

JS 44 (Rev. 12/07) (cand rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

<p>I. (a) PLAINTIFFS</p> <p>Seoul Semiconductor Company, Ltd. Seoul Semiconductor, Inc.</p>	<p>DEFENDANTS</p> <p>Nichia Corporation Nichia America Corporation</p>
<p>(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p>
<p>(c) Attorney's (Firm Name, Address, and Telephone Number)</p> <p>Eugene Crew Townsend and Townsend and Crew LLP Two Embarcadero Center, 8th Floor San Francisco, CA 94111</p>	<p>Attorneys (If Known)</p>

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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td colspan="2"></td> <td>Incorporated or Principal Place of Business In This State</td> <td colspan="2"></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td colspan="2"></td> <td>Incorporated and Principal Place of Business In Another State</td> <td colspan="2"></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> <tr> <td colspan="2"></td> <td>Foreign Nation</td> <td colspan="2"></td> </tr> </table>	PTF	DEF		PTF	DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Citizen of This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4			Incorporated or Principal Place of Business In This State			<input type="checkbox"/> 2	<input type="checkbox"/> 2	Citizen of Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5			Incorporated and Principal Place of Business In Another State			<input type="checkbox"/> 3	<input type="checkbox"/> 3	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 6	<input type="checkbox"/> 6			Foreign Nation		
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IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<p>PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
		<p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Amtrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 15 U.S.C. section 2 (Sherman Act)

Brief description of cause:
 Monopolization, attempted monopolization and combination to monopolize


VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

SAN FRANCISCO/OAKLAND SAN JOSE

DATE: October 13, 2008 SIGNATURE OF ATTORNEY OF RECORD: 

ORIGINAL

FILED
08 OCT 28 PM 4:08
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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BZ

SEOUL SEMICONDUCTOR
COMPANY, LTD., a South Korean
corporation; SEOUL
SEMICONDUCTOR, INC., a California
corporation,

Plaintiffs,

v.

NICHIA CORPORATION, a Japanese
corporation; and NICHIA AMERICA
CORPORATION, a Pennsylvania
corporation,

Defendants.

Case No. 08

4932

**COMPLAINT FOR
MONOPOLIZATION, ATTEMPTED
MONOPOLIZATION, COMBINATION
TO MONOPOLIZE, VIOLATION OF
CALIFORNIA CARTWRIGHT ACT,
MALICIOUS PROSECUTION, AND
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE**

**DEMAND FOR JURY TRIAL
PURSUANT TO FED. R. CIV. P. 38(b)**

Plaintiffs SEOUL SEMICONDUCTOR COMPANY, LTD. and SEOUL
SEMICONDUCTOR, INC. (collectively, "SSC") complain of defendants NICHIA
CORPORATION and NICHIA AMERICA CORPORATION (collectively, "Nichia") as
follows:

NATURE OF ACTION

1
2 1. SSC brings this action to remedy the profound harm sustained by it as a result of
3 Nichia's predatory actions, perpetrated in both the marketplace and the courtroom in violation
4 of Federal and California law, with the goal of eliminating SSC from the world market for
5 light emitting diode devices ("LEDs") and thereby preserving Nichia's dominance of that
6 market. LEDs are semiconductor devices that are used as light sources in a variety of small
7 consumer electronic products, such as cell phones and laptop displays.

8 2. Nichia brought its predation into the courtroom in 2006 when, as Judge Maxine
9 Chesney of this District later found, Nichia instructed its lawyers to have their private research
10 firm (Nanoscience) "engineer" a "fake" purchase of LEDs from SSC by falsely representing to
11 SSC that it was solely for "research purposes" while concealing the fact that it was actually for
12 Nichia's use in starting a spurious lawsuit. Once it manipulated that fake purchase out of SSC,
13 Nichia sued SSC for patent infringement, claiming it sustained hundreds of millions of dollars
14 in damages because of SSC's alleged misconduct. It then invested over \$10 million to
15 prosecute its baseless lawsuit -- worth only \$62 in actual damages -- not to collect the \$62 but
16 to deploy the heavy machinery of litigation to crush its smaller rival and thereby fence out
17 competition in the fast growing world market for LEDs that Nichia had long dominated.

