

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

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

Plaintiffs/Counter-Defendants,

v.

NICHIA CORPORATION, and
NICHIA AMERICA CORPORATION,

Defendants/Counter-Plaintiffs,

v.

EVERLIGHT AMERICAS, INC.,

Defendant.

Case No. 4:12-CV-11758 GAD-MKM
Hon. Gershwin A. Drain

Jury Trial Demanded

SECOND AMENDED COMPLAINT

Plaintiffs/Counter-Defendants Everlight Electronics Co., Ltd. (“Everlight”) and Emcore Corporation (“Emcore”) file this Second Amended Complaint (“Complaint”) against Defendants/Counter-Plaintiffs Nichia Corporation (“Nichia”) and Nichia America Corporation (“NAC”), wherein Everlight seeks a declaratory judgment of non-infringement, invalidity, and unenforceability of United States Patent Nos. 5,998,925 (the “’925 Patent”) and 7,531,960 (the “’960 Patent”) against Nichia, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 and the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and both Everlight and Emcore jointly seek a judgment of infringement by Nichia and NAC of U.S. Patent No. 6,653,215 (the “’215 Patent”) pursuant to 35 U.S.C. §§ 271 and 281, and damages resulting

therefrom pursuant to 35 U.S.C. § 284, and such other relief as the Court deems just and proper, and in support thereof allege as follows:

The Parties

1. Everlight is a corporation organized and existing under the laws of Taiwan with a principal place of business at No. 6-8, Zhonghua Rd., Shulin Dist., New Taipei City, Taiwan 23860. Everlight manufactures its light-emitting diode (“LED”) products in Taiwan and, through a subsidiary, has sales offices in the United States in Texas and California.

2. Emcore is a New Jersey corporation with a principal place of business at 10420 Research Road, SE, Albuquerque, New Mexico, 87123. LED products incorporating Emcore’s patented technology are offered nationwide, including in this district.

3. Upon information and belief, Nichia is a corporation organized and existing under the laws of Japan with a principal place of business at 491 Oka, Kaminaka-Cho, Anan-Shi, TOKUSHIMA 774-8601, JAPAN. Nichia Corporation conducts substantial and continuous business in this district and is subject to personal jurisdiction in this district.

4. Upon information and belief, NAC is a subsidiary of Nichia in the United States with a principal place of business at 48561 Alpha Drive, Suite 100, Wixom, MI 48393. NAC is headquartered in this district, conducts substantial and continuous business in this district and is subject to personal jurisdiction in this district.

Jurisdiction and Venue

5. The claims for declaratory judgment arise under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

6. The claims of patent infringement arise under 35 U.S.C. §§ 271 and 281.

7. Subject matter jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338 and 28 U.S.C. §§ 2201 and 2202.

8. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c).

Patents-in-Suit

9. The '925 Patent, entitled "Light Emitting Device Having a Nitride Compound Semiconductor and a Phosphor Containing a Garnet Fluorescent Material," names on its face Yoshinori Shimizu, Kensho Sakano, Yasunobu Noguchi, and Toshio Moriguchi as inventors (the "Named Inventors") and states that it was issued on December 7, 1999 to assignee Nichia Kagaku Kogyo Kabushiki Kaisha (d/b/a Nichia Corporation) (Exhibit A).

10. The '960 Patent, entitled "Light Emitting Device with Blue Light LED and Phosphor Components," names on its face Yoshinori Shimizu, Kensho Sakano, Yasunobu Noguchi, and Toshio Moriguchi as inventors and states that it was issued on May 12, 2009 to assignee Nichia Corporation (Exhibit B).

11. Emcore is the owner by assignment and Everlight is the exclusive licensee, with the right to enforce, of the '215 entitled "Contact to N-GaN with Au Termination" which the United States Patent and Trademark Office lawfully and duly issued on November 25, 2003. A true and correct copy of the '215 Patent is attached hereto as Exhibit C.

Background

12. Everlight is a leading manufacturer and supplier of LED products, with customers around the world, including in this district.

13. Everlight successfully competes against Nichia and NAC, who are also in the business of manufacturing and supplying LED products.

14. Nichia has been aggressively pursuing Everlight and Everlight's customers through litigation in various forums around the world, including Japan, Germany, and Taiwan.

15. For example, in October 2011, Nichia initiated an action against an Everlight customer, Tachibana Eletech Co., Ltd., in Tokyo District Court, Intellectual Property Division, alleging infringement of Nichia's Japanese Patent No. 4530094, which is a Japanese counterpart of the '960 Patent ("Tokyo Action").

16. In addition, on April 18, 2012, Nichia initiated an action against Everlight in Germany for alleged infringement of Nichia's European Patent No. EP 0 936 682, which is a European counterpart of the '925 Patent ("German Action").

17. The accused products in the Tokyo Action are Everlight's LEDs having Part Nos. GT3528 and 61-238, and the accused products in the German Action are Everlight's LEDs having Part No. 61-238. Everlight supplies these and/or similar LEDs, such as 67-11/T1C-FV2W2F/2T, ELSH-F81M1-0CPGS-C3000, ELSH-F91C1-0CPGS-C5000, ELSH-J31M3-0CPGS-D3000, ELSH-J61C3-0CPGS-D5000, ELSW-F81M1-0CPGS-C3000, ELSW-J11C1-0CPGS-C5700, ELSW-J31M3-0CPGS-D3000, ELSW-J71C3-0CPGS-D5700, 234-15UTC/H5/S400-X10(TCI), 334-15/T2C1-FUWA/PR6(LP), 334-15/T2C3-FQSB/PR6(LP), 334-15/T2C5-FNQB/PR6(LP), 484-15-T5C9-F36E-T13-AM (S), 484-15-T5C9-F36E-T13-AM(L), and 65-21-B3T-1NL2M2C6A-2T8-AM, to its customers in the United States (collectively, "Everlight LED Products").

18. The '925 Patent is the parent of the '960 Patent, and the '960 Patent is a division of the application that resulted in the '925 Patent.

19. Nichia has also threatened litigation over several patents, including Japanese Patent No. 4530094, against other Everlight customers in Japan, including JFE, Charle, and Chip One Stop.

20. Nichia also initiated a patent infringement action against Everlight in Taiwan, in which Everlight prevailed in November 2011.

21. In addition to litigation matters, there are currently over 20 patent reexamination or opposition proceedings pending in several different countries, initiated by Everlight against Nichia. The subject of these proceedings include Nichia patents related to the '925 and '960 Patents.

22. Nichia also has a pattern of aggressively pursuing manufacturers, users and/or distributors of competitive LED products in the United States by asserting infringement of the '925 and/or '960 Patents against them. Between 2005 and 2011, Nichia pursued at least four actions in the United States where it claimed infringement of the '925 Patent, and at least two actions in which the '960 Patent was asserted.

23. Nichia has also threatened litigation against its competitors in press releases. For example, in April 2012, Nichia issued a press release regarding a suit over a related German counterpart patent, in which it asserted, "Nichia seeks to protect its patents and other intellectual property rights and takes actions against alleged infringers in any country where appropriate and necessary."

24. Nichia's systematic and aggressive pursuit of Everlight, Everlight's customers, and other third parties in the LED industry through litigation has created a substantial and immediate dispute between Everlight and Nichia relating to the '925 and '960 Patents.

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.