

**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-00687-PGB-LRH

**JOINT STATUS REPORT, MOTION TO LIFT STAY,
AND PROPOSED FIFTH AMENDED SCHEDULING ORDER**

Plaintiff ParkerVision, Inc. (“ParkerVision”) and Defendants Qualcomm Incorporated, Qualcomm Atheros, Inc., HTC Corporation, and HTC America, Inc. (“Qualcomm”), submit the following Joint Status Report, Motion to Lift Stay, and Proposed Fifth Amended Scheduling Order pursuant to the Court’s order dated April 29, 2020 at Docket No. 380.

The parties jointly move to lift the stay ordered by the Court on March 17, 2020 at Docket No. 377. The parties agree that given the uncertainties regarding the duration of COVID-19 precautions remaining in effect, the litigation should resume with the understanding that the parties will use technology to allow discovery to proceed remotely.

The parties have met and conferred, but have been unable to reach agreement on a proposed schedule. The parties’ proposed schedule is attached as Exhibit A, with the following issues in dispute:

Event	PV Proposed Dates	Def. Proposed Dates
Parties enter into representative products agreements, or file a joint brief explaining why agreement has not been possible	June 29, 2020	Defendants object to these deadlines for the reasons set forth below.
ParkerVision narrows its asserted claims to 20 asserted claims total	September 9, 2020	
Defendants narrow their asserted references and combinations (each 103 combination counts as a reference) to 20 total references	September 23, 2020	
Opening expert reports	September 23, 2020	October 8, 2020
Rebuttal expert reports	October 23, 2020	December 3, 2020
Expert discovery closes	November 6, 2020	December 22, 2020
Dispositive and <i>Daubert</i> motions	November 17, 2020	January 12, 2021
Oppositions to Dispositive and <i>Daubert</i> motions	December 4, 2020	February 9, 2021
Replies to Dispositive and <i>Daubert</i> motions	N/A	February 23, 2021
Meet and confer to prepare joint final pretrial statement	January 5, 2021	March 9, 2021
Joint final pretrial statement (including a single set of jointly-proposed Jury Instructions and Verdict Form, Voir Dire Questions, Witness Lists, Exhibit Lists with Objections on Approved Form, and Deposition Designations).	January 15, 2021	March 23, 2021
All Other Motions Including Motions <i>in Limine</i> (limited to a single motion not to exceed 25 pages without prior leave of Court) and Objections to Deposition Designations and Counter- Designations on approved form.	January 27, 2021	April 6, 2021
Final pretrial conference	March 11, 2021	May 24, 2021
Trial term begins	April 5, 2021	June 7, 2021

ParkerVision's Statement

As noted in the parties' April 14, 2020 Joint Status Report in Light of COVID-19, "ParkerVision's agreement to this continued stay is conditioned on the agreement of the parties to undertake efforts to move this case forward beginning on June 1, 2020." Dkt. No. 379 at 2. ParkerVision specifically requested that Qualcomm use the six weeks between then and now to (i) consider a representative products agreement (which would drastically streamline this case and obviate the need for further schematic reviews)¹; and (ii) "use the period of this continued stay to investigate other technological means for remote electronic schematic inspections" and other "alternative proposals" (including remote depositions) that would permit this case to restart efficiently and safely. *Id.* at 2-3. Instead, Qualcomm seeks further delay and refuses to agree to any form of representative products.

ParkerVision requests that the Court adopt its proposed schedule, which culminates in an April 2021 trial setting (ultimately, a four month delay from the prior December 2020 trial setting). While the stay due to the COVID-19 pandemic was necessary, this case should not be delayed for longer than needed. It should be rescheduled as closely as possible to the prior schedule. Indeed, courts around the country are recognizing that litigation must move forward in a timely fashion using available technology given the uncertainties regarding how long COVID-19 precautions may remain in effect. *See, e.g.*, Standing Order Regarding Pretrial Procedures in Civil Cases Assigned to Chief District Judge Rodney Gilstrap During the Present COVID-19 Pandemic, <http://www.txed.uscourts.gov/sites/default/files/judgeFiles/COVID19%20Standing>

¹ In *ParkerVision I*, Judge Dalton held that ParkerVision was permitted "to present evidence concerning one product and 'then state[e] that the same analysis applies to other allegedly infringing devices that operation similarly, without discussing each type of device in detail,'" citing Federal Circuit authority. *ParkerVision, Inc. v. Qualcomm Inc.*, 27 F.Supp.3d 1266, 1278 (M.D.Fla. 2014).