18 3. After the court summarily dismissed all but \$62 of Nichia's baseless claims,
19 Nichia still persisted in prosecuting what remained, in defiance of the federal court's later pleas
20 to stop its further "misuse of the judicial system" for anticompetitive purposes. It also sought
21 through commencement and prosecution of its baseless litigation to force SSC into a *per se*
22 unlawful division of the world market for LEDs by insisting that SSC vacate it as Nichia's
23 price for dismissal of its lawsuit. Nor did Nichia stop with a single lawsuit, but strafed its
24 smaller rival with a half dozen similarly abusive lawsuits throughout California, Asia and
25 Europe while broadcasting its predatory litigation campaign to the world market in order to --
26 as Nichia boasted -- "send a message" to competitors and customers alike that, unless they
27 heeded its "message," a similar fate would await them. SSC seeks by this action to have
28 Nichia held accountable for its unlawful, unprivileged and destructive actions.

JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT

1
2 4. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal
3 question) and § 1337 (commerce and antitrust regulation) because SSC's claims arise under the
4 antitrust laws of the United States (Sherman Act, 15 U.S.C. §§ 1 *et seq.*). This Court has
5 diversity jurisdiction under 28 U.S.C. § 1332(a) because the parties are citizens of different
6 states and the value of the matter in controversy exceeds seventy-five thousand dollars
7 (\$75,000) exclusive of interest and costs. This Court has supplemental jurisdiction of the
8 pendent state law claims under 28 U.S.C. § 1367. This Court has personal jurisdiction over
9 Nichia because Nichia is authorized to, and does, conduct business in California and has
10 committed many of the antitrust violations in California.

11 5. Venue is proper in this Court under 28 U.S.C. § 1391 because Nichia is found in
12 this district and because a substantial number of the events giving rise to the claims asserted
13 herein arose in this district.

14 6. Intradistrict assignment to the San Francisco division of the Northern District is
15 proper under Local Rule 3-5(b) because many of the actions giving rise to this action occurred
16 within this jurisdiction, specifically in the City and County of San Francisco.

17 7. Nichia has engaged in an exclusionary course of conduct that has occurred in,
18 and has substantially affected, domestic and foreign trade and commerce. Nichia's practices as
19 set forth below are being undertaken as part of a global strategy directed by, and ultimately
20 inuring to the benefit of, Nichia in the United States. If not enjoined, Nichia's practices will
21 substantially harm competition by reducing the quality and increasing the prices of LEDs sold
22 in the relevant market or otherwise restraining competition as further set forth below.

THE PARTIES

1
2 8. Seoul Semiconductor Company, Ltd. is a corporation organized under the laws
3 of South Korea with its principal place of business located at 148-29, Gasan-dong, Geumchun-
4 gu, Seoul 153-801, Korea. Seoul Semiconductor, Inc., a California corporation, is a wholly
5 owned United States subsidiary that is located in Los Angeles, California. SSC is one of the
6 leading designers and manufacturers of LEDs and has rapidly become one of the world's top
7 LED manufacturers with innovative management systems and advanced technologies.

8 9. Nichia Corporation is organized under the laws of Japan with its principal place
9 of business located at 491 Oka, Kaminaka-Cho, Anan, 774-8601, Tokushima, Japan. Nichia
10 America Corporation is a wholly owned United States subsidiary incorporated in Pennsylvania
11 with sales offices in California, Pennsylvania and Michigan. Throughout the relevant period
12 Nichia has sold, marketed and licensed and continues to sell, market and license LEDs and
13 LED-related products in the United States and specifically in the Northern District of
14 California.

