

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

PARKERVISION, INC.

Plaintiff,

vs.

INTEL CORPORATION

Defendant.

C.A. No. 6:20-cv-108-ADA

JURY TRIAL DEMANDED



PUBLIC VERSION

DEFENDANT INTEL CORPORATION'S OPPOSED MOTIONS *IN LIMINE*

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I. MIL NO. 1: TO EXCLUDE EVIDENCE OR ARGUMENT RELATED TO QUALCOMM'S STATEMENTS REGARDING PARKERVISION/PARKERVISION'S TECHNOLOGY

ParkerVision has indicated that it intends to offer at trial evidence of statements allegedly made by non-party Qualcomm Inc. about alleged benefits of ParkerVision's down-conversion technology. *See* Dkt. 167, Third Am. Compl., ¶26 (“In internal communications, Qualcomm engineers and senior executives lauded ParkerVision's technology: ‘This is virtually the holy grail of RF receiver designs—achievable and within practical limits!’; ‘[w]e are very impressed with the performance! We can make a phone with [ParkerVision's] parts with higher dynamic range than today's phones’ and ‘[t]he truth is Parker Vision have [sic] stumbled on something revolutionary’; ... ‘this is critical technology that we must land based on what we have seen so far. It offers revolutionary rf versus power performa[n]ce based on early te[s]t resul[t]s.”) (quoting PTX-324); *see also* Ex. 1, Steer Reb. Rpt., ¶2358. ParkerVision should be precluded from introducing or discussing such statements—including, for example, PTX-324 and PTX-353—for multiple reasons.

First, Qualcomm's statements were made before the patents asserted in this case even issued, and are not tied to any ParkerVision patent. Moreover, ParkerVision has admitted that most of the statements were made before the Qualcomm declarants had even seen any technical details of ParkerVision's claimed technology. The statements thus do not constitute “industry praise” relevant to secondary considerations of non-obviousness, and the statements should be excluded under FRE 401 and 403 because they are irrelevant to this case, unfairly prejudicial to Intel, and highly likely to confuse and mislead the jury. *Second*, the statements should be excluded under FRE 801 and 802 because they are inadmissible hearsay. They were made by out-of-court, non-party declarants who are not subject to cross-examination, and they are being offered for their truth. *Finally*, if ParkerVision is permitted to offer these statements at trial, then Intel should be permitted to introduce evidence that Qualcomm in fact never used

ParkerVision’s claimed down-conversion technology, as confirmed by the fact that Qualcomm has now twice been found not to infringe ParkerVision’s patents. If Qualcomm’s supposed *praise* of ParkerVision’s technology is relevant to show the alleged value of ParkerVision’s patents, then the multiple court findings that Qualcomm ultimately *chose not to use* that same technology is equally relevant in rebuttal.

A. Qualcomm’s Statements Should Be Excluded Under FRE 401 And 403.

Qualcomm’s statements should be excluded under FRE 401 and 403 because they are irrelevant, unfairly prejudicial, and likely to confuse the jury. ParkerVision has indicated that it may try to offer Qualcomm’s statements as evidence of the “industry praise” factor of secondary considerations of non-obviousness. *See* Ex. 1, Steer Reb. Rpt., ¶2358. But Qualcomm’s statements are not, and cannot be, tied to the claims and defenses *in this case* and are irrelevant to secondary considerations because they are generic statements—not tied to any patent—that were made before Qualcomm even knew the technical details of ParkerVision’s claimed technology.

