

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

_____	)	
<b>NICHIA CORPORATION,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>C.A. No. 2:16-cv-01453-JRG</b>
	)	<b>(LEAD CASE)</b>
<b>v.</b>	)	
	)	<b>Jury Trial Demanded</b>
<b>VIZIO, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**PLAINTIFF NICHIA CORPORATION’S P.R. 4-5(a)  
OPENING CLAIM CONSTRUCTION BRIEF**

**TABLE OF CONTENTS**

I.	INTRODUCTION .....	1
II.	SUMMARY OF THE PATENTS-IN-SUIT.....	3
III.	APPLICABLE LAW .....	4
IV.	CLAIM CONSTRUCTION ANALYSIS .....	5
A.	Disputed Terms No. 1 and No. 2: “Concave” and “Convex” .....	5
B.	Disputed Term No. 3: “Substantially Flat” .....	8
C.	Disputed Term No. 4: “Resin” .....	12
D.	Disputed Term No. 5: “A Notch is Formed in the Metal Part” .....	16
E.	Disputed Term No. 6: “Cutting ... Along [the at Least One Notch]” .....	21
F.	Disputed Term No. 7: The Preambles of Claims 1 and 17 of the ’250 Patent are Limitations .....	22
V.	NONE OF THE ASSERTED CLAIMS ARE INVALID UNDER 35 U.S.C. § 112 .....	25
A.	The Phrase “Inner Side Wall Surface” Is Not Indefinite .....	25
B.	The Term “Substantially Flat” Is Not Indefinite.....	26
VI.	DEFENDANTS’ POSITIONS ARE INCONSISTENT WITH THEIR STATEMENTS TO THE PATENT OFFICE .....	26
VII.	AGREED CONSTRUCTIONS .....	28
VIII.	CONCLUSION.....	29

**TABLE OF AUTHORITIES**

**Cases**

*ams AG v. 511 Innovations, Inc.*, IPR2016-01787,  
 Paper No. 15, at 6 (P.T.A.B. Mar. 15, 2017) ..... 27

*Aventis Pharms., Inc. v. Amino Chems. Ltd.*,  
 715 F.3d 1363 (Fed. Cir. 2013) ..... 17

*Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp.*,  
 320 F.3d 1339 (Fed. Cir. 2003) ..... 25

*Catalina Marketing Int’l v. Coolsavings.com, Inc.*,  
 289 F.3d 801 (Fed. Cir. 2002) ..... 1, 24

*CCS Fitness, Inc. v. Brunswick Corp.*,  
 288 F.3d 1359 (Fed. Cir. 2002) ..... 8, 15

*GE Lighting Sols., LLC v. AgiLight, Inc.*,  
 750 F.3d 1304 (Fed. Cir. 2014) ..... 13

*Globus Med., Inc. v. Flexuspine, Inc.*, IPR2015-01830,  
 Paper No. 11, at 9 (P.T.A.B. Feb. 25, 2016)..... 27

*Hill-Rom Servs., Inc. v. Stryker Corp.*,  
 755 F.3d 1367 (Fed. Cir. 2014) ..... 1, 15

*Kaneka Corp. v. Xiamen Kingdomway Group Co.*,  
 790 F.3d 1298 (Fed. Cir. 2015) ..... 7

*Liebel-Flarsheim Co. v. Medrad, Inc.*,  
 358 F.3d 898 (Fed. Cir. 2004) ..... 14

*Nautilus, Inc. v. Biosig Instruments, Inc.*,  
 134 S. Ct. 2120 (U.S. 2014)..... 25

*Nichia Corp. v. Everlight Americas, Inc.*,  
 855 F.3d 1328 (Fed. Cir. 2017) ..... 24

*Nichia Corp. v. Everlight Elecs. Co., Ltd.*,  
 No. 13-cv-702-JRG, 2014 WL 7149169 (E.D. Tex. Dec. 12, 2014)..... 4

*Optis Cellular Tech., LLC v. Kyocera Corp.*,  
 2:16-cv-0059, 2017 U.S. Dist. LEXIS 18191 (E.D. Tex. Feb. 8, 2017)..... 5, 15, 16, 22

*Phillips v. AWH Corp.*,  
 415 F.3d 1303 (Fed. Cir. 2005) ..... passim

*Renishaw PLC v. Marposs Societa' Per Azioni*,  
158 F.3d 1243 (Fed. Cir. 1998) ..... 20

*Teleflex, Inc. v. Ficoso N. Am. Corp.*,  
299 F.3d 1313 (Fed. Cir. 2002) ..... 22

*Thorner v. Sony Computer Entm't Am. LLC*,  
669 F.3d 1362 (Fed. Cir. 2012) ..... 2, 8, 15

**Statutes**

35 U.S.C. § 112..... 1, 4, 25, 29

**Rules**

P.R. 4-3 ..... 1

P.R. 4-5(a)..... 1

## TABLE OF EXHIBITS

Name <sup>1</sup>	Abbreviation	Description
Appx. 1	'250 Patent	U.S. Patent No. 8,530,250
Appx. 2	'411 Patent	U.S. Patent No. 9,490,411
Appx. 3	'071 Patent	U.S. Patent No. 9,537,071
Dkt. 143	Joint Statement	Joint Claim Construction and Prehearing Statement pursuant to P.R. 4-3, filed October 30, 2017
Ex. A	Everlight Claim Construction Order	Claim Construction Memorandum and Order, dated December 12, 2014, issued by the Court in <i>Nichia Corp. v. Everlight Electronics Co., Ltd.</i> , Case No. 2:13-CV-702-JRG (Dkt. 79) ("Everlight Order")
Ex. B	Defendants' 4-3(d) Summary	Defendants' Summary of Expert Testimony Pursuant to Patent Local Rule 4-3(d), served October 30, 2017
Ex. C	-	Concave, Math Open Reference <a href="http://www.mathopenref.com/concave.html">http://www.mathopenref.com/concave.html</a> (last accessed Oct. 10, 2017)
Ex. D	-	U.S. Patent No. 6,627,482 ("Wang")
Ex. E	-	McGraw-Hill Dictionary of Scientific and Technical Terms, 6th ed. (2003)
Ex. F	-	Resin, Merriam-Webster <a href="https://www.merriam-webster.com/dictionary/resin">https://www.merriam-webster.com/dictionary/resin</a> (last accessed Oct. 10, 2017)
Ex. G	-	Resin, American Heritage Dictionary <a href="https://ahdictionary.com/word/search.html?q=resin">https://ahdictionary.com/word/search.html?q=resin</a> (last accessed Oct. 10, 2017)
Ex. H	-	Webster's Unabridged Dictionary of the English Language (2001)
Ex. I	-	The New Oxford American Dictionary, 2d Ed. (2005)
Ex. J	-	<i>Lowe's Companies, Inc., Lowe's Home Centers, LLC and L G Sourcing, Inc. v. Nichia Corp.</i> , Paper No. 2, Petition for <i>Inter Partes Review</i> (P.T.A.B. Aug. 29,

<sup>1</sup> The "Ex." numbers refer to the Exhibits attached to the Declaration of Michael H. Jones, dated November 21, 2017, and filed concurrently herewith.

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.