

**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

**DEFENDANT REALTEK SEMICONDUCTOR CORP.'S RESPONSE TO
PLAINTIFF PARKERVISION, INC.'S MOTION FOR PROTECTIVE ORDER**

I. INTRODUCTION

ParkerVision’s Motion provides no valid reason for this Court to block nonparty Intel Corporation from producing a handful of relevant documents that Intel was prepared to produce in the Northern District of California pursuant to a subpoena, the validity of which ParkerVision does not dispute. ECF No. 107 (“Motion” or “Mot.”); ECF No. 107-2 (“Intel intends to produce the documents responsive to Realtek’s subpoena on Monday, July 8.”). ParkerVision cannot identify the required “clearly defined and *serious* injury” that it must show to obtain issuance of a protective order in this Court to stop Intel’s compliance with a subpoena in a different district. Indeed, ParkerVision cannot even establish that Intel’s production of a small set of documents such as validity and invalidity expert reports would cause “annoyance, embarrassment, oppression, or undue burden or expense” to *anyone*. See Fed. R. Civ. P. 26(c)(1).

Contrary to the Motion, the documents requested from Intel are directly relevant to this case. The asserted patents here are related to the patents ParkerVision asserted against Intel, and claim and disclose the same outdated radio frequency down conversion technology. As a result, the asserted patents have overlapping claim language and invalidity issues as the patents addressed in the Intel cases, and ParkerVision submitted declarations from Dr. Steer—its validity expert in the Intel cases, and ParkerVision submitted declarations from Dr. Steer—its validity expert in the Intel cases—as support for ParkerVision’s claim construction positions in this case. See ECF Nos. 74-4, 74-5. Far from being an attempt to “evade” any requirements, Mot. at 2, or create any burden or expense, Intel’s agreement to produce the requested documents resolved ParkerVision’s stated objections to producing Intel’s confidential information in this case, and should have obviated the need for any discovery motion at all. Through its Motion, ParkerVision wants to hide statements made in prior litigations that are likely contrary to its positions in this litigation—and such statements are undoubtedly discoverable. Therefore, Realtek respectfully requests that the

Court deny the Motion, and permit Intel to produce a limited set of responsive documents in the Northern District of California subject to the valid subpoena.

II. BACKGROUND

Over six months ago, on January 11, 2024, Realtek served its First Set of Requests for Production to ParkerVision seeking, among other things, the documents that ParkerVision produced in its other patent litigations, including its cases against Intel. *See, e.g.*, Ex. A at 21 (Request No. 48). On February 20, 2024, ParkerVision served boilerplate objections and responses, stating that it “is willing to meet and confer regarding the scope and relevance of this Request.” Ex. B at 36-37 (Response to Request No. 48). Thereafter, the parties met and conferred several times regarding ParkerVision’s productions, resulting in ParkerVision’s refusal to identify the prior litigation documents ParkerVision was withholding subject to its unexplained objections, notwithstanding the requirements of Rule 34. *See* Fed. R. Civ. P. 34(b)(2)(C); Ex. C (Apr. 25, 2024 G. Wang Email to A. Ciuffo).

On April 17, 2024, the parties further met and conferred, and Realtek specifically requested that ParkerVision produce the validity and invalidity expert reports from its cases against Intel, which were never identified as withheld, and missing from ParkerVision’s limited productions. *See* Ex. C. During the meet and confer, ParkerVision’s counsel indicated that ParkerVision “would not produce expert reports from other litigations given the confidential information of other defendants [(i.e., nonparties in this action)]” in those reports, including the validity or invalidity expert reports, which ParkerVision’s counsel represented “also include third party confidential information.” *Id.* Realtek asked ParkerVision to identify which third party information was included in the validity and invalidity reports “so that we can seek permission from these third parties to have a copy of these reports.” *Id.* ParkerVision never responded to Realtek’s request,

and it did not identify which third party confidential information supposedly precluded ParkerVision's production.