Federal Circuit precedent is clear that “a nexus [must] be established between the merits of the claimed invention and the evidence proffered on secondary considerations.” *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 306 n.42 (Fed. Cir. 1985). Qualcomm’s statements, however, were made in the 1998-1999 timeframe—*years* before the earliest Asserted Patent was issued. Moreover, the Qualcomm statements are generic, high-level statements that ParkerVision has not even attempted to tie to the substance of the Asserted Patents. It is ParkerVision’s burden to establish a nexus between the evidence and the merits of the claimed invention. *See In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed. Cir. 1995) (patentee “must establish a nexus between the evidence and the merits of the claimed invention”). But ParkerVision has presented no evidence showing that whatever ParkerVision product, test results, or presentation that the Qualcomm declarants were discussing embodied

the asserted claims. *Bosch Auto. Serv. Sols., LLC v. Matal*, 878 F.3d 1027, 1037 (Fed. Cir. 2017) (“To determine whether a nexus exists, ‘[o]ur cases require consideration of whether ‘the marketed product embodies the claimed features.’”). Indeed, ParkerVision’s expert’s entire analysis consists of only conclusory statements that “Qualcomm quickly recognized the significance of ParkerVision’s energy transfer (energy sampling) system as set forth in the claims of the patents-in-suit” and that Qualcomm personnel “lauded ParkerVision’s technology.” Ex. 1, Steer Reb. Rpt., ¶2358. Such general, conclusory opinions are insufficient to establish the required nexus. *See Enova Tech. Corp. v. Seagate Tech. (US) Holdings Inc.*, 706 F. App’x 987, 995 (Fed. Cir. 2017) (affirming Board finding that patentee “failed to link the evidence of praise to the claimed invention” where the evidence “only address[ed] the products at a high level” and patentee’s expert “offered only conclusory opinions in support”); *Bosch*, 878 F.3d at 1037-38 (patentee failed to show nexus to support commercial success where declarant provided only conclusory testimony that commercial products practiced claimed invention and its proffered claim chart lacked foundation and improperly relied on hearsay).¹

Introducing the Qualcomm statements would also be highly misleading because, according to ParkerVision’s own testimony, most of the statements were made *before* ParkerVision even showed Qualcomm how its claimed invention worked. For example, the statements include Qualcomm emails sent between August 1998 and February 1999. *See* Ex. 2, PTX-324 at PDF pp. 2 (8/11/1998), 4 (2/2/1999), 8 (2/4/1999), 12 (2/5/1999). But ParkerVision has repeatedly stated, in sworn testimony, that “the first time that Qualcomm had ever been given the technical details about [its] invention and had ever been shown how it

¹ *See also In re Kavanagh*, 851 Fed. App’x. 1028, 1034-35 (Fed. Cir. 2021) (affirming Board finding that alleged industry praise—articles from “experts in the field” calling the patentee’s technology the “next generation of food safety,” “so unique,” and “Super Cool!”—lacked sufficient nexus because “nothing in the articles . . . tied the praise of the invention or its success to the claimed features”).

worked” was later—in a March 16, 1999 meeting. Ex. 3, QCI Trial Day 2 Tr. at 183:4-7, 189:13-17; *see* Ex. 4, QCI Trial Day 3 Tr. at 46:5-12; 47: 10-11 (ParkerVision’s CEO testifying that ParkerVision “presented the internal workings of the technology, how the technology works,” and “the fundamental concepts of the technology” to Qualcomm on “March 16 of 1999”). Subsequent evidence indicates that, within days after that March 16, 1999 meeting, Qualcomm *criticized* the technology, and the negotiations ended without an agreement. *See* Ex. 5, PV00434004 at PV00434011 (Qualcomm stating on *March 23, 1999* that ParkerVision’s “technology offer[ed] little novel remedy, if any, to the known problems” in the industry); Ex. 6, Parker June 22, 2022 Dep. at 208:21-209:1 (ParkerVision CEO admitting that Qualcomm negotiations ended around “June or July of 1999”). In short, Qualcomm’s statements show—at most—Qualcomm’s uninformed reactions to ParkerVision’s unsubstantiated touting of its technology; statements that Qualcomm backed away from when it learned the technical details.

