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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EVERLIGHT ELECTRONICS CO.,
LTD, and EMCORE CORPORATION,

Plaintiffs,

No. 12-cv-11758

v

NICHIA CORPORATION, and
NICHIA AMERICA CORPORATION,

Defendants.

_____ /

JURY TRIAL - VOLUME III of XII

PROCEEDINGS BEFORE THE HONORABLE GERSHWIN A. DRAIN
UNITED STATES DISTRICT JUDGE
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Thursday, April 9, 2015

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None

<u>EXHIBITS:</u>	<u>Identified</u>	<u>Received</u>
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1 Detroit, Michigan

2 Thursday, April 9, 2015

3 (Discussion held off the record)

4 THE COURT: Briefly summarize whatever you think
5 needs to go on the record.

6 MR. RIZZI: Okay. Thank you, your Honor.

7 So in Dr. Bretschneider's expert report he has a
8 total of three pages relating to alleged lack of enablement.
9 In those three pages he raises three specific issues that have
10 to do with the abilities to make certain semiconductors and --
11 I'm sorry -- phosphors and semiconductors. These he ties to
12 certain claim elements, but his opinions are specific to
13 whether full substitution of gadolinium or lanthanum for
14 yttrium in the claims, garnet fluorescent material is possible.

15 To that one, your Honor, we would submit it's
16 clearly covered by your Daubert order, he is not permitted to
17 opine on matters of phosphor synthesis.

18 The second one has to do with YIG fluorescent
19 material; same applies there. This is based on a precluded
20 opinion that YIG cannot be made.

21 And the third one has to do with the ability to
22 make an indium nitride semiconductor. This one, I would
23 submit, your Honor, is not within the scope of your Daubert
24 order, the only one that's remaining. And he really gives no
25 basis at all in this section for why it's supposedly enabled.

1 At the very end he has a passing reference to say, my analysis
2 is also confirmed by my -- confirmed, but my review of the
3 notebooks and other materials as set forth in the section on
4 inequitable conduct below, which is not relevant. My analysis
5 of figures and data is set forth above.

6 So what he is saying is, he's not adding, he's not
7 adding to what he's set forth. He's saying it's confirmed by
8 what's in those other sections.

9 What plaintiff is trying to do is essentially to
10 use that thread, that simple reference to confirm what's in
11 here to say, well, now he can opine on all these other matters
12 relating to working examples, other working examples that
13 supposedly have errors and they want to point all those out to
14 the jury. None of that was actually set forth where he is
15 talking about enablement or lack of enablement as a basis for
16 lack of enablement.

17 MR. TRAUPMAN: Your Honor, that's just not
18 accurate.

19 THE COURT: Those folks at the door, do you want
20 to come in? Come in and have a seat.

21 MR. RIZZI: We can hand up the report, if you
22 like.

23 THE COURT: And maybe I can look at your report
24 while Mr. Traupman is speaking. Do you have the same report?

25 MR. TRAUPMAN: Yes, that's the same report. I

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