UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

EVERLIGHT ELECTRONICS CO., LTD., and EMCORE CORPORATION,

Civil Action No.12-cv-11758 HON. GERSHWIN A. DRAIN

Plaintiffs/Counter-Defendants.

v.

NICHIA CORPORATION, and NICHIA AMERICA CORPORATION,

Defendants/Counter-Plaintiffs,

v.

EVERLIGHT AMERICAS, INC.,

Defendant.	

ORDER GRANTING NICHIA'S MOTION FOR LEAVE TO FILE SUR-REPLY [#375]

Presently before the Court is Nichia's Motion for Leave to File Sur-Reply, filed on September 22, 2014. The motion is fully briefed and for the reasons that follow, the Court will grant Nichia's motion.

The filing of a sur-reply is appropriate when new evidence relevant to a party's summary judgment motion becomes available after the completion of summary judgment briefing. *Mauer v. Deloitte & Touche, LLP*, 752 F.Supp. 2d 819, 824-25 (S.D. Ohio 2010); *Nolan LLC c. TDC Int'l Corp.*, No. 06-14907, 2009 U.S. Dist. LEXIS 47445, *4-5 (E.D. Mich. Jun. 5, 2009). Additionally, Rule 56(c) precludes the consideration of new evidence and argument in a summary judgment reply brief without providing the non-moving party adequate opportunity to respond. *Eng'g & Mfg*.



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Servs., LLC v. Ashton, 387 F. App'x 575, 583 (6th Cir. 2010); Seay v. Tenn. Valley Auth., 339 F.3d

454, 480-82 (6th Cir. 2003).

Here, Nichia has established good cause for granting its requested relief. Nichia should be

permitted to bring the testimony of Mr. Bernd Kammerer, President and COO of Everlight Americas

and CEO of Everlight Europe, to the attention of the Court because it is relevant to the issue of

injunctive relief. The Court rejects Everlight's arguments that Nichia had this evidence long before

summary judgment briefing began and that Nichia has not been diligent in the prosecution of this

case. Additionally, the Court agrees with Nichia that a sur-reply is required with respect to the

issues concerning the terms "white" and "white light" and marking, given that Everlight raised new

arguments and evidence in its reply brief, and not, typical "rebuttal evidence" as it claims.

Accordingly, Nichia's Motion for Leave to File Sur-Reply [#375] is GRANTED.

SO ORDERED.

Dated: November 5, 2014

/s/Gershwin A Drain

GERSHWIN A. DRAIN

UNITED STATES DISTRICT JUDGE



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