In prior litigation against Qualcomm, ParkerVision argued that there would be no undue prejudice “associated with [the introduction of] *Qualcomm’s own statements*” because if “Qualcomm now disagrees with the statements it made, or wishes to explain them, it may make those arguments to the jury.” Ex. 7, ParkerVision, Inc.’s Responses to Qualcomm’s Motions *in Limine* at 2, *ParkerVision, Inc. v. Qualcomm Inc.*, No. 6:14-cv-687 (M.D. Fla. June 11, 2021), Dkt 632 (emphasis by ParkerVision). By contrast, Qualcomm’s statements *would* unduly prejudice Intel here, where Intel has no comparable ability to explain non-party Qualcomm’s statements to the jury. Intel employees have no personal knowledge about the Qualcomm statements and cannot testify regarding the timing of the statements, their substance, or Qualcomm’s ultimate decision not to use ParkerVision’s technology.²

² Moreover, the Court denied Intel discovery from ParkerVision regarding ParkerVision’s prior litigation against Qualcomm because the Court found no nexus between Qualcomm’s purported infringement and this case. *See* Dkt. 163, Sept. 13 Hr’g Tr. at 81:23-82:3 (“[Y]ou’re going to have to tether together Qualcomm and Intel I’m not following why whether or

B. Qualcomm’s Statements Are Textbook Inadmissible Hearsay.

Qualcomm’s statements should also be excluded under FRE 801 and 802 as inadmissible hearsay. They are out-of-court, non-party assertions, made by individuals not subject to cross-examination, offered for the truth of the matter asserted—namely, that ParkerVision’s technology merited praise. *See* Ex. 1, Steer Reb. Rpt., § XXI(F); Ex. 8, Benoit Rpt., ¶¶61-63. No hearsay exception or exclusion applies (or could apply)—including the business record exception (FRE 803(6))—because none of ParkerVision’s trial witnesses are qualified to lay a foundation for Qualcomm’s statements. *Acceleration Bay LLC v. Activision Blizzard Inc.*, 2018 WL 5045186, at *2-3 (D. Del. Oct. 17, 2018).

ParkerVision cannot circumvent the rule against hearsay by introducing these statements through its experts, because experts may not serve as mere conduits to introduce hearsay evidence. Specifically, “[a]n expert witness may not simply summarize the out-of-court statements of others as his testimony.” *Robroy Indus.-Tex., LLC v. Thomas & Betts Corp.*, 2017 WL 1319553, at *9 (E.D. Tex. Apr. 10, 2017) (quoting *United States v. Brownlee*, 741 F.3d 479, 482 (7th Cir. 2014)). That is precisely what ParkerVision’s experts would be doing here if they were called to merely parrot non-technical, non-specific, rhetorical “praise” of ParkerVision. “Rule 703 ‘was not intended to abolish the hearsay rule and allow a witness, under the guise of giving expert testimony, to in effect become the mouthpiece of the witnesses on whose statements or opinions the expert purports to base his opinion.’” *Id.* (quoting *Factory Mut. Ins. Co. v. Alon USA L.P.*, 705 F.3d 518, 524 (5th Cir. 2013)).

C. If Qualcomm’s Statements Were Admitted, Intel Should be Permitted To Introduce The Outcomes of the Qualcomm Litigations.

In the alternative, if Qualcomm’s statements were to be admitted, Intel should be permitted to respond by showing that Qualcomm never used ParkerVision’s claimed inventions

not Qualcomm products infringe the receiver claims of a patent have anything to do with Intel.”); *id.* at 91:10-11 (“I’m going to deny Intel’s request.”).

by introducing the fact that Qualcomm has twice been found not to use ParkerVision’s energy transfer sampling patents. *See ParkerVision, Inc. v. Qualcomm, Inc.*, 621 F. App’x 1009, 1017 (Fed. Cir. 2015); *ParkerVision, Inc. v. Qualcomm Inc.*, 2022 WL 1230505, at *4 (M.D. Fla. Mar. 22, 2022), *appeal dismissed*, 2022 WL 1439273 (11th Cir. May 4, 2022). In short, if ParkerVision can tell the jury that Qualcomm said good things about ParkerVision’s technology, then Intel should be able to respond that two courts have found that Qualcomm did not end up using it.

ParkerVision should therefore be precluded from offering into evidence statements by Qualcomm allegedly praising ParkerVision’s technology—including PTX-324 and PTX-353³ and any similar statements or exhibits. In the alternative, if ParkerVision is permitted to introduce such statements, then Intel should be equally permitted to introduce evidence of the outcomes of the Qualcomm litigations.