NICHIA'S POWER IN THE RELEVANT MARKET

15
16 10. The relevant product market in this action consists of white side-view LEDs.
17 LEDs embody innovative technology that has begun to revolutionize the range of lighting
18 applications available and is expected to replace the incandescent bulb within 10 years. These
19 solid-state semiconductor devices have the ability to convert electrical energy directly into
20 light with little or no generation of heat. The main benefits of LEDs include their small size,
21 extreme durability, brightness, lower power requirements and energy efficiency. White side-
22 view LEDs are primarily used to backlight LCD (liquid-crystal display) screens found in
23 notebooks and various portable electronic devices such as cellular phones, digital audio players
24 (MP3 players) and personal digital assistants (PDAs). There are no alternatives to display
25 technology for handheld devices that offer similar benefits of white side-view LEDs as to cost,
26 power consumption, performance and longevity. There are currently other technologies for
27 backlighting LCD screens but white side-view LEDs are superior for smaller LCDs because
28 the alternatives are larger, use more power, contain toxic mercury and have a shorter lifespan.

1 Because there are no reasonable substitutes for white side-view LEDs, white side-view LEDs
2 constitute the relevant product market. The relevant geographic market is the world because
3 LEDs, as well as the consumer electronic products that incorporate them, are bought and sold
4 worldwide.

5 11. Approximately 90% of all LEDs are produced by only five or six companies
6 worldwide. Nichia has been manufacturing and selling LEDs since the early 1990s and has
7 acquired a dominant share in all key markets. SSC is informed and believes that in 2007
8 Nichia accounted for 50 to 60% of all white side-view LEDs sold worldwide, thereby
9 conferring upon Nichia substantial market power in the relevant market. Nichia conflated that
10 power with its vast arsenal of patents, which it then unlawfully deployed to exclude
11 competition by raising its rivals' costs as described below.

12 **NICHIA'S EXCLUSIONARY CONDUCT**

13 12. For many years, Nichia dominated the world market for LEDs, reaching market
14 shares in excess of 80% by 2000. As LEDs became more popular and SSC as well as other
15 firms developed innovative products, Nichia began to lose market share to its rivals. To
16 prevent this encroachment upon its dominance of the LED market, Nichia hatched a plan to
17 eliminate SSC and others who sought to compete with Nichia on the merits. The main strategy
18 employed by Nichia in furtherance of its plan was the repeated use of baseless litigation
19 against SSC -- without probable cause and regardless of the merits -- to frighten customers
20 from buying SSC's superior products and deter SSC and others from competing with Nichia on
21 the merits.

22 13. On January 10, 2006, Nichia launched its first predatory lawsuit against SSC in
23 the Northern District of California, claiming that SSC infringed four of Nichia's design
24 patents. This lawsuit was conceived and implemented in bad faith. Since a sale in the United
25 States is a jurisdictional requirement for infringement of a United States patent, Nichia -- in
26 collaboration with its counsel -- fabricated the purchase of a few samples of SSC's product so
27 as to create the false appearance of infringement. Nichia's counsel instructed its research firm
28 (Nanoscience) to purchase white side-view LEDs from SSC by falsely telling SSC that its

1 products were desired solely for research purposes and requesting SSC to "ship the samples to
2 Nanoscience" and "then forward the samples to us [Nichia's counsel] along with the original
3 packaging." To conceal the fact that it was not a *bona fide* purchase, Nichia's counsel further
4 instructed its agent: "Please do not tell them that a law firm requested these samples." Nichia
5 then parlayed this contrived purchase into a spurious claim that SSC had induced others to
6 purchase SSC's products throughout the United States, resulting in a baseless damage claim
7 against SSC for hundreds of millions of dollars. The District Judge condemned the contrived
8 purchase as "fake" and "engineered" and barred Nichia from seeking damages that were
9 concocted by it, denied Nichia's request for an injunction and summarily dismissed Nichia's
10 claim of induced infringement as baseless, thereby reducing Nichia's damage claim from
11 hundreds of millions of dollars to a paltry \$62. After telling Nichia that its dismissal of
12 Nichia's induced infringement claim "took the guts out of the case," reducing the remainder to
13 "the size of a grain of rice," the Court warned Nichia that it was a "misuse of the justice system
14 in this country to be tying up a courtroom and a jury over what is a matter of [a] miniscule
15 amount of money." Nichia ignored the Court's warning. SSC repeatedly offered Nichia
16 concessions that far exceeded what Nichia could ever obtain from a trial in order to get it to
17 drop its baseless litigation. But SSC's offers were spurned, just as the Court's pleas were
18 spurned. Nichia's rejection of their pleas was avowedly to "send a message" to the market and
19 to "put the LED industry in general and Seoul in particular on notice that it will not tolerate"
20 SSC's sales -- even though its sales were fabricated by Nichia, were *de minimis* and were of an
21 obsolete product that SSC announced it was discontinuing well before the trial even began.
22 The ultimate award of \$250 (the statutory minimum) was based upon what the Court described
23 as one small "aberrant" sale of a sample product.

