

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EVERLIGHT ELECTRONICS CO.,)
LTD.,)
Plaintiff,)

vs.)

NICHIA CORPORATION, and NICHIA)
AMERICA CORPORATION,)
Defendants.)

NICHIA CORPORATION and NICHIA)
AMERICA CORPORATION,)
Counter-Plaintiffs,)

vs.)

EVERLIGHT ELECTRONICS CO.,)
LTD.,)
Counter-Defendant.)

and)

EVERLIGHT AMERICAS, INC.,)
Defendant.)

Case No. 4:12-cv-11758-GAD-MKM
Hon. Gershwin A. Drain

JURY INSTRUCTIONS

Additional Keywords: 271

TABLE OF CONTENTS

	<u>Page</u>
POST-TRIAL INSTRUCTIONS	1
1. GENERAL INSTRUCTIONS	2
2. CONSIDERING WITNESS TESTIMONY	3
3. HOW TO EXAMINE THE EVIDENCE	4
4. EXPERT WITNESSES	5
5. SUMMARY OF CONTENTIONS.....	6
6. BURDENS OF PROOF.....	7
7. CLAIM CONSTRUCTION - GENERALLY	8
8. INDEPENDENT AND DEPENDENT CLAIMS	9
9. CLAIM INTERPRETATION.....	10
10. “COMPRISING” CLAIMS	12
11. INVALIDITY – BURDENS OF PROOF.....	13
12. ENABLEMENT	14
13. PRIOR ART AND PRIORITY.....	16
14. ANTICIPATION	17
15. OBVIOUSNESS.....	18
16. LEVEL OF ORDINARY SKILL	20
17. SCOPE AND CONTENT OF THE PRIOR ART	21
18. INFRINGEMENT – GENERALLY.....	22
19. DIRECT INFRINGEMENT	23
20. DIRECT INFRINGEMENT BY “LITERAL INFRINGEMENT”	24
21. DIRECT INFRINGEMENT “UNDER THE DOCTRINE OF EQUIVALENTS”	25

22.	THE RULE AGAINST IMPORTING LIMITATIONS FROM THE SPECIFICATION	26
23.	INSTRUCTIONS FOR DELIBERATIONS	27

POST-TRIAL INSTRUCTIONS

You have seen and heard the evidence in this case. I will now instruct you on the law that you must apply. It is your duty to follow the law as I give it to you. On the other hand, you the jury are the judges of the facts. Do not consider any statement that I have made during the trial or make in these instructions as an indication that I have any opinion about the facts of this case. Statements and arguments of the attorneys are not evidence and are not instructions on the law. They are intended only to assist the jury in understanding the evidence and the parties' contentions.

1. GENERAL INSTRUCTIONS

A verdict form has been prepared for you. You will take this form to the jury room and when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the form. Follow the instructions on the form and answer each question on the verdict form that is applicable from the facts as you find them. Do not decide who you think should win and then answer the questions accordingly. Your answers and your verdict must be unanimous.

In determining whether any fact has been proved in this case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

2. CONSIDERING WITNESS TESTIMONY

In deciding the facts, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it. In considering the testimony of any witness, you may take into account many factors, including the witness' opportunity and ability to see or hear or know the things the witness testified about; the quality of the witness' memory; the witness' appearance and manner while testifying; the witness' interest in the outcome of the case; any bias or prejudice the witness may have; other evidence that may have contradicted the witness' testimony; and the reasonableness of the witness' testimony in light of all the evidence. The weight of the evidence does not necessarily depend upon the number of witnesses who testify.

By the Court allowing testimony or other evidence to be introduced over the objection of an attorney, the Court did not indicate any opinion as to the weight or effect of such evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When the Court sustained an objection to a question addressed to a witness, the jury must disregard the question entirely, and may draw no inference from the wording of it or speculate as to what the witness would have testified to, if he or she had been permitted to answer the question.

At times during the trial it was necessary for the Court to talk with the lawyers here at the bench out of your hearing, or by calling a recess. We met because often during a trial something comes up that does not involve the jury. You should not speculate on what was discussed during such times.

In determining the weight to give to the testimony of a witness, you should ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact, or whether there was evidence that at some other time the witness said or did something, or failed to say or do something, that was different from the testimony the witness gave before you during the trial.

