

**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 DEFENDANT
QUALCOMM INCORPORATED TO PROVIDE 30(B)(6) TESTIMONY
CONCERNING THE FOUNDATION OF ITS OWN HIGHLY
RELEVANT DOCUMENTS**

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I. INTRODUCTION

Qualcomm's own documents prove that it has willfully infringed ParkerVision's '528 Patent asserted in this case. Yet Qualcomm has refused to provide a stipulation on the admissibility (other than relevance objections) of its own business records and statements produced from its own files, while at the same time refusing to provide a Rule 30(b)(6) designee witness to allow ParkerVision to establish a foundation for admissibility of Qualcomm's own documents. The Court should not permit Qualcomm to shirk its discovery obligations in this regard, and should compel Qualcomm to designate a witness to provide testimony to which ParkerVision is entitled.

II. RELEVANT BACKGROUND

A. Qualcomm's Business Records Prove That It Has Willfully Infringed ParkerVision's Patented Technology

Most, if not all, of the following facts are memorialized in Qualcomm documents that it unjustifiably refuses to authenticate through basic Rule 30(b)(6) testimony:

In the late 1990s and early 2000s, ParkerVision attempted to license its inventions to Qualcomm, including the downconverter technology that is the subject of the asserted '528 patent claims. During this period, ParkerVision disclosed and explained its innovative direct downconverter technology to Qualcomm (under strict non-disclosure agreements). ParkerVision referred to this technology as "Direct2Data" or "D2D."

Qualcomm's internal correspondence, admissions, and business records about its assessment and testing of ParkerVision's technology directly contradict its denials of willful infringement here. As just one of many examples, [REDACTED]

[REDACTED]

[REDACTED]

When ParkerVision first disclosed its direct downconverter technology to Qualcomm, [REDACTED]

[REDACTED]

Following extensive testing of a ParkerVision D2D prototype in February 1999, [REDACTED]

[REDACTED]

[REDACTED]

Moreover, in stark contrast to Qualcomm’s current claims that the invention of the asserted ’528 Patent would have been obvious to anyone skilled in the art at the time, no one at Qualcomm was able to divine how ParkerVision achieved such “revolutionary” performance. For example, [REDACTED]

Consistent with its attention to ParkerVision’s press releases about its growing patent portfolio mentioned above [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Despite Qualcomm's view of the D2D technology as "the holy grail," internal Qualcomm documents show that the company [REDACTED]

[REDACTED]

[REDACTED] Several years after this disinformation campaign proved effective and negotiations between the parties ceased, Qualcomm determined that the downconverter technology it had independently developed in the meantime was not good enough to stay competitive in the market. As a result, Qualcomm concluded that it [REDACTED]

[REDACTED]

[REDACTED] That is exactly what Qualcomm did.

It is plain that these internal Qualcomm communications, and others like them, about ParkerVision, its technology, and its patents, are highly relevant to ParkerVision's

allegations of willful infringement. Yet Qualcomm has refused ParkerVision the opportunity to depose a 30(b)(6) witness regarding these internal Qualcomm documents and communications for authentication and foundational purposes, the effect of which is to prevent ParkerVision from using these highly relevant documents at trial.

B. In an Attempt To Avoid Proof of Its Willful Infringement, Qualcomm Has Refused To Designate a Witness To Provide Proper Foundational Testimony for Its Own Business Records.

During the discovery period in this case, Qualcomm refused to waive objections as to hearsay with respect to its own documents containing statements by its own personnel. In view of this approach, on December 19, 2019, ParkerVision served Qualcomm with ParkerVision's Amended Rule 30(b)(6) Notice Topic Nos. 71-80. Ex. 12, ParkerVision's Amended 30(b)(6) Notice at 31-33, and Ex. B at 35-37 (Dec. 19, 2019). These topics sought foundational testimony for documents originating from Qualcomm's files, such testimony to establish the authenticity of the documents, and testimony to the admissibility of the documents as business records under Fed. R. Evid. 803(6), and/or statements of a party opponent under Fed. R. Evid. 801(d)(2) including, but not limited to, the emails listed in Exhibit B to the Notice. *Id.*