24 14. The Court observed that Nichia's case is "obviously not about money, at least in
25 this lawsuit, but what the ancillary benefits are that are being sought, I'm not sure it's really fair
26 to use the courtroom to accomplish this goal." She later concluded that, in pursuing a \$62
27 claim to judgment, Nichia "may have been attempting to obtain some unstated ancillary
28 advantage over defendants in Asia, [but] plaintiff fails to explain why its use of the United

1 States federal court system for a purpose having nothing of real substance to do with the
2 United States is justified, let alone that such endeavor should be underwritten by the
3 defendants." The "unstated ancillary advantage over defendants" that Nichia sought was to
4 frighten customers from buying from SSC and to frighten rivals from competing with Nichia.
5 Repeatedly telling one of SSC's important customers that it planned to "cause the collapse" of
6 SSC, Nichia pursued that goal by contacting SSC's customers to spread what is known in
7 technology industries as "Fear, Uncertainty, and Doubt" (or "FUD") about SSC and its
8 products. As part of its FUD tactic, Nichia told scores of SSC customers that SSC was a
9 habitual "infringer" of Nichia's patents without telling customers that its claim was for only
10 \$62 (under the statutory minimum) and that Nichia's case against SSC was largely contrived
11 and was later "gutted" by the Court's rulings.

12 15. Defying the Court's pleas to discontinue its "misuse of the judicial system,"
13 Nichia pressed its \$62 infringement lawsuit forward through a three week trial solely to "put
14 the LED industry" on notice that it will use its prodigious market power to punish anyone who
15 competes with Nichia. The clear message was that any rival that encroached upon Nichia's
16 position of dominance in the market would be subjected to oppressive, costly and protracted
17 litigation. Nichia expended over 10 million dollars in pursuit of \$62 in the San Francisco case
18 alone, much of it for excessive and abusive discovery tactics in violation of court orders,
19 forcing SSC to expend about 8 million dollars in self-defense. As the District Court observed,
20 Nichia used the litigation as "a sledgehammer to kill a gnat" so as to – in Nichia's own words –
21 "put the LED industry" on notice that it would face a like fate. Even after the Court dismissed
22 over 99% of Nichia's lawsuit as meritless, SSC still offered Nichia concessions that far
23 exceeded what Nichia could ever obtain from a trial in order to end the costly litigation.
24 Nichia refused and, instead, demanded that SSC vacate the entire side-view LED market as its
25 price for dismissal of the lawsuit. SSC refused Nichia's unlawful demand which, if accepted,
26 would have resulted in a *per se* unlawful market allocation that further entrenched Nichia's
27 monopoly of the relevant market.

28 16. The San Francisco litigation was but part of Nichia's overall litigation rampage.

