

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIZIO, INC.,
Petitioner
v.

NICHIA CORPORATION,
Patent Owner.

Case IPR2017-00551
Patent 7,915,631B2
Case IPR2017-00552
Patent 7,901,959 B2
Case IPR2017-00556
Patent 7,855,092 B2
Case IPR2017-00558
Patent 8,309,375 B2¹

BRIAN J. McNAMARA, STACEY G. WHITE, and
NABEEL U. KHAN, *Administrative Patent Judges*.

McNAMARA, *Administrative Patent Judge*.

CONDUCT OF THE PROCEEDING
37 C.F.R. § 42.5

¹ This Order addresses issues that are identical in related cases. We exercise our discretion to issue one order to be filed in each case. The parties are not authorized to use this style heading in any subsequent papers.

Vizio, Inc. (“Petitioner”) filed a Petition for *inter partes* review in each of the proceedings identified in the caption of this paper (“the Subject Proceedings”). Each Petition was accorded a filing date of December 30, 2016. In the Petition filed in IPR2017-00551 (’551 Pet.), Petitioner acknowledged that the claims of U.S. Patent 7,915,631 B2 (the ’631 Patent) “will likely expire during the requested IPR” and states “to the extent there may be differences here Petitioner construes the ’631 claims under both the broadest reasonable interpretation (“BRI”) for purposes of institution and under *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) for purposes of this review.” ’551 Pet. 14. Petitioner made the same statement in IPR2017-00552 (’552 Pet.) concerning the claims of U.S. Patent 7,010,959 B2 (’552 Pet. 13), in the Petition in IPR2017-00556 (’556 Pet.) concerning the claims of U.S. Patent 7,855,092 (’556 Pet. 32), and in the Petition in IPR2017-00558 (’558 Pet.) concerning the claims of U.S. Patent 8,309,375 B2 (’558 Pet. 24–25). “For purposes of this review” Petitioner proposed claim constructions for “electrode” and “main emission peak” in IPR2017-00551. ’551 Pet. 14. Each of the remaining Petitions states that for purposes of this review Petitioner interprets all terms according to their plain and ordinary meaning consistent with the corresponding specification. ’552 Pet. 13, ’556 Pet. 32, ’558 Pet. 25.

On January 30, 2017 Nichia Corporation (“Patent Owner”) timely filed and served Patent Owner’s Motion and Certification Under 37 C.F.R. § 42.100(b) Requesting Expired Patent Claim Construction (“Motion”) requesting that we apply a district court-type claim construction in each of the Subject Proceedings. In each Motion, Patent Owner certified that the corresponding patent in the Subject Proceeding would expire within 18 months of the entry of the Notice of Filing Date.

On March 31, 2017, Patent Owner contacted the Board via e-mail to request a conference to seek permission to file a notice confirming that its Motion in each of the subject Proceedings is unopposed. Patent Owner's e-mail request states that Petitioner's counsel "has indicated Petitioner opposes this request for a conference call and the filing of any notices." A conference call is not required. The default time for opposing a motion is one month after service of the motion. 37 C.F.R. § 42.25(a)(1). Petitioner has not opposed Patent Owner's Motions in the Subject Proceedings. Patent Owner's Motions comply with the requirements of 37 C.F.R. § 41.100(b) and we find that the requested relief is warranted. Thus, we will apply a district court-type claim construction in each of the Subject Proceedings.

In consideration of the above it is

ORDERED that a district type claim construction will be applied in each of the Subject Proceedings.

Case IPR2017-00551; IPR2017-00552; IPR2017-00556; 2017-00558
Patent 7,915,631B2; 7,901,959 B2; 7,855,092 B2; 8,309,375 B2

PETITIONER

Gabrielle E. Higgins
Jordan M. Rossen
ROPES & GRAY LLP
gabrielle.higgins@ropesgray.com
jordan.rossen@ropesgray.com

PATENT OWNER

Catherine Nyarady
David E. Cole
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
cnyarady@paulweiss.com
dcole@paulweiss.com