

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EVERLIGHT ELECTRONICS CO., LTD.
and EMCORE CORPORATION,

Plaintiffs,

No. C 13-80251 WHA (misc)

v.

NICHIA CORPORATION and NICHIA
AMERICA CORPORATION,

Defendants,

**ORDER DENYING NICHIA'S MOTION
TO COMPEL PRODUCTION OF
DOCUMENTS AND DEPOSITION
AND ORDERING INTEMATIX'S
COMPLIANCE WITH THIS ORDER**

INTEMATIX CORPORATION,

Real party in interest.

In this miscellaneous action to compel discovery for use in a civil action pending elsewhere, limited relief is **GRANTED**.

STATEMENT

Everlight Electronics Co., Ltd. filed a declaratory judgment action against Nichia Corporation and Nichia America Corporation in the Eastern District of Michigan in April 2012. *Everlight Electronics Co., Ltd., et al. v. Nichia Corporation, et al.*, No. 4:12-cv-111758 (E.D. Mich. Apr. 19, 2012). The second amended complaint alleges several claims for relief, including declaratory judgment of non-infringement and invalidity of U.S. Patent Nos. 5,998,925 (“’925 patent”) and 7,531,960 (“’960 patent”) and infringement of U.S. Patent No. 6,653,215 (“’215 patent”). Nichia counterclaimed for infringement. The ’925 patent is titled “Light Emitting Device Having a Nitride Compound Semiconductor and a Phosphor Containing a Garnet

1 Fluorescent Material.” The ’960 patent is titled “Light Emitting Device with Blue Light LED
2 and Phosphor Components.” The ’215 patent is titled “Contact to n-GaN with Au termination.”

3 Plaintiff Everlight manufactures and supplies LED products, including white LEDs
4 containing phosphors. Defendant Nichia is a competitor of Everlight in the LED products
5 industry.

6 Third-party Intematix Corporation is a privately owned company with approximately 200
7 employees mostly located in Fremont, California, China, and Taiwan (Lund Decl. ¶ 4).

8 Intematix makes and sells phosphors to the LED industry, including to Everlight (*id.* ¶ 5).

9 Intematix and Nichia are competitors in the phosphor industry (*ibid.*).

10 On September 13, Nichia served third-party Intematix with a subpoena *duces tecum* and
11 Intematix served objections on September 27. On September 30, Nichia served an amended
12 subpoena *duces tecum* to include requests for samples of the Intematix phosphors supplied to
13 Everlight. Intematix served objections to the amended subpoena on October 7. Counsel met and
14 conferred on October 8, 11, and 15. Nichia attempted to narrow some of its requests. The
15 parties, however, were apparently unable to resolve their differences.

16 On November 13, approximately one month after the parties’ last meet and confer,
17 Nichia filed the instant motion to compel production of documents and deposition of Intematix
18 in this district (Dkt. No. 1). Two days later, non-expert discovery closed. The action remains in
19 the Eastern District of Michigan and some motions are set to be heard before Judge Gershwin A.
20 Drain on December 16.

21 In the instant motion, Nichia moves to compel the production of Nichia’s document
22 request numbers 2 through 11 by December 5, 2013, and to compel a witness to give testimony
23 concerning Nichia’s deposition topic numbers 2 through 9 by December 12, 2013. Although
24 Rules 37 and 45 have been recently amended (effective December 1), this miscellaneous action
25 is governed by the rules effective December 2007.

26 During meet and confers, Nichia and Intematix discussed forgoing a deposition of
27 Intematix in favor of a business record declaration. Nichia, however, was only agreeable to such
28 a substitute if the documents produced “provided sufficient substantive information directed to

1 the remaining requests” and Nichia could review the documents before accepting a declaration
2 substitute. Intematix was not willing to accept such terms.

3 **ANALYSIS**

4 “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
5 party’s claim or defense Relevant information need not be admissible at the trial if the
6 discovery appears reasonably calculated to lead to the discovery of admissible evidence.”