1 Nichia instigated over half a dozen other lawsuits against SSC in California, Asia and Europe
2 with or without probable cause and regardless of the merits and for the purpose of (1) slurring
3 SSC's reputation in the LED market with false allegations that SSC is a habitual infringer of
4 Nichia's patents and (2) diverting SSC's limited resources from necessary technological
5 innovation to the defense of Nichia's many baseless lawsuits. Just recently, in the summer of
6 2008, Nichia threatened one of SSC's largest customers (Samsung) with a patent infringement
7 lawsuit based on a product Samsung purchased from SSC which Nichia falsely alleged had
8 been adjudged by the San Francisco court to infringe a Nichia patent. However, that product
9 was not even at issue in that litigation. Nichia also sent unfounded warning letters to other
10 customers of SSC in furtherance of its defamation of SSC in the marketplace.

11 17. Even though SSC substantially prevailed in the San Francisco litigation and
12 reported that in a press release, Nichia swiftly retaliated with yet another lawsuit against SSC.
13 Nichia instigated that lawsuit to block SSC's press release from mitigating the harm caused to
14 SSC by Nichia's program of defamation through litigation. Nichia sued SSC in the federal
15 court in Los Angeles, baselessly alleging that SSC's press release constituted false advertising
16 and unfair competition in violation of the Lanham Act and the California Unfair Competition
17 Act. SSC moved for summary judgment, claiming that Nichia's action was meritless on
18 several grounds. Even though SSC's motion for summary judgment in Los Angeles was fully
19 briefed and under submission before Judge Anderson, and while the San Francisco case was
20 on appeal, Nichia served on SSC's counsel in the San Francisco case a subpoena that Judge
21 Alsup (presiding in Judge Chesney's absence) held "unbearably terrible," "oppressive" and
22 "abusive." Judge Alsup also concurred with Judge Chesney's assessment of the judicial abuses
23 perpetrated by Nichia and its counsel from commencement of the San Francisco case forward:
24 "I read what she [Judge Chesney] said, she said this was a waste of the jury's time. There is no
25 doubt that that was true," observing that "the lawyers at Foley or the client at Nichia,
26 somebody is trying to get retribution, that's what it looks like to me. *It does not look like this*
27 *was pursued in good faith.*" Later, the federal court in Los Angeles (Judge Anderson) granted
28 summary judgment against Nichia, holding that Nichia failed to produce any evidence showing

1 that SSC's press release was material or that Nichia suffered any injury or that it was entitled to
2 any monetary or injunctive relief.

3 **HARMFUL EFFECT OF NICHIA'S EXCLUSIONARY CONDUCT**

4 18. Nichia's exclusionary conduct described hereinabove has caused, and will
5 continue to cause, substantial harm to competition and consumers in the United States and
6 throughout the world. By abusing the judicial process repeatedly for the purpose of
7 intimidating its rivals and SSC's customers, Nichia has suppressed output, reduced choice and
8 stifled innovation in the relevant market. This has in turn inflated the costs and prices of LEDs
9 sold to LCD manufacturers for resale to end users in the United States and abroad. Absent
10 court intervention, Nichia will regain the monopoly it held before it was confronted with
11 competition on the merits from SSC and others. This harm to competition also caused
12 substantial antitrust injury to SSC, including a substantial loss of sales, a decrease in SSC's
13 resources available for R&D, the curtailment of SSC's ability to contribute its innovative
14 products to the rapidly expanding world market for LEDs, the impairment of its goodwill, and
15 the forced expenditure of millions of dollars to defend itself against Nichia's litigation abuses.

16 **CLAIM 1**
17 **MONOPOLIZATION, ATTEMPTED MONOPOLIZATION AND COMBINATION**
18 **TO MONOPOLIZE**

[Violation of Sherman Act, Section 2, 15 U.S.C. § 2]

19 19. SSC incorporates by reference the allegations contained in paragraphs 1-18
20 above.