%20Order.pdf, at 2-3, 5 (E.D. Tex. April 20, 2020) (“Trying to keep cases moving forward while prioritizing the health of individuals will sometimes lead to unconventional practices and accommodations that would not normally be accepted as appropriate. As one example, the pandemic conditions may require production of computer source code in ways that are not consistent with the producing party’s normal security protocols. As another example, depositions of witnesses may need to be conducted remotely with all participants separated, which, especially for first-time witnesses unfamiliar with the process, may be an uncomfortable experience. . . . The Court expects the parties to work collaboratively to identify and implement temporary procedure that will enable the receiving party’s authorized personnel (e.g., outside counsel and experts) to review source code during the pandemic without the need for travel or in-person code review.”); Emergency Rule 11 Related to COVID-19, <https://www.courts.ca.gov/documents/appendix-i.pdf> (Ca. adopted April 6, 2020; amended April 17, 2020, April 20, 2020, and May 29, 2020) (providing for remote depositions); Temporary Order regarding Civil Litigation and Rules of Civil Procedure in Circuit Court, <http://www.courtswv.gov/covid19/TemporaryOrder4-24-20.pdf>, at 3-5 (W. Va. April 24, 2020) (permitting discovery to continue and depositions to be taken remotely).

ParkerVision believes that Qualcomm’s proposed schedule should be rejected because it: (A) provides for an unjustified amount of time for rebuttal expert reports that is nearly twice that contemplated by this Court’s model Case Management Report in Patent Cases (and is longer than agreed to in the prior case schedules); (B) refuses to set a deadline for entering into a representative products agreement; (C) refuses to adopt deadlines for the parties to mutually narrow the assertions and claims at issue in the case in a timely fashion; and (D) unnecessarily

delays trial by introducing significant, unwarranted extensions of deadlines (that were not present in the prior case schedules) and driving up the costs of litigation.

I. Qualcomm Adds An Extra Month To The Deadline for Rebuttal Expert Reports

Qualcomm seeks to delay the schedule with a request for 8 weeks between opening and rebuttal expert reports. In each of the four prior scheduling orders agreed to by the parties and adopted by the Court, Qualcomm has acceded to one month between the deadlines for opening and rebuttal expert reports—and no change in circumstance warrants doubling the amount of time now. *See* Dkt. Nos. 229, 300, 313, 322. Qualcomm cites potential issues with conducting simulations on its own computers, but Qualcomm alone controls access to its simulation computers and staff. Further, Qualcomm can ease its burden by agreeing to representative products, and its refusal to agree to narrow the case means that ParkerVision will bear the significant burden of responding to Qualcomm allegations regarding a large number of prior art references.

Qualcomm asserts that it needs additional time for rebuttal expert reports to accommodate “the restrictions the COVID-19 pandemic have placed on Defendants and their witnesses.” But Qualcomm fails to explain why in-person meetings are necessary to prepare rebuttal reports, or why telephonic or Zoom conferences will lead to inefficiencies in preparing a report. Qualcomm further argues that delays are necessary because ParkerVision’s experts may submit simulations stored on Qualcomm’s on-site Cadence review computer, and Qualcomm’s expert’s review of those simulations may need to travel. Qualcomm’s assertion that additional time is needed due to simulations is: (i) entirely hypothetical; and (ii) any delays in permitting its expert to review simulations would be delays of Qualcomm’s own creation for purposes of litigation.

First, Qualcomm's preemptive request for additional time is based on conjecture at a time when it is very difficult to predict what COVID-19 precautions will or will not be required four months from now. And Qualcomm assumes that ParkerVision's expert will rely on simulations. That should not be a foregone conclusion. If ParkerVision's expert does rely on simulations, and if Qualcomm's expert experiences genuine challenges in timely completing his review of those simulations as a result of COVID-19 precautions, then the parties can—at that time—address a limited extension of time that is justified and tailored to the specific impediments of completing the review within one month. In any event, if ParkerVision's expert (who is also in an at-risk age group) has supplied simulations that Qualcomm must rebut, that means that the parties would have already arrived at a workable solution for experts to safely access the Cadence review computer.

