

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NICHIA CORPORATION  
Petitioner,

v.

EMCORE CORPORATION  
Patent Owner.

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Case No. IPR2012-00005 (JYC)  
Patent 6,653,215

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Held: November 6, 2013

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Before KEVIN F. TURNER, STEPHEN C. SIU, and JONI Y. CHANG,  
*Administrative Patent Judges.*

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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and

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9                   ON BEHALF OF THE PATENT OWNER:

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17                   The above-entitled matter came on for hearing on Wednesday,  
18                   November 6, 2013, commencing at 1:00 p.m., at the U.S. Patent and  
19                   Trademark Office, 600 Dulany Street, Alexandria, Virginia.  
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23                   P R O C E E D I N G S  
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25                   JUDGE CHANG: Good afternoon. Welcome to the PTO. This is an  
26                   oral hearing for case IBR2012-00005. The Board instituted this Inter Partes  
27                   review for patent 6,653,215 on February 12th, 2013.

28                   At this time, we would like counsel to introduce yourself,  
29                   beginning with petitioner.

30                   MR. SMITH: Thank you, Your Honor, this is Matthew Smith  
31                   from Turner Boyd, LLP for the petitioner, Nichia Corporation. I have with

1 me Chase Brill at counsel table, and Mr. Maebius, from Foley & Lardner  
2 and also a representative from Nichia, Mr. Miki.

3 JUDGE CHANG: Thank you.

4 MR. TOMASULO: Good afternoon, Your Honor, my name is  
5 Michael Tomasulo for patent owner. With me is David Lin who is an  
6 associate of Winston & Strawn. I have Mr. Richard Merisier with Trial  
7 Graphics who is going to help us with our onscreen visual presentation. And  
8 I have a representative from Emcore, Mr. Daniel McGlynn, and a  
9 representative from Emcore's licensee, Everlight, Ms. Cindy Chou. Both  
10 Mr. McGlynn and Ms. Chow are attorneys.

11 JUDGE: Welcome. Thank you.

12 Each party has one hour to present their arguments. This is  
13 consistent with our order granting the parties' request for an oral hearing.  
14 Petitioner will proceed first, presenting its case as to the challenged-to  
15 claims. Since in this case the patent owner filed a motion to amend, so the  
16 petitioner may reserve rebuttal time for its case and time for responding to  
17 the patent owner's case with regard to the motion to amend claims.

18 Thereafter, patent owner will respond to the petitioner's case,  
19 and also present its case with regard to the motion to amend. Patent owner  
20 may reserve rebuttal time for its case as to the motion to amend claims. And  
21 after that, the petitioner will use up the rest of the time to respond to the  
22 patent owner's presentation on all matters.

23 And I just want to make sure that Judge Turner, are you okay  
24 over there? Judge Turner?

25 JUDGE TURNER: I can hear you, yes, thank you, I'm here.

1 JUDGE CHANG: Great. So, we can start.

2 MR. TOMASULO: May I ask a procedural clarification before  
3 we start?

4 JUDGE CHANG: Sure.

5 MR. TOMASULO: With respect to the order that one of the  
6 recent orders instituted regarding the scope of oral argument, it was made  
7 pretty clear that the parties are restricted to arguments that they made. And,  
8 so, if Mr. Smith, for instance, has an objection that I've gone beyond proper  
9 argument, would it be customary for him to wait until his rebuttal time to  
10 reserve that? I would appreciate that I wouldn't interject my objections  
11 during his presentation and reserve my objections until once he's concluded,  
12 and similarly he would do the same for me, but I want to make sure that to  
13 the extent either one of us do have objections, we understand the proper  
14 procedure for preserving them for the record.

15 JUDGE CHANG: Okay, that's a good question. Usually, so  
16 far, we have several AIA hearings, it's very similar to our other oral  
17 hearings, most of the time we do have a lot of questions, so in answering the  
18 questions, you might go outside the scope of the papers or argument that you  
19 filed, but we do ask that the counsel stay with the argument that was  
20 presented in your papers. But I realize sometimes it might go outside of it,  
21 and we try to give some leeway, but if your whole presentation is outside the  
22 scope of your paper, I mean, I think that to reserve the time and also  
23 efficiency of this proceeding, we would like to probably, you know, stop  
24 counsel from that line of argument.

1           So, I'm just going to try to be reasonable. I can't say at this  
2 point that, you know, I hope that not everybody's going to jump up and say  
3 objection to every single sentence, but we're going to give you leeway to go  
4 outside the scope of your paper, but like I said, if your main argument for ten  
5 to 15 minutes to be all outside the scope of your brief, then we will probably  
6 stop you. Is that fair?

7           MR. TOMASULO: It's certainly fair, but I'm still not entirely  
8 clear. I would prefer to not interrupt his presentation with an objection.

9           JUDGE CHANG: Okay.

10          MR. TOMASULO: May I just reserve my objections and make  
11 them at the time of my presentation?

12          JUDGE CHANG: You can.

13          MR. TOMASULO: I would just as soon not have Mr. Smith to  
14 interrupt me as well.

15          MR. SMITH: I'm happy to agree to that, Your Honor.

16          JUDGE CHANG: How's this? We're going to conduct it in a  
17 nice manner. So, I will ask Mr. Smith not to interrupt you, but I do want to  
18 make sure you understand that we may be able to interrupt your presentation  
19 with questions as well as may ask you where is that argument in your brief,  
20 so that way we can understand whether the argument was originally  
21 presented in your paper.

22          MR. TOMASULO: Understood, I'm certain that we would  
23 both welcome your questions.

24          JUDGE CHANG: Okay, that sounds great.

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