

Filed on behalf of: Nichia Corporation

Paper _____

By: Martin M. Zoltick, Lead Counsel
Robert P. Parker, Back-up Counsel
Derek F. Dahlgren, Back-up Counsel
Michael H. Jones, Back-up Counsel
Mark T. Rawls, Back-up Counsel
ROTHWELL, FIGG, ERNST & MANBECK, P.C.
607 14th Street, N.W., Suite 800
Washington, DC 20005
Phone: 202-783-6040
Facsimile: 202-783-6031
Emails: mzoltick@rfem.com
rparker@rfem.com
ddahlgren@rfem.com
mjones@rfem.com
mrawls@rfem.com

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VIZIO, INC.,
Petitioner,

v.

NICHIA CORPORATION,
Patent Owner.

Case IPR2018-00437
Patent 9,537,071

**RESPONSE TO PETITIONER'S REPLY TO
PATENT OWNER'S SUR-REPLY**

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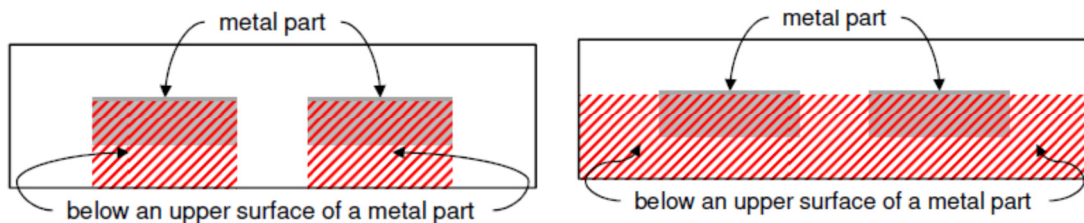
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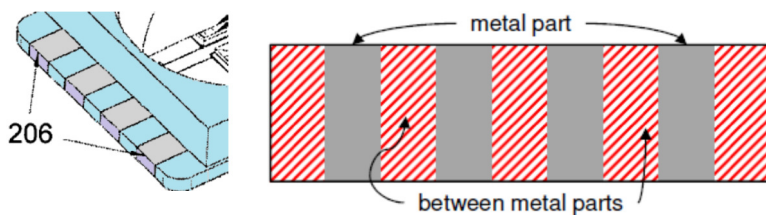
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I. Patent Owner’s construction of “in a region below” is more faithful to the specification and plain meaning

As the Board noted, figures are particularly apt to illustrate “relative spatial positions of structures;” and thus inform the disputed issue. Paper 45, 3. Is a region “below an upper surface of the metal part” only if it is underneath the upper surface of the metal part (left, Patent Owner)? Or can it also be “at a lower level than” the upper surface irrespective of the surface’s boundaries (right), as Petitioner contends in its latest filing? The figures below illustrate the positions:



The issue is significant because Loh (Petitioner’s primary reference) shows resin *between* metal leads (*not underneath* those leads’ upper surface) on two sides:



Side view figures show *one* side of a device. Each of the four sides must have a region as claimed.

Patent Owner’s construction is a natural reading of “in a region below,” is consistent with the specification, and improves adhesion as the specification teaches. Petitioner’s construction leads to awkward results, and does not provide the same advantages. It is a byproduct of Loh, not the plain meaning.

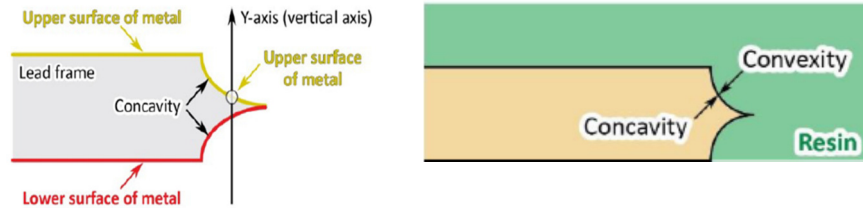
Moreover, Petitioner confirms that (as shown in Patent Owner’s sur-reply) its construction means that resin entirely above the upper surface of the metal part

is considered in a region below that surface. SSR, 2 (“the hypotheticals show resin disposed in a region below ‘*an*’ upper surface of the metal part.”). Further, rather than take multiple levels into account, Petitioner insists that such levels are not in “the patent figures [or] in Loh.” *Id.* Notwithstanding that FIG. 11 shows a lead having multiple levels due to a concavity, Petitioner’s response misses the point. Irrespective of the patent *figures*, the patent *specification and claims* describe and encompass differences in level on an upper surface of the metal part. SR, 1.

Petitioner also disputes the relevance of the “notch” limitation because it “does not refer to resin or its location.” SSR, 2. The specification explains that—unlike a hole, which also penetrates the lead, or a step which does not—a notch is filled with resin. SR, 4-5. Because the notch is formed in the metal part in the outer lateral surface of the resin package, that means resin is present in the portion where the notch is formed, *i.e.* resin at a lower level than an upper surface of the metal part. *Id.* Thus, Petitioner gives no meaning to “in a region below”.

Finally, Petitioner again challenges the support for below meaning underneath. Dr. Schubert has explained that the specification describes concavities and convexities (which improve adhesion between the metal part and the resin part) that result in resin underneath metal on four outer side surfaces of the resin package. Ex. 2011, §VII(A)(2). Mischaracterizing Dr. Schubert’s testimony, Petitioner refers to an “admission[.]” that “concavities or convexities are formed in

the regions *below the upper surfaces* of the exposed leads.” SSR, 1-2 (quoting Ex. 2011, ¶50). Dr. Schubert made no admission contrary to Patent Owner’s position.



The concavity or convexity on the upper portion of the lead is a part of the upper surface of the lead; the concavity or convexity on the lower portion of the lead is below that upper surface. The remainder of the quoted sentence (elided by Petitioner) further explains that the concavities/convexities “*fill with resin during processing.*” Dr. Schubert also explains that a “concave profile with respect to the leads” is “mirrored by the convex profile in the resin”. *Id.* ¶54. In sum, Dr. Schubert’s position is consistently that there are resin-filled regions below an upper surface of the metal part.

II. Patent Owner’s construction of “resin package” is correct

The specification defines (expressly and through repeated and consistent usage) the terms resin package, resin part, and metal part to refer to a singulated light emitting device. Terms such as “singulated” do not render an apparatus claim invalid *per se*; courts routinely permit them. The claimed device is singulated.

Irrespective of incorporation of background art, Loh does not describe its invention as encompassing singulated devices. Nothing Petitioner says fixes this.

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