3. HOW TO EXAMINE THE EVIDENCE

Certain testimony in this case has been presented to you through a deposition. A deposition is the sworn, recorded answers to questions asked a witness in advance of the trial. This deposition testimony is entitled to the same consideration and is to be judged by you as to credibility and weight as if the witness had testified from the witness stand in court.

While you should consider only the evidence in this case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in the case.

The testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all the other evidence you believe that single witness.

There are two types of evidence that you may consider in properly finding the truth as to the facts in the case. One is direct evidence - such as testimony of an eyewitness. The other is indirect or circumstantial evidence - the proof of a chain of circumstances that indicates the existence or nonexistence of certain other facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

4. EXPERT WITNESSES

When knowledge of a technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field - called an expert witness - is permitted to state his or her opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely upon it.

In deciding whether to accept or rely upon the opinion of an expert witness, you may consider any bias of the witness.

5. SUMMARY OF CONTENTIONS

I will now summarize the issues that you must decide and for which I will provide instructions to guide your deliberations. You must decide the following main issues:

1. Whether Everlight has proved by clear and convincing evidence that Claims 2, 3, and 5 of the '925 Patent and Claims 2, 14 and 19 of the '960 Patent are invalid.
2. Whether Nichia has proved by a preponderance of the evidence that Everlight infringed Claims 2, 3 and 5 of the '925 Patent and Claims 2, 14 and 19 the '960 Patent.

6. BURDENS OF PROOF

Nichia has the burden of proving infringement of Claims 2, 3, and 5 of the '925 patent and Claims 2, 14, and 19 of the '960 Patent by a preponderance of the evidence. Preponderance of the evidence means evidence that persuades you that a claim is more likely true than not true. In determining whether any fact has been proved by a preponderance of the evidence, you may, unless otherwise instructed, consider the stipulations, the testimony of all witnesses regardless of who may have called them, and all exhibits received in evidence regardless of who may have produced them. It will be your job to determine whether Nichia has met its burden of proving that infringement of the asserted patent claims is more likely true than not true.

Everlight has the burden of proving invalidity of Claims 2, 3 and 5 of the '925 patent and Claims 2, 14, and 19 of the '960 Patent by clear and convincing evidence. Clear and convincing evidence means evidence that it is highly probable that the fact is true. This is a higher standard than the more likely than not standard but it is not so high as the standard used in criminal law, which is evidence beyond a reasonable doubt.

7. CLAIM CONSTRUCTION - GENERALLY

Before you decide whether Everlight has infringed the claims of Nichia's patents or whether Nichia's patents are invalid, you will have to understand the role of the patent claims. The patent claims are numbered sentences at the end of the patent. The claims are important because it is the words of the claims that define what a patent covers. The figures and text in the rest of the patent provide a description and/or examples of the invention and provide a context for the claims, but it is the claims that define the breadth of the patent's coverage.

You will first need to understand what Claims 2, 3, and 5 of the '925 Patent and Claims 2, 14 and 19 of the '960 Patent cover in order to decide whether or not there is infringement of the claims. The law says that it is my role to define the terms of the claims and it is your role to apply my definitions in determining whether there is or is not infringement.

I will now explain how a claim defines what it covers. A claim sets forth, in words, a set of requirements. Each claim sets forth its requirements in a single sentence. If a device or a method satisfies each of these requirements, then it is covered by the claim.

In patent law, the requirements of a claim are often referred to as "claim elements" or "claim limitations." When a thing meets all of the requirements of a claim, the claim is said to "cover" that thing, and that thing is said to "fall" within the scope of that claim. In other words, a claim covers a product where each of the claim elements or limitations is present in that product.

The patent claims involved here begin at column 31, line 26 of the '925 patent, and begin at column 30, line 65 of the '960 patent. You must use the same claim meaning for both your decision on invalidity and your decision on infringement.

8. INDEPENDENT AND DEPENDENT CLAIMS

This case involves two types of patent claims: independent claims and dependent claims.

An “independent claim” sets forth all of the requirements that must be met in order to be covered by that claim. Thus, it is not necessary to look at any other claim to determine what an independent claim covers. In this case, claim(s) 1 of the ‘925 Patent and claims 1 and 14 of the ‘960 Patent are each independent claims.

