20 page schematic and layout of "reverse engineering drawing description" Exhibit F extracted from TCAM chip75K7234 etc. were filed in original, third amended complaint, infringement contention and Objection to defendant's MSJ during discovery. With Schematic in Figure1,2,3 and Layout in Picture 2 of Huang's Expert report which corresponds to Figure1,2,5 and Picture 0 of "Reverse Engineering Drawing Description" Exhibit F reading Fig.1, Figure2a, Figure3 and Figure6 of RE45259 patent. It is proved that TCAM chip75K7234 etc. infringes claim 1 and 13 of RE45259 patent (a167-a184). Plaintiff Mr. Huang proved the infringement in his "infringement contention"(a80-a106), Huawei's NE40 routers etc. used Broadcom TCAM chips and infringed RE45259 patent.

Expert report Exhibit T, R, Q and U, witness declaration Exhibit M, Press release Exhibit D, product information E, F, I, J and L were all produced during discovery. Expert Discovery dead line is on Nov.17, 2016. Press release D and Products information Exhibit E, L, I and J were

published, which are all self-authenticated. All of Exhibits D,E,F,I,J,L,M,T,R,Q and U should not be stricken.

Huawei's employees who are Huawei's shareholders acted as witness, pro se Mr. Huang is also witness. Expert witness discovery deadline is November 17, 2016, the disclosure of expert witness is 90 day before the Jury Trial based on Fed.R.C.P 26(a)(2)(D). Plaintiff Mr. Huang disclosed witness in their declaration on October 17, 2016 and in amended disclosure on November 11, 2016. As pointed out by District Judge J. Owen Forrester in *Sklar v. Clough*, 2007 U.S. Dist. LEXIS 49248 (N.D.Ga. July 6, 2007), "a district court may consider a hearsay statement in passing on a motion for summary judgment if the statement could be reduced to admissible evidence at trial or reduced to admissible form" (citation omitted). This is not just a hearsay proposition but one of general application. The "Reverse-engineering drawing description" in Exhibit F were declared in admissible authentication format on October 24, 2016 in Exhibit W101 of Dkt.124 and in Exhibit F of Dkt.157 on December, 2016. This case is Huang's first lawsuit as a pro se, Mr. Huang has no idea on authentication. Fed.R.C.P 56(d) allow that the admissible evidence to be provided later and the Court should defer judgment. Mr. Huang raised a triable issues that Huawei's products including NE40 Routers were proved infringing US patent RE45259. Defendant's MSJ should be rejected and

District Court's Judgment should be reversed.

**2. Huawei's evidence challenging the Infringement of US patent 6744653 and 6999331 is disputable.**

The TCAM structure "A low power version of eFlexCAM employs a differential sense amplifier to reduce voltage swing of the Hitline and further reduce power required for search operations" described in eSilicon's "eFlexCAM brochure" Exhibit E read the content (FIG.3B,3C,5B and 7 of 6744653) and claims of US patent 6744653 and 6999331. Expert Report of Mr. Liu in Exhibit R of Dkt.109 proved the infringement of Huawei's eSilicon's eFlexCAM TCAM IP to US patent 6744653 and 6999331. Huawei infringed US patent 6744653 and 6999331. Huawei's claim of rule11 letter on March 22 and Declaration of rule11 motion on May23, 2016 that no Huawei's products containing TCAM IP of eSilicon have been sold in USA were proved fraudulent and perjured on June 6, 2016 by information in Huawei's website [e.huawei.com.us/](http://e.huawei.com.us/) and [e.huawei.com.cn/](http://e.huawei.com.cn/) that all Huawei's networking products containing TCAM sold in China are also sold in USA. On July, 2016 Huawei's Counsel asked Huawei to calculate the sale revenue of products using TCAM IP of eSilicon Corporation and the corresponding royalty which further proved that Huawei's products using TCAM IP of eSilicon have been sold in USA,(a114) Huawei's rule11 letter on March 22 and Declaration of rule



11 motion on May23, 2016 are based on false information and perjured testimony. On July and August, 2016 Defendant Huawei asked multi-time for eSilicon to make schematics of TCAM. The eFlexCAM brochure was officially released in 2011in same time that Huawei license the 40nm TCAM IP of eSilicon eFlexCAM. The 40nm TCAM structure of eFlexCAM brochure are same as the 40nmTCAM Huawei licensed from eSilicon. The four schematics used in Huawei's MSJ were made during the Litigation on July,2016,which were five years later than the TCAM IP which Huawei licensed, they are definitely different. Ms. Li said: "The designer of HiSilicon (Huawei fully owned) will change TCAM design and will not use differential sense amplifier to match line in the future", which indicated that the differential sense amplifier to match line was used. The four schematic made by eSilicon Corporation after July, 2017 is a DISPUTABLE evidence which is contradicted to the TCAM structure in eFlexCAM brochure. Based on Fed.R.C.P. 56(h) the District Court should NOT GRANT Huawei's MSJ of non-infringement, it needs further evidence or to be decided at Trial.

