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

NICHIA CORPORATION,)
Plaintiff,)
V.)
WILMAR CORPORATION,)
Defendant.)

Civil Action No. <u>2:10-cv-358</u> Jury Trial Demanded

COMPLAINT

Plaintiff Nichia Corporation brings this Complaint against Wilmar Corporation, and in support alleges as follows:

THE PARTIES

1. Plaintiff Nichia Corporation ("Nichia") is a corporation organized and existing under the laws of Japan.

 On information and belief, Defendant Wilmar Corporation is a company existing under the laws of the State of Washington, with a principal place of business located at 801 SW 16th Street, Renton, WA 98057.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has Federal question jurisdiction pursuant to 28 U.S.C. § 1331 and exclusive original jurisdiction pursuant to 28 U.S.C. § 1338(a).

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

Case 2:10-cv-00358-TJW Document 1 Filed 09/13/10 Page 2 of 6

5. This Court has personal jurisdiction over Defendant because, on information and belief, it manufactures, imports, distributes, markets, sells and/or offers for sale infringing products in this judicial district.

<u>COUNT I</u> <u>INFRINGEMENT OF U.S. PATENT NO. 5,998,925</u>

6. Plaintiff realleges and incorporates by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1-5 of this Complaint.

7. U.S. Patent No. 5,998,925 ("the '925 patent"), entitled "Light Emitting Device Having a Nitride Compound Semiconductor and a Phosphor Containing a Garnet Fluorescent Material," was duly and legally issued on December 7, 1999, by the U.S. Patent and Trademark Office. A copy of the '925 patent is attached as Exhibit A.

8. Nichia is the owner of the '925 patent by virtue of an assignment and owns all right and title to the '925 patent.

9. Upon information and belief, Defendant has infringed and continues to infringe one or more of the claims of the '925 patent, directly, contributorily, and/or by inducement, by making, using, selling, offering for sale and/or importing in this country (and in this judicial district), and inducing others to use, without license, certain devices containing infringing LEDs in violation of 35 U.S.C. § 271.

10. Upon information and belief, Defendant's acts of infringement of the '925 patent were, in whole or in part, done willfully and with knowledge of the '925 patent.

11. Plaintiff has been and will continue to be damaged by Defendant's infringement and will be irreparably harmed unless that infringement is enjoined.

<u>COUNT II</u> INFRINGEMENT OF U.S. PATENT NO. 7,531,960

12. Plaintiff realleges and incorporates by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1-11 of this Complaint.

13. U.S. Patent No. 7,531,960 ("the '960 patent"), entitled "Light Emitting Device with Blue Light LED and Phosphor Components," was duly and legally issued on May 12, 2009, by the U.S. Patent and Trademark Office. A copy of the '960 patent is attached as Exhibit B.

14. Nichia is the owner of the '960 patent by virtue of an assignment and owns all right and title to the '960 patent.

15. Upon information and belief, Defendant has infringed and continues to infringe one or more of the claims of the '960 patent, directly, contributorily, and/or by inducement, by making, using, selling, offering for sale and/or importing in this country (and in this judicial district), and inducing others to use, without license, certain devices containing infringing LEDs in violation of 35 U.S.C. § 271.

16. Upon information and belief, Defendant's acts of infringement of the '960 patent were, in whole or in part, done willfully and with knowledge of the '960 patent.

17. Plaintiff has been and will continue to be damaged by Defendant's infringement and will be irreparably harmed unless that infringement is enjoined.

<u>COUNT III</u> <u>INFRINGEMENT OF U.S. PATENT NO. 5,652,434</u>

18. Plaintiff realleges and incorporates by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1-17 of this Complaint.

Case 2:10-cv-00358-TJW Document 1 Filed 09/13/10 Page 4 of 6

19. U.S. Patent No. 5,652,434 ("the '434 patent"), entitled "Gallium Nitride-Based III-V Group Compound Semiconductor," was duly and legally issued on July 29, 1997, by the U.S. Patent and Trademark Office. A copy of the '434 patent is attached as Exhibit C.