The remainder of the claims at issue from the ‘925 and ‘960 Patents are “dependent claims.” A dependent claim does not itself recite all of the requirements of the claim but refers to another claim for some of its requirements. In this way, the claim “depends” on another claim. A dependent claim incorporates all of the requirements of the claim(s) to which it refers. The dependent claim then adds its own additional requirements. To determine what a dependent claim covers, it is necessary to look at both the dependent claim and any other claim(s) to which it refers. A product that meets all of the requirements of both the dependent claim and the claim(s) to which it refers is covered by that dependent claim.

9. CLAIM INTERPRETATION

It is my job as judge to provide to you the meaning of any claim language that must be interpreted. You must accept the meanings I give you and use them when you decide whether any claim of the patent has been infringed and whether any claim is invalid. I will now tell you the meanings of the following words and groups of words from the patent claims.

Claim Term	Court's Construction
'925 Patent	
<p><i>“a garnet fluorescent material comprising 1) at least one element selected from the group consisting of [yttrium], [lutetium], [scandium], [lanthanum], [gadolinium], and [samarium], and 2) at least one element selected from the group consisting of Al, Ga and In, and being activated with cerium”</i> (Claim 1)</p>	<p>“a garnet fluorescent material comprising one or more elements selected from Yttrium, Lutetium, Scandium, Lanthanum, Gadolinium, and Samarium; and one or more elements selected from Aluminum, Gallium, and Indium, and being activated with cerium”</p>
<p><i>“a general formula $(Re_{1-r}SM_r)_3(Al_{1-s}Ga_s)_5O_{12}:Ce$, where $0 \leq r < 1$ and $0 \leq s \leq 1$ and Re is at least one selected from Y and Gd”</i> (Claim 3)</p>	<p>“a general formula $(Re_{1-r}SM_r)_3(Al_{1-s}Ga_s)_5O_{12}:Ce$, where r is greater than or equal to zero and less than one, where s is greater than or equal to zero and less than or equal to one, and Re is Yttrium, Gadolinium, or any combination thereof”</p>
<p><i>“comprises a nitride compound semiconductor represented by the formula: $In_iGa_jAl_kN$ where $0 \leq i$, $0 \leq j$, $0 \leq k$ and $i+j+k = 1$”</i> (Claim 1)</p>	<p>“comprises a nitride compound semiconductor represented by the formula $In_iGa_jAl_kN$, where i is greater than or equal to zero, j is greater than or equal to zero, and k is greater than or equal to zero and where i plus j plus k equals one”</p>

All other terms should be given their ordinary and customary meaning that those terms would have to a person of ordinary skill in the art at the time of the invention, that is, as of the effective filing date of the applications for the '925 Patent and '960 Patent.

You should not take my definition of the language of the claims as an indication that I have a view regarding how you should decide the issues that you are being asked to decide, such as invalidity and infringement. These issues are yours to decide.

10. “COMPRISING” CLAIMS

Claims 2, 3, and 5 of Nichia’s ‘925 patent and Claims 2, 14, and 19 of Nichia’s ‘960 Patent use the phrase “comprising” or “comprises.” The words “comprising” and “comprises” mean “including” or “containing but not limited to.”

If you find that Everlight’s accused products include all of the elements of any claim, the fact that Everlight’s accused products might include additional components would not avoid literal infringement of a claim that uses “comprising” language.

11. INVALIDITY – BURDENS OF PROOF

I will now instruct you on the rules you must follow in deciding whether or not Everlight has proven that claims 2, 3, and 5 of the '925 and claims 2, 14, and 19 of the '960 Patents are invalid. To prove that any claim of a patent is invalid, Everlight must persuade you by clear and convincing evidence, i.e., Everlight must convince you that it is highly probable that the claims are invalid

12. ENABLEMENT

Everlight also contends that claims 2, 3, and 5 of the '925 patent and claims 2, 14, and 19 of the '960 patent are invalid because the specifications of the '925 and '960 Patents do not contain a sufficiently full and clear description of how to make and use the full scope of the claimed invention. To succeed, Everlight must show by clear and convincing evidence that the '925 and '960 Patents do not contain a sufficiently full and clear description of the claimed invention. To be sufficiently full and clear, the description must contain enough information to have allowed a person having ordinary skill in the field of technology of the patent to make and use the full scope of the claimed invention at the time the original patent application was filed. This is known as the “enablement” requirement. If a patent claim is not enabled, it is invalid.