### **III. THE SANCTION OF ATTORNEYS FEE AND COSTS IS ERRONEOUS AND WRONGFUL**

#### **1. Mr. Huang did adequate pre-suit investigation**

This is as stated in section I of this petition

**2. Plaintiff Mr. Huang has been in good faith during the litigation.**

In his declaration ExhibitX-2 of Dkt.184 (a126-a129) Mr. Huang disclosed the original TCAM design of Fig.1 of RE45259 patent sent to Andy Bechtolsheim in 2002 under NDA in page 28-30 of "Infringement contention" which was sent to Defendant Huawei on November, 2015. This proved that Huawei's Counsel Torkelson's declaration in motion for attorney fee Dkt.179 is perjured. In "Infringement contention" Huang brought up 20 page layout and schematics in "Reverse Engineering Drawing Description" Exhibit F (a154-a164). The District Court granted Defendant Huawei's motion for attorney fees and expert costs based on Huawei counsel Pengyan Li's declaration Dkt179-1 and Huawei Counsel Torkelson's declaration Dkt.179-2. Both Li's declaration and Torkelson's declaration were contradicted to the factual material evidence, they are all perjured. In declaration of Exhibit X-1 (a116-a125) and declaration of Exhibit X-2(a126-a129) of Dkt.184 with factual material support Plaintiff Mr. Huang denied all the content in the Li's declaration Dkt.179-1 and Torkelson's declarationDkt.179-2. The Court took Huawei Counsel Ms. Li's perjury as evidence is erroneous. In spite that with factual material evidence support Plaintiff Mr. Huang denied Huawei's perjured testimony Magistrate Judge Payne made Sanction to Plaintiff Mr. Huang in Order 204 based

on Huawei Li's perjured testimony and in Order 212 the district Judge Gilstrap cited Huawei Li's perjured testimony from Order 204 and threaten to Sanction Plaintiff Huang more if Huang dare to tell the truth that Huawei's motion for attorney fee are based on Huawei Counsel's perjury. In Dkt.216 Plaintiff Huang proved that Judge Payne's Order 204 and Judge Gilstrap's Order 212 are based on their own fraudulent statement and Huawei's perjury. By declaration Huang denied Judge's fraudulent statement and Huawei Counsel's perjury, Pengyan Li's 's declaration "Mr. Huang has repeatedly called, emailed, and sent messages to me seeking payment for dismissal of his lawsuits ..." is contradicted to fact and perjured.

Pengyan Li sent me email on September 2, 2015 and express intention to talk with me, cited Li's email : "We hope you would agree,....Thus, we have more time to discuss with you facts of the case). When I called Penyan Li's cell Phone She asked me How much I want to settle case. I told her that Huawei needs to make offer. On September15, 2015 Li sent me email and asked me: "MAYWE HAVE A TELEPHONE CALL TODAY." Appx2218. On February 5, 2016 Pengyan Li sent me email: "Huawei team intends to discuss settlement DIRECTLY with you in order to save time and resource of both side"(a116-a125). On February 15, 2016 Pengyan Li sent me email, threatened: "Huawei expect that you withdraw the complaint. ...the settlement amount will be very

low, HUAWEI WILL CONTINUE LAWSUIT TO AVOID MORE COMPLAINTS AGAINST HUAWEI HAPPENS" (a116-a125) "CONTINUE LAWSUIT" means to have Plaintiff incur costs. On May23, 2016, Pengyan Li sent me email:" Mr. Huang, Next Month June 7 -13 I will be in Dallas, TX, wonder you would be in Dallas on that time , if possible , hope to discuss this case with you"(a116-a125). I proposed 10Million USD to settle the case at Li's request.Huawei Counsel Ms. Li's emails proved that in her perjured declaration she put her own conducts on Plaintiff Mr. Huang. The Judges overlooked those facts. Huawei Ms. Li told me : "Huawei authorized me to make five digit number offer to you, as a pro se, the Court won't allow you go to Jury Trail, Huawei won't be taken to the Trail by all means."