20. Nichia is the owner of the '434 patent by virtue of an assignment and owns all right and title to the '434 patent.

21. Upon information and belief, Defendant has infringed and continues to infringe one or more of the claims of the '434 patent, directly, contributorily, and/or by inducement, by making, using, selling, offering for sale and/or importing in this country (and in this judicial district), and inducing others to use, without license, certain devices containing infringing LEDs in violation of 35 U.S.C. § 271.

22. Upon information and belief, Defendant's acts of infringement of the '434 patent were, in whole or in part, done willfully and with knowledge of the '434 patent.

23. Plaintiff has been and will continue to be damaged by Defendant's infringement and will be irreparably harmed unless that infringement is enjoined.

<u>COUNT IV</u> INFRINGEMENT OF U.S. PATENT NO. 6,093,965

24. Plaintiff realleges and incorporates by reference, as if fully set forth herein, all of the allegations contained in paragraphs 1-23 of this Complaint.

25. U.S. Patent No. 6,093,965 ("the '965 patent"), entitled "Gallium Nitride-Based III-V Group Compound Semiconductor," was duly and legally issued on July 25, 2000, by the U.S. Patent and Trademark Office. A copy of the '965 patent is attached as Exhibit D.

26. Nichia is the owner of the '965 patent by virtue of an assignment and owns all right and title to the '965 patent.

Case 2:10-cv-00358-TJW Document 1 Filed 09/13/10 Page 5 of 6

27. Upon information and belief, Defendant has infringed and continues to infringe one or more of the claims of the '965 patent, directly, contributorily, and/or by inducement, by making, using, selling, offering for sale and/or importing in this country (and in this judicial district), and inducing others to use, without license, certain devices containing infringing LEDs in violation of 35 U.S.C. § 271.

28. Upon information and belief, Defendant's acts of infringement of the '965 patent were, in whole or in part, done willfully and with knowledge of the '965 patent. Plaintiff has been and will continue to be damaged by Defendant's infringement and will be irreparably harmed unless that infringement is enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following:

A. A judgment that Defendant has infringed one or more of the claims of U.S. Patent Nos. 5,998,925; 7,531,960; 5,652,434; and, 6,093,965;

B. A permanent injunction pursuant to 35 U.S.C. § 283, restraining and enjoining Defendant and its officers, agents, attorneys, employees, and those acting in privity or active concert with them, from infringement of one or more of the claims of U.S. Patent Nos. 5,998,925; 7,531,960; 5,652,434; and, 6,093,965 for the full terms thereof;

C. An award of damages to Plaintiff including pre-judgment and post-judgment interest, in an amount adequate to compensate for Defendant's infringement of one or more of the claims of U.S. Patent Nos. 5,998,925; 7,531,960; 5,652,434; and, 6,093,965;

D. A judgment that Defendant has willfully infringed one or more of the claims of U.S. Patent Nos. 5,998,925; 7,531,960; 5,652,434; and, 6,093,965;

E. An award of treble damages pursuant to 35 U.S.C. § 284 for willful infringement;

- F. An award of Plaintiff's costs and reasonable attorney's fees;
- G. A declaration that this case is exceptional pursuant to 35 U.S.C. § 285; and,
- H. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff requests a trial by jury on all issues triable by a jury.

DATE: September 13, 2010

Respectfully submitted,

BY: <u>/s/ Otis Carroll</u> Otis W. Carroll State Bar No. 03895700 Collin M. Maloney State Bar No. 00794219 Mandy Carroll Nelson State Bar No. 24055270 IRELAND, CARROLL & KELLEY, P.C. 6101 South Broadway, Suite 500 Tyler, TX 75703 Telephone: (903) 561-1600 Facsimile: (903) 581-1071 Fedserv@icklaw.com

ATTORNEYS FOR PLAINTIFF

Of Counsel

FOLEY & LARDNER LLP Kenneth E. Krosin (to be admitted pro hac vice) Michael D. Kaminski (to be admitted pro hac vice) 3000 K St., NW, Suite 600 Washington, DC 20007 Telephone: (202) 672-5300 Facsimile: (202) 672-5399