

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

Nichia Corporation,

Plaintiff,

v.

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

Defendants.

**DEFENDANTS' INITIAL
INVALIDITY CONTENTIONS
(Jury Trial Demanded)**

Defendants Lowe's Companies, Lowe's Home Centers, LLC and L G Sourcing, Inc. (collectively, "Lowe's") serve these Initial Invalidity Contentions in accordance with the Amended Utility Patent Claim Construction Scheduling Order (Dkt 28) filed on February 24, 2017 in accordance with the Local Civil Rules of the Western District of North Carolina, Rule 3.3 of the Local Patent Rules and pursuant to Rule 16 of the Federal Rules of Civil Procedure. Lowe's Initial Invalidity Contentions are made without the benefit of complete discovery and are based on Lowe's good faith understanding of Plaintiff Nichia Corporation's ("Nichia") disclosure of asserted patents and claims in its P.R. 3.1 Preliminary Infringement Contentions to Lowe's.

Lowe's P.R. 3.3 Initial Invalidity Contentions address claims 1-2 and 6-11 of U.S. Patent No. 7,915,631 ("the '631 patent") and claim 3 of U.S. Patent No. 8,120,057 ("the '057 patent"), the only patents and claims asserted in Nichia's P.R. 3.1 Preliminary Infringement Contentions. Lowe's continues to pursue discovery and investigate prior art relevant to the '631 patent and the '057 patent. Lowe's reserves the right to modify, amend, and/or supplement its Initial Invalidity Contentions based on additional information, in accordance with P.R. 3.6 and any applicable Court order.

Lowe's Initial Invalidity Contentions depend on the construction of the claims of the '631 patent and the '057 patent. Claim construction, which is a question of law reserved for the Court, has not yet occurred. Because the claims have not yet been construed, Lowe's has not had the opportunity to compare the asserted claims of the '631 patent, as construed by the Court, with the prior art. Lowe's disclosure of its Initial Invalidity Contentions is not intended as a waiver of any claim construction argument or non-infringement position. Additionally, Lowe's reserves the right to amend, supplement, or modify its invalidity contentions after the claims have been construed by the Court. Lowe's Initial Invalidity Contentions may be based in part on Nichia's Infringement allegations, and Lowe's reserves the right to amend, supplement, or modify its invalidity contentions based on any claim construction positions that Nichia may take in this case. Further, Lowe's reserves the right to assert that a claim is indefinite, not enabled, or fails to meet the written description requirement based on any claim construction position that Nichia may take in this case or based on any claim construction the Court may adopt in this case.

I. IDENTIFICATION OF PRIOR ART REFERENCES

Lowe's identifies the following references as prior art that anticipates and/or renders obvious the asserted claims of the '631 patent and '057 patent under 35 U.S.C. §§ 102 and/or 103.¹ Lowe's contends that at least the prior-art references identified below anticipate and/or render obvious, either alone or in combination, the asserted claims of the '631 patent and the '057 patent. Lowe's also incorporates by reference all prior-art references cited in the '631 patent and the '057 patent or cited by any defendant sued by Nichia for infringement of the '631 patent or the '057 patent.

¹ Nichia's Amended Preliminary Infringement Contentions assert that the '631 patent "claims priority to various Japanese patent applications, the earliest of which is dated July 29, 1996." This priority date generally is used in Lowe's Initial Invalidity Contentions, but as discussed infra, Lowe's does not believe the '631 Patent is entitled to this priority date. For this reason, Lowe's

P.R. 3.3 (A) Prior Art References Against the '631 Patent

U.S. Patent No. 6,600,175 B1 to Baretz, *et al.* (filed on March 26, 1996, issued on July 29, 2003) (“Baretz”)

JP 01-260707 to Usuda *et al.* (filed on April 11, 1988, published on October 18, 1989) (“Usuda”)

JP S50-79379 to Tabuchi (published on November 24, 1973) (“Tabuchi”)

JP H7-99345 to Matoba (filed on September 28, 1993, published on April 11, 1995) (“Matoba”)

JP H05-152609 to Tadatsu *et al.* (filed on November 25, 1991, published on June 18, 1993) (“Tadatsu”)

“High-power InGaN single-quantum-well-structure blue and violet light-emitting diodes,” Shuji Nakamura *et al.*, Applied Physics Letters, Vol. 67, No. 13 (Sept. 1995) (“Nakamura”)

“Large-band-gap SiC, III-V nitride, and II-VI ZnSe-based semiconductor device technologies,” H. Morkoç *et al.*, University of Illinois, Materials Research Laboratory and Coordinated Science Laboratory (Aug. 1, 1994) (“Morkoç”)

U.S. Patent No. 3,691,482 to Pinnow *et al.* (filed on January 19, 1970, issued on September 12, 1972) (“Pinnow ‘482”)

U.S. Patent No. 3,699,478 to Pinnow *et al.* (filed on May, 26, 1969, issued on October 17, 1972) (“Pinnow ‘478”)

“Photoluminescent Conversion of Laser Light for Black and White and Multicolor Displays,” L. G. Van Uitert, *et al.*, Applied Optics, Vol. 10, No. 1 (January 1971) (“Van Uitert”)

C.J. Nuese and J.I. Pankove “Chapter 2. Light-Emitting Diodes - LEDs” in Topics in Applied Physics, p. 35 (Book 40) (J.I. Pankove ed., 1980) (“Nuese”).