In order to be enabling, the patent must permit persons having ordinary skill in the field of technology of the patent to make and use the full scope of the claimed invention, which includes reasonable enablement of any claimed ranges, at the time of original filing without having to conduct undue experimentation. However, some amount of experimentation to make and use the invention is allowable. In deciding whether a person having ordinary skill would have to experiment unduly in order to make and use the invention, you may consider several factors:

- (1) the time and cost of any necessary experimentation;
- (2) how routine any necessary experimentation is in the field of light-emitting diode technology;
- (3) whether the patent discloses specific working examples of the claimed invention;
- (4) the amount of guidance presented in the patent;
- (5) the nature and predictability of the field of light-emitting diode technology;
- (6) the level of ordinary skill in the field of light-emitting diode technology; and
- (7) the scope of the claimed invention.

A claim is not necessarily invalid for failure to meet the enablement requirement merely because some of the claimed combinations or parts of the ranges are inoperative. However, if the number of inoperative embodiments becomes

significant, and in effect forces one of ordinary skill in the art to experiment unduly in order to practice the invention, the claims may be invalid.

No one or more of these factors is alone dispositive. Rather, you must make your decision whether or not the degree of experimentation required is undue based upon all of the evidence presented to you. You should weigh these factors and determine whether or not, in the context of this invention and the state of the art at the time of the original application, a person having ordinary skill would need to experiment unduly to make and use the full scope of the claimed invention.

13. PRIOR ART AND PRIORITY

Prior art may include items that were publicly known or that have been used or offered for sale, publications, or patents that disclose the claimed invention or elements of the claimed invention. To be prior art, the item or reference must have been made, known, used, published, or patented either before the invention was made or more than one year before the filing date of the patent application. However, prior art does not include a publication that describes the inventor's own work and was published less than one year before the date of invention.

Everlight has put at issue certain references alleged to be prior art to certain claims of the '925 Patent that are dated earlier than the filing date of the '925 Patent. To establish entitlement to the priority date of any of the foreign priority applications, Nichia must present evidence of entitlement to such priority. The ultimate burden of proving invalidity remains with Everlight.

In deciding whether claims 2, 3, and 5 of the '925 Patent are entitled to the priority of any of the five Japanese priority applications, you must consider the descriptions of the priority applications from the viewpoint of a person having ordinary skill in the field of technology of the patent when the application was filed. Claims 2, 3, and 5 of the '925 Patent are entitled to the priority of a Japanese priority application if a person having ordinary skill reading the priority application would have recognized that it describes the full scope of the claimed invention as it is claimed in claims 2, 3 and 5 of the '925 Patent and that the inventors actually possessed that full scope by the filing date of the priority application.

The priority requirement may be satisfied by any combination of the words, structures, figures, diagrams, formulas, etc., contained in the patent application. The full scope of a claim or any particular requirement in a claim need not be expressly disclosed in the priority application if a person having ordinary skill in the field of technology of the patent at the time of filing would have understood that the full scope or missing requirement is in the priority application.

14. ANTICIPATION

In order for someone to be entitled to a patent, the invention must actually be “new.” In general, inventions are new when the identical product has not been made, used, or disclosed before. Anticipation must be determined on a claim-by-claim basis.

Everlight contends that claims 2, 3, and 5 of the '925 patent and claims 2, 14, and 19 of the '960 patent are invalid because the claimed inventions are anticipated. Everlight must convince you of this by clear and convincing evidence, i.e., that the evidence highly probably demonstrates that the claim(s) is/are invalid.

Here is a list of ways that Everlight can show that a patent claim was not new:

- (1) An invention is not new if it was known to or used by others in the United States before the date of invention. An invention is known when the information about it was reasonably accessible to the public on that date.
- (2) An invention is not new if it was already patented or described in a printed publication, anywhere in the world before the date of invention. A description is a “printed publication” only if it was publicly accessible.
- (3) An invention is not new if it was described in a published patent application filed by another in the United States before the date of invention.
- (4) An invention is not new if the claimed invention was described in a patent granted on an application for patent by another filed in the United States and the application was filed before the effective filing date of the application for the '925 and '960 Patents.

15. OBVIOUSNESS

Even though an invention may not have been identically disclosed or described before it was made by an inventor, in order to be patentable, the invention must also not have been obvious to a person of ordinary skill in the field of technology of the patent at the time the invention was made.

Everlight may establish that a patent claim is invalid by showing, by clear and convincing evidence, that the claimed invention would have been obvious to persons having ordinary skill in the art at the time the invention was made in the field of light emitting diode technology.