II. MIL NO. 2: TO EXCLUDE ANY ATTEMPTS TO IMPLY OR ARGUE THAT INTEL OR INFINEON COPIED PARKERVISION’S TECHNOLOGY

ParkerVision should be precluded from offering argument or inviting the inference that Intel or Infineon allegedly copied ParkerVision’s technology or the Asserted Patents or using other inflammatory language implying that Intel “took” or “stole” ParkerVision’s technology.

In the present case, there is no evidence of copying, and it would be impermissible for ParkerVision to rely on “mere allegations regarding similarities between the accused product and a patent” to imply copying. *Liqwd, Inc. v. L’Oreal USA, Inc.*, 941 F.3d 1133, 1137-38 (Fed. Cir. 2019). Moreover, courts routinely preclude plaintiffs from using charged words that suggest an improper taking, such as “copying,” “stealing,” and “robbing,” to describe defendants’ actions because such words have no probative value and serve only to inflame the

³ PTX-324 and PTX-353 are both an improper 105-page compilation of materials (without bates stamps from this case) from ParkerVision’s prior litigation against Qualcomm. They should be excluded for the additional reason that they include numerous documents not timely produced during fact discovery.

jury. *See, e.g.*, Ex. 9, *Intellectual Ventures II LLC v. FedEx Corp.*, No. 2:16-cv-00980, slip op. at 10 (E.D. Tex. Apr. 26, 2018) (granting motion *in limine* to preclude plaintiff from characterizing the actions of defendants “as ‘stealing,’ ‘copying,’ ‘pirating,’ or any other charged words suggesting an improper taking from [plaintiff]”); Ex. 10, *Huawei Techs. Co. Ltd. v. T-Mobile US, Inc.*, No. 2:16-cv-00052, slip op. at 13 (E.D. Tex. Sept. 29, 2017) (“Huawei may not present evidence or argument that T-Mobile or Intervenors ‘copied’ the patent(s)-in-suit or are otherwise ‘copyists.’”).

As such, ParkerVision should be precluded from making arguments or using derogatory or pejorative terms implying that Intel “copied,” “took,” or “stole” from ParkerVision.

III. MIL NO. 3: TO EXCLUDE IRRELEVANT AND UNFAIRLY PREJUDICIAL EVIDENCE AND ARGUMENT THAT PARKERVISION RELIES ON FOR ITS (LEGALLY DEFICIENT) WILLFULNESS CLAIM

ParkerVision seeks to introduce two categories of irrelevant and unfairly prejudicial documents and testimony regarding its pre-suit contacts with Intel and Infineon. ParkerVision seeks to rely on these documents and this testimony in an attempt to show that engineers at Intel and Infineon knew of and intentionally infringed the Asserted Patents; but they show nothing of the kind, and will only confuse the jury. In fact, most pre-date the Asserted Patents or relate to a ParkerVision transmitter concept that is entirely unrelated to the receiver concept at issue. Thus, even if ParkerVision is permitted to argue willful infringement to the jury—and it should not be, for all of the reasons set forth in Intel’s Motion for Summary Judgment of No Willful Infringement (Dkt. 174)—it should nonetheless be precluded from relying on the irrelevant and unfairly prejudicial documents and testimony described below.

A. Intel’s Pre-Suit Documents And Communications With ParkerVision Having No Connection To The Asserted Patents (PTX-102, PTX-140, PTX-144-147, PTX-641; Dkt. 211 [PV Resp.] Exs. 9, 11-12).⁴

⁴ PTX-146, PTX-144, PTX-145, PTX-147, PTX-140, PTX-641, and PTX-102 correspond to Exs. 1, 7-8, 10, 51, and 61-62 filed with ParkerVision’s opposition to Intel’s motion for summary judgment of no willful infringement, Dkt. 211.