Second, any obstacles to timely accessing the Cadence review computer as a result of Qualcomm's own restrictions limiting its own expert's access are delays of its own creation for purposes of litigation. Qualcomm's CEO recently appeared on CNBC, asserting that Qualcomm's development teams continue to work, with 35,000 of Qualcomm's 37,000 employees remotely logging in from home, that they still have employees in their labs, and that factory employees have returned to work. QUALCOMM CEO ON CORONAVIRUS IMPACT, 5G, BUYBACKS AND MORE, CNBC (March 19, 2020), <https://www.cnbc.com/video/2020/03/19/qualcomm-ceo-on-coronavirus-impact-5g-buybacks-and-more.html> (last visited May 28, 2020), at 3:06-16, 6:37-40, 10:05-10:33. Plainly, Qualcomm has gone to great lengths to permit its business to safely continue unimpeded, whether remotely or in-person. Qualcomm's assertions that the experts will be unable to timely access Cadence thus ring hollow.

II. Qualcomm Should Be Required to Engage In A Good Faith Negotiation Regarding Entering Into A Representative Products Agreement

Qualcomm's arguments regarding representative products are mired in misdirection. While Qualcomm asserts that no negotiation regarding representative products can take place until after expert reports are complete, waiting until after expert reports to agree on representative products, when the parties and their experts are already bound by their reports, completely defeats the purpose of a representative product. Instead, the parties should be negotiating representative products during discovery, when the parties are still able to narrow the scope of the case and reduce the costs of fact and expert discovery.

Nor is ParkerVision requesting the Court order Qualcomm and HTC to commit to representative products. ParkerVision has simply proposed that the Court require the parties to make good faith efforts to narrow the case via a representative products agreement *or* explain why they are unable to do so. While Qualcomm objects to ParkerVision's proposed date, it not only does not provide a counter-proposal, but objects to such a good faith effort altogether. Instead, Qualcomm's objection employs the same gamesmanship as in the first ParkerVision case. There, as here, Qualcomm objected to any sort of representative products agreement, forcing ParkerVision to spend time and money proving that each individual product infringed, despite the Accused Products not only all being cellular transceivers, but each being an iterative improvement on its predecessor Accused Product. *See ParkerVision v. Qualcomm, Inc.*, 27 F. Supp. 3d 1266 (M.D. Fl. 2014) (holding on JMOL that ParkerVision had properly shown that Magellan and Solo were representative of the remaining architectures, including GZIF3, GZIF4, Napoleon, Odyssey, Ramsis, Volans, and Voltron).

If Qualcomm believes there are representative products, it should inform ParkerVision and the Court and so stipulate. If it believes that there are material differences between the

products such that there are no representative products, it should inform ParkerVision and the Court, and be bound by that representation at trial. Failure to do so only serves to unreasonably drive up ParkerVision's costs. *See Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 555 (2014).

III. Qualcomm's Purported Need For More Time Should Be Solved By Narrowing Asserted Claims and Prior Art On A Reasonable Timeline

Qualcomm's professed need for additional time in the schedule and for rebuttal reports is a problem of its own making because it has thus far refused to agree to timely streamline the case, which would in turn reduce the amount of time needed for the preparation of expert reports. On May 22, 2019, the Court heard argument regarding ParkerVision's prior proposal to streamline the case by reducing claims and prior art references. Dkt. No. 295. Qualcomm previously rejected that proposal. Dkt. No. 127. Nevertheless, to address Qualcomm's professed need for additional time for the preparation for expert reports, ParkerVision has once again proposed that the parties agree to narrow the case in a timely fashion through reductions in the number of asserted claims and prior art references, which will also simplify the necessary discovery and time expenditure for expert reports.²

Rather than provide a substantive response to ParkerVision's proposal, Qualcomm appears to contend that it is possible to proceed to trial on dozens of asserted claims and prior art references, and that *the parties cannot even set a schedule for narrowing the case in the future* until ParkerVision has responded to Qualcomm's unserved invalidity contentions. Qualcomm misses the mark: ParkerVision's proposed date to narrow its Asserted Claims is more than two months after the deadline to serve its amended infringement contentions; the proposed deadline

² Courts routinely require parties to narrow the number of claims and prior art references. *See, e.g., Joao Bock Transaction Sys., LLC v. Fid. Nat'l Info. Servs.*, 2014 U.S. Dist. LEXIS 189675 at *3-5 (M.D. Fl. Oct. 30, 2014).

for Qualcomm to narrow its prior art references is nearly two months after its deadline to serve invalidity contentions and the same day opening expert reports are due. Qualcomm, having investigated its own invalidity case and presented an expert report on the topic, should be best situated to know which references it intends to bring to trial, and which to drop. Failing to do so merely serves to unreasonably drive up costs, forcing ParkerVision to investigate and defend every purported possible reference, while permitting Qualcomm to wait until the last possible moment to drop weak defenses. *See Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 555 (2014).

