

**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, and HTC AMERICA,
INC.,**

DEFENDANTS.

CASE NO.: 6:14-cv-687-PGB-KRS

**OUTSIDE ATTORNEY'S EYES ONLY
UNDER SEAL—SUBJECT TO
PROTECTIVE ORDER-CONTAINS
CONFIDENTIAL INFORMATION**

**PARKERVISION'S MOTION TO COMPEL INTERROGATORY ANSWERS
FROM DEFENDANT QUALCOMM**

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I. INTRODUCTION

Plaintiff ParkerVision, Inc. (“ParkerVision”) respectfully moves the Court to compel Defendants Qualcomm Incorporated and Qualcomm Atheros, Inc. (“Qualcomm”) to respond completely to ParkerVision’s Interrogatory Nos. 1 and 2. These interrogatories are directed to fundamental information relevant to ParkerVision’s infringement allegations:

- Interrogatory No. 1: The identification of Qualcomm products relating to the allegations at issue in this matter, including accused, potentially accused, and collateral products; and
- Interrogatory No. 2: The sales, revenue, cost data, units sold, and profit margin for the Accused Products, which is defined to include the products identified in the infringement contentions, the products identified in Interrogatory No. 1, and future products.

Qualcomm seeks to avoid its discovery obligations by relying, in part, on the same argument this Court dismissed this past July. *See* Doc. 297. There, the Court rejected Qualcomm’s argument that informal correspondence the parties exchanged in 2015 as part of a never-formalized negotiation process limited ParkerVision’s assertion of certain patent claims. *Id.* After reviewing the parties’ briefing and hearing oral argument, the Court rejected Qualcomm’s attempt to limit the scope of the case, because “Qualcomm knew that ParkerVision’s ‘nonlimiting’ election of claims was just that: nonlimiting.” *Id.* at 6 (“The parties were negotiating—nothing more.”). The Court acknowledged Qualcomm’s stipulation “that accused devices not identified in the Complaint may be included in this litigation for the sake of judicial economy.” *Id.* at 1-2. The Court also noted that Qualcomm agreed that ParkerVision “should be permitted to expand the scope of the accused products to include ‘WTR5975’ and ‘new products that may be revealed in discovery.’” *Id.* at 6. The Court ruled that “ParkerVision may elect Accused Products at-

issue at the time of the stay, as well as new products released during the pendency of the stay, consistent with the Order.” *Id.* at 7.

Having lost the argument once, Qualcomm now refuses to provide relevant discovery on accused products and the corresponding damages based on 2015 correspondence. The Court should reject Qualcomm’s argument for all the same reasons as before, and because the information ParkerVision seeks is relevant to the “reasonable royalty” that ParkerVision is due for Qualcomm’s infringement. This includes financial information for the accused products as well as related products designed and sold by Qualcomm to operate *with* the accused products (as an integrated chipset or family of products). Consequently, ParkerVision asks the Court to compel Qualcomm to respond completely to Interrogatory Nos. 1 and 2.

II. BACKGROUND

A. Interrogatory Nos. 1 and 2 Request Fundamental Information Needed to Establish the Scope of the Case.

On May 2, 2014, ParkerVision filed this action seeking damages for patent infringement. Doc. 1; *see also* Doc. 26. On February 12, 2015, ParkerVision served its First Set of Common Interrogatories (Nos. 1-8) (Ex. A), which Qualcomm initially answered in 2015 and supplemented thereafter. Ex. B. The first interrogatory asks Qualcomm to identify products (e.g., microchips) made, used, offered for sale, sold, or imported into the United States by product names, product numbers, product type, and codenames. Ex. A at 12. These products included “receiver, transmitter, transceiver, modem, baseband, and baseband processors or combination thereof.” *Id.* The second interrogatory asks Qualcomm to disclose financial information for the Accused Products. *Id.* at 12-13. This information includes units sold, sales, revenues, costs, and profit

margins. *Id.* Accused Products are defined to include the products identified in the infringement contentions, the products identified in Interrogatory No. 1, and future products. *Id.* at 3-4. Taken together, these interrogatories enable the parties to (i) define the scope of the case for the Court (e.g., in terms of accused products, related products, and potential damages) and (ii) prioritize discovery obligations and schedules (e.g., evaluate the highest selling accused products first) to minimize discovery costs for both parties.

