

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

PARKERVISION, INC.

Plaintiff,

v.

QUALCOMM INCORPORATED, QUALCOMM
ATHEROS, INC., HTC CORPORATION, HTC
AMERICA, INC., SAMSUNG ELECTRONICS
CO., LTD., SAMSUNG ELECTRONICS
AMERICA, INC., and SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC

Defendants.

CASE NO.: 6:14-CV-00687-PGB-KRS

PROPOSED AMENDED CASE MANAGEMENT AND SCHEDULING ORDER

Plaintiff ParkerVision, Inc. (“ParkerVision”) and Defendants Qualcomm Incorporated, Qualcomm Atheros, Inc., HTC Corporation, and HTC America, Inc., submit the following proposed Amended Case Management and Scheduling Order pursuant to the Court’s order dated July 23, 2019 at Docket No. 297.

The parties have met and conferred to reach agreement on the majority of the schedule. There are, however, three issues that the parties have been unable to reach agreement on. The disputed dates and language are italicized in the proposed amended schedule below, and the parties’ positions for each of the three issues follow.

Proposed Amended Schedule

Event	Proposed Dates
Parties' proposed list of claim terms for construction, including any Motions for Additional Claim Construction Briefing	Tuesday, August 13, 2019
Responses, if any, to Motion(s) for Additional Claim Construction Briefing	Tuesday, August 27, 2019
If allowed, ParkerVision files Opening Claim Construction Brief	Friday, September 13, 2019
Qualcomm files Opening motion on the preclusive effect, if any, of <i>ParkerVision I</i> on this case	<i>Friday September 13, 2019 [ParkerVision's Proposal]</i> <i>Wednesday, February 26, 2020 [Qualcomm's Proposal]</i>
ParkerVision files response to motion on the preclusive effect, if any, of <i>ParkerVision I</i> on this case	<i>Friday September 27, 2019 [ParkerVision's Proposal]</i> <i>Wednesday, March 11, 2020 [Qualcomm's Proposal]</i>
If allowed, Qualcomm files Responsive Claim Construction Brief	Friday, September 27, 2019
If allowed, Joint Pre-Hearing Statements	Friday, October 11, 2019
Supplement all current written discovery responses (<i>e.g.</i> , interrogatories, requests for production, requests for admission) with new accused products	Wednesday, October 16, 2019
If allowed, Claim Construction Hearing	Mid-November 2019 ¹
Intent to rely on advice of counsel as a defense Amendment of infringement contentions [(if good cause exists in light of Claim Construction Order)] ²	Wednesday, February 12, 2020 ³
Amendment of invalidity contentions [(if ParkerVision amends or if good cause exists in light of Claim Construction Order)] ⁴	Tuesday, March 3, 2020
Non-infringement contentions	Tuesday, March 24, 2020

¹ Counsel for Qualcomm is currently set to be in trial November 4-15, 2019.

² As set forth in the joint statement, Defendants propose that the [*italicized*] language be added. ParkerVision opposes the addition of this language.

³ If a Claim Construction Order has not issued by January 31, 2020, the parties will submit a status report addressing whether this deadline and subsequent deadlines, including the trial date, will need to be modified.

⁴ As set forth in the joint statement, Defendants propose that the [*italicized*] language be added. ParkerVision opposes the addition of this language.

[Response to invalidity contentions] ⁵	[If included. Tuesday, April 7, 2020 [ParkerVision's Proposal] Tuesday, March 24, 2020 [Qualcomm's Proposal]
Fact discovery closes	Wednesday, April 22, 2020
Opening expert reports	Thursday, May 21, 2020
Rebuttal expert reports	Tuesday, June 23, 2020
Mediation	Tuesday, July 7, 2020
Expert discovery closes	Tuesday, July 14, 2020
Dispositive and <i>Daubert</i> motions	Tuesday, September 1, 2020 ⁶
Oppositions to Dispositive and <i>Daubert</i> motions	Tuesday, September 22, 2020
Meet and confer in person to prepare joint final pretrial statement	Thursday, October 15, 2020
Joint final pretrial statement	Monday, October 26, 2020
Motions <i>in limine</i> and any other motions	Monday, November 2, 2020
Final pretrial conference	Monday, November 23, 2020
Trial term begins	Monday, December 7, 2020

ParkerVision's Statement

A. ParkerVision I Briefing Schedule

First, regarding Qualcomm's contemplated motion on the preclusive effect, if any, of *ParkerVision I* on this case, ParkerVision proposes that any such motion be filed as soon as reasonably possible. Such a motion calls for a legal analysis by the Court into whether previous legal findings in prior cases may preclude any of ParkerVision's claims in this case—a case that involves different patents with different claim terms. This analysis will turn primarily on issues exclusively within the province of the Court—*e.g.*, claim construction. In the interests of judicial and party economy, this issue should be briefed and decided in parallel to claim construction

⁵ As set forth in the joint statement, Defendants propose that this [*italicized*] deadline be included. ParkerVision opposes the addition of this deadline.