With deadlines for the close of fact discovery and expert reports fast approaching, in an effort to limit the parties' discovery disputes, Realtek did what ParkerVision should have done in response to Realtek's January 2024 Requests for Production—Realtek sought approval directly from Intel to produce Intel confidential information in this case. To facilitate that approval and production of Intel's documents under the applicable protective order in this case, Realtek issued the June 3, 2024 Subpoena to Intel Corporation (the "Subpoena"). *See* ECF No. 107-1. The Subpoena seeks, *inter alia*, production of documents in the Northern District of California, where Intel's Santa Clara headquarters are located. ECF No. 107-1 at 3. Specifically, the Subpoena requests production of a handful of documents that Realtek understood could contain Intel confidential information based on statements from ParkerVision's counsel: (1) copies of validity and invalidity expert reports exchanged in the Intel cases, (2) any argument, briefing, or court orders regarding Intel's marking defenses, and (3) deposition transcripts, including the transcripts of depositions of ParkerVision's expert witnesses. *See id.* at 9. Neither Intel nor ParkerVision moved to quash or limit the Subpoena in the Northern District of California. Intel thereafter identified and collected responsive documents, and indicated that it was prepared to produce documents responsive to the Subpoena pursuant to the applicable protective order in this case. *See* Ex. D (June 27, 2024 H. Hanson Email).

On June 26, 2024, ParkerVision's counsel sent an email stating that it would move for a protective order "to forbid Realtek's requested discovery from Intel." *See* Ex. E (June 26, 2024 Z. Ellis Email). The parties met and conferred the next day, and ParkerVision's counsel stated for the first time that "good cause" existed for this Court to issue a protective order because the validity

and invalidity reports from the Intel cases—which involved related patents, with overlapping claim language—were supposedly irrelevant to Realtek’s defenses and may cause jury confusion. ParkerVision did not identify any harm it would suffer in the immediate production of the documents.¹ In response to outreach from ParkerVision’s counsel, Intel then stated that it would hold off on producing responsive documents pending the Court’s resolution of the Motion, but made clear that “*Intel does not oppose* the production of documents in response to Realtek’s subpoena.” Ex. F (July 10, 2024 Email from H. Hanson) (emphasis added).²

III. ARGUMENT

ParkerVision concedes that it lacks any standing to quash or limit the Subpoena pursuant to Rule 45, *see* Mot. at 3, but that is what ParkerVision is requesting from this Court, despite characterizing its Motion as seeking entry of a protective order. *See, e.g., Salmon v. Waffle House, Inc.*, No. 19-cv-1349, 2020 WL 6708382, at *2 (E.D. La. Nov. 16, 2020) (“[A] plaintiff cannot challenge a Rule 45 subpoena directed to a third party on the basis that ... the subpoena is overly broad, or that the subpoena seeks information that is irrelevant because only the responding third party can object and seek to quash a Rule 45 subpoena on those grounds.”). Of course, any motion to quash the Subpoena should have been filed in the Northern District of California, where Intel’s compliance is required (and already agreed to). Fed. R. Civ. P. 45(d)(3); *Providence Title Co. v. Truly Title, Inc.*, No. 4:21-cv-147-SDJ, 2022 WL 17981500, at *2 (E.D. Tex. Sept. 29, 2022) (court

¹ ParkerVision’s counsel stated that this Court had denied a request for production of expert reports in the Intel cases, but ironically, pointed Realtek to a sealed transcript that ParkerVision has not produced and that Realtek cannot access. *See* Mot. at 6 (citing *ParkerVision, Inc. v. Intel Corp.*, Case No. 6:20-cv-00108-ADA, ECF No. 163 at 78-91 (W.D. Tex. Sept. 13, 2022)).

² During the parties’ meet and confer, ParkerVision’s counsel also falsely stated that Intel agreed with ParkerVision, and did not want to produce documents. In fact, Intel was prepared to make a production, but had only held off based on ParkerVision’s representation that it would move for a protective order in this Court. ECF No. 107-2 (“Based on that representation, Intel will not make its production pursuant to Realtek’s subpoena next week.”).

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