7 FRCP 26(b)(1). On a discovery motion,

8 the court must limit the frequency or extent of discovery otherwise
9 allowed by these rules or by local rule if it determines that:

10 (i) the discovery sought is unreasonably cumulative or duplicative,
11 or can be obtained from some other source that is more convenient,
12 less burdensome, or less expensive;

13 (ii) the party seeking discovery has had ample opportunity to obtain
14 the information by discovery in the action; or

15 (iii) the burden or expense of the proposed discovery outweighs its
16 likely benefit, considering the needs of the case, the amount in
17 controversy, the parties’ resources, the importance of the issues at
18 stake in the action, and the importance of the discovery in resolving
19 the issues.

20 FRCP 26(b)(2)(C). FRCP 37 governs motions to compel discovery and “a motion for an order to
21 a nonparty must be made in the court where the discovery is or will be taken.” FRCP 37(a)(2).

22 Rule 45(c)(1) makes the party issuing the subpoena responsible for taking “reasonable steps to
23 avoid imposing undue burden or expense on the person subject to the subpoena” and the issuing
24 court must enforce this duty. Rule 45(c)(3) states: “On timely motion, the issuing court must
25 quash or modify a subpoena that . . . (iii) requires disclosure of privileged or other protected
26 matter, if no exception or waiver applies; or (iv) subjects a person to undue burden.” The issuing
27 court may, on motion, quash or modify the subpoena if it requires “disclosing a trade secret or
28 other confidential research, development, or commercial information” or “disclosing an
unretained expert’s opinion or information that does not describe specific occurrences in dispute
and results from the expert’s study that was not requested by the party.” FRCP 45(c)(3)(B). The
issuing court may also order production under specified conditions if the moving party “shows a

1 substantial need for the testimony or material that cannot be otherwise met without undue
2 hardship” and “ensures that the subpoenaed person will be reasonably compensated.”

3 **1. IDENTIFICATION OF PHOSPHORS SOLD BY INTEMATIX TO EVERLIGHT.**

4 Document request number 2 and deposition topic number 2 are generally directed at a list
5 of phosphors sold or supplied by Intematix to Everlight from 2006 to present. The requests are
6 as follows:

7 Document Request 2: Documents sufficient to identify or describe
8 the Phosphors sold or otherwise supplied by Intematix to Everlight
9 from 2006 to the present, including the type, name, model and part
10 number of each Phosphor.

11 Deposition Topic 2: Identification of the Phosphors sold or
12 otherwise supplied by Intematix to Everlight from 2006 to the
13 present, including the type, name, model and part number of each
14 Phosphor.

15 Nichia argues that its requests are directly relevant to its allegations of infringement of
16 the '925 and '960 patents (Br. 19). It further argues that its requests are not duplicative or
17 cumulative of information produced by Everlight because Everlight produced incomplete
18 information regarding the phosphors it purchased from Intematix (Br. 21).

19 Intematix argues that such requests are unreasonably burdensome because they require
20 Intematix to search for records of all phosphors Everlight purchased from Intematix in Taiwan
21 from 2006 to present. This takes time away from its real business.

22 This order finds that document request number 2 and deposition topic number 2 are
23 overly broad and unduly burdensome on non-party Intematix. Intematix is hereby **ORDERED** to
24 produce a sworn declaration identifying the name (or model number) of each phosphor Intematix
25 sold to Everlight from January 1, 2009 to September 13, 2013. The motion to compel document
26 request number 2 and deposition topic number 2 is otherwise **DENIED**.

27 **2. TECHNICAL INFORMATION REGARDING INTEMATIX PHOSPHORS.**

28 Document request numbers 3, 5, 6, and 7 and deposition topic numbers 4, 5, and 6 are
directed at identifying specific Intematix phosphors allegedly present in Everlight accused
products. The requests are as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Document Request 3: Product specifications or data sheets for each Phosphor sold or otherwise supplied to Everlight from 2006 to the present.

Document Request 5: Documents sufficient to identify technical information, including chemical composition, chemical formula, particle size, particle density, and absorption/emission wavelengths, regarding the Intematix Phosphors sold or otherwise supplied to Everlight from 2006 to the present that contain YAG (Yttrium Aluminum Garnet), including NYAG-02TM, NGAG-04TM, NYAG-05TM, NYAG-06TM, NYAG4156, EX-T1, EX-T2, EX-T4, and EX-T5.