None of ParkerVision's pre-suit communications with Intel, and none of the documents relating to these contacts, mention any of the Asserted Patents, which is not surprising as they predate all but one of the Asserted Patents. Dkt. 174 at 2-3, 5-6. Moreover, there is no evidence that ParkerVision ever discussed the one Asserted Patent that had issued beforehand with anyone at Intel. Dkt. 174 at 5-6; Dkt. 236 [Reply ISO MSJ] at 5-7. Exhibits in this category include internal Intel documents, correspondence with ParkerVision, visits to ParkerVision's websites, and NDAs between the parties that are unrelated to any of the Asserted Patents. *See, e.g.*, Dkt. 212-61 (PTX-102), Dkt. 212-50 (PTX-140), Dkts. 212, 212-6, 212-7, 212-9 (PTX-144-147), Dkt. 212-60 (PTX-641); Dkt. 211 [PV Resp.] Exs. 9, 11-12. These exhibits have no nexus to the Asserted Patents.

[REDACTED]

[REDACTED] likewise does not mention any Asserted Patent and does not identify ParkerVision as the portfolio owner. PTX-140. [REDACTED]

[REDACTED]

[REDACTED] PTX-140; Dkt. 236 [Reply ISO MSJ] at 8. [REDACTED] therefore also lacks a nexus to the Asserted Patents.

ParkerVision's records of visits to its website are vague and untethered to the Asserted Patents or Intel's design of the products-at-issue. There is no basis to infer that any of Intel's alleged visits included review of website pages that list ParkerVision patents, let alone selected the Asserted Patents from those lists and read them. Moreover, none of those records identify any Intel engineer who designed the circuits-at-issue. Dkt. 174 [MSJ] at 12-15. ParkerVision's website records are therefore irrelevant for lack of nexus to the Asserted Patents or the design of the accused products.

Because none of the above categories of documents and related testimony are tied to the Asserted Patents, any attempt by ParkerVision to rely on them would be confusing, misleading, and unfairly prejudicial.

B. Infineon’s Pre-Suit Documents And Communications With ParkerVision Having No Connection To The Asserted Patents (PTX-66, PTX-70, PTX-74, PTX-105-107, PTX-109, PTX-152-159, PTX-164, PTX-200, PTX-203, PTX-247-249, PTX-256; Dkt. 211 [PV Resp.] Exs. 17, 24, 27, 30-31, 43-44, 58).⁵

ParkerVision’s pre-suit contacts with Infineon are equally irrelevant. *First*, like its communications with Intel, ParkerVision’s pre-suit communications with Infineon fail to mention any Asserted Patent. In fact, only one Asserted Patent had issued (the ’902 patent) at the time of those communications (between 2006 and early 2009). *Second*, all but one of ParkerVision’s communications with Infineon focus on a *transmitter* concept ParkerVision was promoting at the time, which is unrelated to the *receiver* concept at issue here. *Third*, ParkerVision’s contacts with Infineon predate Intel’s acquisition of Infineon’s Wireless Solutions business (in January 2011) and the development of the circuits-at-issue (also in 2011) by years.⁶ Here again, the lack of any nexus to the Asserted Patents or the engineers who designed the circuits-at-issue renders these documents irrelevant.

* * *

Despite the irrelevance of these pre-suit communications between ParkerVision on the one hand and Infineon or Intel on the other, ParkerVision has made clear that it will rely on these documents and related testimony to argue that—years later—Intel knowingly designed

⁵ PTX-66, PTX-152, PTX-247-249, PTX-107, PTX-256, PTX-153-154, PTX-248, PTX-153, PTX-152, PTX-109, PTX-159, PTX-164, PTX-74, PTX-105, PTX-106, PTX-70, PTX-155-158, PTX-200, and PTX-203 correspond to Exs. 15-16, 18-23, 25-26, 28, 32-42, 45, 57, 59 filed with ParkerVision’s opposition to Intel’s motion for summary judgment of no willful infringement, Dkt. 211.