U.S. Patent No. 5,907,222 to Lengyel *et al.* (filed on November 3, 1993, issued on May 25, 1999) (“Lengyel”)

U.S. Patent No. 4,678,338 to Kitta *et al.* (filed on November 22, 1983, issued on July 7, 1987) (“Kitta”)

U.S. Patent No. 5,118,985 to Patton *et al.* (filed on July, 9, 1991, issued on June 2, 1992) (“Patton”)

JP Patent Pub. No. H52-40959 (published on October 15, 1977) (“Hasetani”)

DE Patent Application Publication No. 19638667 (filed on September 20, 1996, published on April 2, 1998) (“Schlotter”)

P.R. 3.3(A) Prior Art References Against the '057 Patent

U.S. Patent No. 7,105,861 to Erchak, *et al.* (published on March 10, 2005, issued on September 12, 2006) (“Erchak”)

U.S. Patent No. 6,455,343 to Chen, *et al.* (issued on September 24, 2002) (“Chen”)

U.S. Patent No. 6,621,106 to Murakami, *et al.* (issued on September 16, 2003) (“Murakami”)

U.S. Patent No. 7,288,797 to Deguchi, *et al.* (published on July 21, 2005, issued on October 30, 2007) (“Deguchi”)

U.S. Patent Pub. No. 2006/0255358 to Shum (published on November 16, 2006, effective filing date of May 19, 2006) (“Shum”)

U.S. Patent No. 5,972,731 to Dutta (issued on October 26, 1999) (“Dutta”)

U.S. Patent No. 4,864,370 to Gaw, *et al.* (issued on September 5, 1989) (“Gaw”)

U.S. Patent No. 6,169,296 to Kamiyama, *et al.* (issued on January 2, 2001) (“Kamiyama”)

U.S. Patent Pub. No. 2006/0261355 to Kususe (published on November 23, 2006, effective filing date of May 18, 2006) (“Kususe”)

U.S. Patent No. 6,796,108 to Lin, *et al.* (issued on September 28, 2004) (“Lin”)

U.S. Patent No. 5,578,839 to Nakamura, *et al.* (issued on November 26, 1996) (“Nakamura ‘839”)

U.S. Patent No. 5,652,434 to Nakamura, *et al.* (issued on July 29, 1997) (“Nakamura ‘434”)

U.S. Patent Pub. No. 2005/0212002 to Sanga (published on September 29, 2005, effective filing date of March 29, 2005) (“Sanga”)

U.S. Patent No. 7,075,115 to Sakamoto, *et al.* (published on July 1, 2004, issued on July 11, 2006) (“Sakamoto”)

U.S. Patent No. 7,112,825 to Shakuda, *et al.* (published on July 7, 2005, issued on September 26, 2006) (“Shakuda”)

U.S. Patent No. 5,309,001 to Wantanabe, <i>et al.</i> (issued on May 3, 1994) (“Wantanabe ‘001”)
U.S. Patent No. 6,121,635 to Wantanabe, <i>et al.</i> (issued on September 19, 2000) (“Wantanabe ‘635”)
<i>Light Emitting Diodes</i> , First Edition, Schubert (published in 2003) (“Schubert”)
<i>High Brightness Light Emitting Diodes: Semiconductors and Materials</i> , Vol. 48, 1997, Stringfellow <i>et al.</i> (“Stringfellow”)
JP H07326793 to Takashi (published on December 12, 1995 (“Takashi”))
U.S. Patent No. 6,417,525 to Hata (issued July 9, 2002) (“Hata”)

II. P.R. 3.3 (B) BASES FOR INVALIDITY OF ALL ASSERTED CLAIMS

Nichia asserts claims 1-2 and 6-11 of the ‘631 patent and claim 3 of the ‘057 patent against Lowe’s. Each of the asserted claims is invalid because they fail to meet one or more of the statutory requirements for patentability. The specific bases for invalidity are provided below and in the claim charts attached as Exhibits A through E and Exhibits 1 through 21. Each of the prior art items qualify as prior art under 35 U.S.C. § 102.

In the charts Lowe’s has cited representative portions of the identified references. An identified reference may contain additional support for a particular claim limitation in addition to the representative portions identified in the claim charts. Further, persons of ordinary skill in the art generally read a prior-art reference as a whole and in the context of other publications and literature. To understand and interpret any specific statement or disclosure within a prior-art reference, a person of ordinary skill in the art would rely on other information within the reference, along with other publications and his or her general knowledge and understanding of the field.

Lowe’s therefore reserves the right to rely on uncited portions of the identified prior-art references

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