Document Request 6: Documents sufficient to identify technical information including chemical composition, chemical formula, particle size, particle density, and absorption/emission wavelengths, regarding the Intematix Phosphors sold or otherwise supplied to Everlight from 2006 to the present that contain yellow silicate, including Y4453.

Document Request 7: Documents sufficient to identify technical information including chemical composition, chemical formula, particle size, particle density, and absorption/emission wavelengths, regarding the Intematix Phosphors sold or otherwise supplied to Everlight from 2006 to the present that contain red nitride, including RR6436.

Deposition Topic 4: Technical information, including chemical composition, chemical formula, particle size, particle density, and absorption/emission wavelengths, regarding the Intematix Phosphors sold or otherwise supplied to Everlight from 2006 to the present that contain YAG (Yttrium Aluminum Garnet), including NYAG-02TM, NGAG-04TM, NYAG-05TM, NYAG-06TM, NYAG4156, EX-T1, EX-T2, EX-T4, and EX-T5.

Deposition Topic 5: Technical information, including chemical composition, chemical formula, particle size, particle density, and absorption/emission wavelengths, regarding the Intematix Phosphors sold or otherwise supplied to Everlight from 2006 to the present that contain yellow silicate, including Y4453.

Deposition Topic 6: Technical information, including chemical composition, chemical formula, particle size, particle density, and absorption/emission wavelengths, regarding the Intematix Phosphors sold or otherwise supplied to Everlight from 2006 to the present that contain red nitride, including RR6436.

Nichia argues that these requests are narrowed in two ways. *First*, Nichia argues that it limited the requests to the eleven Intematix phosphors present in the accused products.

* Nichia has previously sought to redact certain information contained in the above requests. The same information sought to be redacted, however, is not redacted in Intematix's opposition and does not constitute a trade secret.

1 *Second*, Nichia argues that it identifies the specific technical information requested
2 (e.g., chemical composition, formula, particle size, density, and absorption/emission
3 wavelengths).

4 Intematix argues that the requests are not relevant to the asserted patents which contain
5 claims including resin—not phosphor—limitations (Opp. 5–6). Intematix further argues that the
6 requests are not actually narrow because they target “all Yag phosphors sold to Everlight” and
7 all phosphors containing red nitrate or yellow silicate. Intematix also argues that Nichia appears
8 to have some information about Intematix phosphors, including publicly available datasheets and
9 documents produced by Everlight. Specific details of Intematix’s chemical compositions and
10 formulas (beyond those disclosed in publicly available materials) are closely guarded, highly
11 confidential, extremely valuable trade secrets (Lund Decl. ¶¶ 15–16). Intematix also reports that
12 it does not have a policy or practice of maintaining and storing discontinued product data sheets
13 (*id.* ¶ 11).

14 This order finds that document request numbers 3, 5, 6, and 7 and deposition topic
15 numbers 4, 5, and 6 are overly broad and unduly burdensome on non-party Intematix. Intematix
16 views defendant Nichia as a direct competitor in the phosphor industry (Lund Decl. ¶¶ 5, 15).
17 Intematix makes reasonable efforts to restrict access to specific details of its chemical
18 compositions and formulas (*id.* ¶¶ 15–16). One or more of Intematix’s data sheets, however, are
19 provided to customers.

20 Intematix is hereby **ORDERED** to produce any reasonably accessible Intematix data
21 sheets relating to NYAG-02TM, NGAG-04TM, NYAG-05TM, NYAG-06TM, NYAG4156, EX-T1,
22 EX-T2, EX-T4, EX-T5, Y4453, and RR6436. The motion to compel document request numbers
23 3, 5, 6, and 7 and deposition topic numbers 4, 5, and 6 is otherwise **DENIED**.

24 **3. DOCUMENTS RELATING TO THE ENCAPSULANT MATERIAL FOR**
25 **PHOSPHOR-CONTAINING LEDs.**

26 Document request number 8 and deposition topic number 7 are generally directed at
27 information regarding the encapsulant material for phosphor-containing LEDs. The requests are
28 as follows:

Document Request 8: Documents relating to the identification,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

description and selection of the encapsulant material for Phosphor-containing LEDs, including but not limited to Phosphor particle density, Phosphor settling, resin viscosity and differential settling in Phosphor mixtures.