In determining whether a claimed invention is obvious, you must consider the level of ordinary skill in the field of light emitting diode technology that someone would have had by July 29, 1997, as Everlight contends, or July 29, 1996, as Nichia contends, the scope and content of the prior art, and any differences between the prior art and the claimed invention.

Keep in mind that the existence of each and every element of the claimed invention in the prior art does not necessarily prove obviousness. Most, if not all, inventions rely on building blocks of prior art. In considering whether a claimed invention is obvious, you may but are not required to find obviousness if you find that at the time of the claimed invention there was a reason that would have prompted a person having ordinary skill in the field of light emitting diode technology to combine the known elements in a way the claimed invention does, taking into account such factors as (1) whether the claimed invention was merely the predictable result of using prior art elements according to their known function(s); (2) whether the claimed invention provides an obvious solution to a known problem in the relevant field; (3) whether the prior art teaches or suggests the desirability of combining elements claimed in the invention; (4) whether the prior art teaches away from combining elements in the claimed invention; (5) whether it would have been obvious to try the combinations of elements, such as when there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions; and (6) whether the change resulted more from design incentives or other market forces. To find it rendered the invention obvious, you must find that the prior art provided a reasonable expectation of success. Obvious to try is not sufficient in unpredictable technologies.

In determining whether the claimed invention was obvious, consider each claim separately. Do not use hindsight, i.e., consider only what was known at the time of the invention.

In making these assessments, you should take into account any objective evidence (sometimes called “secondary considerations”) that may have existed at the time of the invention date and afterwards that may shed light on the obviousness or not of the claimed invention, such as:

- a. Whether the invention was commercially successful as a result of the merits of the claimed invention (rather than the result of design needs or market-pressure advertising or similar activities);
- b. Whether the invention satisfied a long-felt need;
- c. Whether others had tried and failed to make the invention;
- d. Whether others invented the invention at roughly the same time;
- e. Whether others copied the invention;
- f. Whether there were changes or related technologies or market needs contemporaneous with the invention;
- g. Whether the invention achieved unexpected results;
- h. Whether others in the field praised the invention;
- i. Whether persons having ordinary skill in the art of the invention expressed surprise or disbelief regarding the invention;
- j. Whether others sought or obtained rights to the patent from the patent holder; and
- k. Whether the inventor proceeded contrary to accepted wisdom in the field.

16. LEVEL OF ORDINARY SKILL

In deciding what the level of ordinary skill in the field of light emitting diode technology is, you should consider all the evidence introduced at trial, including but not limited to: (1) the levels of education and experience of the inventor and other persons actively working in the field; (2) the types of problems encountered in the field; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; and (5) the sophistication of the technology.

17. SCOPE AND CONTENT OF THE PRIOR ART

In considering whether the claimed invention was obvious, you must first determine the scope and content of the prior art.

The scope and content of prior art for deciding whether the invention was obvious includes prior art in the same field as the claimed invention, regardless of the problem addressed by the item or reference, and prior art from different fields that a person of ordinary skill in the art using common sense might combine if familiar so as to solve the problem, like fitting together the pieces of a puzzle. When a party attacking the validity of a patent relies on prior art which was specifically considered by the Examiner during the prosecution of the application leading to the issuance of the patent, that party bears the burden of overcoming the deference due a qualified government agency official presumed to have performed his or her job.

18. INFRINGEMENT – GENERALLY

I will now instruct you how to decide whether or not Everlight has infringed Claims 2, 3 and 5 of the '925 patent and Claims 2, 14 and 19 of the '960 Patent.

In this case, Nichia has alleged that Everlight's products directly infringe Claims 2, 3 and 5 of the '925 patent and Claims 2, 14, and 19 of the '960 Patent.

In order to prove infringement, Nichia must prove by a preponderance of the evidence that the requirements of Claims 2, 3 and 5 of the '925 patent and Claims 2, 14, and 19 of the '960 Patent, that is, separately for each asserted claim that it is more likely than not that all of the requirements of that claim have been proven.

I will now explain infringement in more detail.

19. DIRECT INFRINGEMENT

In this case, Nichia asserts that Everlight has directly infringed the '925 and '960 patents. In order to prove infringement, Nichia must prove by a preponderance of the evidence, *i.e.*, that it is more likely than not, that Everlight made, used, imported, offered to sell, or sold in the United States a product or products that meet all of the requirements of one or more of the asserted claims of the '925 or '960 patent. Nichia must prove infringement separately for each accused product.