Even after serving these deposition topics, ParkerVision continued to offer reasonable compromises to Qualcomm in order to streamline the discovery process, and obviate the need for unnecessary depositions and disputes with respect to the admissibility of Qualcomm's own documents. These extensive efforts to compromise by ParkerVision are reflected in numerous emails communications and telephonic meet and confer discussions among counsel for the parties throughout the month of January,

attached as Exhibits 13-15. *See, e.g.*, Ex. 13, Email from ParkerVision Counsel to Qualcomm Counsel at 5 (Email of Jan. 3, 2020 at 12:17pm (proposing ParkerVision withdraw 30(b)(6) topics and RFAs relating to email authentication and to forego depositions of Qualcomm witnesses in exchange for Qualcomm's stipulation on admissibility of documents it has produced)); *id.* at 1 (Email of Jan. 6, 2020 at 9:28pm (noting Qualcomm's rejection of ParkerVision's proposal)); Ex. 14, Email from ParkerVision Counsel to Qualcomm Counsel at 1, 2, and 4 (Emails of Jan. 10, 2020 at 5:39pm, Jan. 13, 2020 at 7:12pm, and Jan. 22, 2020 at 10:25pm, each requesting Qualcomm designate a witness on its 30(b)(6) topics relating to email authentication); Ex. 15, Emails from ParkerVision Counsel to Qualcomm Counsel at 1-16 (Emails from Jan. 27, 2020 to Feb. 12, 2020 requesting Qualcomm stipulate to admissibility of documents or designate a witness on its 30(b)(6) Topic Nos. 71-80).

Unfortunately, Qualcomm has refused to compromise, and continues refuse to offer a 30(b)(6) designee to offer testimony to which ParkerVision is entitled.

III. LOCAL RULE 3.04(A) STATEMENT

PARKERVISION'S AMENDED RULE 30(b)(6) NOTICE TOPICS 71-77

71. All communications between You and ParkerVision prior to January 1, 2005.
72. All communications between You and ParkerVision after January 1, 2005.
73. All internal Qualcomm communications concerning ParkerVision, ParkerVision Technology, the Patent-in-Suit, any technology relating to the Patent-in-Suit, and any patents relating to the Patent-in-Suit.
74. All internal Qualcomm communications concerning any potential, negotiated, or executed agreements, term sheets, memoranda of understanding, or deals of any kind between Qualcomm and ParkerVision.

75. All information, facts, and documents relating to all analyses, models, tests, test boards, and simulations relating to ParkerVision Technology.
76. All information, facts, and documents relating to any analyses and models relating to potential, negotiated, or executed agreements, term sheets, memoranda of understanding, or deals of any kind between Qualcomm and ParkerVision.
77. All communications between Qualcomm and Third Parties prior to January 1, 2006 concerning ParkerVision and ParkerVision Technology.

QUALCOMM'S RESPONSE TO TOPICS 71-77:

Qualcomm objects to topics 71-77, as overwhelmingly overbroad, irrelevant, vague, and not proportional to the needs of this case. Qualcomm further objects to the extent the topics seek information outside Qualcomm's current possession, custody, and control. ParkerVision seeks to embark on an unjustified and harassing fishing expedition into "All communications," "All information, facts, and documents relating to all analyses, models, tests, test boards, and simulations," "All information, facts, and documents relating to any analyses and models," and "All internal Qualcomm communications" from more than fifteen years ago (e.g., "prior to January 1, 2005"), even though the Patent-At-Issue issued in 2015. It is unreasonable and unduly burdensome to ask Qualcomm to find a corporate witness to testify about "All" communications, information, facts, and documents, without ParkerVision first establishing the relevance, if any, of any such communications to specific claims or defenses in this action. Further, Qualcomm objects to topics 76 and 75 as vague, ambiguous, overbroad, and unduly burdensome to the extent it purports to demand Qualcomm identify and designate witness(es) to testify about unidentified "analyses and models relating to potential, negotiated, or executed agreements, term sheets, memoranda of understanding, or deals of any kind" and "all analyses, models, tests, test boards, and simulations relating to ParkerVision Technology."

Subject to, and without waiving any objections, Qualcomm requests a meet and confer to discuss what additional information it believes it is entitled to beyond the deposition testimony already provided in ParkerVision I and the testimony to be provided by the individuals noticed and subpoenaed under Rule 30(b)(1).

Ex. 16, Qualcomm's Objections and Responses to ParkerVision's 30(b)(6) Notice at 3-4 (Jan. 16, 2020).

PARKERVISION'S AMENDED RULE 30(b)(6) NOTICE TOPICS 78-80

78. The authenticity of each document listed in Exhibit B¹ to this Notice and the document(s) produced in response to Request Nos. 129-135² of ParkerVision, Inc.'s 5th Set of Requests for Production to Defendant Qualcomm Incorporated (Nos. 129-143), within the meaning of Fed. R. Evid. 901.
79. Whether each document listed in Exhibit B to this Notice and the document(s) produced in response to Request Nos. 129-135 of ParkerVision, Inc.'s 5th Set of Requests for Production to Defendant Qualcomm Incorporated (Nos. 129-143) constitutes an opposing party's statement, as that term is used in Fed. R. Evid. 801(d)(2), including but not limited to:
- a) Whether such document contains statements made by a Qualcomm representative or employee;
 - b) Whether such document contains statements that Qualcomm or the maker of the statement believed to be true;
 - c) Whether such document contains statements concerning a subject on which the maker of the statement was authorized to make the statement; and

¹ Exhibit B lists 26 emails between August 11, 1998 and May 12, 2004 regarding Qualcomm's evaluation of ParkerVision during that time, between Qualcomm personnel Prashant Kantak, Jeff Jacobs, Ken Montalvo, Chuck Wheatley, Steven Ciccarelli, Lisa Wen, Seyfi Bazarjani, Donald Schrock, Franklin Antonio, Saed Younis, Sanjay Jha, Prashant Kantak, John Lodenius, and Andy Oberst. Ex. 12, ParkerVision's Amended 30(b)(6) Notice at 31-33, and Ex. B at 35-37 (Dec. 19, 2019).

² Requests for Production Nos. 129-135 include "All Documents and Things relating to all communications from You to ParkerVision prior to January 1, 2005" (RFP No. 129), "All Documents and Things relating to all communications from You to ParkerVision after January 1, 2005" (RFP No. 130), "All Documents and Things relating to all internal Qualcomm communications concerning ParkerVision, ParkerVision Technology, the Patent-in-Suit, any technology relating to the Patent-in-Suit, and any patents relating to the Patent-in-Suit" (RFP No. 131), "All Documents and Things relating to all communications between Qualcomm and Third Parties concerning ParkerVision, ParkerVision Technology, the Patent-in-Suit, any technology relating to the Patent-in-Suit, and any patents relating to the Patent-in-Suit," (RFP No. 132), "All Documents and Things relating to all internal Qualcomm communications concerning any potential, negotiated, or executed agreements, term sheets, memoranda of understanding, or deals of any kind between Qualcomm and ParkerVision" (RFP No. 133), "All Documents and Things relating to all analyses, models, tests, test boards, and simulations relating to ParkerVision Technology, whether created by Qualcomm or a Third Party" (RFP No. 134), and "All Documents and Things relating to any analyses, models, simulations, tests, or computations relating to any potential, negotiated, or executed agreements, term sheets, memoranda of understanding, or deals of any kind between Qualcomm and ParkerVision" (RFP No. 135).

- d) Whether such document contains statements concerning a matter that was within the scope of the statement maker's employment.
80. Whether each document listed in Exhibit B to this Notice and the document(s) produced in response to Request Nos. 129-135 of ParkerVision, Inc.'s 5th Set of Requests for Production to Defendant Qualcomm Incorporated (Nos. 129-143) constitutes a record of a regularly conducted activity, as that term is used in Fed. R. Evid. 803(6), including but not limited to:
- a) Whether such document came from Qualcomm's business files;
 - b) Whether such document was:
 - i) created at or near the date indicated on such written communications,
 - ii) created by someone with knowledge about the information contained in the written statement,
 - iii) created from information transmitted by someone with knowledge about the information contained in the written statement,
 - iv) kept in the course of Qualcomm's regularly conducted activity,
 - v) created as a regular practice of the author's employment or position at Qualcomm;
 - c) The source of information or the method or circumstances of preparation of such indicate a lack of trustworthiness; and
 - d) Whether it was Qualcomm's regular practice at the time such document was created to:
 - i) prepare documents and records for use in its business;
 - ii) prepare documents and records at or near the date of the date(s) indicated on them; and
 - iii) retain and maintain records in the ordinary course of Qualcomm's business.

QUALCOMM'S RESPONSE TO TOPICS 78-80:

Qualcomm objects to topics 78-80, as improper, non-specific, overbroad, irrelevant, unduly burdensome, and not proportional to the needs of the case. For example, the topics purport to demand Qualcomm identify and designate witness(es) to testify about unidentified "document(s) produced in response" to seven overbroad requests for production, dated December 19, 2020, with responses and objections due by January 21, 2020, near the end of the fact discovery period. Qualcomm further objects to the extent the topics seek information outside Qualcomm's current possession, custody, and control. Qualcomm further objects to the topics to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, or any other applicable privilege or protection. Subject to, and without waiving any objections, ParkerVision has noticed some authors and/or recipients of the emails identified in Exhibit B to Rule 30(b)(6) notice, dated December 19, 2020, for deposition and can discuss those emails with those

witnesses. To the extent ParkerVision has elected not to depose authors and/or recipients of any specific emails identified in Exhibit B, Qualcomm requests that ParkerVision identify by Bates number those particular documents from Exhibit B by January 17, 2020, and Qualcomm will designate a witness to authenticate those emails. Qualcomm reserves all rights with respect to challenging the foundation, relevance, and authenticity of each document.

Ex. 16, Qualcomm's Objections and Responses to ParkerVision's 30(b)(6) Notice at 4-5 (Jan. 16, 2020).

IV. 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." *Local Access, LLC v. Peerless Network, Inc.*, No. 6:17-cv-236-Orl-40TBS, 2017 U.S. Dist. LEXIS 192439, at *5 (M.D. Fla. Nov. 21, 2017) (citing *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958)). The Federal Rules provide that when a party serving discovery does not receive an adequate response, then 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); Fed. R. Civ. P. 37(a).

Rule 26(b) provides in relevant part that parties may obtain discovery regarding:

any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Fed. R. Civ. P. 26(b)(1).

Rule 30(b)(6) testimony is the proper vehicle for establishing the foundation and authenticity of a corporation's documents, including whether they are records of regularly conducted business activities. *Bristol-Myers Squibb Co. v. Rhone-Poulenc Rorer, Inc.*, 95 Civ. 8833 (RPP), 1999 U.S. Dist. LEXIS 8929, at *7-8 (S.D.N.Y. June 14, 1999).

V. ARGUMENT AND AUTHORITIES

Given Qualcomm's refusal to waive hearsay objections to its own documents authored by its own personnel and from its own files, Qualcomm should be compelled to provide a witness to establish the foundation of Qualcomm's own documents as business records under Fed. R. Evid. 803(6), and/or statements of a party opponent under Fed. R. Evid. 801(d)(2). Qualcomm's position that "a 30(b)(6) witness is [not] an appropriate vehicle" for such information is untenable. Ex. 15, Email from Qualcomm Counsel to ParkerVision Counsel at 11 (Jan. 30, 2020 at 8:09pm). This is particularly true in view of Qualcomm's refusal to observe its discovery obligations, or to entertain any other compromises that could have avoided bringing this needless dispute to the Court.

ParkerVision is entitled to a 30(b)(6) deponent to establish the proper foundation for the highly relevant documents authored by Qualcomm personnel—documents that go to the heart of Qualcomm's willful and egregious behavior toward ParkerVision and its innovative technology claimed by the patent asserted in this case. Relevant precedent supports this uncontroversial position. For example, in *Halbach v. Great-West Life & Annuity Ins. Co.*, No. 4:05CV02399-ERW, 2007 U.S. Dist. LEXIS 52389, at *4-5 (E.D. Mo. July 19, 2007), the court emphasized that it "does not believe it is unreasonable to

request a witness who can identify and authenticate documents provided by the opponent in the course of discovery, so that they can be admitted into evidence in a future court proceeding.” *Id.* at *4. The court went on to order that “Defendants are required to produce deponents on the subjects listed in Plaintiffs’ notice, as they have not filed any motion with this Court objecting to such requests” and that “[i]n the event that all documents are not identified and authenticated in the course of the on-going Rule 30(b)(6) depositions, or through stipulations during the next week, Defendants will be required to produce a Rule 30(b)(6) deponent who can testify as to the identity and authenticity of the noticed documents.” *Id.* at *4-5. The same relief is appropriate here, and this Court should order it. *See also Bristol-Myers Squibb*, 1999 U.S. Dist. LEXIS 8929, at *7-8 (noting party’s offer of a Rule 30(b)(6) witness after the court ruled that “oral depositions would additionally provide proof that Bristol’s records are authentic records of regularly conducted business activity”).