Deposition Topic 7: Identification, description and selection of the encapsulant material for Phosphor-containing LEDs, including but not limited to Phosphor particle density, Phosphor settling, resin viscosity and differential settling in Phosphor mixtures.

Nichia argues that these requests are relevant to the '960 patent. That is, according to Nichia, certain claims of the '960 patent contain limitations requiring a phosphor or fluorescent material with a controlled particle size distribution. Nichia argues that any recommendations by Intematix regarding the choice of encapsulent resin material or mixing parameters for the phosphors are relevant to the '960 patent claims.

Intematix argues that it does not make or sell encapsulent material (Lund Decl. ¶ 7). Intematix, furthermore, does not know the details of Everlight's use of encapsulent material (*id.* ¶ 8). Intematix argues that this is nothing less than a fishing expedition and the only arguable relevance for Everlight's use of encasulent material is highly confidential Everlight information unknown to Intematix (Opp. 4).

Document request number 8 and deposition topic number 7 are overly burdensome for third-party Intematix. The requests are virtually unbounded. They are not tied to third-party Intematix or plaintiff Everlight. They do not contain a time constraint. The motion to compel production of document request number 8 and deposition topic number 7 is **DENIED**.

4. PHOSPHOR SAMPLES.

Document request number 11 states "a physical sample of each phosphor sold or otherwise supplied to Everlight from 2006 to the present, of a minimum of 50 g per sample, and with appropriate designations sufficient to identify the phosphor."

Nichia argues that phosphor samples are relevant to infringement in this action because samples allow for a direct comparison between the Intematix phosphors and the phosphors used in Everlight's accused products. Nichia also agrees to pay reasonable compensation for the phosphor samples (Peterson Decl. ¶ 19). Nicha further argues that the "eleven phosphor samples requested from Intematix provide an alternative, non-duplicative means for Nichia to obtain

1 technical information relevant to the asserted claims by direct testing of the phosphors” (Br. 19).

2 Intematix argues that requesting samples of all phosphors sold or supplied to Everlight
3 over a span of seven years is overly burdensome.

4 Document request number 11 is overly broad, unduly burdensome, and duplicative of at
5 least document request numbers 3, 5, 6, and 7 and deposition topic numbers 5 and 6. Any
6 purported benefit of obtaining the samples is outweighed by the burden of producing a physical
7 sample of all of Intematix’s phosphor samples sold or supplied to Everlight over the span of
8 seven years. This order already requires Intematix to produce certain data sheets as detailed
9 above, thereby obviating the need for physical samples. The motion to compel production of
10 document request number 11 is **DENIED**.

11 **5. INSTRUCTIONS PROVIDED BY INTEMATIX TO EVERLIGHT.**

12 Document request number 4 and deposition topic number 3 are generally directed at any
13 instructions provided by Intematix to Everlight for incorporating Intematix phosphors into
14 Everlight’s LEDs. The requests are as follows:

15 Request 4: Documents sufficient to identify or describe any
16 instructions provided by Intematix to Everlight for incorporating
17 into or otherwise using Intematix Phosphors in Everlight’s LEDs
18 from 2006 to the present.

19 Deposition Topic 3: Technical instructions provided by Intematix
20 to Everlight for incorporating Intematix Phosphors into
21 Everlight’s LEDs.

22 Nichia argues that instructions provided by Intematix to Everlight regarding phosphors is
23 relevant to the claims of the ’960 patent. Although it recognizes that Intematix has stated that it
24 has no instruction documents, Nichia nonetheless wants to know whether oral instructions were
25 given to Everlight (Reply Br. 3). Nicha argues that such requests are not unretained expert
26 opinions under Rule 45(c)(3)(A)(ii) but rather, percipient knowledge acquired through pre-
27 litigation interactions.

28 Intematix argues that these requests, and some of Nichia’s other requests, are motivated
by searching for indirect infringement claims against Intematix. Intematix confirms that it has
not provided instruction documents or technical instructions to Everlight for incorporating into
or otherwise using Intematix phosphors in Everlight’s LEDs (Lund Decl. ¶ 6).