In February 2016, in the middle of the discovery period, the Court stayed this case in light of proceedings pending before the ITC and PTAB. *See* Docs. 250, 265. After reviving the case earlier this year, the Court granted ParkerVision’s Motion Addressing Election of Claims and Accused Products to modify the asserted claims and patents-at-issue from what was asserted in 2015. Doc. 297. In so doing, the Court rejected Qualcomm’s argument that ParkerVision’s election of claims was limited by earlier correspondence between the parties. The Court acknowledged Qualcomm’s stipulation “that accused devices not identified in the Complaint may be included in this litigation for the sake of judicial economy.” *Id.* at 1-2. The Court also noted that Qualcomm agrees that ParkerVision “should be permitted to expand the scope of the accused products to include ‘WTR5975’ and ‘new products that may be revealed in discovery.’” *Id.* at 6. The Court also ruled that “ParkerVision may elect Accused Products-at-issue at the time of the stay, as well as new products released during the pendency of the stay, consistent with the Order.” *Id.* at 7. The Court then issued a schedule requiring the parties to exchange updated written discovery responses on October 30, 2019. *See* Docs. 309, 322.

Shortly after receiving Qualcomm's Court ordered supplemental written discovery responses, ParkerVision informed Qualcomm of "a number of discovery issues." Ex. C at 11-12.¹ Over the next several weeks, ParkerVision detailed the deficiencies with Qualcomm's supplemental responses in multiple emails and participated in multiple meet and confer calls with Qualcomm's counsel. ParkerVision repeatedly requested that Qualcomm promptly provide fulsome discovery responses for Interrogatory Nos. 1 and 2, which are the subject of this Motion. *Id.* at 3-4, 7-11. To put things in perspective, with respect to Interrogatory No. 1, in 2015, Qualcomm identified more than 300 products in a chart that was 20 pages long. Ex. B at AA.1-AA.20. Those products included baseband processors that work with transceivers, WiFi products, and Bluetooth products, as well as combination products that have, for example, a baseband processor and a transceiver combined together. *Id.* This is consistent with the multiple lists of Accused Products, the most recent of which was served in November 2015 that identified baseband and transceiver types of products in cellular, WiFi, and Bluetooth categories as well as products that are combined with one another (e.g., baseband and transceiver products). Ex. D. Yet, in October 2019, Qualcomm identified only fourteen (14) cellular transceiver products on one page. Ex. B at AA.21. On January 6, 2020, Qualcomm identified two additional products. Ex. B at Ex. AA.1-AA.21 and Ex. AAAA.

While the discussions were at all times courteous, Qualcomm refused to update its list of *all* products introduced and sold since 2015, much less provide any financial information for all of those products. *Id.* See also Ex. C at 2-3 and 10-11 (two

¹ Ex. C includes the primary email chain, including attachments, between ParkerVision and Qualcomm, with the most recent email first and the oldest emails toward the end of the email chain. See also Exs. M and N.

attachments of charts to November 15, 2019 email that list the product numbers for which financial data is missing). Those products include baseband processors as well as WiFi products, and Bluetooth products, and other products that *operate together* in a chipset or are *integrated together* in a System on a Chip [SoC], *i.e.*, combined on the same piece of silicon. In many cases, these products are sold together and will only work with other Qualcomm products. To date, Qualcomm has not produced the financial information for all of the new products that it did identify in its 2019 answer, even though it has promised to do so.² Ex. N at 1. Similarly, Qualcomm has refused to update financial information for all of the products that it did identify in 2015. Ex. M at 1. *See also* Ex. C at 2-3. Consequently, for more than a hundred Qualcomm products that Qualcomm identified in 2015, Qualcomm has provided limited or no financial information. Ex. C (two attachments of charts to November 15, 2019 email). And, for all of the products it has identified (by product number) in response to Interrogatory No. 1, Qualcomm has failed to provide the consumer product name. *See* Ex. B, at AA.1-AA.21.

Qualcomm has taken varying positions to justify its refusal to provide complete responses. Qualcomm initially argued that products *without* a transceiver or a transmitter or a receiver (e.g., baseband processors) should be excluded—even though Qualcomm did list such products in its 2015 interrogatory answer, and such products were listed and remain listed on the most recent list of Accused Products served in 2015. *See* Ex. B at Ex.AA.1-AA.20, Ex. C at 3-4, and Ex. D. Next, citing 2015 correspondence, Qualcomm argued that, going forward, non-cellular products (e.g., Bluetooth products and WiFi

² While Qualcomm has in recent days identified additional new products (Ex. B at Exhibit AAAA) and has produced additional financial information for some of the newly identified products, gaps remain.