The documents ParkerVision intends to authenticate during the requested designee deposition include Qualcomm’s communications about its evaluation of ParkerVision’s technology in the 1998-2000 timeframe, Qualcomm’s monitoring of ParkerVision’s patent issuances, and Qualcomm’s subsequent knowing and intentional use of ParkerVision’s technology in its own products. *See* Ex. 15, Email from ParkerVision Counsel to Qualcomm Counsel at 1-10 (Feb. 12, 2020) (listing Qualcomm communications authored by many of the same core group of individuals identified on the example communications in Section II.A, *supra*, e.g., [REDACTED]

[REDACTED]

Qualcomm's approach to this unnecessary dispute is further undermined by the fact that many of the documents that ParkerVision seeks to authenticate (in the list it provided to Qualcomm on January 27) are documents that were actually *admitted as exhibits* in a previous trial in this district between ParkerVision and Qualcomm—without or over any hearsay objections. Ex. 15, Email from ParkerVision Counsel to Qualcomm Counsel at 1-3 (Feb. 12, 2020). In fact, the Middle District of Florida previously admitted over 100 of these documents in a prior proceeding. *Id.* And even many of these were *joint* exhibits or *Qualcomm's* own trial exhibits (DX). *Id.*

Moreover, with respect to the remaining documents that ParkerVision seeks to authenticate with a Qualcomm witness (and which ParkerVision specifically identified to Qualcomm in its extensive attempts to compromise), the vast majority of additional documents cover the same time period, the same subject matter, and are authored by the same people, as the ones previously admitted. *Id.* (*e.g.*, compare generally documents under “I. Exhibits admitted *ParkerVision, Inc. v. Qualcomm Incorporated*, 3:11-cv-719 (M.D. Fla.)” with documents listed under “III. Qualcomm's evaluation of ParkerVision and negotiations with ParkerVision”). Further undermining Qualcomm's position, in Qualcomm's First Set of Requests for Admission to ParkerVision, it refers to the very same type of documents, covering the same time period, the same subject matter, and authored by the same people, as “Qualcomm business record[s].” Ex. 17, Qualcomm's First Set of RFAs to ParkerVision at 16-17 (RFA Nos. 101-105) (Dec. 30, 2019).

Thus, the Rule 26(b)(1) factors strongly support ParkerVision's request here, namely that Qualcomm should be compelled to provide the requested information, which is all highly relevant to Qualcomm's willful infringement of the '528 Patent:

(i) The requested 30(b)(6) testimony on documents relating to Qualcomm's evaluation of ParkerVision's technology are relevant to Qualcomm's willful infringement of ParkerVision's patented technology.

(ii) The amount in controversy is substantial. ParkerVision seeks to recover millions of dollars in damages.

(iii) Qualcomm is a multi-billion dollar corporation with access to substantially more resources than ParkerVision. For example, based on its public financial disclosures, Qualcomm had 11,600 employees in 1998, and 37,000 employees in 2019. The discovery ParkerVision seeks is focused on a comparatively tiny subgroup of authors of Qualcomm documents, all discussing the same categories of subject matter squarely relevant to issues at the heart of this case.

(iv) The discovery is central to resolving the issues in this action because the requested testimony is probative of Qualcomm's willful infringement of ParkerVision's patent.

(v) The benefit of the requested discovery for ParkerVision substantially outweighs any burden or expense to Qualcomm, which is nominal at worst. The testimony sought is essentially ministerial in nature, merely seeking to authenticate documents as to which there can be little dispute are Qualcomm business records.

VI. CONCLUSION

For the foregoing reasons, ParkerVision respectfully requests that the Court grant its motion and compel Qualcomm to provide a 30(b)(6) witness for Deposition Topic Nos. 71-80.

Local Rule 3.01(g) Certification

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

Dated: February 12, 2020

Respectfully submitted,

**MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
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CERTIFICATE OF SERVICE

I certify that on February 12, 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/ William A. Meunier

William A. Meunier