1 This order finds that these requests have little to no bearing on the claims for relief in the
2 action. The second amended complaint against Nichia requests, among other relief, a
3 declaratory judgment of non-infringement under direct, contributory, and induced infringement.
4 Intematix is not a party to the action so what instructions (if any) Intematix provided Everlight is
5 not at issue in the action. Nichia also states that it has already sought from Everlight
6 “instructions provided by its suppliers on how to use and incorporate the phosphors into LED
7 products” (Peterson Decl. ¶ 22). Additional discovery is duplicative. The motion to compel
8 document request number 4 and deposition topic number 3 is **DENIED**.

9 **6. COMMUNICATIONS BETWEEN INTEMATIX AND EVERLIGHT.**

10 Document request numbers 9 and 10 and deposition topic numbers 8 and 9 are generally
11 directed at communications between Intematix and Everlight regarding the asserted Nichia
12 patents and Intematix phosphors. The requests are as follows:

13 Document Request 9: Communications, correspondence, and/or
14 other documents between Intematix and Everlight regarding the
15 technical characteristics of Intematix Phosphors sold or otherwise
16 supplied to Everlight from 2006 to the present, including chemical
composition, chemical formula, particle size, particle density, and
absorption/emission wavelengths.

17 Document Request 10: Communications, correspondence, and/or
18 other documents between Intematix and Everlight regarding the
'925 or '960 patents, including any efforts to design around the
patents.

19 Deposition Topic 8: Communications, correspondence, and/or other
20 documents between Intematix and Everlight regarding the technical
21 characteristics of Intematix Phosphors sold or otherwise supplied to
Everlight from 2006 to the present, including chemical
composition, chemical formula, particle size, particle density, and
absorption/emission wavelengths.

22 Deposition Topic 9: Communications, correspondence, and/or other
23 documents between Intematix and Everlight regarding the '925 or
'960 patents, including any efforts to design around the patents.

24 Nichia argues that these requests are narrowly tailored to eleven phosphors supplied to
25 Everlight and the two asserted Nichia patents (Br. 20). Document request number 9 (and the
26 corresponding deposition topic) is limited to 2006, which is based on the time frame for which
27 Nichia can seek damages from Everlight for patent infringement. Document request
28

1 number 10 (and the corresponding deposition topic) is directed at any efforts to design around
2 the patents and issues of willful infringement and secondary considerations of non-obviousness.
3 Nichia argues that it has requested discovery from Everlight on a number of topics, including
4 communications regarding Nichia’s patents and design around efforts. “To the best of Nichia’s
5 understanding, Everlight has not made a complete production of any of this information to
6 Nichia” (Peterson Decl. ¶ 22).

7 Intematix argues that these requests are not limited to the eleven identified Intematix
8 phosphors. Intematix also argues that such requests are unduly burdensome because
9 communications between Everlight and supplier Intematix about technical aspects of Intematix
10 phosphors (if any) would likely occur via email (in English or Chinese) as well as other methods
11 of communication.

12 This order agrees with Intematix on this point. It is more burdensome for third-party
13 Intematix to search for, translate, and review communications potentially responsive to such
14 broad requests than plaintiff Everlight. The motion to compel document request numbers 9 and
15 10 and deposition topic numbers 8 and 9 is **DENIED**.

16 **7. PROTECTIVE ORDER.**

17 Intematix argues that some of the information sought in Nichia’s discovery requests
18 contain confidential and/or trade secret information. Intematix asks that Nichia be required to
19 agree to the Patent Local Rule 2-2 Interim Model Protective Order of this district (Opp. 10).
20 Specifically, Intematix seeks a unilateral prosecution bar. Section 8 of the Patent Local
21 Rule 2-2 Interim Model Protective Order states:

22 **8. PROSECUTION BAR**

23 Absent written consent from the Producing Party, any individual
24 who receives access to “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
26 SOURCE CODE” information shall not be involved in the
27 prosecution of patents or patent applications relating to [insert
28 subject matter of the invention and of highly confidential technical
information to be produced], including without limitation the
patents asserted in this action and any patent or application
claiming priority to or otherwise related to the patents asserted in
this action, before any foreign or domestic agency, including the
United States Patent and Trademark Office (“the Patent Office”).
For purposes of this paragraph, “prosecution” includes directly or
indirectly drafting, amending, advising, or otherwise affecting the

1 scope or maintenance of patent claims. (Prosecution includes, for
2 example, original prosecution, reissue and reexamination
3 proceedings.) To avoid any doubt, “prosecution” as used in this
4 paragraph does not include representing a party challenging a patent
5 before a domestic or foreign agency (including, but not limited to, a
6 reissue protest, ex parte reexamination or inter partes
7 reexamination). This Prosecution Bar shall begin when access to
8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
9 “HIGHLY CONFIDENTIAL – SOURCE CODE” information is
10 first received by the affected individual and shall end two (2) years
11 after final termination of this action.