⁶ The uncontroverted evidence is that the engineers who designed the circuits-at-issue never had contact with ParkerVision and had never even heard of ParkerVision until years after the circuits-at-issue were designed. Dkt. 174 at 13.

circuits that infringe the Asserted Patents. *See, e.g.*, Dkt. 167, Third Am. Compl., ¶¶ 75-76. ParkerVision has also suggested that these documents and this testimony is relevant to non-obviousness. But as explained above, these exhibits and related testimony never disclose any Asserted Patent, let alone any asserted claim, and therefore lack any nexus that could support a finding of willful infringement or secondary considerations of non-obviousness. All these exhibits and related testimony should therefore be excluded as confusing, misleading, and unfairly prejudicial. *See, e.g., Wm. Wrigley Jr. Co. v. Cadbury Adams USA LLC*, 683 F.3d 1356, 1364 (Fed. Cir. 2012) (secondary considerations of non-obviousness require a nexus with the claimed invention); *Metaswitch Networks Ltd. v. Genband US LLC*, 2016 WL 874734, at *2 (E.D. Tex. Mar. 7, 2016) (“Evidence of a ‘culture of copying’ or that a party was monitoring another company does not bear a sufficient prima facie nexus to the asserted patents.”); *ICU Med., Inc. v. RyMed Techs., Inc.*, 752 F. Supp. 2d 486, 493 (D. Del. 2010) (“The Court concludes that the alleged prior copying by Mr. Ryan and RyMed of unrelated products is irrelevant to infringement and non-obviousness under Rule 402 Furthermore, the Court agrees with RyMed that introduction of such contentions would cause substantial delay, wasted time, and confusion because it would require mini-trials to determine whether Mr. Ryan actually copied the unrelated ICU devices nearly twenty years ago.”).

IV. MIL NO. 4: TO EXCLUDE EVIDENCE OR ARGUMENT REGARDING DISCOVERY DISPUTES, ALLEGED FAILURE TO PRODUCE DOCUMENTS, AND SPECULATION ABOUT UNPRODUCED MATERIALS

Intel requests that the Court preclude ParkerVision from presenting evidence and argument to the jury referring to any discovery disputes, including disputes over claims of privilege; alleged failures to produce documents; and from speculating about—or implying the speculative contents of—any unproduced material. Such evidence, argument, and speculation would be irrelevant, unfairly prejudicial to Intel, likely to confuse the jury, and should be excluded. *See* FRE 401, 402, 403, 512; Ex. 11, Order at 3, 5, *VLSI Tech. LLC v. Intel Corp.*,

No. 6:21-cv-00057-ADA (W.D. Tex. Feb. 19, 2021), Dkt. 508 (granting motions *in limine* to exclude “[a]llegations of any discovery abuse” and “[r]eferences to [d]iscovery [d]isputes”); Ex. 12, Nov. 2, 2022 Hr’g Tr. at 22:23-23:18 (the Court: “[Intel’s] concern seems to be that there might be some offensive use of [Intel’s privilege log] at trial, ***and that’s not going to happen.***”) (emphasis added).

First, evidence and argument regarding all discovery disputes in this litigation, and allegations that materials were not properly produced, should be excluded for their lack of relevance to the trial issues. *See* FRE 401, 402. Because the discovery issues were for the Court (not the jury) to decide, and because they have no bearing on any issues that the jury will be asked to decide (such as infringement, invalidity, and damages), they should be excluded. *See, e.g., Orchestrate HR, Inc. v. Trombetta*, 2017 WL 273669, at *9 (N.D. Tex. Jan. 20, 2017) (excluding discovery disputes because they “are not relevant to any issue to be decided by the jury”); *Van v. Language Line Servs., Inc.*, 2016 WL 3566980, at *4 (N.D. Cal. June 30, 2016) (excluding allegations of wrongfully withholding documents: “this evidence is irrelevant to Plaintiff’s claims at trial”).