On Hearing of July 27, 2016 I had conversation with Judge Payne:

MR.HUANG: Your Honor, Assume court will grant the motion of summary judgment, I still have one more patent and I will have whole bunch hard evidence. Can that patent, with evidence, be taken to trial?

THE COURT: Are you talking about the reissue patent? MR. HUANG: Yes.

THECOURT: If summary judgment is not granted as to all of your patents, then the others would proceed on and the litigation would continue on toward trial.

While Huawei Ms. Li kept contacting me

Huawei's other Counsels sent me email and asked me not to talk to Ms. Li. It is Huawei's conspired plan to build up "the evidence". Huawei Li's declaration ", he could still file more motions and papers with the Court, and Huawei will have to reply and incur further legal fees." is perjured. That "HUAWEIWILL CONTINUE LAWSUIT is what Pengyan Li threatened Plaintiff Huang to have Mr. Huang incur more litigation cost. Huawei benefited multi-billion USD from using the asserted patents. The royalty is much higher than its litigation cost. Ms. Li perjured: "He sued Huawei because one ... told him that it would quickly settle. He ..sue Huawei on ...representation that Huawei would pay \$1.5 million...." I declared that Huawei Pengyan Li said to me: "You should hire a lawyer since your patents are very unique and different from the others who sued Huawei. Your patents are better solution than others..." Li continued: "Huawei had hundreds of lawsuits in TXED, known and retained some lawyers who knows Judges very well. Upon your retaining a lawyer who knows Judges well Huawei could be willing to settle up to one and half million with you."

Huawei Pengyan Li said to me: "Now we are going to retain a law firm well connected to the Court of Appeal for the Federal Circuits upon your appeal, I hope you withdraw your appeal, otherwise Huawei is going to file motion for attorney fees."

Ms. Li perjured: “He did not hire an attorney because he does not want to share revenue with a lawyer.” Magistrate Payne in Order 204 cited as: “Huang said that he nevertheless decided not to hire an attorney because he did not want to share revenue with a lawyer”. The Panel’s proceeding cited: “that he did not want to share revenue with a lawyer,” That “does not want to share revenue with a lawyer” should not be the reason to be sanctioned. Why Judges all cited that? Why Huawei Counsel Li perjured this declaration? Does this relate to what Huawei Li said “knows Judges well.”

I, Xiaohua Huang, declare as follows:

1.No any person or Lawyer told me if I sued Huawei it would be settled quickly, settled at any number or 1.5million USD prior to my filing lawsuit against Huawei, the only reason for me to sue Huawei is that I collected most evidence that Huawei infringed my patents.

2. I did not want a quick settlement and want to take the case to Jury Trial, see the conversation in Hearing of July 27, 2016.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

Xiaohua Huang

**3. Five motion to compel were all filed with reasonable cause**

Prior to filing lawsuit Plaintiff Mr. Huang believed he collected adequate evidence to prove

infringement to Jury Trial without further information from Defendant Huawei, so Mr. Huang did not request information from Defendant until May22, 2016 Defendant Huawei made perjured testimony in rule11motion Dkt.52 that no Huawei's products containing eSilicon TCAM IP are sold in USA.

On July3, 2016 Mr.Huang sent document production request and asked Defendant Huawei to provide information including the contract, source code and product model numbers which contains the seven ASIC chips using TCAM IP of eSilicon and the model numbers of seven ASIC chips, Huawei ignored Mr. Huang's request, then Mr. Huang filed first motion to compel the information on July 8, 2016(Dkt.76).(a131-a136)

In Hearing July27, 2016 Defendant Huawei and Magistrate Judge said no confidential source code should be disclosed to Plaintiff Mr.Huang, then on August 12, 2016 Mr. Huang filed second motion to compel (Dkt.94)(a137-a142) non-confidential information including model numbers of Huawei's products using TCAM IP of eSilicon and manufacture process in order to verify whether those products are sold in theUSA. Magistrate Roy Payne ordered: "The Court previously entered an Order staying this case and all associated deadlines until September 28, 2016.....(Dkt. Nos. 94...) are DENIED WITHOUT PREJUDICE. Plaintiff may re-file these motions only after the expiration of the stay." In Dkt.99.(a130).