IV. Qualcomm's Extension of Dispositive Motion Deadlines Creates Significant Cumulative Delay

The agreed portions of the proposed schedule provide for an additional approximately two months during fact discovery to account for any delays that may occur in conducting discovery remotely. ParkerVision's proposed schedule maintains the other deadlines relative to the close of fact discovery consistent within the time frames agreed to by the parties and adopted by the Court in the Fourth Amended Scheduling order. Qualcomm, however, attempts to inject additional time into the dispositive motion deadlines case and delay the trial date. Qualcomm adds an additional week for dispositive and *Daubert* motions. Qualcomm then requests four weeks for the oppositions to those motions, doubling the two weeks provided for by the Court's August 30, 2019 Amended Case Management and Scheduling Order. ParkerVision's proposal, in contrast, does not add more than contemplated by the prior scheduling order and also comports with the Court's requirement that the deadline for the memorandum in opposition be filed four months before trial. *See* Dkt. No. 309 at II.B.1.

Accordingly, Qualcomm's request to extend the Scheduling Order by six months in light of a two-month stay should be denied and the Court should enter ParkerVision's proposed schedule.

Defendants' Statement

I. ParkerVision Identifies No Good Cause For Its Unrealistic Proposed Schedule and No Prejudice From Defendants' Proposed Schedule.

A. ParkerVision's Claims of "Delay" Are Misplaced.

Contrary to ParkerVision's statements, Qualcomm has not been sitting idly by during the stay, hoping to further "delay" the litigation. To the contrary, at ParkerVision's request, Qualcomm provided schematic printouts during the stay so ParkerVision could analyze the accused products and is processing several additional schematic print-out requests. Qualcomm has also been gathering newly requested financial information during the stay. As Qualcomm has already demonstrated, certain discovery activities can proceed, they just take longer.

ParkerVision's proposed schedule fails to recognize that even though some states and jurisdictions are beginning to relax some restrictions, Defendant Qualcomm, its witnesses, and counsel are still subject to some of the strictest restrictions in the country. To the extent ParkerVision pursues international discovery of Defendant HTC, a whole host of separate issues are raised. Instead of addressing these concerns, ParkerVision seeks to capitalize on the situation by forcing arbitrary limits on Defendants' non-infringement and invalidity defenses that violate due process, as explained further below.

While the parties remain hopeful that restrictions will be lifted, the relevant Qualcomm witnesses and in-house counsel are not expected to be permitted to return to the office until September 8 at the earliest. As a result, certain tasks take a lot longer and some will not be feasible at all until there is a meaningful return. Therefore, while Defendants remain willing to agree to lifting the stay, the schedule must be reasonable and Defendants reserve the right to revisit dates depending on each witnesses' individualized situation and ability to be deposed

remotely, as well as the ability to collect certain information such as schematics and simulations.

B. ParkerVision’s Serial Litigation Has Created the “Costs” It Complains About.

ParkerVision’s complaints about increased litigation costs ring hollow. ParkerVision has filed **four** lawsuits against Qualcomm in the United States,³ asserted twenty-three patents against Qualcomm, and taken over 40 fact depositions of Qualcomm’s witnesses. *ParkerVision I* proved Qualcomm’s products did not infringe ParkerVision’s patents, and ParkerVision’s claims were invalid. *ParkerVision v. Qualcomm*, 621 F. App’x 1009, 1016 (Fed. Cir. July 31, 2015); *ParkerVision v. Qualcomm*, 627 Fed. App’x 921 (Fed. Cir. Oct. 2, 2015). ParkerVision’s ITC action likewise established that ParkerVision could not prove infringement of its patents, with ParkerVision voluntarily dropping the case on the eve of trial, after costing Qualcomm millions of dollars. Most recently, counsel for ParkerVision in this case were invited to attend depositions of Qualcomm’s witnesses in ParkerVision’s Jacksonville case to streamline discovery and with one exception, chose not to attend the depositions. Instead, after burdening Qualcomm with 16 depositions in the Jacksonville case and 13 depositions in ParkerVision’s ITC action, ParkerVision admitted the Jacksonville case was duplicative of this case and moved to stay. *See ParkerVision v. Apple, et al.*, No. 15-cv-1477 (Dkt. 245). ParkerVision is driving up litigation costs and the burden on the courts in this District, not Defendants.

C. ParkerVision Identifies No Concrete Prejudice From Defendants’ Proposed Schedule.

Defendants’ proposed June trial date, which is just two months after ParkerVision’s proposal, seeks to address some of the realities that the parties and the Court will be facing over the next year. ParkerVision has not identified any prejudice caused by Defendants’

³ ParkerVision also asserted its patents in Germany, with the German courts finding ParkerVision’s patents invalid and not infringed.

proposed schedule.

In contrast, Qualcomm's experience with attempting to gather relevant information during the current situation is not hypothetical – Qualcomm and its counsel ran into significant hurdles as Qualcomm was attempting to gather information in the Jacksonville case for expert reports and information in this case over the past few months. In the absence of an articulated need for ParkerVision's rushed schedule, Defendants' more realistic schedule based on the complexities of this case should be adopted.

The parties' primary disputes fall into four categories.

II. Defendants Object to ParkerVision's Highly Prejudicial and Improper Attempt to Have the Court Order the Parties to Enter into a Representative Products Agreement.

ParkerVision requests that the Court set an arbitrary and premature deadline for the parties to "enter into representative products agreements, or [to] file a joint brief explaining why agreement has not been possible." This request, which ParkerVision seeks to apply against 10 years-worth of products and multiple generations, is not based on any applicable legal authority or the facts of this case and should be rejected.

First, ParkerVision demands the Court order an agreement on a representative product proposal by "June 29, 2020" *before* ParkerVision serves final infringement contentions (July 1), *before* fact discovery closes (September 15), and *before* expert reports (September to December under the parties' proposals). It makes no sense to negotiate whether any products are sufficiently similar to be consider "representative" with respect to ParkerVision's four asserted patents and asserted claim elements, before discovery is completed and expert testimony has been elicited.

As Qualcomm has repeatedly explained, most recently in opposition to ParkerVision's attempt to bury a similar request in a discovery motion (*see* Dkt. 351 at 17-19), there are

similarities and differences between its products. For example, there are similarities which necessitate a finding of non-infringement for the same reasons that Judge Dalton and the Federal Circuit found non-infringement in *ParkerVision I*.⁴ But there are also differences which may provide *additional* non-infringement arguments. Whether those similarities and differences are material to the infringement issues in this case will not be known *at the earliest* until ParkerVision explains its final infringement theories in its amended infringement contentions due July 1. Depending on the level of specificity in those contentions, the relevance of certain differences may not even be known until after ParkerVision submits its expert reports. If ParkerVision wishes to litigate this case based on so-called “representative products” that is its own choice.⁵ But this Court has no authority to order Qualcomm and HTC to enter into a “representative products agreement,” especially before fact and expert discovery is complete.

Second, ParkerVision’s demand for a “representative products proposal” is a highly prejudicial attempt to strip Defendants of their noninfringement defenses. For years, ParkerVision has possessed Defendants’ responses to Interrogatory No. 7 (asking Defendants to identify differences across the Accused Products). (*E.g.*, Ex. 19 to Dkt. 350 at 30-56.) Because ParkerVision knows it cannot possibly prove each and every accused product practices each and every element of the asserted claims, ParkerVision is looking for quick short-cuts that would

⁴ ParkerVision’s reliance on *ParkerVision I* is puzzling given that all products were found *not to infringe* and a subset of products (50%-duty cycle products) were treated differently and found not to infringe for multiple reasons. As a result, the experience in *ParkerVision I* confirms the need for individualized non-infringement arguments.

⁵ The Court will recall that ParkerVision previously argued Defendants could not show the accused receiver products were sufficiently similar, in order to overcome the early summary judgment of noninfringement motion ParkerVision demanded Defendants file. (*E.g.*, Dkt 348 at 18.)

violate Defendants’ due process rights. (*See also* Dkt. 351 at 17-19.⁶) Now having forced Defendants to undertake the enormous burden and expense of producing over fifteen million pages of documents due to ParkerVision’s vastly overbroad requests, making schematics available for review, and shipping highly confidential schematic printouts to ParkerVision’s attorneys and experts across the country, ParkerVision demands that the Court order Defendants to give up their additional noninfringement defenses. (*See also* Dkt. 350-1 at ¶¶ 36, 36.)

Third, none of ParkerVision’s cited cases support the unprecedented relief it requests now in the form of an arbitrary and premature deadline for “representative products” in the absence of competent evidence showing products are representative for purposes of the various asserted claims. For example, the *TiVo* discussion was in the context of an expert’s testimony **at trial**, not a court ordering defendants to litigate using representative products where the plaintiff (*i.e.*, ParkerVision) has not established that the other “allegedly infringing devices [] operate similarly” with respect to the asserted patent claim elements. *TiVo v. EchoStar Commc’ns*, 516 F.3d 1290, 1308 (Fed. Cir. 2008) (emphasis added). *Spansion* too concerned an expert choosing to testify at trial about 52 models, as opposed to all of the accused products – not a court ordering defendants to adopt a representative product proposal. *Spansion v. Int’l Trade Comm’n*, 629 F.3d 1331, 1350 (Fed. Cir. 2010). In both cases, there was “substantial evidence” in the trial

⁶ The Magistrate Judges in this case have noted that “it’s not Qualcomm’s job ... to prove your [ParkerVision’s] case for you.” (March 10, 2020 Hearing at 26:3-7, 37:8-17 referring to August 13, 2015 Hearing at 66-67); *Uniloc USA v. Apple*, No. 18-360, 2018 WL 3219486, at *3 (N.D. Cal. July 2, 2018) (conclusory assertions that products are representative are “insufficient”; plaintiff must explain “how its laundry list of accused products operate in the same manner for infringement purposes”); *Tech. Properties Ltd. v. Samsung Elecs.*, 114 F. Supp. 3d 842, 849–50 (N.D. Cal. 2015) (plaintiff’s “representative product” approach was “deficient”); *Bender v. Infineon Techs. N. Am.*, No. 09-2112, 2010 WL 964207, at *1-2 (N.D. Cal. Mar. 16, 2010) (criticizing “plaintiff’s grouping of the accused products into rather broad and amorphous categories”); *Digital Reg of Tex. v. Adobe Sys.*, No. 12-1971, 2013 WL 633406, at *4 (N.D. Cal. Feb. 20, 2013) (“alleging a representative platform, without an explanation, is insufficient”).)

record that the modeled (*i.e.*, allegedly representative product) and non-modeled products “operate[d] similarly with respect to the claimed limitation”. *Id.* at 1351.

No such proof has been tendered by ParkerVision here. To the contrary, ParkerVision contends that its “four asserted patents” have “claims with varying evidentiary requirements” (Dkt. 345 at 24) and argued Defendants could not prove the accused products were materially similar with respect to this case (Dkt. 327 at 9, 19-20).

The Court should reject ParkerVision’s request to violate Qualcomm’s due process rights and to interfere with Qualcomm’s ability to defend itself in this case. The Court should not order an arbitrary deadline for the “[p]arties enter into representative products agreements, or file a joint brief explaining why agreement has not been possible.” Defendants object to such a legally impermissible deadline.

III. Defendants Object to ParkerVision’s Request to Order the Parties to Prematurely Relinquish Their Claims and Defenses.

Defendants object to ParkerVision’s request to order “Defendants [to] narrow their asserted references and combinations” prematurely and by “September 23, 2020.” The technical field at issue in this case is deep and well-developed. Many textbooks, patents, articles, and prior art products invalidate the asserted claims. The Federal Circuit, for example, found all but one of ParkerVision’s asserted claims invalid previously. *E.g.*, *ParkerVision v. Qualcomm*, 621 F. App’x 1009 (Fed. Cir. July 31, 2015). Defendants are entitled to develop their record to defend themselves, including by working with experts to decide which prior art references and combinations to use.

ParkerVision demands that the Court order Defendants to prematurely “narrow their asserted references and combinations” before expert reports. The date proposed by ParkerVision assumes a narrowing *must* occur before it is clear whether it is even needed and to what extent.