products) should be excluded, even though, again, Qualcomm did list such products in its 2015 interrogatory answer and such products were listed and remain listed on the most recent list of Accused Products served in November 2015. *See* Ex. C at 2-3, 6-7, (December 15, 2015 correspondence, attached to Qualcomm November 20, 2015 email), and Ex. D. ParkerVision sent the 2015 correspondence in an effort to narrow Qualcomm's discovery obligations in relation to a different interrogatory, Interrogatory No. 7, not subject to this motion. Ex. C (December 15, 2015 correspondence attachment). That interrogatory was directed toward the identification of differences between various architectures. The identified correspondence at issue reflected the ongoing discussion between the parties to focus the allegations and defenses, in which ParkerVision proposed dropping certain claims and narrowing its allegations to certain products, if Qualcomm would reduce the number of prior art references/invalidity arguments that it was asserting, which Qualcomm did *not* do. Qualcomm made similar arguments in view of similar correspondence in relation to ParkerVision's motion to modify the asserted claims, which were rejected by the Court. Doc. 297 (*See* Doc. 285, Ex. 1, December 2, 2015 correspondence) ParkerVision never agreed to restrict the scope of Interrogatory Nos. 1 and 2, which are at issue in this motion. ParkerVision never modified the list of Accused Products, served in November 2015, or dismissed any products from its complaint, though it did file jointly with Qualcomm a motion to dismiss certain patents. Doc. 228.

Qualcomm's fallback position is that it does not have a duty to provide fulsome discovery responses for products other than the cellular receiver/transmitter/transceiver products until ParkerVision provides updated infringement contentions—even for

products introduced after 2015, during the term of the stay. Ex. C at 3. These updated contentions presumably would cite schematics and other technical documents that (i) Qualcomm has not produced and (ii) correspond to products Qualcomm has refused to identify. The Court's schedule provides additional time for ParkerVision to review precisely the type of technical information Qualcomm has refused to produce and to update its infringement contentions accordingly. Expert reports are not due until May 21, 2020. Doc. 322.

III. LEGAL STANDARD

“The overall purpose of discovery under the Federal Rules is to require the disclosure of all relevant information so that the ultimate resolution of disputed issues in any civil action may be based on a full and accurate understanding of the true facts, and therefore embody a fair and just result.” *Jones v. Z.O.E. Enters. of Jax*, No. 3:11-cv-377, 2012 U.S. Dist. LEXIS 104768, at *2 (M.D. Fla. July 27, 2012) (citing *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958)). Federal Rule of Civil Procedure 26(b)(1) provides that “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense....” Fed. R. Civ. P. 26(b)(1). “Courts construe relevancy ‘broadly to encompass any matter that bears on, or that reasonably could lead to other matter[s] that could bear on, any issue that is or may be in the case.’” *Southern Gardens Citrus Processing Corp. v. Barnes Richardson & Colburn*, No. 2:11-cv-377-99SPC, 2013 WL 1232800, at *2 (M.D. Fla. Mar. 26, 2013) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)). Moreover, as the Supreme Court and courts in this district recognize, “[d]iscovery requests are not only limited to the issues raised in the pleadings, nor limited only to evidence that would be

admissible at trial.” *Id.* (citing *Oppenheimer*, 437 U.S. at 351). Similar to the discovery requirements set forth in Rule 26, the Discovery Practice Manual for the Middle District of Florida requires that:

A party responding to a discovery request should make diligent effort to provide a response that (i) fairly meets and complies with the discovery request and (ii) imposes no unnecessary burden or expense on the requesting party.

Middle District Discovery at Sec. I.C.4; *see also Woods v. DeAngelo Marine Exhaust, Inc.*, 692 F.3d 1272, 1279 (Fed. Cir. 2012) (stating that under Rule 26, parties have a duty “to conduct a reasonable inquiry into the factual basis of their discovery responses.”). In the event that discovery does not receive an adequate response, the serving party may request an order compelling disclosure. *Arthrex, Inc. v. Parcus Med.*, No. 2:11-cv-694, 2012 U.S. Dist. LEXIS 124173, at *2 (M.D. Fla. Aug. 31, 2012) (citing Fed. R. Civ. P. 37(a)). Whether to grant a motion to compel is at the discretion of the trial court. *Commercial Union Ins. Co. v. Westrope*, 730 F.2d 729, 731 (11th Cir. 1984).

