

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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VIZIO, INC.,  
Petitioner,

v.

NICHIA CORPORATION  
Patent Owner.

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Case IPR2018-00437  
Patent 9,537,071

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**PETITIONER'S OBJECTIONS TO EXHIBITS SUBMITTED WITH  
PATENT OWNER'S RESPONSE AND CONTINGENT MOTION TO  
AMEND CLAIMS**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Vizio, Inc. (“Petitioner”) hereby submits the following objections to Patent Owner Nichia Corporation’s (“Patent Owner”)’s Exhibits 2008-2010 and 2019-2020 and any reference to or reliance on them, without limitation. Petitioner’s objections below apply the Federal Rules of Evidence (“F.R.E.”). These objections address evidentiary deficiencies in the material submitted by Patent Owner with its Response and Contingent Motion to Amend Claims on September 18, 2018.

To the extent Patent Owner does not cite these Exhibits or to paragraphs of its witness declarations (Exhibits 2008 and 2019) in its Patent Owner Response or Contingent Motion to Amend Claims, permitting reference to or reliance on these Exhibits and paragraphs in other submissions of Patent Owner would be impermissible, misleading, irrelevant, and unfairly prejudicial to Petitioner (F.R.E. 401, 402, 403). By failing to cite Exhibits or paragraphs of witness declarations, Patent Owner has also waived any arguments as to those Exhibits and portions of the declarations. *See* Paper 18 at 7; 37 C.F.R. § 42.6(a)(3).

**I. Objections to Exhibit 2008, And Any Reference to/Reliance Thereon**

Grounds for objection: F.R.E. 702 (“Testimony by Expert Witnesses”); F.R.E. 703 (“Bases of an Expert’s Opinion Testimony”); F.R.E. 602 (“Need for Personal Knowledge”); F.R.E. 801, 802 (Impermissible Hearsay); F.R.E. 401 (“Test for Relevant Evidence”); F.R.E. 402 (“General Admissibility of Relevant

Evidence”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”); 37 C.F.R. § 42.6(a)(3) (Rule Against Incorporation by Reference); 37 C.F.R. § 42.61 (“Admissibility”).

Petitioner objects to Exhibit 2008. The declarant of Exhibit 2008, Dr. Schubert, fails to provide sufficient underlying facts or data upon which the statements contained therein could legitimately be based, in violation of F.R.E. 702. Dr. Schubert has also not “reliably applied the principles and methods to the facts of the case,” and his opinions in Exhibit 2008 are not “the product of reliable principles and methods,” in violation of F.R.E. 702. Furthermore, there is no indication that Dr. Schubert based his opinions on facts or data upon which an expert in the relevant field would reasonably rely in violation of F.R.E. 703. In addition, Dr. Schubert lacks personal knowledge of material to which he testifies in violation of F.R.E. 602.

Further, Dr. Schubert purports to repeat statements in the exhibit and/or other sources they cite for the truth of the matter contained therein, but without demonstrating that any hearsay exception applies, in violation of F.R.E. 801, 802, and 403.

Accordingly, permitting reliance on Exhibit 2008 in Patent Owner’s Response or other submissions of Patent Owner would be misleading and unfairly prejudicial to Petitioner (F.R.E. 403).

## **II. Objections to Exhibit 2009, And Any Reference to/Reliance Thereon**

Grounds for objection: 37 C.F.R. § 42.61 (“Admissibility”); 37 C.F.R. § 42.64(a) (“Deposition evidence”); 37 C.F.R. § 42.53(f)(8) (Objections in depositions).

Exhibit 2009 appears to be a deposition transcript from another proceeding. Petitioner hereby expressly repeats and incorporates by reference all of objections stated on the record in those depositions, and affirmatively maintain all such objections.

## **III. Objections to Exhibit 2010, And Any Reference to/Reliance Thereon**

Grounds for objections: F.R.E. 901 (“Authenticating or Identifying Evidence”); F.R.E. 1002 (“Requirement of the Original”); F.R.E. 1003 (“Admissibility of Duplicates”); F.R.E. 401 (“Test for Relevant Evidence”); F.R.E. 402 (“General Admissibility of Relevant Evidence”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”); F.R.E. 801 (“Definitions That Apply to This Article; Exclusions from Hearsay”), 802 (“The Rule Against Hearsay”); 37 C.F.R. § 42.61 (“Admissibility”).

Petitioners object to the use of Exhibit 2010 under F.R.E. 901, 1002, 1003, and 37 C.F.R. § 42.61 because Patent Owner fails to provide the authentication required for this document, and the Exhibit is not self-authenticating under F.R.E. 902.

Petitioners object to Exhibit 2010 as impermissible hearsay under F.R.E. 801, 802, and 805 to the extent to which the out of court statements therein, or the out of court statements referenced therein, are offered for the truth of the matters asserted and constitute impermissible hearsay for which Patent Owner has not demonstrated any exception or exclusion to the rule against hearsay (F.R.E. 801, 802, 805).

**IV. Objections to Exhibit 2019, And Any Reference to/Reliance Thereon**

Grounds for objection: F.R.E. 702 (“Testimony by Expert Witnesses”); F.R.E. 703 (“Bases of an Expert’s Opinion Testimony”); F.R.E. 602 (“Need for Personal Knowledge”); F.R.E. 801, 802 (Impermissible Hearsay); F.R.E. 401 (“Test for Relevant Evidence”); F.R.E. 402 (“General Admissibility of Relevant Evidence”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”); 37 C.F.R. § 42.24(a)(1)(vi) (Page-limit for Motions to Amend); 37 C.F.R. § 42.6(a)(3) (Rule Against Incorporation by Reference); 37 C.F.R. § 42.61 (“Admissibility”).

Petitioner objects to Exhibit 2019. The declarant of Exhibit 2019, Dr. Schubert, fails to provide sufficient underlying facts or data upon which the statements contained therein could legitimately be based, in violation of F.R.E. 702. Dr. Schubert has also not “reliably applied the principles and methods to the facts of the case,” and his opinions in Exhibit 2019 are not “the product of reliable

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