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8			
9	UNITED STATES DISTRICT COURT		
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11	NORTHERN DISTRICT OF CALIFORNIA		
12	SAN JOSE DIVISION		
13			
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15	TRUSTEES OF BOSTON UNIVERSITY and CREE LIGHTING COMPANY	Case No	
16	Plaintiffs,	COMPLAINT FOR	
17	V.	INFRINGEMENT OF U.S. PATENT NO. 5,686,738	
18	NICHIA CORPORATION and NICHIA AMERICA CORPORATION,	JURY TRIAL DEMANDED	
19	Defendants.		
20	Plaintiffs, Trustees of Boston University ("BU") and Cree Lighting Company		
21	("Cree Lighting"), by and for their complaint against defendants, Nichia Corporation and Nichia		
22	America Corporation, allege as follows:		
23	NATURE OF THE ACTION		
24	1. This is an action arising under the patent laws of the United States, Title 35 of the		
25	United States Code from Defendants' infringement of a patent relating to gallium nitride film		
26	technology. Plaintiffs seek damages for Defendants' infringement and a permanent injunction		
27			
28	restraining Defendants from further infringement.		
	COMPLAINT FOR PATENT INFRINGEMENT UNDER 35 U.S.C. § 1 et seq. SV1:\120992\01\2LCW01!.DOC\39603.0009		

JURISDICTION AND VENUE

- 2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).
- 3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).
- 4. Venue is proper in this district because Defendants have, among other things, advertised and/or offered to sell infringing products within this state and within this judicial district. Furthermore, upon information and belief, Defendant Nichia America maintains a sales office in this district. Defendants are accordingly subject to the jurisdiction of this Court consistent with the Fourteenth Amendment to the United States Constitution.

INTRADISTRICT ASSIGNMENT

5. This case is properly assigned to the San Jose division of this judicial district because a substantial part of the events or omissions which give rise to the claim occurred in this judicial district in that Defendants have committed and continue to commit acts of infringement within the San Jose division of this judicial district, including, without limitation, marketing, selling, and offering for sale infringing products. Furthermore, upon information and belief, Defendant Nichia America maintains a sales office that is within the San Jose division of this judicial district at 181 Metro Drive, Suite 350, San Jose, California 95110.

PARTIES

- 6. Plaintiff BU is a non-profit educational institution having its principal campus in Boston, Massachusetts. BU is the owner of U.S. Patent No. 5,686,738, entitled "Highly Insulating Monocrystalline Gallium Nitride Thin Films," duly and legally issued on November 11, 1997 to Theodore D. Moustakas (attached hereto as Exhibit A) ("the '738 Patent").
- 7. Plaintiff Cree Lighting is a California corporation with its principal place of business at 340 Storke Road, Goleta, California 93117. Cree Lighting is an exclusive licensee under the '738 Patent with substantial and proprietary rights thereunder, including the right to prosecute actions for infringement of said patent.
- 8. Upon information and belief, defendant Nichia Corporation is a Japanese corporation with its principal place of business at 491 Oka, Kaminaka-Cho, Anan, 774-8601 Tokushima, Japan.

9. Upon information and belief, defendant Nichia America Corporation is a Pennsylvania corporation with its principal place of business at 3775 Hempland Road, Mountville, Pennsylvania 17554 and a sales office in this district at 181 Metro Drive, Suite 350, San Jose, California 95110.

CAUSE OF ACTION FOR PATENT INFRINGEMENT

- 10. On information and belief, Defendants have been, for a time past, and are currently infringing, contributing to the infringement of, and/or inducing the infringement of, directly and/or indirectly, the '738 Patent by, among other things, making, using, selling, importing, and/or offering for sale, certain semiconductor devices comprised, *inter alia*, of gallium nitride films, within the territorial boundaries of the United States that are covered by one or more claims of the '738 Patent.
- 11. On information and belief, Defendants' infringement of the '738 Patent has been and is willful, and will continue unless enjoined by this Court. BU and Cree Lighting have suffered, and will continue to suffer, irreparable injury as a result of this willful infringement. Pursuant to 35 U.S.C. § 284, BU and Cree Lighting are entitled to damages for infringement and treble damages. Pursuant to 35 U.S.C. § 283, BU and Cree Lighting are entitled to a permanent injunction against further infringement.
- 12. This case is exceptional and, therefore, BU and Cree Lighting are entitled to attorneys' fees pursuant to 35 U.S.C. § 285.

WHEREFORE, BU and Cree Lighting pray for relief as follows:

PRAYER FOR RELIEF

- A. That Defendants be adjudged to have infringed the '738 Patent;
- B. That Defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from directly or indirectly infringing the '738 Patent;
- C. An accounting for damages by virtue of Defendants' infringement of the '738 Patent;

1	D.	An award of damag	es to compensate BU and Cree Lighting for Defendants'
2	infringement, pursuant to 35 U.S.C. § 284, said damages to be trebled because of Defendants		
3	willful infringement;		
4	E.	An assessment of p	re-judgment and post-judgment interest and costs against
5	Defendants,	together with an award	d of such interest and costs, in accordance with 35 U.S.C.
6	§ 284;		
7	F.	That Defendants be	directed to pay BU's and Cree Lighting's attorneys' fees
8	incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285; and		
9	G.	That BU and Cree L	ighting have such other and further relief as this Court may
10	deem just an	d proper.	
11			JURY DEMAND
12			
13		Plaintiffs BU and Cre	e Lighting demand a trial by jury on all disputed issues.
14	This 3rd day	of May, 2001.	MATTHEW D. POWERS
15			THEODORE T. HERHOLD ERIC K. LAUMANN
16			COLETTE VOGELE
17			WEIL, GOTSHAL & MANGES LLP
18			By:
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