⁶ The parties recognize that the time for filing dispositive motions is closer to trial than the preferred 4-5 months in the Court's model order. The parties are requesting a September filing date, however, because in August 2020, Qualcomm and the same Qualcomm counsel that is involved in this case will be involved in a trial against ParkerVision in Jacksonville. *See ParkerVision v. Apple, et al.*, 15-cv-1477 (Dkt. 152).

before the parties expend significant resources on fact and expert discovery.

Qualcomm previously argued that “the better course to do is to deal with that in the context of expert reports,” 5/22/2019 Hearing Tr. at 35:17-23, but it now proposes February 26, 2020 as the deadline for the motion. Whatever the precise date, Qualcomm would needlessly push the deadline to the latter stages of discovery. Qualcomm urges the Court to allow it to wait until claims have been dropped and the case has been narrowed. *Id.* But there is no realistic way for ParkerVision to narrow the case in such a way so as to totally obviate the contemplated motion. Under Qualcomm’s proposed delay, then, there is no real upside and a significant risk of downside.

The parties know which products were previously accused. The parties know which claim terms were previously construed. The parties know which products are at issue now. And the parties will soon know which additional claim terms (if any) are to be construed in this case, beyond those that were the subject of the pre-stay claim construction process. Given these realities, there is no good reason to wait to confront any alleged issues of preclusion.

B. Response to Invalidity Contentions

Qualcomm next proposes that ParkerVision serve an “Initial Response to Invalidity Contentions” within three weeks of the proposed Invalidity Contention deadline. The Court should resist Qualcomm’s proposal for several reasons. First, the Court’s Case Management Report in Patent Cases does not contemplate such a Response, and requiring one here would be unprecedented. Indeed, the only instance of this Court ever requiring a formal validity Response was the result of the parties mutually agreeing to a schedule based on the Northern District of Illinois’ local rules. *See Joao Bock Transaction Sys., LLC v. Fid. Nat’l Info. Servs.*, No: 3:13-cv-223-J-32JRK, ECF No. 62 (M.D. Fla. Nov. 5, 2013). That court’s local rules do not apply to this

case. And Qualcomm has put forth no good reason to deviate from this Court's or this district's well-established practice here. Second, to the extent Qualcomm wishes to probe the factual bases for ParkerVision's assertion of validity, it can do so through the normal course of fact and/or expert discovery. Last, even if the Court is persuaded to require ParkerVision to serve a validity Response, ParkerVision should be given well more than three weeks to respond. Qualcomm currently asserts an exceptional amount of prior art—upwards of 350 individual references and *thousands* of alleged combinations. *See* 5/22/2019 Hearing Tr. at 32:4-11. Even assuming that Qualcomm eventually narrows its asserted art to a more manageable number, ParkerVision will be unable to meaningfully prepare its validity positions until the date it is served with Qualcomm's amended invalidity contentions. As a result, should the Court require an invalidity response, that Response should be due no sooner than April 7, 2020.

C. Amended Contentions

Finally, while the parties agree on the final deadlines for amended infringement and invalidity contentions, Qualcomm proposes that such amendments be made only “if good cause exists in light of Claim Construction Order.” Qualcomm's proposal has no basis in the Court's Case Management Report in Patent Cases, which contemplates amended contentions *as a matter of course* “no sooner than 3 months and no later than 5 months of [the Claim Construction Hearing].” “Good cause” is not typically a requirement to amend infringement and invalidity contentions in this Court, and Qualcomm has put forth no reason to deviate from the model order and require good cause here.

Defendants' Statement

A. Impact of *ParkerVision I* Briefing Schedule

ParkerVision proposes that Defendants file a motion regarding the effect of *ParkerVision I* in a few weeks. ParkerVision's schedule, however, would lead to briefing based on an incomplete record. First, ParkerVision has contended that the repeated findings of non-infringement in *ParkerVision I* should have no impact because the scope of the claims in this case are different in scope than the claims at issue in *ParkerVision I*. Defendants disagree. Regardless, claim construction may play a role in deciding the scope of the claims and thus, should be completed before briefing on the impact of *Parkervision I*.

