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

PARKERVISION, INC., Plaintiff, v. REALTEK SEMICONDUCTOR CORP., Defendant.	Case No. 6:22-cv-01162-ADA JURY TRIAL DEMANDED

PLAINTIFF PARKERVISION INC.'S OPPOSED MOTION
FOR PROTECTIVE ORDER

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

I. INTRODUCTION

Realtek is attempting to evade the requirements of Rule 26 as well as this Court's authority. Realtek seeks discovery from ParkerVision's former litigation adversary, Intel; specifically expert reports, deposition transcripts, and briefing from the ParkerVision-Intel litigation. The Intel case, however, related to entirely ***different*** patents and products and involved ***different*** experts. The discovery Realtek seeks is irrelevant to this case. Additionally, the discovery contains third-party confidential information *other than Intel's own confidential information*.

Realtek seeks this discovery despite the fact that ParkerVision shared with Realtek Intel's previous efforts in support of a similar tactic in its litigation with ParkerVision. Realtek knows that Intel moved this Court for discovery into expert materials from ParkerVision's prior litigations with Qualcomm. And it knows that this Court denied Intel's request.

To side-step this Court's involvement, Realtek avoided a motion to compel ParkerVision to produce the same information in this case. Instead, it subpoenaed third-party Intel hoping that Intel would *voluntarily* provide the material that Realtek seeks, and this Court would never get involved.

This is not the first time Realtek tried to evade this Court's authority. In particular, this Court previously denied Realtek's efforts to uncover the identity of (and materials from) a chip extraction company that was involved in ParkerVisions' pre-suit analysis of a Realtek chip. Yet, Realtek still sent a subpoena to a chip company seeking the very information this Court blocked.

For the foregoing reasons, ParkerVision moves for a protective order to preclude Realtek's requested discovery.[1]

[1] Realtek also seeks to depose Intel. If the Court grants this motion, the deposition should also be precluded.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

II. LEGAL STANDARD

Rule 26(c)(1) permits "any party" to move for a protective order to protect a party from undue burden or expense, including limiting the scope of disclosure or discovery to certain matters. Fed. R. Civ. P. 26(c)(1); *iLife Techs. v. Nintendo of Am. Inc.*, No. 3:13-cv-4987-M, 2017 U.S. Dist. LEXIS 239063, at *9 (N.D. Tex. Mar. 1, 2017). Thus, "a party has standing to move for a protective order pursuant to Rule 26(c) even if the party does not have standing pursuant to Rule 45(d)." *Kilmon v. Saulsbury Indus., Inc.*, No. MO:17-CV-99, 2018 U.S. Dist. LEXIS 237653, at *10 (W.D. Tex. Feb. 13, 2018).

The Fifth Circuit places the burden on the party moving for a protective order to specifically show good cause and a specific need for protection. *See In re Terra Int'l*, 134 F.3d 302, 306 (5th Cir.1998); *Carr v. St. Farm. Mut. Auto. Ins. Co.*, 312 F.R.D. 459, 465 (N.D. Tex. 2015). In other words, the party resisting discovery has the burden "to show that the requested discovery does not fall within Rule 26(b)(1)'s scope of proper discovery—often referred to in shorthand as 'relevance' for purposes of discovery—or that a discovery request would impose an undue burden or expense." *Carr*, 312 F.R.D. at 464. But even where a moving party lacks standing to request a Rule 26(c) protective order on behalf of a nonparty, courts have found within their "inherent power" to manage discovery the ability to *sua sponte* issue a protective order under Rule 26(c) to effectuate the moving party's request. *Providence Title Co. v. Truly Title, Inc.*, No. 5:21-cv-147-SDJ, 2022 U.S. Dist. LEXIS 233861, at *8-9 (E.D. Tex. Sept. 29, 2022).

"Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required." *Seattle Times Co. v. Rhinehart*, 467 U.S.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

20, 36 (1984). Thus, the court may forbid the discovery or limit the scope of discovery to certain matters. Fed. R. Civ. P. 26(c).

III. ARGUMENT

Realtek seeks to avoid this Court's authority regarding discovery issues in order to obtain irrelevant information that falls outside of the scope of Rule 26(b)(1).

On June 3, 2024, Realtek subpoenaed Intel seeking the production of expert invalidity/validity reports, deposition transcripts, and non-public patent marking briefing from ParkerVision's prior litigation against Intel—*ParkerVision, Inc. v. Intel Corporation*, No. 6:20-cv-00108-ADA (W.D. Tex. Feb. 11, 2020).[2]

In particular, Realtek sought the following materials from Intel:

1. Expert reports shared in the ParkerVision-Intel Litigations between Intel and ParkerVision regarding invalidity or validity of the Intel-Asserted Patents or Related Patents.[3]

2. Documents relating to or containing briefing, argument, or any order regarding whether ParkerVision failed to comply with 35 U.S.C. 287, the "Marking Statute" from the ParkerVision-Intel Litigations.

3. Deposition transcripts of ParkerVision's witnesses from the ParkerVision-Intel Litigations including but not limited to ParkerVision's expert witnesses and fact witnesses including ParkerVision's corporate designees and any named inventors on the Intel-Asserted Patents.

On June 21, 2024, Intel informed ParkerVision that Intel intended to comply with the subpoena and produce (1) the invalidity report of Intel's expert (Dr. Subramanian), (2) the validity

[2] Ex. 1 at 3-11. While there were two cases against Intel, the 108 Case was the only case that proceeded to expert reports, depositions, and patent marking briefing.

[3] The subpoena defines "Related Patents" to mean: (1) any United States or foreign patent or patent application related to any Intel-Asserted Patent by way of subject matter or claimed priority date, (2) all parent, grandparent or earlier, divisional, continuation, continuation-in-part, provisionals, reissue, reexamination, and foreign counterpart patents and applications of thereof, and/or (3) any patent or patent application filed by one of more of the same applicant(s) (or his or her assignees) that refers to any of (1) or (2) herein.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

report of ParkerVision's expert (Dr. Steer), (3) the deposition transcripts of Dr. Subramanian and Dr. Steer, (4) non-public patent marking briefing, and (5) the deposition transcripts of all of ParkerVision's witnesses (which ParkerVision has produced to Realtek). Ex. 1 at 1. ParkerVision immediately informed Intel that it would move for a protective order.

ParkerVision understands that, to date, Intel has not produced any of these materials. Ex. 2.

ParkerVision seeks a protective order regarding (1) the invalidity report of Dr. Subramanian, (2) the validity report of Dr. Steer, (3) the deposition transcripts of Dr. Subramanian and Dr. Steer, and (4) non-public patent marking briefing.

There are significant differences between the Realtek case and the Intel case. Thus, the materials that Realtek seeks falls outside of Rule 26.

First, the Intel expert reports and expert deposition testimony related to ***different*** patents, products, and issues that are not at issue here.

ParkerVision v. Intel[4]	ParkerVision v. Realtek
6,580,902	6,049,706
7,539,474	6,266,518
8,588,725	7,292,835
9,118,528	8,660,513
9,246,736	
9,444,673	

Second, Dr. Subramanian and Dr. Steer are not experts in the Realtek case. And these experts did not analyze the patents or claims asserted in the Realtek case. These experts were tasked with analyzing whether *Intel chips* infringed ParkerVision's patents and whether the claims of the patents asserted against Intel were valid. None of this information is relevant to the present

[4] ParkerVision asserted these patents in its Third Amended Complaint. *See generally ParkerVision, Inc. v. Intel Corporation*, No. 6:20-cv-00108-ADA, ECF No. 167 (W.D. Tex. Oct. 4, 2022). Thus, the expert reports, depositions, and marking issues related only to these patents.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.