You must compare each accused product with each and every one of the requirements of the asserted claims to determine whether all of the requirements of any claim are met. If any Everlight product completely omits any limitation recited in any asserted claim of the '925 or '960 patent, then that product does not infringe that claim.

For direct infringement, Nichia is not required to prove that Everlight intended to infringe or knew of the patents.

20. DIRECT INFRINGEMENT BY “LITERAL INFRINGEMENT”

There are two types of “direct infringement”: (1) “literal infringement” and (2) “infringement under the doctrine of equivalents.” In order to prove direct infringement by literal infringement, Nichia must prove by a preponderance of the evidence, i.e., that it is more likely than not, that Everlight made, used, sold, offered for sale within, or imported into the United States an accused product that meets all of the requirements of a claim and did so without the permission of Nichia during the time that the ‘925 and ‘960 Patents were in force. You must compare each accused product with each and every one of the requirements of a claim to determine whether all of the requirements of that claim are met.

You must determine, separately for each asserted claim, whether or not there is infringement. There is one exception to this rule. If you find that a claim on which other claims depend is not infringed, there cannot be infringement of any dependent claim that refers directly or indirectly to that independent claim. On the other hand, if you find that an independent claim has been infringed, you must still decide, separately, whether the accused product meets the additional requirements of any claims that depend from the independent claim, thus, whether those claims have also been infringed. A dependent claim includes all the requirements of any of the claims to which it refers plus additional requirements of its own.

21. DIRECT INFRINGEMENT “UNDER THE DOCTRINE OF EQUIVALENTS”

If a company makes, uses, sells, offers to sell within, or imports into the United States a product that does not meet all of the requirements of a claim and thus does not literally infringe that claim, there can still be direct infringement if that product satisfies that claim “under the doctrine of equivalents.”

Under the doctrine of equivalents, a product infringes a claim if the accused product contains elements corresponding to each and every requirement of the claim that is equivalent to, even though not literally met by, the accused product. You may find that an element or step is equivalent to a requirement of a claim that is not met literally if a person having ordinary skill in the field of technology of the patent would have considered the differences between them to be “insubstantial” or would have found that the structure: (1) performs substantially the same function and (2) works in substantially the same way (3) to achieve substantially the same result as the requirement of the claim. In order for the structure to be considered interchangeable, the structure must have been known at the time of the alleged infringement to a person having ordinary skill in the field of technology of the patent. Interchangeability at the present time is not sufficient. In order to prove infringement by “equivalents,” Nichia must prove the equivalency of the structure to a claim element by a preponderance of the evidence.

22. THE RULE AGAINST IMPORTING LIMITATIONS FROM THE SPECIFICATION

It is a “bedrock principle of patent law” that “the claims of a patent define the invention to which the patentee is entitled the right to exclude” and the “written description part of the specification itself does not delimit the right to exclude. That is the function and purpose of claims.”

23. INSTRUCTIONS FOR DELIBERATIONS

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

It is your sworn duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case, do not hesitate to re-examine your own opinion and change your mind if you become convinced that you are wrong. However, do not give up your honest beliefs solely because the others think differently, or merely to finish the case.

Remember that in a very real way you are the judges – judges of the facts. Your only interest is to seek the truth from the evidence in the case.

When you retire to the jury room to deliberate your verdict, you may take this charge with you as well as exhibits which the Court has admitted into evidence. Select your Foreperson and conduct your deliberations. If you recess during your deliberations, follow all of the instructions that the Court has given you regarding your conduct during the trial. After you have reached your unanimous verdict, your Foreperson is to complete on the form your answers to the questions. Do not reveal your answers until such time as you are discharged, unless otherwise directed by me. You must never disclose to anyone, not even to me, your numerical division on any question.

Any notes that you have taken during this trial are only aids to memory. If your memory should differ from your notes, then you should rely on your memory and not on the notes. The notes are not evidence. A juror who has not taken notes should rely on his or her independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

If you want to communicate with me at any time, please give a written message or question to the bailiff, who will bring it to me. I will then respond as promptly as possible either in writing or by having you brought into the courtroom so that I can

address you orally. I will always first disclose to the attorneys your question and my response before I answer your question.

After you have reached a verdict, you are not required to talk with anyone about the case unless the Court orders otherwise. You may now retire to the jury room to deliberate.