Second, any purported relevance of discovery issues, or speculation regarding the existence or contents of unproduced materials, is far outweighed by the potential for undue prejudice to Intel, time wasting, and jury confusion. *See Orchestrate HR*, 2017 WL 273669, at *9 (“[A]ny relevance [discovery disputes] may have for impeachment purposes are substantially outweighed by the risk of unfair prejudice.”); *Brighton Collectibles, Inc. v. Marc Chantal USA, Inc.*, 2009 WL 10674074, at *3 (S.D. Cal. Apr. 1, 2009) (excluding evidence regarding the discovery process and finding that such evidence could paint one party “in a negative light,” and that the “prejudice would clearly outweigh any probative value”). To prevent potential jury confusion and to ensure that trial time is focused on the issues that the

jury will be asked to decide and the evidence actually before the jury, such evidence, argument, and speculation should be excluded under FRE 403.

V. MIL NO. 5: TO EXCLUDE EVIDENCE OR ARGUMENT REGARDING CURRENT AND FORMER EMPLOYEES' IRRELEVANT FINANCIAL INFORMATION

Intel requests that the Court preclude ParkerVision from presenting evidence any argument to the jury regarding current and former Intel employees' irrelevant financial information—such as their salary amounts, any performance bonuses, and/or net worth—under FRE 401-403. *First*, such evidence is irrelevant to the issues at trial, including because no current or former Intel employee has a financial stake in the outcome of this matter. *See* FRE 401-402. *Second*, the tendency of such questions and arguments to embarrass or harass the witness and confuse the jury substantially outweighs any alleged probative value. FRE 403. Indeed, such evidence is routinely excluded for these reasons. *See, e.g., Finjan, Inc. v. Blue Coat Sys., Inc.*, 2015 WL 4129193, at *4 (N.D. Cal. June 8, 2015) (excluding references to compensation under FRE 403 where compensation unrelated to case); *Aristocrat Leisure Ltd. v. Deutsche Bank Trust Co. Americas*, 2009 WL 3111766, *6 (S.D.N.Y. Sept. 28, 2009) (“[A]ny limited probative value of [the dollar amount of a relevant party’s compensation] is outweighed by its potential to bias the jury under Rule 403.”); *Kinsey v. Cendant Corp.*, 588 F. Supp. 2d 516, 518 (S.D.N.Y. 2008) (excluding evidence about “compensation package” because “parties are not permitted to argue to the fact finder’s potential economic sympathies or prejudices”).⁷

⁷ To be clear, the parties should be permitted to present evidence and argument to the jury regarding witnesses being paid and/or receiving a benefit *from this case*, as opposed to merely receiving compensation irrespective of this case. For instance, ParkerVision’s technical expert Michael Steer testified that he spends [REDACTED] supporting ParkerVision’s lawsuits and [REDACTED]. *See* Ex. 13, Steer Dep. at 77:10-78:7. The jury should be allowed to consider these facts in weighing witnesses’ credibility. *E.g.*, Fifth Circuit Pattern Jury Instructions § 3.4 (June 2020) (“In weighing the testimony of the witnesses, you may consider ... any feelings or *interest* in the case, or any prejudice or *bias* about the case, that he or she may have”) (emphasis added).

VI. MIL NO. 6: TO EXCLUDE IRRELEVANT AND PREJUDICIAL REFERENCES TO INTEL’S SIZE, WEALTH, AND FINANCIAL PERFORMANCE

Pursuant to FRE 402 and 403, Intel requests that the Court preclude ParkerVision from presenting evidence and argument (a) referring to Intel’s total company revenues;⁸ (b) referencing Intel’s overall size, financial performance, and/or market/competitive position (including total employees or employee layoffs); or (c) using pejorative characterizations like “dominant,” “monopolist,” “goliath,” or “bully” pertaining to Intel’s overall size, wealth, and financial performance that would unfairly “skew the damages horizon for the jury.” *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1320 (Fed. Cir. 2011).