The patent laws state that “upon finding for the claimant, the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, . . . “ 35 U.S.C. § 284. The Federal Circuit has repeatedly held that derivative, collateral, or convoyed sales is one of the *Georgia Pacific* factors relevant to the determination of a reasonable royalty rate.³ *Interactive Pictures Corp. v. Infinite Pictures, Inc.*, 274 F.3d 1371, 1385 (Fed. Cir. 2001) (“The ‘extent of ... derivative or convoyed sales’ is one of the often-cited Georgia–Pacific factors relevant to a determination of a reasonable royalty rate.”); *State Indus.*,

³ The common framework to determine a reasonable royalty was set forth in *Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F.Supp. 1116 (S.D.N.Y. 1970) and the factors, therefore, are often referred to as the *Georgia-Pacific* factors.

Inc. v. Mor-Flo Indus., Inc., 883 F.2d 1573, 1580–81 (Fed. Cir. 1989) (“The value of collateral sales could also be factored into the royalty rate.”) (citations omitted); *Deere & Co. v. Int’l Harvester Co.*, 710 F.2d 1551, 1559 (Fed. Cir. 1983) (finding that consideration of collateral sales is an “eminently reasonable approach to the willing seller-willing buyer analysis”). District courts have granted a patentee’s motion to compel this information, based on its relevance. *Infinity Comp. Prods., Inc. v. Epson America, Inc.*, No. cv-18-02532 RGK, 2018 WL 7890859, at *2 (C.D. Cal. Dec. 14, 2018) (granting plaintiff’s motion to compel production of documents because “[t]he effect of selling the accused printer products in promoting sales of ink cartridges may be a relevant consideration in determining a reasonable royalty under Georgia-Pacific Factor 6.”); *Biax Corp. v. Nvidia Corp.*, 271 F.R.D. 200, 215 (D. Colo. 2010) (granting plaintiff’s motion to compel because the requested documents related to the sixth Georgia Pacific factor, which is “relevant to a calculation of damages based on a theory of ‘reasonable royalty.’”).

Infringement contentions, generally served at the outset of a case, streamline discovery in patent infringement actions. “‘Infringement contentions...serve the purpose of providing notice to the Defendants of infringement theories beyond the mere language of a patent claim.’” *Intellectual Ventures I LLC v. AT&T Mobility, LLC*, No. 13-1668-LPS, 2017 WL 658469, at *2 (D. Del. Feb. 14, 2017) (quoting *Motion Games, LLC v. Nintendo Co., Ltd.*, No. 6:12-cv-878-RWS-JDL, 2015 WL 1774448, at *2 (E.D. Tex. Apr. 16, 2015)). “Infringement contentions are not intended to require a party to set forth a *prima facie* case of infringement and evidence in support thereof.” *Realtime Data, LLC v. Packeteer, Inc.*, No. 6:08-cv-144, 2009 WL 2590101, at *5 (E.D. Tex. Aug. 18,

2009); *see also* *Balsam Coffee Solutions Inc. v. Folgers Coffee Co.*, No. 6:09-cv-089, 2009 WL 4906860, at *3 n. 2 (E.D. Tex. Dec. 9, 2009) (observing “P.R. 3-1 does not require the disclosure of evidence and documents supporting infringement contentions....”); *Realtime Data, LLC v. Packeteer, Inc.*, No. 6:08-cv-144, slip. op. at 3 n. 3 (E.D. Tex. July 20, 2009) (explaining the identification of evidence obtained during discovery can aid in satisfying the notice function of infringement contentions); *Samsung SDI Co. v. Matsushita Elec. Indus. Co.*, No., 2006 WL 5097360, at *1 (C.D. Cal. June 5, 2006) (explaining “[t]he plaintiff is not ... required to produce evidence of infringement ... or to provide evidentiary support for its contentions” (quotations omitted)). “Infringement contentions are not meant to provide a forum for litigation of the substantive issues; they are merely designed to streamline the discovery process.” *Linex Techs. v. Belkin Int’l, Inc.*, 628 F.Supp.2d 703, 713 (E.D. Tex. Sept. 19, 2008).

IV. INTERROGATORIES AND RESPONSES (CIVIL LOCAL RULE 3.04(A))

The interrogatories and responses at issue in this Motion are as follows:

A. INTERROGATORY NO. 1 (Ex. A at 12; Ex. B at 2):

Separately identify each receiver, transmitter, transceiver, modem, baseband, and baseband processor, or combination thereof (*e.g.*, system on a chip) or cellular telephone, tablet, or other mobile communication device containing a receiver, transmitter, transceiver, modem, baseband, or baseband processor, or combination thereof (*e.g.*, system on a chip) made, used, offered for sale, or sold within the United States or imported into the United States by You or at Your direction in the six years preceding the filing of the first amended complaint in this matter and up through trial in this matter. Your answer should include identification by Bates number of all documents related to Your answer and use the format of the following exemplary table:

Defendant	Product Type	Product Name	Model Number	Wireless Carrier	Internal Name	Relevant Documents
Qualcomm	Modem	Snapdragon 801	MSM8974	N/A	—	—
Samsung	Phone	Galaxy S5	SM-G900	Verizon	—	—

B. INTERROGATORY NO. 2 (Ex. A at 12-13; Ex. B at 4):

Separately for each of Your Accused Products, identify on a monthly and quarterly basis, for the six years preceding the filing of the original complaint in this matter and up through trial in this matter: (a) the number of units sold, imported into, or licensed in the United States net of any returns; (b) the revenues associated with the units sold, imported into, or licensed in the United States net of any returns; (c) all costs relating to units sold, imported into, or licensed in the United States net of any returns; (d) all other expenses for the units sold, imported into or licensed in the United States net of any returns; (e) the profit margin before taxes for the units sold, imported into or licensed in the United States net of any

returns; and (f) an identification by Bates number of all documents related to Your answer. To the extent that You do not track, maintain, or have the ability to calculate the information separately for each Accused Product, identify the information at the most granular level at which it is tracked, maintained, or at which You are able to calculate the information. Your answer should use the format of the following exemplary table:

Defendant	Accused Product	No. of Units	Revenues	Costs	Other Expenses	Profit Margin	Documents
Qualcomm	Snapdragon 801 (MSM8974)	—	—	—	—	—	—

V. ARGUMENT

A. ParkerVision's Discovery Requests are Both Relevant and Reasonable.

Interrogatory Nos. 1 and 2 are directed toward (i) the identification of infringing, potentially infringing or collateral products—and their relationship to one another (e.g., products in a family or chipsets and products that share the same internal codename); and (ii) the corresponding financial information pertinent to calculating damages. This is fundamental information that is relevant to a patentee's infringement allegations and the related damages. 35 U.S.C. §§ 271, 284.⁴ When it comes to responding to discovery requests, the pertinent question is whether a fulsome response is likely to lead to the

⁴ 35 U.S.C. § 271 is directed toward infringement of a patent, with § 271(a) stating “[e]xcept as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.” 35 U.S.C. § 285 states the following: “Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.”

discovery of relevant information. *See* Fed. R. Civ. P. 26(b)(1). The information sought by Interrogatory Nos. 1 and 2 pertain to accused products as well as conveyed sales of collateral products, which is one of the *Georgia-Pacific* factors. Qualcomm has a duty to substantively respond to all discovery requests that are likely to elicit nonprivileged information “relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). Discovery requests are *not* limited to issues raised in pleadings or to evidence likely to be admissible at trial. *See Southern Gardens*, 2013 WL 1232800, at *2. The very purpose of discovery is to “require the disclosure of *all relevant information* so that the ultimate resolution of disputed issues in any civil action may be based on *a full and accurate understanding* of the true facts.” *Jones*, 2012 U.S. Dist. LEXIS 104768, at *2 (emphasis added) (citing *United States v. Procter & Gamble Co.*, 356 U.S. at 682). As in 2015 before the case was stayed, discovery is going on now, so Qualcomm cannot unilaterally refuse to provide relevant information. Qualcomm must provide discovery in 2019 that is commensurate with the discovery that it provided in 2015 and also fill in any missing gaps of specific product and sales information.

B. Qualcomm Must Identify and Produce Financial Information About the Accused Products.

In 2015, ParkerVision served on Qualcomm detailed infringement contentions (e.g., claim charts), together with a list of Accused Products. *See, e.g.*, Ex. J for an exemplary claim chart for U.S. Patent No. 7,218,907, which is only one example of a multitude of claim charts and supplemental claim charts served in 2015. To prepare the original version of this claim chart, ParkerVision had to retain experts to reverse engineer one of Qualcomm’s popular microchips, at the cost of approximately