21 20. Nichia's ongoing exclusionary conduct alleged herein constitutes monopolization
22 in violation of § 2 of the Sherman Act (15 U.S.C. §§ 2 *et seq.*). Nichia for several years
23 enjoyed or possessed a monopoly of the relevant market. When faced with new competition
24 starting in the early 2000s, Nichia resorted to the exclusionary conduct alleged herein with the
25 purpose and effect of preserving its monopoly against encroachment by rivals. Nichia's
26 conduct also constitutes attempted monopolization in violation of § 2 of the Sherman Act
27 given that, absent this Court's intervention, there is a dangerous probability that Nichia will
28 succeed through its ongoing predation in exacerbating its dominance of the relevant market

1 indefinitely. Finally, Nichia's exclusionary litigation abuses were conceived in collaboration
2 with counsel, hence also constituting a combination to monopolize the relevant market in
3 violation of § 2 of the Sherman Act.

4 **CLAIM 2**
5 **VIOLATION OF CALIFORNIA CARTWRIGHT ACT**
6 [Bus. & Prof. Code § 16720 *et seq.*]

7 21. SSC incorporates by reference the allegations contained in paragraphs 1-20
8 above.

9 22. Nichia's ongoing exclusionary conduct alleged herein constitutes a violation of
10 the Cartwright Act of California (Bus. & Prof. Code § 16720 *et seq.*).

11 **CLAIM 3**
12 **MALICIOUS PROSECUTION**

13 23. SSC incorporates by reference the allegations contained in paragraphs 1-22
14 above.

15 24. Both the San Francisco and Los Angeles litigation referenced herein above were
16 commenced and prosecuted by Nichia in bad faith, with malice and without probable cause.
17 Nichia acted both oppressively and maliciously with intent to cause injury to SSC and with
18 conscious disregard for the rights of others. As such, SSC is entitled to exemplary damages, in
19 addition to compensatory damages, as permitted by law.

20 **CLAIM 4**
21 **INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

22 25. SSC incorporates by reference the allegations contained in paragraphs 1-24
23 above.

24 26. Nichia deliberately interfered with SSC's prospective economic advantage. SSC
25 has enjoyed prospective economic relationships with customers which were of substantial
26 economic benefit to SSC. With knowledge of these valuable relationships, Nichia has
27 deliberately engaged in wrongful conduct designed to interfere with and disrupt SSC's
28 relationships with existing and prospective customers. Nichia's actions were independently
29 wrongful as they violated both Federal and California law. Nichia acted both oppressively and

1 maliciously with intent to cause injury to SSC and with conscious disregard for the rights of
2 others. As such, SSC is entitled to exemplary damages, in addition to compensatory damages,
3 as permitted by law.

4 **PRAYER**

5 SSC hereby prays for judgment and relief against Nichia as follows:

6 A. Adjudge that Nichia monopolized, attempted to monopolize and combined to
7 monopolize the relevant market in violation of § 2 of the Sherman Act (15 U.S.C. § 2);

8 B. Adjudge that Nichia's conduct violated the Cartwright Act of California (Bus. &
9 Prof. Code § 16720 *et seq.*)

10 C. Adjudge that Nichia's litigation constituted malicious prosecution in violation of
11 California law;

12 D. Adjudge that Nichia deliberately and wrongfully interfered with SSC's valuable
13 economic relationships to SSC's economic detriment;

14 E. Award SSC treble damages under claims 1 and 2, as provided by law (15 U.S.C.
15 § 15 and Bus. & Prof. Code § 16750);

16 F. Award SSC compensatory and exemplary damages under claims 3 and 4, as
17 provided by law;

18 G. Award SSC reasonable attorneys' fees under and other costs of suit (15 U.S.C.
19 § 15);

20 H. Award SSC interest, as provided by law;

21 I. Grant any other relief as the Court may deem appropriate.

22
23 Dated: October 28, 2008

TOWNSEND AND TOWNSEND AND CREW LLP

24
25 By: 

26 Eugene Crew
27 Roger L. Cook
28 Paul Kirsch
Veronica Besmer

Counsel for Plaintiffs

REQUEST FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), SSC respectfully demands a trial by jury of all claims that may be tried to a jury.

Dated: October 28, 2008

TOWNSEND AND TOWNSEND AND CREW LLP

By: 

Eugene Crew
Roger L. Cook
Paul Kirsch
Veronica Besmer

Counsel for Plaintiffs

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