Courts routinely exclude such evidence and argument because any probative value is substantially outweighed by the risk of unfair prejudice, confusion of the issues, and misleading the jury. *See id.* at 1320-21; *Oil-Dri Corp. of Am. v. Nestle Purina Petcare Co.*, 2019 WL 5206273, at *2 (N.D. Ill. Mar. 13, 2019) (precluding evidence of defendant’s “size and wealth” because portraying defendant as a “multi billion dollar multinational company” would “inflame the jury”); *Mars, Inc. v. Trurx LLC*, 2016 WL 4055675, at *1 (E.D. Tex. Apr. 29, 2016) (precluding “derogatory remarks” such as “‘Goliath,’ ‘Monopolist,’ or ‘Bully.’ Additionally, Defendants are not permitted to address [plaintiff’s] total revenue”); *HTC Corp. v. Tech. Props. Ltd.*, 2013 WL 4782598, at *6 (N.D. Cal. Sept. 6, 2013) (“Federal Circuit case law does not permit the use of a company’s overall size or revenue as a check to confirm the reasonableness of a jury award. ... [T]he probative value of evidence related to [the company’s] size, wealth,

⁸ Intel filed a *Daubert* Motion to preclude ParkerVision’s damages expert, Mr. Benoit, from including baseband sales in his damages calculation. Dkt. 171 at 11-17. If this Court grants that motion, then, in addition to evidence about Intel’s total revenue, evidence regarding the number of baseband units sold by Intel and revenue therefrom should also be excluded. *See Uniloc*, 632 F.3d at 1319-20 (disclosure to jury of total revenues from product, absent showing that accused features drove demand for entire product, was improper); *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860, 869 (Fed. Cir. 2010) (“[E]vidence unrelated to the claimed invention does not support compensation for infringement but punishes beyond the reach of the statute.”).

or overall revenues is substantially outweighed by the risk of unfair prejudice ... necessitating its exclusion"); *Union Carbide Corp. v. Montell N.V.*, 28 F. Supp. 2d 833, 841 (S.D.N.Y. 1998) (precluding reference to company's "dominant" position in the industry).

Indeed, this Court recently granted similar motions in other patent litigation involving Intel. *See, e.g.*, Ex. 11, Order at 5, *VLSI Tech. LLC v. Intel Corp.*, No. 6:21-cv-00057 (W.D. Tex.Feb. 19, 2021), Dkt. 508 (granting motion to exclude, among other things, evidence regarding "Intel ... Financial Performance" and "Financial Metrics" and ruling that "comments about sales about accused products is okay, anything irrelevant to damages calculation is out; sales must be both in expert reports & relevant"). Such evidence and argument should be excluded here, too.

VII. MIL NO. 7: TO EXCLUDE REFERENCE TO PARTIES' TRIAL TEAMS

ParkerVision has indicated that it may seek to reference the size or composition of Intel's trial team, including its outside counsel, employees of such counsel, jury consultants, or independent litigation support services personnel whom Intel has retained for this case.⁹ Because these matters have no bearing on any relevant issue, and could potentially confuse the jurors, who are unlikely to appreciate that such personnel are common in patent cases like this one, they should be excluded under FRE 401, 402, and 403. *See, e.g., Strickholm v. Evangelical Lutheran Good Samaritan Soc.*, 2013 WL 788096, at *6 (D. Idaho Mar. 1, 2013) (prohibiting reference "to the number of attorneys representing any other party and where those attorneys are from"); *Allstate Ins. Co. v. Nassiri*, 2013 WL 2394116, at *7 (D. Nev. May 30, 2013) (barring attorneys from identifying jury consultants); *Green v. Logan's Roadhouse, Inc.*, 2015 WL 200977, at *2 (S.D. Miss. Jan. 14, 2015) (granting "[d]efendant's motion in limine as to any argument or reference to the number of Defendant's attorneys or their residence").

⁹ Intel proposed in its draft joint pretrial order that the parties agree that neither party make such references; ParkerVision rejected Intel's proposal. *See* Ex. 14, PV's Dec. 14, 2022 Edits to Intel Proposed Pretrial Order at 4 (showing ParkerVision's deletion in redline).

Dated: December 22, 2022

Respectfully submitted,

/s/ J. Stephen Ravel

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record are being served with a copy of the foregoing sealed documents via electronic mail on December 22, 2022.

/s/ J. Stephen Ravel
J. Stephen Ravel