On October 11, 2016 based on Magistrate Judge Payne's Order in Dkt.99 Plaintiff Mr. Huang refiled second motion to compel as third motion to compel to compel the non-confidential information. The third motion to compel is a refiling of second motion to compel based on Magistrate Payne's Order Dkt.99.(a143-a148)

On October 24, 2016 Plaintiff Mr. Huang retained three outside independent experts who signed undertaking protective order agreement, based on 10(e) of protective order, those experts can access the "restricted, attorney eye only, confidential source code information." Plaintiff Mr. Huang sent the protective order undertaking signed by independent experts to Defendant Huawei and asked Defendant to disclose the requested information to retained independent experts. Defendant ignored Plaintiff's requests, The Plaintiff Mr. Huang filed fourth motion on October 28, 2016.(a149-1151). Defendant Huawei used unreasonable cause and denied Plaintiff's request.

On November 18, 2016 Huawei Counsel Torkelson sent Plaintiff Mr. Huang email and stated that Broadcom allowed Huang's retained experts to access and review the confidential source code of TCAM chip NSE5512 ,(a112-a115) Huawei Counsel also sent email on November 28, 2016 and acknowledge that based on item 5(e) , 9, 10(a) and 10(h) of Protective Order signed by Magistrate Payne independent experts are allowed



to access confidential information.(a112-a115)

Based on the fact that Broadcom allowed Plaintiff's retained experts to access its confidential source code Plaintiff Mr. Huang filed fifth motion to compel Huawei to allow his retained experts to access the source code of eSilicon TCAM IP used in HiSicon ASIC chip of Huawei's networking products on November 28, 2016.(a152-a153)

The independent expert should be given the same right with or without attorney as long as signing the NDA or/and undertaking of protective order since the independent expert is third party. Signing NDA is the industrial common practice for all the professionals to view the confidential source code. No any professionals who access the confidential source code daily are supervised by a lawyer. Both attorney and experts are retained by Plaintiff or Defendant, all qualified professional experts should be given same right as constitutional law requires no matter under lawyer's supervision or not. Because the qualified professionals has the ability to obey NDA or Protective Order. As a matter of fact the professional experts can obey the protective order better than lawyer as Huawei Counsel Pengyan Li and Torkelson made perjured testimony contradicted to the factual materials.

#### **4. Fraud on the Court**

On Hearing of March8, 2017 I argued that the evidence of reverse engineering was already

authentic by then, that Huawei infringed RE45259 patent was proved further by the evidence provided by Broadcom. I produced adequate pre-litigation evidence and I am in good faith, Huawei's Counsel was perjured, so I should not be sanctioned for attorney fees. Court Deputy reporter Tammy Goolsby asked me to mail \$100 dollar to herself to prepare the transcript. The transcripts has many mistakes on Mr. Huang's speech.

Huawei Counsel Leon Carter said to Magistrate Judge Payne: "Let him (Huang) pay the money." Magistrate Judge Payne replied: "He does not have Money." This part was omitted in the transcript. This conversation showed that Leon Carter was in an advanced position able to command Magistrate Judge Payne, Magistrate Judge Payne's judgment was commended by Defendant Huawei Counsel Carter, the court reporter deliberately omitted this conversation in transcript. Magistrate Judge Payne said to me: "you do not understand what perjured mean, also you do not understand what fraudulent mean in US legal system." Magistrate Judge Payne mean that English is not my first language. Magistrate Judge Payne discriminated my national origin.

With evidence support Plaintiff Mr.Huang filed motion Dkt.170 and asked the Court to take action on Huawei's perjured testimony, the Court denied Mr. Huang's motion right away with fraudulent cause that Huang's motion has no evidence support. The Court's conduct encouraged

Huawei Counsel Li and Torkelson to make more perjured declaration in Motion for attorney fees. Even when Plaintiff Huang proved Huawei's declaration is perjured, the Courts still took all Huawei Counsel's perjury as evidence to grant Huawei's Motion for money based on Huawei Counsel's instruction which proved again what Huawei counsel Ms. Li said " knows Judges very well."

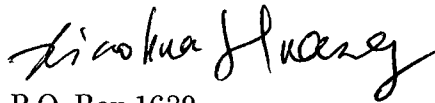
Huawei Counsel Ms. Li, Magistrate Judge Payne and the Panel (of Federal Circuits) are all interested in "he did not want to share revenue with a lawyer." In May, 2016 Mr. Huang refused to retain a lawyer who claimed that his partner knows Judge Gilstrap very well and signed up hundreds of cases in TXED.

#### IV CONCLUSION

Judgment of Federal Circuit and the Judgment of US district Court at Eastern Texas should be reviewed and reversed.

Dated: November 5, 2018 Respectfully Submitted,

Xiaohua Huang



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