ParkerVision has not served amended infringement contentions and thus, has not even made a final identification of which patents, claims, and products it still plans on pursuing. Discovery, including depositions of inventors, are likely months away. Moreover, Defendants have not served amended invalidity contentions yet and, more importantly, ParkerVision has not adequately responded to interrogatories seeking ParkerVision's position on why the prior art references in these amended invalidity contentions do not invalidate the asserted claims. As explained in the 2015 briefing (Dkt. 127) and hearing (Dkt. 211), this is all information that must occur before the parties can have a meaningful dialogue. Defendants therefore propose that the parties have this discussion and the setting of appropriate dates, if needed, two weeks after the close of fact discovery.⁷

IV. Strict COVID-19 Restrictions Prevent Defendants From Being Able to Properly Prepare Expert Reports Under Aggressive Deadlines.

Defendants – Qualcomm (California) and HTC (Taiwan), their counsel, and their experts are subject to some of the strictest COVID-19 restrictions in the country. Qualcomm's technical expert, for example, is in an at-risk age group, and has been restricted from traveling to San Diego to review Qualcomm's highly confidential schematics. It is unrealistic to demand Defendants to submit rebuttal expert reports within 30 days after receipt of opening expert reports, and to not allow sufficient time between the close of fact discovery (September 15) and the submission of opening expert reports (October 8).

⁷ The Court previously rejected ParkerVision's proposal for artificial narrowing. (Dkt. 211 (Aug. 27, 2015 Hearing Transcript at 231:10-21) ("But it's very difficult for the defendants at this juncture to say, I can guarantee that my prior art or obviousness claims can be or defenses can be narrowed down to a certain number. They don't know what they are dealing with. And that's a fair assessment. And I'm very concerned when judges just set numbers. Because it ignores the reality of what litigators have to deal with. And having been one for 28 years, I can put myself in your shoes. It's just not that simple for us to make demands that are not reasonable. I have declined to do that, and I will continue to decline to be unreasonable."))

As noted above, Qualcomm and its counsel ran into significant hurdles as Qualcomm was attempting to gather information in the Jacksonville case for rebuttal expert reports. ParkerVision's infringement experts in Jacksonville had simulations created, run, and stored on the Qualcomm on-site Cadence review computer as part of their expert report for the patent asserted in the Jacksonville action. Qualcomm's expert could not travel to review these simulations for purposes of responding to ParkerVision's allegations. As a result, ParkerVision agreed to stay the case. *See ParkerVision v. Apple, et al.*, No. 15-cv-1477 (Dkt. 238).

Now, ParkerVision's counsel in this case are refusing to acknowledge the restrictions the COVID-19 pandemic have placed on Defendants and their witnesses. Defendants are entitled to do the homework necessary to prepare their rebuttal expert reports. Defendants' proposed schedule extends the time for service of rebuttal expert reports by a little over two weeks (not including Thanksgiving week). ParkerVision fails to cite any prejudice and refuses to accommodate Defendants' reasonable request for some additional time due to the increased inefficiencies and problems created by the COVID-related travel and work restrictions.

ParkerVision's request should be rejected. Defendants request that opening expert reports be due by October 8, and rebuttal expert reports be due by December 3.

V. Defendants' Proposed Dispositive Motion Deadlines Track the Court's Standard Scheduling Order.

Defendants' proposal for dispositive motion briefing is more closely aligned with the Court's standard scheduling order.

First, the deadline for opening briefs is set to reduce conflicts with the winter holidays and Defendants' proposed schedule sets the deadline for the memorandum in opposition at approximately four months before trial. (*See* Dkt. 309 at II.B.1. ("In light of the district court's heavy felony trial calendar, at least 4 months are required before trial to receive memoranda in

opposition to a motion for summary judgment and to research and resolve the dispositive motion sufficiently in advance of trial.”.)

Second, Defendants’ briefing schedule more closely tracks the Court’s preferred briefing spacing and structure. Instead of 17 days over the Thanksgiving holiday for opposition briefs and no reply, as ParkerVision proposes, Defendants’ proposal sets the deadline for an opposition at 28 days after the opening brief and a reply brief 14 days later. (See Dkt. 309 at II.H.1. (“Each party opposing a motion for summary judgment shall file and serve, within thirty (30) days after being served with such motion, a legal memorandum with citation to authorities in opposition to the relief requested of not more than twenty (20) pages... The Court will accept a ten (10) page reply without leave of Court. The reply shall be limited to addressing issues raised by the opposing party that have not already been addressed in the motion. The reply shall be filed within fourteen (14) days after the response is served.”).)

The Court should reject ParkerVision’s request to truncate the briefing schedule and to shorten the time for the Court to review and decide issues.

May 29, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 29, 2020, I electronically filed the foregoing 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/ Leah Buratti

Leah Buratti