

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

| | | |
|---------------------|---|----------------------------|
| NICHIA CORPORATION, |) | |
| |) | |
| Plaintiff, |) | C.A. No. 2:16-cv-01453-JRG |
| |) | |
| v. |) | LEAD CASE |
| |) | |
| VIZIO, INC. |) | |
| |) | |
| Defendant. |) | |
| |) | |

**PLAINTIFF NICHIA CORPORATION’S SUBMISSIONS
PURSUANT TO LOCAL PATENT RULES 3-1 AND 3-2**

Pursuant to the Local Patent Rules of the Eastern District of Texas, Plaintiff Nichia Corporation (“Nichia”) serves on VIZIO, Inc. (“VIZIO”) the materials required by Rules 3-1 and 3-2 as follows.

RULE 3-1- INFRINGEMENT CONTENTIONS

In accordance with Rule 3-1 (a) and (b), the accused products in this case include all products that are or have been made, used, sold, or offered for sale in the United States, or imported into the United States, that contain or include LED devices that are covered by one or more claims of U.S. Patent No. 9,490,411 (the “411 Patent”) and/or U.S. Patent No. 9,537,071 (the “071 Patent”), including:

- (i) The following products, which include or contain the representative LEDs reflected in the claim charts attached hereto in Exhibits 1 and 2;

VIZIO TV Models

D28h-C1
D39hn-E0

- (ii) Any product that includes or contains, for purposes of the asserted claims, LEDs with the same features as the LEDs identified in paragraph (i), including but not limited to the following;

| |
|---|
| <p style="text-align: center;">VIZIO TV Models</p> <p>D28hn-D1</p> |
|---|

- (iii) And any product that includes or contains an LED that is within the same product series, and/or has the same package design, as any of the Accused Products identified in paragraphs (i) and (ii).

As required by Rules 3-1 (a) - (d), claim charts showing “[e]ach claim of each patent in suit that is allegedly infringed by each opposing party” and “identifying specifically where each element of each asserted claim is found within each” accused product and process, and whether the elements are “literally present or present under the doctrine of equivalents” are attached as Exhibits 1 and 2. As demonstrated in the claim charts, based on information currently available to Nichia, the LEDs in the accused products literally infringe the asserted claims.

As noted above, the claim charts are directed to exemplary products believed to be representative of the infringing LEDs. All of Defendant’s products that include or contain LEDs that are similar in structure and design to the LEDs in the exemplary products are accused products. *Juxtacomm Techs., Inc. v. Ascential Software Corp.*, 548 F. Supp. 2d 379, 381 (E.D. Tex. 2008) (recognizing expedient of using “one chart to accuse both products”); *see also ConnecTel, LLC v. Cisco Sys., Inc.*, 391 F. Supp. 2d 526, 528-29 (E.D. Tex. 2005) (“[T]he Court ORDERS ConnecTel to designate exemplar accused infringing products and compare those products to each asserted patent on a claim by claim, element by element basis.”).

Nichia's infringement contentions are based on the information available to Nichia at this time, including data and inferences reasonably drawn from material regarding Defendant's products that are available to Nichia from public sources. Nichia reserves the right to amend and revise these contentions, including the right to supplement the list of accused products, as additional information becomes available to Nichia through discovery or otherwise. *See, e.g., Nidec Corp. v. LG Innotek Co., Ltd.*, 07-cv-108, 2009 WL 3673253 (E.D. Tex. Sept. 2, 2009) (allowing for amendments for additional products identified through discovery).

In accordance with Rule 3-1(e), the claims of the patents-in-suit are entitled to the priority dates of an earlier patent application, as follows:

| PATENT | CLAIMS | PRIORITY DATE |
|--------|---------------------|-------------------|
| '411 | All asserted claims | September 3, 2008 |
| '071 | All asserted claims | September 3, 2008 |

Nichia reserves the right to assert a priority date based on conception and reduction to practice of the claimed inventions before the dates set forth above.

Finally, Nichia reserves the right to rely, for any purpose, on the assertion that its own products, devices, processes, or acts practice the claimed inventions. In accordance with Rule 3-1(f), Nichia products, by model number, that practice one or more of the asserted claims of the '411 Patent and/or the '071 Patent, are listed on Exhibit 3 attached hereto.

RULE 3-2: DOCUMENTS ACCOMPANYING INFRINGEMENT CONTENTIONS

Nichia's disclosures as required by Local Patent Rule 3-2 are being served contemporaneously via FTP. *Pending entry of a protective order in this lawsuit, Nichia designates each of the documents in this production "Confidential: Outside Attorneys' Eyes Only."*

Documents produced in accordance with Rule 3.2(a) are throughout the range NicCONSOL0003257-NicCONSOL0013245.

Documents produced in accordance with Rule 3.2(b) are included in the range
NicCONSOL0000914 - NicCONSOL0034514.

Pursuant to Rule 3.2(c), the file histories of the '411 and '071 Patents are at NicCONSOL
0083681-NicCONSOL0084263.

Nichia reserves the right to use any document for any permitted purpose.

DATED: May 12, 2017

Respectfully submitted,

/s/Robert P. Parker

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May, 2017, a true and correct copy of the foregoing **PLAINTIFF NICHIA CORPORATION'S SUBMISSIONS PURSUANT TO LOCAL PATENT RULES 3-1 AND 3-2** were served by electronic mail and file transfer portal, upon the following counsel of record.

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