Second, ParkerVision has contended that it is accusing different products than the products found not to infringe by the Federal Circuit in *ParkerVision I*. While "ParkerVision may not serve infringement contentions raising new theories" (Dkt. 297 at 6), the exact products that ParkerVision is accusing, however, will not be known until ParkerVision finalizes its infringement contentions after the claim construction order. As a result, briefing on the impact of *ParkerVision I* should occur after February 12, 2020. At that time, the parties will know the scope of the claims and the scope of ParkerVision's infringement contentions.

B. Contentions

ParkerVision disputes that it should be required to show good cause in order to amend its infringement contentions. Without a good cause standard, however, the contentions will be a moving target. The Court has already ruled that "ParkerVision may not serve infringement contentions raising new theories. Notwithstanding the IPR proceeding and appeal, the case does not completely start anew." (Dkt. 297 at 6). ParkerVision should, therefore, be required to show good cause before any further amendments.

ParkerVision's schedule concerning responses to contentions is also unfairly one-sided. ParkerVision's schedule requires Defendants to respond to ParkerVision's infringement

contentions (ParkerVision has the burden of proof on infringement). Yet, ParkerVision is unwilling to respond to Defendants' invalidity contentions (Defendants have the burden of proof on invalidity). In contrast, Defendants' proposed schedule takes a more equitable approach and includes a date for ParkerVision to respond to Defendants' invalidity contentions.

August 6, 2019

Respectfully submitted,

McKool Smith, P.C.

/s/ Douglas A. Cawley

Douglas A. Cawley,
(Trial Counsel, pro hac vice)
Texas State Bar No. 04035500
E-mail: dcawley@mckoolsmith.com
Richard A. Kamprath (pro hac vice)
Texas State Bar No. 24078767
E-mail: rkamprath@mckoolsmith.com
McKool Smith P.C.
300 Crescent Court, Suite 1500
Dallas, Texas 75201
Telephone: (214) 978-4000
Facsimile: (214) 978-4044

Joshua W. Budwin (pro hac vice)
Texas State Bar No. 24050347
E-mail: jbudwin@mckoolsmith.com
Kathy H. Li (pro hac vice)
Texas State Bar No. 24070142
E-mail: kli@mckoolsmith.com
Leah Buratti (pro hac vice)
Texas State Bar No. 24064897
E-mail: lburatti@mckoolsmith.com
McKool Smith P.C.
300 West Sixth Street, Suite 1700
Austin, Texas 78701
Telephone: (512) 692-8700
Facsimile: (512) 692-8744

SMITH HULSEY & BUSEY

Stephen D. Busey
Florida Bar Number 117790
Email: sbusey@smithhulsey.com
Smith Hulsey & Busey
225 Water Street, Suite 1800
Jacksonville, Florida 32202
Telephone: (904) 359-7700
Facsimile (904) 359-7708

***ATTORNEYS FOR PLAINTIFF
PARKERVISION, INC.***

COOLEY LLP

By /s/ Matthew J. Brigham

Stephen C. Neal

(Trial counsel; admitted pro hac vice)

nealsc@cooley.com

Matthew J. Brigham (admitted pro hac vice)

mbrigham@cooley.com

Jeffrey Karr (admitted pro hac vice)

jkarr@cooley.com

Dena Chen (admitted pro hac vice)

dchen@cooley.com

3175 Hanover Street

Palo Alto, CA 94306-2155

Phone: (650) 843-5000

Fax: (650) 849-7400

Eamonn Gardner (admitted pro hac vice)

egardner@cooley.com

4401 Eastgate Mall

San Diego, CA 92121-1909

Telephone: (858) 550-6000

Facsimile: (858) 550-6420

Stephen Smith (admitted pro hac vice)

ssmith@cooley.com

1299 Pennsylvania Avenue NW

Suite 700

Washington, DC 20004

Phone: (202) 842-7800

Fax: (202) 842-7899

**BEDELL, DITTMAR, DEVAULT,
PILLANS & COXE, P.A.**

John A. DeVault, III

Florida Bar No. 103979

jad@bedellfirm.com

Michael E. Lockamy

Florida Bar No. 069626

mel@bedellfirm.com

The Bedell Building

101 East Adams Street

Jacksonville, Florida 32202

Telephone: (904) 353-0211

Facsimile: (904) 353-9307

***ATTORNEYS FOR DEFENDANTS
QUALCOMM INCORPORATED,
QUALCOMM Atheros, INC., HTC
CORPORATION, AND HTC AMERICA,
INC.***

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via the Court's ECF system on August 6, 2019.

/s/ Matthew J. Brigham
Matthew J. Brigham