See Ex. J for the original version. Like the other claim charts, the

exemplary claim charts found in Exhibits J and L (which is a later version of the claims chart) are nearly one hundred pages in length and identify actual electrical circuits of interest as well as signals that enter and leave the cited circuitry that are used to control the cited circuitry. Exs. J and L. All told, ParkerVision served more than 60 detailed claim charts on the Defendants in 2015. These claim charts put Qualcomm on notice of ParkerVision's infringement theories, and the parties therefore were able to work through extensive discovery and claim construction issues through 2015 and, once the case was revived, through 2019. As such, the infringement contentions have fulfilled their intended purpose. *Realtime Data, LLC v. Packeteer, Inc.*, No. 6:08-cv-144, 2009 WL 2590101, at *5 (E.D. Tex. Aug.18, 2009); *Balsam Coffee Solutions Inc. v. Folgers Coffee Co.*, No. 6:09-cv-089, 2009 WL 4906860, at *3 n. 2 (E.D. Tex. Dec. 9, 2009); *Realtime Data, LLC v. Packeteer, Inc.*, No. 6:08-cv-144, slip. op. at 3 n. 3 (E.D. Tex. July 20, 2009); *Samsung SDI Co. v. Matsushita Elec. Indus. Co.*, No., 2006 WL 5097360, at *1 (C.D. Cal. June 5, 2006); *Linex Techs. v. Belkin Int'l, Inc.*, 628 F.Supp.2d 703, 713 (E.D. Tex. Sept. 19, 2008).

ParkerVision later supplemented this specific chart in June 2015, with a letter that referenced the specific citations to the schematics produced by Qualcomm and reserved "all rights to further supplement the infringement contentions as discovery continues and consistent with the guidance set forth in the Court's Management and Scheduling Order." Ex. O. ParkerVision's letter points out that it was being provided early "[i]n the spirit of good faith and open discovery. . . in advance of the filing of the opening claim construction brief and despite ongoing discovery issues. " *Id.* ParkerVision reserved

the right to supplement the infringement contentions as discovery continues. . . .” *Id.* ParkerVision made similar statements in November 2015. Ex. P.

The list of accused products, provided with the Infringement Contentions, identify the products known at the time that were and are believed to operate in similar fashion and for which additional discovery is needed, the most recent of which is found in Exhibit D. Ex. D. Obviously, it is not financially feasible (or expected of a patentee) to spend millions and, possibly, tens of millions of dollars, to reverse engineer hundreds of Qualcomm’s chips in order to extract a circuit shown in Qualcomm’s internal schematics that can be simply produced in discovery. Thereafter, on a rolling basis, throughout 2015, ParkerVision served supplemental infringement contentions, together with a list of Accused Products. *See, e.g.*, Exs. D and L. These infringement contentions go much further than what generally is required, as they identify, by Bates number, the specific circuits for twelve different Qualcomm architectures on sale at the time. *See, e.g.*, Ex. L at 2-3, 16-17, 24-25, 32-33, 41-42, 45-46, 53-54, 59-60, 68-69, 71-72, 74-76, 78-81, 86-87, and 89-90. These supplemental charts took months and months for attorneys and experts to review and prepare, and the analysis continued up until the case was stayed in February 2016. Consequently, Qualcomm must provide updated and complete data for products listed and formally accused by ParkerVision in 2015, as well as potentially infringing products identified by Qualcomm in its interrogatory answer in 2015. This includes baseband products, WiFi products, and Bluetooth products identified by ParkerVision on its list of Accused Products and/or listed by Qualcomm in its 2015 answers to Interrogatory Nos. 1 and 2. But, Qualcomm has refused to do so.

To justify its position, Qualcomm argued that ParkerVision dropped certain accused products, even though the correspondence Qualcomm cited for this proposition pertained to a different interrogatory directed toward a discussion of the differences between certain architectures. Ex. C (attachment showing December 15, 2015 correspondence). Moreover, the cited 2015 correspondence was part of a proposal made by ParkerVision to Qualcomm to reduce its claims and allegations, if Qualcomm would reduce the number of prior art references and its invalidity arguments. But, Qualcomm never agreed to reduce the number of asserted prior references or narrow its invalidity arguments. The proposals referenced by this letter were never entered in any court order, because ParkerVision never received a positive indication that Qualcomm would reduce the number of its prior art references prior to the stay of the case. Instead, rather than working with ParkerVision to narrow its invalidity arguments, Qualcomm decided to submit its invalidity arguments to the Patent Office for an *inter partes* review. Now, four years later, Qualcomm seeks to use ParkerVision's good faith efforts to work with Qualcomm in 2015 as a sword in 2019 to restrict its discovery obligations. Qualcomm adopted this strategy this past summer to resist the modification of the asserted claims and now does the same in relation to discovery requests. The Court characterized this 2015 correspondence as "nonlimiting," when it permitted ParkerVision to modify the asserted claims and patents. Doc. 297 at 6. And, to the extent any modifications occur, after the Court revived this case, good cause exists to make changes, as a change in circumstances warranted modification to the allegations. The Court reasoned that "[t]here was no meeting of the minds, and even if an agreement had been reached, an Order of this Court was required to finalize the dismissal of claims." *Id.* at 5. The Court

further held that “the parties understand amendment of infringement contentions following reexamination is permissible.” *Id.* ***In short, this Court held that ParkerVision was not bound by 2015 correspondence for purposes of electing asserted claims that define the scope of the infringement allegations. It necessarily follows that ParkerVision is not bound by 2015 correspondence for the discovery related to those allegations.***

