

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

PARKERVISION, INC.,)
)
 Plaintiff,)
)
 v.)
)
 APPLE INC., et al.,)
)
 Defendants.)
 _____)

Case No. 3:15-cv-01477-BJD-JBT

**PLAINTIFF PARKERVISION, INC.’S MOTION TO COMPEL
30(b)(6) DEPOSITION TESTIMONY FROM DEFENDANT APPLE, INC.**

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I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 7 and Local Rule 3.01, Plaintiff ParkerVision, Inc. (“ParkerVision”) moves to compel Defendant Apple, Inc. (“Apple”) to produce witnesses to provide testimony on two categories of deposition topics in ParkerVision’s Fed. R. Civ. P. 30(b)(6) deposition notice to Apple (the “Notice”):

- (1) technical topics having to do with identifying what Qualcomm Inc. (“Qualcomm”) accused chipsets are integrated with what Apple accused products, what changes (if any) Apple makes to those Qualcomm chipsets before they are integrated into Apple products, and the operation of the Qualcomm chipsets in the Apple products—all relevant to whether the Apple accused products infringe by way of the Qualcomm chipsets incorporated in them; and
- (2) topics related to the factual underpinning for defenses raised by Apple in its Answer to the Complaint in this case.¹

ParkerVision served the Notice on Apple on October 17, 2019, and on December 19, 2019, two months later, Apple responded in an email stating that Apple would provide a single witness on only an exceedingly small subset of topics from the Notice.

During a meet and confer, the parties discussed the prospect of a declaration that would obviate the need for testimony on some of these deposition topics. However, ParkerVision made clear that any declaration would not cover all topics for which

¹ In correspondence between the parties concerning the issues raised in this Motion to Compel, these two categories of deposition topics were referred to collectively as the “Technical Topics.” *See* Exhibit A. The Technical Topics referred to in email correspondence between parties have been divided into two groups for the purpose of distinguishing between the arguments concerning relevance of the two groups of topics.

ParkerVision seeks testimony. ParkerVision further explained that it wanted to be prepared in the event the parties were not able to agree on declaration language or agree on what topics would be covered in the declaration, and therefore repeatedly requested that Apple designate witnesses on these topics in parallel path with the preparation of a declaration. Now, less than three weeks before the close of fact discovery, Apple still has not provided a witness prepared to testify concerning Apple's corporate knowledge regarding the deposition topics falling under the two categories enumerated above, as required under Fed. R. Civ. P. 30(b)(6). Moreover, the parties have not yet agreed on the form of a declaration, and any declaration agreed upon will need to be supplemented with deposition testimony. Thus, ParkerVision requests that this Court compel Apple to produce witnesses to testify on these topics.

II. BACKGROUND

On October 17, 2019, ParkerVision served Apple with the Notice, which includes deposition topics related to (i) the tying of Qualcomm chipsets to the Apple products in which they are incorporated, (ii) modifications Apple makes to such chipsets, (iii) the operation of the Qualcomm chipsets in the Apple products, and (iv) the factual underpinning for defenses Apple raised in its Answer to the Second Amended Complaint, as set forth in more detail below:

A. Qualcomm Chipsets in Apple Products and Modifications by Apple

The following deposition topics concern identification of the Qualcomm chipsets incorporated into Apple products, the changes (if any) Apple made to those chipsets prior to integration, and the operation of those chipsets in the Apple products. It is the

Qualcomm chipsets in the Apple products that ParkerVision accuses of infringing the asserted patent, and thus the way in which these chipsets operate and the effect on that operation by any changes made to them by Apple are highly relevant to the matter of direct infringement by Apple in this case:

17. All types of Documents (e.g., design review documents, integration guides, data sheets, specifications, guides, manuals, etc.), Source Code and Chip-Level Schematics, including: (a) Apple's proprietary technical documents; and (b) Third Party or other Respondent technical documents; relating to the RF Chip and/or Baseband Processor in each Apple Product.
18. The engineering, design, research and/or development of the Apple Products, including without limitation:
 - (a) the identity of the individuals and/or Third Parties or other Respondents involved in the engineering, design, research and/or development and their duties;
 - (b) the identity of records relating to or supporting the engineering, design, research and/or development of the Apple Products;
 - (c) Your decision to engineer, design, research and/or develop the Apple Products;
 - (d) the relationship between You and any Third Party or other Respondent related to the engineering, design, research, and/or development of the Apple Products;
 - (e) the reason for the involvement of any Third Party or other Respondent in the engineering, design, research, and/or development of the Apple Products;
 - (f) all information, facts, documents and circumstances relating to any agreements between Apple and any such Third Party or other Respondent; and
 - (g) the corporate organization and departmental structure relating to the engineering.
19. The relationship between You and Qualcomm Inc. as it pertains to:
 - (a) the supply of RF Chips to You by Qualcomm;

- (b) any changes You make or have made to such RF Chips, including changes to Source Code and/or Chip-Level Schematics;
 - (c) any changes that are authorized by Qualcomm; and
 - (d) any design or alterations of RF Chips You request from Qualcomm.
29. For each Apple Product, the structure, architecture, function, operation, integration, and implementation of each RF Chip in each Apple Product.
 30. For each Apple Product, the structure, architecture, function, operation, integration, and implementation of each Baseband Processor in each Apple Product.
 31. For each Apple Product, the structure, architecture, function, operation, implementation and interface between each Baseband Processor and each RF Chip in each Apple Product.
 32. For each Apple Product, the testing, results of testing, evaluation, consideration, and/or selection of RF Systems, including RF Chips and Baseband Chips, in each Apple Product – including, without limitation, cost, availability, compatibility, integration, performance, capability, or any other technical factor.
 33. For each Apple Product, on a version-by-version basis, all changes made to any element or portion of such RF Chip by or on behalf of Apple prior to using, installing, integrating, or otherwise placing such RF Chip in an Apple Product, describe in detail the nature of such changes, and identify any Documents instructing or describing these changes.
 34. For each Apple Product, on a version-by-version basis, all IC pin connections for each RF Chip and Baseband Processor included in such Apple Product, including but not limited to all inputs and values for all bias voltages, supply voltages, enabling pins and ground connections inputs and values.
 35. For each Apple Product, the structure, function, operation, and implementation of all receive signal paths in each RF Chip.
 36. For each Apple Product, the structure, function, operation, and implementation of all transmit signal paths in each RF Chip.
 37. For each receive signal path in each Apple Product:
 - (a) the type of demodulation employed;
 - (b) the voltage and current waveforms versus time for the RF signal input nodes of each demodulator, the voltage and current waveforms versus time of the local oscillator signal input nodes of each demodulator including any

simulations, actual measurements of waveforms and/or timing charts showing these signals;

- (c) the voltage and current waveforms versus time for the output nodes of each demodulator for each of RF Chip, including any simulations, actual measurements of waveforms and/or timing charts showing these signals; and
 - (d) all signal paths, electronic traces, front-side buses, back-side buses, computer buses, electrical connections, and the signals that are sent over each, between Baseband Processors and the RF Chip, including any design documents, user manuals, implementation guides, chipset guides, simulations, and actual measurements of waveform and timing charts showing these signals and electrical connections for each RF Chip.
38. For each transmit signal path in each Apple Product:
- (a) the type of modulation employed;
 - (b) the creation of the baseband signal and the propagation of the baseband signal from the Baseband Processor to the RF Chip, including the voltage and current waveforms versus time for the baseband signal upon creation, and any inverting circuitry that inverts the baseband signal, including the voltage and current waveforms versus time of the inverted baseband signal at the output nodes of the inverting circuitry, and including any simulations and actual measurements of waveform and timing charts showing these of the carrier signal for each RF Chip;
 - (c) all signal paths, electronic traces, front-side buses, back-side buses, computer buses, electrical connections, and the signals that are sent over each, between Baseband Processors and the RF Chip, including any design documents, user manuals, implementation guides, chipset guides, simulations, and actual measurements of waveform and timing charts showing these signals and electrical connections for each RF Chip; and
 - (d) the RF signal and the propagation to the antenna, including the spectral response versus frequency for the RF signal at the output node of all combiners, at the input node of all filters, and at the output of all filters, including any simulations and actual measurements of the spectral characteristic plots of the propagating RF signal at the output of all combiners, at the input of all filters, and at the output of all filters for frequency ranges including the charts showing these characteristic spectrum for frequencies at baseband through Cellular Modes for each Apple Product.

These topics collectively are referred to as the “Qualcomm Chipset Topics.”

B. Contentions

The following topics seek the factual underpinning for defenses raised by Apple in response to ParkerVision’s August 31, 2018 Second Amended Complaint against Apple in

this case. ParkerVision is entitled to explore this factual information via deposition so that it can adequately prepare its responses to Apple's defenses:

39. All information, facts and documents relating to Your additional defense of non-infringement, as alleged in Your Response to the Complaint.
40. All information, facts and documents relating to Your additional defense of invalidity, as alleged in Your Response to the Complaint.
42. All information, facts and documents relating to Your additional defense of lack of unfair act, as alleged in Your Response to the Complaint.
44. All information, facts and documents relating to Your additional defense of prosecution history estoppel / disclaimer, as alleged in Your Response to the Complaint.
45. All information, facts and documents relating to Your additional defense of estoppel, laches, waiver, as alleged in Your Response to the Complaint.
46. All information, facts and documents relating to Your additional defense of substantial noninfringing use, as alleged in Your Response to the Complaint.
47. All information, facts and documents relating to Your additional defense of no inducement, as alleged in Your Response to the Complaint.
48. All information, facts and documents relating to Your additional defense of inventorship, as alleged in Your Response to the Complaint.
49. All information, facts and documents relating to Your additional defense of res judicata and/or collateral estoppel, as alleged in Your Response to the Complaint.
50. All information, facts and documents relating to Your other defenses, as alleged in Your Response to the Complaint.
51. Any communications regarding or relating to the infringement, validity, and/or licensing of the Asserted Patents, including without limitation the identity of those persons who engaged in such communications; the dates of such communications; the content of such communications; and the identity of any documents recording or relating to such communications.

These topics are collectively referred to as the "Contentions Topics."

E. Correspondence Relating to the Notice

Apple did not provide a formal response to the Notice, but instead indicated in an email that it would provide a single witness to testify regarding a small subset of the topics in the Notice. None of those topics concern the Qualcomm chipsets incorporated into Apple products, any changes made to them, and their operation within the Apple products, or the factual underpinning for Apple's defenses raised in its Answer. Specifically, Apple's email response offered testimony on the following narrow band of information:

- For Topic No. 3, Mr. Jaynes will only testify to the internal code names that are contained in Apple's recent production of financial data;
- For Topic No. 10, Mr. Jaynes will only testify to the identity and location of the manufacturing facilities for each accused Apple Product;
- For Topic Nos. 11 and 12, Mr. Jaynes' testimony will be limited to the financial data contained in Apple's second production of documents;
- For Topic Nos. 14 and 26, Mr. Jaynes will testify to the location where each accused Qualcomm RF chip is installed in each accused Apple Product.

Exhibit A (December 19, 2019 – Email from Musher to Weinger).

In this same email, Apple objected to the remaining topics in the Notice “for the reasons identified in Apple's April 6, 2016 Objections and Responses to ParkerVision's First Notice of Deposition” in the International Trade Commission Investigation No. 337-TA-982 that was filed concurrently with this case on December 15, 2015.² *Id.* Counsel for ParkerVision and Apple met and conferred on Friday, January 3, 2020, regarding the Notice and Apple's designation of witnesses, during which the parties discussed the

² This case was stayed on February 12, 2016 following institution of ITC Investigation No. 337-TA-982. Dkt. 41. The stay was lifted on May 25, 2017, following termination of ITC Investigation No. 337-TA-982. Dkt. 50.

prospect of a declaration that would obviate the need for testimony on some of the remaining deposition topics for which Apple had not designated a witness. However, ParkerVision made clear that any declaration would not cover all topics for which ParkerVision seeks testimony, and ParkerVision further requested that Apple designate witnesses on these outstanding topics in parallel path with the preparation of a declaration, explaining that it wanted to be prepared in the event the parties were not able to agree on declaration language or agree on what topics would be covered in the declaration.

In follow-up correspondence to that meet and confer, ParkerVision explained that “at least because there are new products at issue in this case as compared to the previous ITC investigation, because the depositions in this case are taking place almost three years after those in the ITC, and because we are not certain the Court will allow use of depositions taken in the ITC case as if taken in this case, we require a witness prepared to testify as to Apple’s knowledge for each of” those topics present in the deposition notice to Apple in Investigation No. 337-TA-982 and it reiterated its “request that the deposition be scheduled in parallel path with the effort to finalize a declaration so that a deponent is ready in the event declaration language cannot be agreed upon.” Exhibit A (January 4, 2020 – Email from Armington to Vlasits at 3:46 PM).³ ParkerVision also stated its understanding based on the call that Apple would provide to ParkerVision by early the following week the additional topics for which it would provide witnesses and an identification of those

³ For reference, ParkerVision’s corporate deposition notice to Apple in Investigation No. 337-TA-982 is attached hereto as Exhibit B, and ParkerVision’s 30(b)(6) deposition notice to Apple in this case is attached as Exhibit C.

witnesses and the dates and locations for those depositions. *Id.* (January 4, 2020 – Email from Armington to Vlasits at 10:13 PM).

ParkerVision did not receive this information on Tuesday, January 7, 2020, and thus emailed counsel for Apple indicating ParkerVision’s intention to move to compel. Only after receiving that email did Apple respond stating that it would designate a witness on a subset of deposition topics not at issue in this Motion,⁴ but identifying no witness for the Technical or Contentions Topics. *Id.* (January 7, 2020 – Email from Vlasits to Armington at 8:06 PM). Counsel for ParkerVision responded stating that it would take the deposition on the subset of additional topics for which Apple designated a witness, but that it would move to compel on the remaining outstanding Topics for which Apple had not identified witnesses. *Id.* (January 8, 2020 – Email from Armington to Vlasits at 4:06 PM). Only after again being told that ParkerVision intended to move to compel did Apple respond that its single identified witness would testify concerning one additional topic – Topic No. 24. *Id.* (January 8, 2020 – Email from Vlasits to Armington at 5:03 PM). Counsel for ParkerVision reiterated in response that witnesses were still outstanding for numerous additional topics including and all the Qualcomm Chipset and Contentions Topics and reiterated its intention to move to compel on those Topics. *Id.* (January 8, 2020 – Email from Armington to Vlasits at 11:15 PM).⁵ For a third time, after hearing of ParkerVision’s

⁴ Specifically, Apple Agreed to designate a witness “to identify the location of the negotiations, location of the Apple people involved, location of execution, and to the extent known, the location of the Qualcomm personnel involved[,]” related to Topic Nos. 20-22.

⁵ As to the Qualcomm Chipset and Contentions Topics, counsel for the parties discussed the potential for a declaration that might obviate a deposition on some of these Topics, and ParkerVision is still committed to working towards such a declaration, but given that fact discovery closes in less than four weeks, ParkerVision cannot pass up a witness in the event declaration language cannot be agreed upon by the parties prior to a deposition. *See id.*

intent to move to compel, Apple again gave ground, albeit slightly, and identified two more topics on which its single witness would testify – Topic Nos. 23 and 25. Exhibit D (January 9, 2020 – Email from Vlasis for Armington at 7:26 PM). However, Apple still has not identified any witnesses for the Qualcomm Chipset or Contentions Topics, and given the late stage of fact discovery, ParkerVision cannot afford to wait on the trickle of additional witness designations ParkerVision seems to get from Apple each time it signals its intent to move to compel.

III. LEGAL STANDARD

A corporation may be deposed using the procedure set forth in Fed. R. Civ. P. 30(b)(6) under which “the party taking the deposition must serve a notice which describes with reasonable particularity the topics for examination. Then the organization *must* designate a person or persons who consent to testify on its behalf, and it can state the matters on which each person designated will testify.” *NXP B.V. v. Blackberry Ltd.*, Case No. 6:12-cv-498-Orl-22TBS, 2013 U.S. Dist. LEXIS 156362, at *9 (M.D. Fla. Oct. 31, 2013) (emphasis added). “The persons designated by the organization must testify about information known or reasonably available to the organization,” and “[t]he deponent has a duty to be knowledgeable about the subject matter identified as the area of inquiry.” *Id.* Further, “[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.’” *Southeastern Metals Mfg. Co. v. Stampco, Inc.*, Case No. 3:13-cv-844-J-34MCR, 2014 U.S. Dist. LEXIS

191836, at *4 (M.D. Fla. July 31, 2014) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)).

IV. DISCUSSION

Both categories of testimony ParkerVision seeks in its Notice are highly relevant to its claims of patent infringement in this case and thus bear directly on the matters at issue in this case.

A. Qualcomm Chipset Topics (Topic Nos. 17-19, 29-38)

Through these topics, ParkerVision seeks testimony concerning the identity of the Qualcomm chipsets in Apple accused products, explanation of any changes that Apple makes to the Qualcomm chipsets prior to integration into Apple accused products, and how the Qualcomm chipsets operate once integrated into the Apple accused products. This information is highly relevant to the matter of infringement of the patent at issue in this case because it is the Qualcomm chipsets' frequency down-conversion that ParkerVision accuses of infringing asserted U.S. Patent No. 9,118,528 (the "'528 Patent").

To determine what Apple products infringe the '528 Patent, ParkerVision must know what Apple products contain the frequency down-converting Qualcomm chipsets. To determine whether these Qualcomm chipsets operate in an infringing manner in the Apple products, ParkerVision must be able to explore whether Apple makes any modification to the Qualcomm chipsets in their products and how the Qualcomm chipsets actually operate in the Apple products. And, while some of these topics were contained in ParkerVision's corporate deposition notice to Apple in Investigation No. 337-TA-982, Apple's designation of a witness on some of the Qualcomm Chipset Topics in a previous

case – removed in time by almost three years between the ITC depositions and the depositions in this case – does not absolve Apple of its obligation to produce a witness on the Qualcomm Chipset Topics in this case, pending in a different forum where significant time has passed, and where there are new Qualcomm and Apple products accused of infringement. Indeed, there are at least two new Qualcomm chipsets accused of infringement in this case that are incorporated into Apple products and did not exist at the time of the ITC case, and ParkerVision has had no opportunity to depose Apple concerning the Apple products that utilize the new accused chipsets. Thus, the information ParkerVision seeks in the Qualcomm Chipset Topics is highly relevant as it bears directly on the issue of direct infringement in this case.

B. Contentions (Topic Nos. 39, 40, 42, 44-51)

Each of these Contentions Topics seeks the factual underpinning for defenses raised by Apple in its September 13, 2018 Answer to ParkerVision’s Second Amended Complaint in this case. ParkerVision seeks an opportunity to explore the factual underpinning of each of these defenses so that it can fully understand the basis for the defenses, and thus prepare adequately to respond to those defenses at trial. The Topics include requests for testimony concerning the factual underpinning for Apple’s defenses of non-infringement (Topic No. 39), invalidity (Topic No. 40), and estoppel, laches, and waiver (Topic No. 44), amongst others, all of which testimony is appropriately requested by ParkerVision through a 30(b)(6) deposition notice to Apple. *See Humanscale Corp. v. CompX Int’l, Inc.*, Action No. 3:09-CV-86, 2009 U.S. Dist. LEXIS 120197, at *8-9, 13-14 (E.D. Va. Dec. 24, 2009) (granting motion to compel 30(b)(6) deposition testimony on defendant’s non-

infringement, invalidity, unenforceability, patent marking, and laches defenses); *Ivax, LLC v. Celgene Corp.*, CASE No. 12-61917-CIV-DIMITROULEAS/Snow, 2013 U.S. Dist. LEXIS 196442, at *4, 6-7 (S.D. Fla. July 29, 2013) (granting motion to compel 30(b)(6) deposition testimony on defendant's invalidity defense). Until or unless Apple withdraws its affirmative defenses, ParkerVision is entitled to probe them through the deposition of an adequately prepared Apple witness.

V. CONCLUSION

For the foregoing reasons, ParkerVision respectfully requests this Court to compel Apple to produce witness for deposition on the Qualcomm Chipset and Contentions Topics.

Local Rule 3.01(g) Certification

Pursuant to Local Rule 3.01(g), ParkerVision's attorneys conferred in good faith with Apple's attorneys with regard to the subject matter of this motion. Counsel do not agree on the resolution of this motion.

[signatures on following page]

Dated: January 10, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 10, 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/ John R. Thomas

Attorney