

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
CIVIL ACTION NO. 5:16-CV-142-MOC-DSC**

**Nichia Corporation,**

Plaintiff,

v.

**Lowe's Companies, Inc., Lowe's Home Centers,  
LLC, and L G Sourcing, Inc.,**

Defendants.

**STIPULATED PROTECTIVE  
ORDER**

WHEREAS, Plaintiff Nichia Corporation (“Nichia”) and Defendants Lowe’s Companies Inc., Lowe’s Home Centers, LLC, and L G Sourcing, Inc. (“Lowe’s”), hereafter referred to as “the Parties,” believe that certain information that is or will be encompassed by discovery demands by the Parties involves the production or disclosure of trade secrets, confidential business information, or other proprietary information; and

WHEREAS, the Parties seek a protective order limiting disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c):

THEREFORE, it is hereby stipulated among the Parties and ORDERED that:

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material (“Protected Material”). Protected Material shall be designated by the

Party producing it by affixing a legend or stamp on such document, information or material as follows: “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” The phrase “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall be placed clearly on each page of the Protected Material.

2. Any document produced under Patent Rules 2-2, 3-2, and/or 3-4 before issuance of this Order, including any documents reproduced in these proceedings from other cases, with the designation “Confidential” or “Confidential - Outside Attorneys’ Eyes Only” shall receive the same treatment as if designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under this Order, unless and until such document is re-designated to have a different classification under this Order.

3. With respect to documents, information or material designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (“DESIGNATED MATERIAL”),<sup>1</sup> subject to the provisions herein and unless otherwise stated, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Federal Rules of Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIAL shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

4. A designation of Protected Material (i.e., “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) may be made at any time. Inadvertent or unintentional production of documents, information or material that has not been designated as DESIGNATED MATERIAL shall not be

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<sup>1</sup> The term DESIGNATED MATERIAL is used throughout this Protective Order to refer to the class of materials designated as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction of that Protected Material by notifying the recipient(s), as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure, and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Materials and any documents, information or material derived from or based thereon. Designating Party shall, upon request of the Receiving Party, specifically identify the confidential portions of any pleading or other document filed under seal with the Court, written discovery response, or any exhibits thereto, or alternatively provide the Receiving Party with a redacted non-confidential version thereof. The Designating Party shall have five (5) business days to comply with such a request.

5. “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the Designating Party, upon prior order of the Court, or as set forth in paragraph 11 herein:

- (a) outside counsel of record in this Action for the Parties;
- (b) employees of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;
- (c) outside consultants or experts (i.e., not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation, provided that:
  - (1) such consultants or experts are not presently employed by the Parties hereto for purposes other than this Action or by a known or identified competitor of any of the

Parties; and (2) before access is given, the consultant or expert has completed the Undertaking attached as Appendix A hereto and the same is served upon the producing Party with a current curriculum vitae (or its available equivalent) of the consultant or expert, and a list of all litigations and administrative proceedings in which he or she has either written an expert report or given testimony at trial, a hearing, a deposition, or by written submission in the previous five (5) years (the "Notice"). The Notice must be received at least five business (5) days before access to the Protected Material is to be given to that consultant, to provide an opportunity for the Producing Party to notify the Receiving Party in writing that it objects to disclosure of Protected Material to the consultant or expert. The Parties agree to promptly confer and use good faith to resolve any such objection. If the Parties are unable to resolve any objection, the Party seeking to disclose DESIGNATED MATERIAL may file a motion with the Court. The objecting Party shall have the ultimate burden of proving that such disclosure is not appropriate. No disclosure shall occur until all such objections are resolved by agreement or Court order. Each outside consultant or expert to whom DESIGNATED MATERIAL is disclosed in accordance with the terms of this Order shall be advised by counsel of the terms of this Order, shall be informed that he or she is subject to the terms and conditions of this Order, and shall sign an acknowledgment, attached as Appendix A hereto, that he or she has received a copy of, has read, and has agreed to be bound by this Order;

(d) independent litigation support services, including persons working for or as court reporters, graphics or design services, jury or trial consulting services, and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action; and

(e) the Court and its personnel.

6. A Party shall designate documents, information or material as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only upon a good faith belief that the documents, information or material contains confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such documents, information or material.

7. DESIGNATED MATERIAL shall be used by the Parties only in the litigation of this Action and shall not be used for any other purpose. Any person or entity who obtains access to DESIGNATED MATERIAL or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries or descriptions of such DESIGNATED MATERIAL or any portion thereof except as may be reasonably necessary in the litigation of this Action. Any such copies, duplicates, extracts, summaries or descriptions shall be classified DESIGNATED MATERIAL and subject to all of the terms and conditions of this Order.

8. Any person associated with a Party who is permitted to receive the other Party’s or a Third Party’s DESIGNATED MATERIAL, who obtains, receives, has access to, or otherwise learns, in whole or in part, the other Party’s or a Third Party’s DESIGNATED MATERIAL under this Order shall not prepare, prosecute, supervise, or assist in the preparation or prosecution of any patent application or the amendment of any patent claim in any proceeding whatsoever, excluding post-grant proceedings such as *Inter Partes* Review, pertaining to the field of the invention of the patent-in-suit during the pendency of this Action and for one year after its conclusion, including any appeals. To ensure compliance with the purpose of this provision, each Party shall create an “Ethical Wall” between those persons with access to DESIGNATED MATERIAL and any individuals who prepare, prosecute, supervise or assist in

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