Significantly, while ParkerVision formally dropped patents jointly with Qualcomm (Doc. 228), ParkerVision never formally dropped products from its list of accused products or otherwise dismissed them from this action. Thus, the subject products remained “live” at the time of and during the pendency of the stay. Qualcomm also has argued that it is not obligated to identify or provide additional financial information about any products, accused or not, unless explicitly charted in 2015. Ex. C at 2-3. The detailed charts Qualcomm now demands are included in an expert report served at the end of the case, ***after discovery***, not at the beginning of a case, ***before discovery***, or in the middle of a case, ***during discovery***. Qualcomm’s argument, in effect, puts “the cart before the horse.” ParkerVision has consistently provided additional information about its infringement allegations in good faith, in 2015, well in advance of the Court’s 2015 deadlines, to facilitate a resolution to discovery disputes or to further claim construction discussions. Exs. O and P.

Qualcomm also has refused to identify all products and provide pertinent financial information about products Qualcomm introduced ***after*** the stay. Ex. C at 2-3. This is in spite of this Court’s holding that ParkerVision “may elect Accused Products at-issue at the time of the stay, as well as new products released during the pendency of the stay,”

and that ParkerVision is permitted “to expand the scope of the accused products to include ‘WTR5975’ and ‘new products that may be revealed in discovery.’” Doc. 297 at 6-7. This includes “combination” products that marry, for example, a cellular transceiver with a cellular baseband module. Ex. M at 1-2. Qualcomm has yet to provide complete information about the fourteen additional products that it listed in its 2019 answer. *Id.* at 2. In particular, even after Qualcomm produced additional financial information in recent days for the post 2015 cellular transceiver products after a two month delay, financial information remains missing for at least one of the new products, namely WTR5974. Ex. M.

which the Court actually identified in its July order. Ex. B at AA.21. *See* Doc. 297 at 6. Qualcomm has still not identified any of the new post 2015 “combination” products, in which transceivers and basebands (and/or other products) are combined into a single microchip, or otherwise confirmed that none exist. Ex. M. Qualcomm should provide complete information.

C. Qualcomm Must Provide Information about Collateral Products Having Convoyed Sales.

At a high level, Qualcomm describes in its 10K its Snapdragon™ family of products, products that ParkerVision has both accused and charted, as follows:

The Qualcomm® Snapdragon™ family of integrated circuit products includes the Snapdragon mobile, compute and automotive platforms. Each platform consists of application processors and wireless connectivity capabilities, including our cellular modem that provides core *baseband modem* functionality for voice and data communications, *non-cellular wireless connectivity (such as Wi-Fi and Bluetooth) and global positioning functions*. Our Snapdragon application processor functions include security, graphics, display, audio, video, camera and AI. *These supporting components, in addition to our cellular modems and application processors comprising our core SoC [System on a Chip], are also sold as individual components.* The combination of the Snapdragon

SoC, system software and supporting components provide an overall platform with optimized performance and efficiency, enabling manufacturers to design and deliver powerful, slim and power-efficient devices ready for integration with the complex cellular networks worldwide.

Ex. K at 9-10 (emphasis added). Qualcomm adds on its website that “Qualcomm technologies has *a comprehensive portfolio of RF solutions* that includes multimode, multiband RF transceivers and Qualcomm RF Front End radio front-end (RFFE) components” and later states that “Qualcomm Technologies brings together a vast set of advanced RF front-end technologies to build *a comprehensive mobile platform.*” Ex. E at 1, 3. (emphasis added).

As an illustration of the significance of this marketing strategy in relation to just one pair of products, ParkerVision listed a number of WAN/cellular transceiver products on its list of Accused Products in 2015. Ex. D. One of these products was identified as WTR1605, which actually was listed twice—as both a product accused by both the transmitter and receiver patents. *Id* at 2 and 7. Qualcomm described this product in its 2015 interrogatory answer as a “WAN/Cellular Transceiver, GPS Receiver” having the codename. Ex. B at AA.20. ParkerVision supplemented its infringement contentions to reference products with the related codename _____ for this product.