12 Intematix also argues that request number 10 (and the corresponding deposition topic) covers
13 communications protected by the joint defense privilege.

14 Nichia states that while it “does not disagree in principle to a protective order entered by
15 this Court to govern Intematix’s trade secrets,” it questions whether such an order is necessary.
16 Nichia argues that it is unnecessary for this district to enter a separate protective order for
17 third-party Intematix when a stipulated protective order has been entered by the Eastern District
18 of Michigan. That protective order, according to Nichia, adequately protects Intematix.

19 Paragraph 4(c) states:

20 All Discovery Materials produced in this case designated
21 ‘Confidential – Attorneys’ Eyes Only,’ shall be used solely for
22 purposes of this Action and for no other purpose. The parties
23 acknowledge that other actions are or may in the future be brought
24 by one against another, and agree that none of the Discovery
25 Materials designated ‘Confidential – Attorneys’ Eyes Only’ may be
26 used in other actions.

27 (Peterson Decl. Ex. P). Paragraph 11 states that “[w]ithin sixty (60) days of the final termination
28 of this Action and any appeals related to this Action, all Discovery Material designated
29 ‘Confidential – Attorneys’ Eyes Only’ and all copies of Discovery Material designated
30 ‘Confidential – Attorneys’ Eyes Only’ shall be destroyed or returned to the party that produced
31 same . . .” (*id.*).

32 This order finds it unnecessary to enter a separate protective order for Intematix in this
33 district when the action is pending in the Eastern District of Michigan. The protective order
34 entered by Judge Drain adequately protects Intematix—especially in light of the denial of
35 Nichia’s motion to compel and the narrowly tailored information ordered here. This order
36 provides limited relief to Nichia so a separate protective order for third-party Intematix is of

1 limited value. Additionally, non-expert discovery closed two days after Nichia filed this motion.
2 The request to enter into a separate protective order for Intematix in this district is, accordingly,
3 **DENIED.**

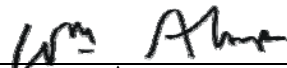
4 **CONCLUSION**

5 In sum, Intematix is hereby **ORDERED** to produce a sworn declaration identifying the
6 name (or model number) of each phosphor Intematix sold to Everlight from January 1, 2009 to
7 September 13, 2013. The motion to compel document request number 2 and deposition topic
8 number 2 is **DENIED**. Intematix is hereby **ORDERED** to produce Intematix's data sheets relating
9 to NYAG-02TM, NGAG-04TM, NYAG-05TM, NYAG-06TM, NYAG4156, EX-T1, EX-T2, EX-T4,
10 EX-T5, Y4453, and RR6436. The motion to compel document request numbers 3, 5, 6, and 7
11 and deposition topic numbers 4, 5, and 6 is **DENIED**. The motion to compel production of
12 document request number 8 and deposition topic number 7 is **DENIED**. The motion to compel
13 production of document request number 11 is **DENIED**. The motion to compel document request
14 number 4 and deposition topic number 3 are **DENIED**. The motion to compel document request
15 numbers 9 and 10 and deposition topic numbers 8 and 9 is **DENIED**.

16 In other words, Nichia's motion to compel a witness of Intematix on deposition topic
17 numbers 2 through 9 is **DENIED**. Intematix is ordered to produce data sheets and a sworn
18 declaration as outlined above by **DECEMBER 18, 2013**, but only if Judge Drain authorizes this
19 discovery, the discovery period otherwise having expired. The production is subject to the
20 protective order entered by Judge Drain. Nichia must pay all reasonable costs and fees to collect
21 and produce the materials produced (but not the costs and expenses of the motion practice).

22
23 **IT IS SO ORDERED.**

24
25 Dated: December 3, 2013.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE