Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 1 of 18 CONFIDENTIAL – ATTORNEYS EYES ONLY

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS WACO DIVISION

PARKERVISION, INC.,

Plaintiff,

Case No. 6:20-cv-00108-ADA

v.

JURY TRIAL DEMANDED

INTEL CORPORATION,

Defendant.

PLAINTIFF PARKERVISION, INC.'S DAUBERT MOTION REGARDING DAMAGES ISSUES

CONFIDENTIAL – ATTORNEYS EYES ONLY

TABLE OF CONTENTS

		<u>Page</u>
A.	The (Court should exclude certain of Perryman's opinions and discussions of because they are untied to the facts of the case
	1.	Perryman's opinions relating to the fair market value of Infineon's patents in 2010 is misleading and untied to the facts of the case 1
	2.	Perryman's discussions of ParkerVision's patent portfolio valuations included in ParkerVision's SEC filings are misleading and untied to the facts of the case, and should not be admitted
	3.	Perryman's discussions of ParkerVision's is misleading and untied to the facts of the case and should not be admitted.
B.	The (Court should exclude Perryman's opinions and reliance on the because they are not comparable licenses
	1.	Perryman's determination of economic comparability of the is unsupported, unreliable and not tied to the facts of the case.
	2.	Perryman fails to offer or provide an opinion on the value of the
	3.	Perryman improperly relies on a for support that Intel uses 12
C.		Court Should Exclude Perryman's Opinions and Reliance on , Which Are Not Comparable Licenses
D.		Court should exclude Perryman's unsupported technical opinions that not qualified to offer

Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 3 of 18

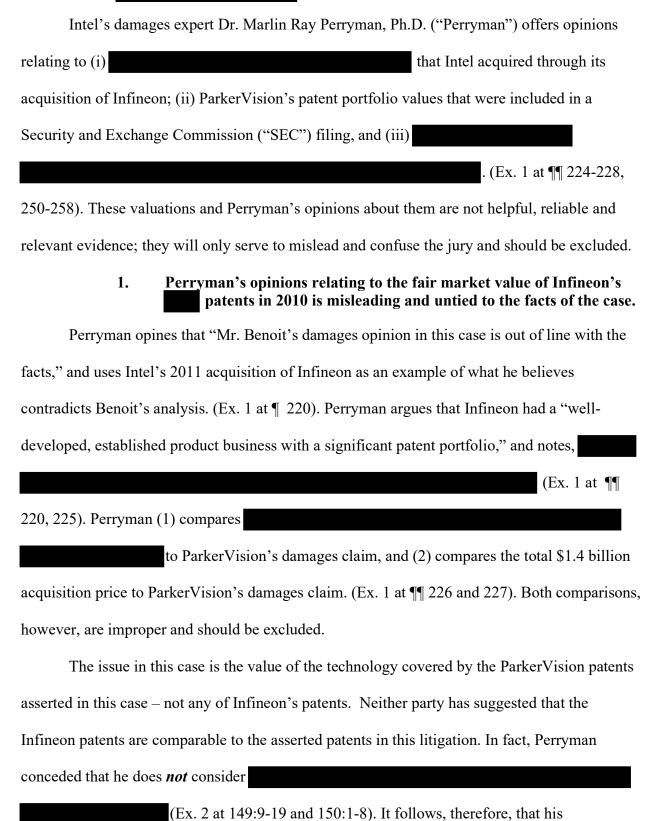
CONFIDENTIAL – ATTORNEYS EYES ONLY

TABLE OF AUTHORITIES

	Page(s)
Cases	
Corelogic Info. Sol'ns, Inc. v. Fiserv, Inc., 2012 U.S Dist. LEXIS 196809 (E.D. Tex. 2012)	9
DataQuill Ltd. v. High Tech Comp. Corp., 887 F. Supp. 2d 999 (N.D. Cal 2011)	2
Ericsson, Inc. v. D-Link Sys., 773 F.3d 1201 (Fed. Cir. 2014)	9, 13
Golden Bridge Tech. v. Apple Inc., No. 5:12-cv-04882-PSG, 2014 U.S. Dist. LEXIS 68564 (N.D. Cal. 2014)	2
Sundance, Inc. v. DeMonte Fabricating Ltd., 550 F.3d 1356 (Fed. Cir. 2008)	14
Wilson v. Woods, 163 F.3d 935 (5th Cir. 1999)	15
Other Authorities	
Fed. R. Evid. 702	14

Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 4 of 18 CONFIDENTIAL – ATTORNEYS EYES ONLY

A. The Court should exclude certain of Perryman's opinions and discussions of because they are untied to the facts of the case.



Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 5 of 18 CONFIDENTIAL – ATTORNEYS EYES ONLY

consideration of non-comparable technology and transactions has no place in a proper damages analysis.

In addition, there are several other flaws with Perryman's comparisons to Infineon's portfolio and business valuations that make them unreliable and inappropriate. Perryman's first comparison uses the fair market value of Infineon's patents by applying an *equal* weighting to each patent. Specifically, Perryman stated:

Assuming equal patent values, that would translate to per patent. Using that price per patent, the value of the six patents-in-suit asserted in this case would indicate a total value of This amount is smaller than ParkerVision's damages claim of .

(Ex. 1 at ¶ 226).

Perryman's equal weighting of all patents in a portfolio runs counter to established damages law. DataQuill Ltd. v. High Tech Comp. Corp., 887 F. Supp. 2d 999, 1023-24 (N.D. Cal 2011) (holding that in order to rely on licenses to a broad portfolio, experts "must present evidence sufficient to allow the jury to weigh the economic value of the patented feature against the economic value of the features and services covered by the license agreement.") Golden Bridge Tech. v. Apple Inc., No. 5:12-cv-04882-PSG, 2014 U.S. Dist. LEXIS 68564, at *19 (N.D. Cal. 2014) (holding "the case law is clear that mere patent counting and dividing is not enough"). Different patents can – and do – have different values. Some inventions have great value, while other do not. By equally weighting all Infineon patents (which again are not claimed to be comparable), Perryman's analysis improperly suggests that each patent provides the same technical and economic benefit, has the same patent life, was issued in the same time period, was being used, and/or was perceived to have value at the time of Perryman performed no analysis whatsoever as to the variation of value within the acquired patent portfolio to indicate whether all patents are of similar value, whether the majority of the acquired patents

Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 6 of 18 CONFIDENTIAL – ATTORNEYS EYES ONLY

have little to no value, or whether a select few of the acquired patents drive the majority of value.

And Perryman provided no indication of whether and to what extent the acquired patents were claimed to be embodied in any Infineon and/or Intel commercialized products or whether those products and technologies had become technologically obsolete as of the acquisition date.

Further, he did not identify the percentage of the patents that were U.S. patents or foreign patents. Again, Perryman did no analysis whatsoever to support his "assumed" equal weighting approach and his flawed assumption makes his analysis inherently unreliable

In addition, does not make any adjustments to account for differences between a fair market valuation of a portfolio and, as required in a hypothetical negotiation, that a reasonable royalty is based on the assumption that the patents are valid and infringed. Moreover, a damages award is a pre-tax amount, while a fair market valuation is a post-tax number. Unlike a damage award in a patent case that is a pre-tax value without accounting for invalidity, non-infringement and other business risks, the fair market value of Infineon's patents was a post-tax value derived from an analysis that includes a discount rate and "individual surcharges [that were] added [to the discount rate] to account for the inherent risks of the assets." (Ex. 3 at 336). All of the above differences *undervalue* the patents in an acquisition context as opposed to the proper context of a *Georgia-Pacific* hypothetical negotiation. Using a post-tax, equally weighted, fair market value of patents that are discounted to present value to reflect uncertainty in the context of a hypothetical negotiation analysis is improper and would only serve to confuse and mislead the jury.

In sum, Perryman plans to use patents that are not technologically or economically comparable that were valued according to an analysis that is not compatible with a hypothetical negotiation analysis to tell the jury that the average patent is worth

Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 7 of 18 CONFIDENTIAL – ATTORNEYS EYES ONLY

ParkerVision's valuation for the six patents in suit is higher than the average would indicate. Such a baseless, unreliable, and misleading opinion is highly prejudicial and completely disconnected from the facts of this case. It should, therefore, be excluded (along with the data underlying Perryman's planned discussion).

Equally as flawed is Perryman's second comparison that uses the entire \$1.4 billion acquisition price to assign value to each of Infineon's patents. Using this approach,

Perryman claims that the value of each patent is smaller than

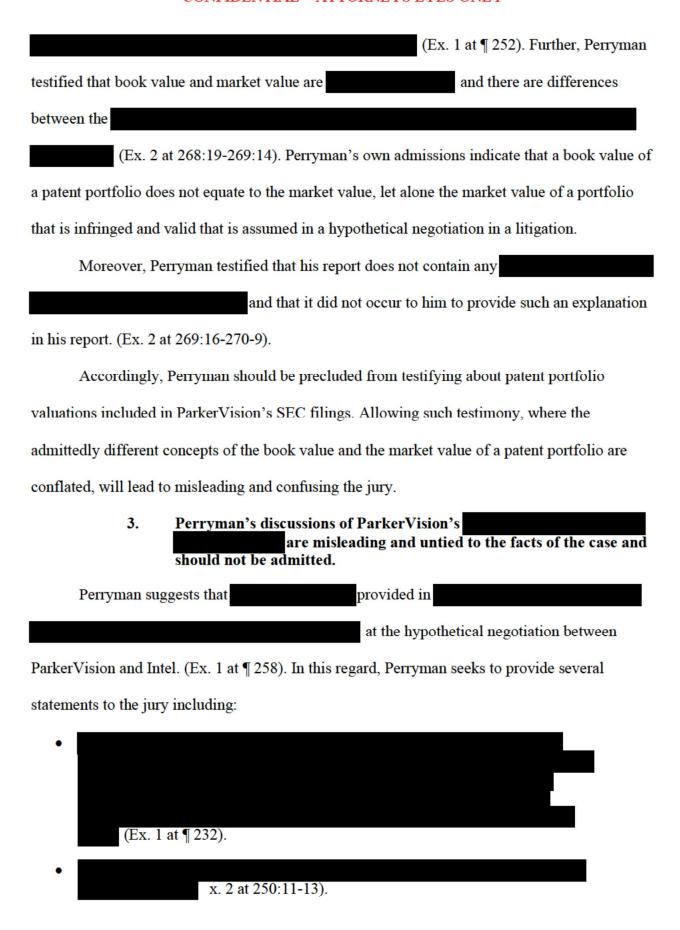
ParkerVision's damages claim. (Ex. 1 at ¶ 227). This approach, based on the entire acquisition price, is misleading and not tied at all to the facts of the case. Indeed, Perryman's approach is illogical and encompasses a host of business issues (from tax rates to geopolitical risk, to poor management) that have no applicability in the valuation of infringed patents pursuant to a hypothetical negotiation. It is another direct attempt to mislead the jury by proffering an absurd argument. Any use of the business values from Intel's acquisition of Infineon is unreliable and not tied to the facts of the case.

The Court should, therefore, exclude Perryman's opinions and discussions surrounding Deloitte's valuation of Infineon's patents and any reliance on the fair market values of Intel's acquisition.

2. Perryman's discussions of ParkerVision's patent portfolio valuations included in ParkerVision's SEC filings are misleading and untied to the facts of the case and should not be admitted.

Perryman opines that the estimated value of ParkerVision's patent portfolio, as per its SEC filings, provides evidence of the total value of ParkerVision's entire patent portfolio, and that this value "would be much greater than the value of a nonexclusive U.S. license to the patents-in-suit." (Ex. 1 at ¶ 249). Despite making this conclusion, Perryman concedes that ParkerVision's SEC filings reflected book values of its patent portfolio that

Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 8 of 18 CONFIDENTIAL – ATTORNEYS EYES ONLY



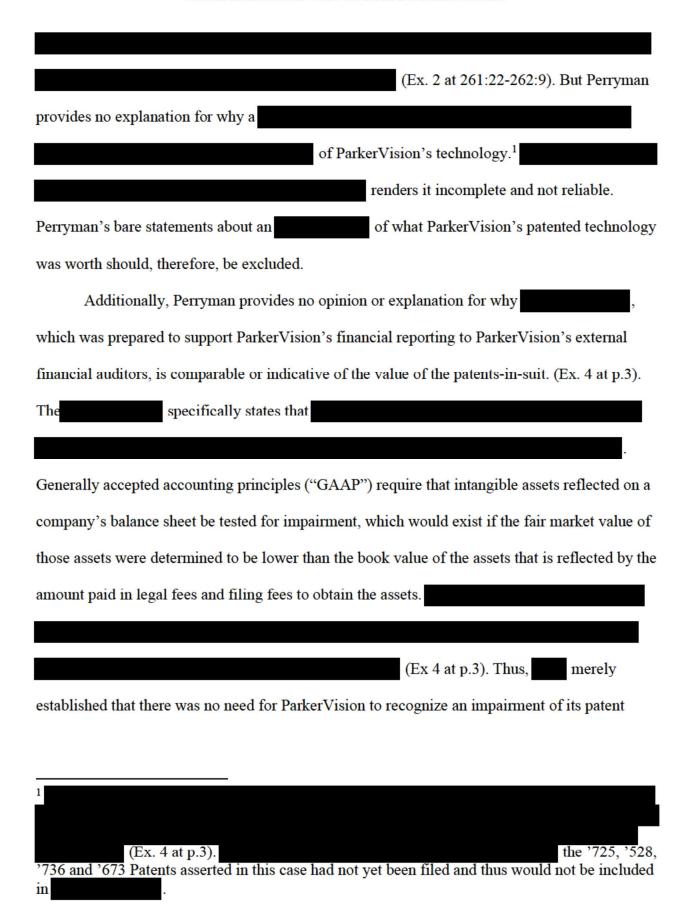
Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 9 of 18 CONFIDENTIAL – ATTORNEYS EYES ONLY

As discussed below, these foregoing statement and testimony are directly contradicted by the facts.

Perryman suggests that ParkerVision's own advisors agreed that a lower royalty rate was
warranted for ParkerVision's portfolio. But Perryman's statement is unsupported because Price
Waterhouse Cooper ("PWC"), ParkerVision's accounting firm, specifically questioned
. In particular, PWC stated
that and
asked,
(Ex. 1 at ¶ 257). Perryman relies on PWC's statement to support his erroneous
conclusion and . Specifically, Perryman
admitted
. (Ex. 2 at 262:21-263:7). Given
Perryman's admission , any discussion of ParkerVision's advisors
agreeing
must be stricken.
Perryman statements that of ParkerVision's patent portfolio was
derived did not
include and, in fact, states flat-out that
(Ex. 4 at p.3). As
such, Perryman's conclusion that ParkerVision's patent portfolio was
determined under should be stricken.
Likewise, Perryman's suggestion that ParkerVision and Intel would have considered the
at the hypothetical negotiation is without any basis. Perryman testified that

Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 10 of 18

CONFIDENTIAL – ATTORNEYS EYES ONLY



Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 11 of 18 CONFIDENTIAL – ATTORNEYS EYES ONLY

portfolio under GAAP. Moreover, as previously discussed, fair market value assessments are determined on a post-tax and present-value bases, which is not comparable to the determination of a running royalty, which assumes validity and infringement.

As discussed above,
(Ex. 2 at 262:21-263:7). Because the
is unreliable and inconclusive. The Court should therefore exclude Perryman's discussions,
opinions, and reliance on .
B. The Court should exclude Perryman's opinions and reliance on the because they are not comparable licenses
1. Perryman's determination of economic comparability of the is unsupported, unreliable and not tied to the facts of the case.
Perryman suggests that the
. (Ex. 1 at ¶¶ 205
and 212). But Intel made no such valuation. In fact, Mr. Gray testified
(Ex. 5 at 112:14-113:1). Simply put, Gray
And by Intel failing to evaluate the economic value of

Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 12 of 18 CONFIDENTIAL – ATTORNEYS EYES ONLY

technologies, any payment amounts included in the
no relationship to any economic benefits or economic value pertaining to
technologies and patents. In other words, it is not possible to measure or opine on the supposed
economic comparability of the
done when it entered into the
surrounding the economic comparability of the
therefore, be excluded because they are contradicted by Intel's own admissions. See Ericsson,
Inc. v. D-Link Sys., 773 F.3d 1201, 1228-29 (Fed. Cir. 2014) (holding that "[t]estimony relying
on licenses must account for such distinguishing facts [regarding comparability] when invoking
them to value the patented invention"); Corelogic Info. Sol'ns, Inc. v. Fiserv, Inc., 2012 U.S Dist.
LEXIS 196809, at *10 (E.D. Tex. 2012) (holding that "the proponent of a license must establish
its technical and economic comparability prior to introducing the royalty amount to the jury").
2. Perryman fails to offer or provide an opinion on the value of the agreements.
In his expert report, Perryman does not provide an opinion on the value of the
. Perryman states that due to the
three
downward adjustments are warranted. (Ex. 1 at ¶¶ 210 and 219). But Perryman does not offer an
opinion on the value of the
adjustments, and he admitted that he never performed that analysis or quantified those
adjustments.
With respect to the , Perryman testified as follows:

Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 13 of 18 CONFIDENTIAL – ATTORNEYS EYES ONLY



Perryman's reliance on Gray's testimony to support his opinion in this regard is equally

(Ex. 2 at 247:10-248:2).

flawed because Gray (Ex. 5 at 129:6-9). By failing to perform any quantitative analysis on the (and it not being in his report), any testimony from Perryman regarding the value of the is unreliable and cannot assist the jury in understanding or determining the comparability of the Similarly, Perryman relies on Dr. Subramanian to support the statement in his report that the purported advantages of the technology covered by the patents in the (Ex. 1 at ¶¶ 217). But Perryman has no support for this statement as Dr. Subramanian opines only that the benefits of the Therefore, Perryman's statement regarding the technology covered in the is unsupported and must be stricken. , Perryman neither provides any opinion on the value of the Like the nor quantified the three purported downward adjustments. (Ex. 2 at 249:14-25). And that is further troubling to Perryman's use of the because that and includes terms that would not exist in the agreement is

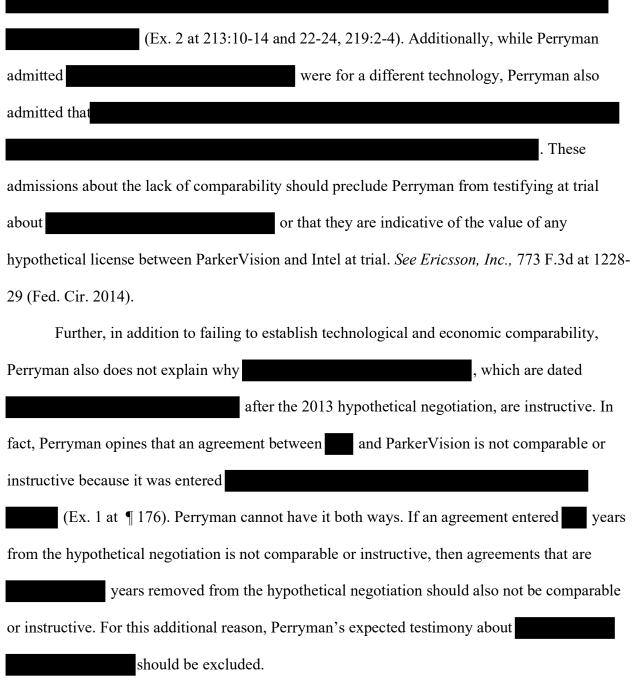
Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 14 of 18 CONFIDENTIAL – ATTORNEYS EYES ONLY

hypothetical patent *license* between ParkerVision and Intel. For example, Perryman testified that (Ex. 2 at 248:19-25). Perryman failed to provide any indication of what quantitative value equates to and concluded, without any analysis or support, that By failing to quantify the adjustments that are supposedly warranted for , a jury will be unable to determine the value of to corroborate Perryman's ipse dixit conclusion that would provide an offset to the ownership rights granted in By not performing a proper and supported comparability analysis to account for the nature of any testimony from Perryman at trial regarding the value of is unreliable hand-waving, cannot assist the jury in understanding or determining the comparability of , and unfairly prejudicial to Parker Vision. Perryman's discussions and testimony about cannot assist the trier of fact because he simply points to the amounts paid under those offers no opinion on, and in fact, fails to perform any analysis that could help inform the jury of the value of . The analytical gap between the value associated with , for which there is admittedly no evidence and Perryman offers no opinion on, and Perryman's proffered opinions that are comparable to the hypothetical negotiation here, is too great to be sustained under Daubert. Any testimony about the alleged comparability of

Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 15 of 18 CONFIDENTIAL – ATTORNEYS EYES ONLY

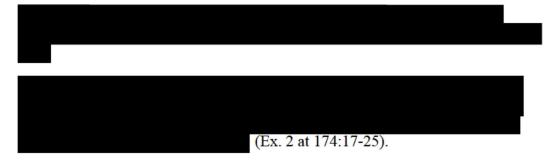
would be unreliable expert say-so, mislead the jury, confuse the issues relevant to a proper damages analysis in this case, and should be excluded. 3. Perryman improperly relies on for support that Intel uses lump-Perryman relies on as confirmation that (Ex. 1 at ¶ 218). Perryman's use of , which is a patent purchase agreement, for support that Intel utilizes lump-sum royalty structures is improper and misleading. Perryman testified that (Ex. 2 at 255:16-256:8). Perryman does not provide any explanation or evidentiary support for why the payment structure of is comparable to the hypothetical patent *license* between ParkerVision and Intel. Perryman's own admission indicates that are exclusively lump-sum or fixed fee payments, which is not comparable to a patent license that can take the form of either a lump-sum or running royalty. Accordingly, Perryman's use of as confirmation that is misleading, unreliable ipse dixit and should be excluded. C. The Court Should Exclude Perryman's Opinions and Reliance on the , Which Are Not Comparable Licenses Perryman suggests that ParkerVision's , are comparable and indicative of the value of a hypothetical license between ParkerVision and Intel. (Ex. 1 at ¶¶ 146-158). Though Perryman's report argues are comparable, he conceded at his deposition that the that

Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 16 of 18 CONFIDENTIAL – ATTORNEYS EYES ONLY



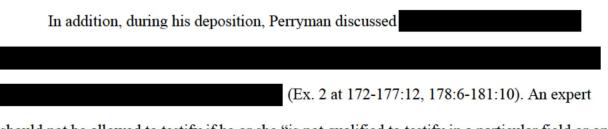
D. The Court should exclude Perryman's unsupported technical opinions that he is not qualified to offer.

As discussed below, Perryman is seeking to provide technical opinions to the jury that are either based on Perryman's understandings from Dr. Subramanian that are *not* contained in either of Dr. Subramanian's reports or based solely on Perryman's conjecture:



In its gatekeeping role, the Court, pursuant to Federal Rule of Evidence 702, is charged with "ensur[ing] that expert testimony admitted into evidence is both reliable and relevant."
Sundance, Inc. v. DeMonte Fabricating Ltd., 550 F.3d 1356, 1360 (Fed. Cir. 2008). This is because "[e]xpert evidence can be both powerful and quite misleading" Id. at 595.

In support of his opinion that the patents-in-suit provide minimal, if any, noticeable benefits to the end users of the products-at-issue, Perryman relies on his discussions with Intel's liability expert Dr. Vivek Subramanian and Dr. Subramanian's noninfringement report. (Ex. 1 at ¶ 358) Perryman's citation to Dr. Subramanian's noninfringement report includes a reference to a 59-page range of Dr. Subramanian's report, none of which support Perryman's opinion. (Ex. 1 at ¶ 358, n. 571) Specifically, in none of these 59-pages does Dr. Subramanian provide any explanation for what constitutes significant benefits, and more importantly never states that such benefits are "minimal, if any." Perryman, therefore, has no support for his technical opinion and he is not qualified to derive a conclusion that the asserted patents provided minimal, if any, noticeable benefits. Accordingly, any opinion from Perryman regarding the alleged lack of benefits.



should not be allowed to testify if he or she "is not qualified to testify in a particular field or on a

Case 6:20-cv-00108-ADA Document 195 Filed 11/04/22 Page 18 of 18 CONFIDENTIAL – ATTORNEYS EYES ONLY

given subject." *Wilson v. Woods*, 163 F.3d 935, 937 (5th Cir. 1999). Perryman does not possess any of the necessary knowledge, skill, experience, training, or education relating to baseband technology or the role that technology plays in transceivers to offer an opinion or his "observations" on this topic. Perryman admitted that

(Ex. 2 at 176:13-15 and 177:1-

2). Accordingly, any "observations" or testimony relating to baseband technology that is derived from Perryman's own experiences must be excluded.

Dated: October 28, 2022 Respectfully submitted,

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