Ex. L at 2-3, 16-17, 24-25, 32-33, 41-42, 45-46, 53-54, 59-60, 68-69, 71-72, 74-76, 78-81, 86-87, and 89-90. Moreover, on February 14, 2011, Qualcomm issued a press release entitled “Qualcomm Introduces 28nm Mass Market LTE/DC-HSPA+ Chipsets for Mobile Broadband Products” in which it discussed the WTR1605 as well as two baseband processors, MDM9615 and MDM8215, as part of its “family of Mobile Data Modem™ (‘MDM’) chipsets.” Ex. I. Qualcomm’s 2011 press release goes on to state:

[t]he MDM9615 and MDM8215 are *designed to pair up with* the WTR1605 radio frequency I and PM8012 power management IC to provide *a highly integrated chipset solution.*” The WTR1605 will be Qualcomm’s first Radio Transceiver in Wafer Level Package and will be a *highly integrated* radio transceiver with multi-mode (LTE FDD, LTE TDD, CDMA, WCDMA, TD-SCDMA, GSM) and multi-band support.

Id. at 2 (emphasis added). ParkerVision included both products on its list of Accused Products. Ex. D at 3. Qualcomm identified and described both baseband products in its 2015 interrogatory answer as “WAN/Cellular Baseband.” Ex. B at AA.6-AA.7.

To illustrate the impact of Qualcomm’s refusal to provide the requested discovery, Qualcomm in 2015 did produce sales data for the MDM9615 and microchips that share the same codename. *Sales for just this one family of baseband chips totaled more than*

Similarly, in 2015, Qualcomm produced financial data for the WTR1605 and the microchips that share the same codename. *Sales for just this one family of transceiver chips totaled more than*

Since then, however, Qualcomm reversed course and has refused to provide any additional information post 2015, for any baseband processor—whether in existence in 2015 or introduced after 2015. This includes the MDM9615.

Similarly, as another more recent post 2015 example, Qualcomm identified the WTR5975 WAN/Cellular Transceiver, GPS Receiver in its updated 2019 interrogatory answer. Ex. B at AA.21 (Exhibit AAA). However, Qualcomm is refusing to list (or provide any sales information about) other collateral products, such as its “sixth-generation discrete LTE multimode chipset – the Qualcomm® Snapdragon™ X16 LTE modem,” discussed in another press release. Ex. H. That press release again touts various chipset features, stating that “The Snapdragon X16 LTE modem pairs with the new WTR5975 RF transceiver,” and goes on to state as follows:

The Snapdragon X16 LTE modem, WTR5975 and QET4100 *are designed and optimized together as a system* to support fast downloads, swift application performance, as well as provide enhanced thermal efficiency and optimized power consumption. The new chipset is designed to enable a broad range of connected platforms from smartphones, tablets, and mobile computing devices to cars, drones and virtual reality headsets.

Id. at 3 (emphasis added). In the technical specification for the Qualcomm® Snapdragon™ X16 LTE modem, Qualcomm again touts the “new digital interface between the transceiver and the modem simply PCB [printed circuit board] layout to facilitate the implementation of the X16 LTD modem’s advanced features for OEMs, and to free up valuable board space that can be utilized for larger batteries or more streamlined design.” Ex. G at 2.

The vast majority, if not all, of these types of Qualcomm products (baseband, WiFi, Bluetooth) form part of one or more Qualcomm chipsets in which the constituent chips are designed to be “paired” exclusively together. These chipsets include transceiver, WiFi, Bluetooth, baseband processors, and combination products found on ParkerVision’s list of accused products and/or in Qualcomm’s 2015 interrogatory answers. Because they are relevant to the determination of a reasonable royalty for Qualcomm’s infringement, Qualcomm must provide the complete information requested in Interrogatory Nos. 1 and 2.

VI. CONCLUSION

Qualcomm refuses to provide the requested discovery despite this district’s well-established case law setting forth the discovery requirements applicable in this case, the Court’s scheduling order (Doc. 322), and this Court’s recent decision (Doc. 297). For the reasons stated above, ParkerVision asks the Court to compel Qualcomm to fully respond to Interrogatory Nos. 1 and 2, including the citation to the “Product Name.”

LOCAL RULE 3.01(G) CERTIFICATION

Pursuant to Local Rule 3.01(g), ParkerVision's attorneys conferred in good faith with defendants' attorneys, who object to the relief sought in this motion.

Dated: January 8, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that (i) on January 8, 2020, counsel for Qualcomm Incorporated and Qualcomm Atheros, Inc. was served with an unredacted copy of the foregoing and (ii) on January 10, 2020, a copy of the foregoing was electronically filed with the Clerk of Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non- CM/ECF participants: none.

/s/ John R. Thomas

Attorney