

## Gilstrap Missed Invalidity Of LED Patents, Fed. Circ. Told

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Law360, Los Angeles (June 3, 2016, 11:56 PM ET) -- An LED packaging company told the Federal Circuit on Friday that U.S. District Judge Rodney Gilstrap erred in upholding the validity of three patents it was accused of infringing, saying the court misinterpreted language in the patents and aspects of product design.

Everlight Electronics Co. Ltd. argued in a cross-appeal filed Friday that the Federal Circuit should overturn Judge Gilstrap's January ruling that found Nichia Corp.'s three semiconductor packaging patents were valid and infringed by Everlight's products, but that it should affirm the lower court's denial of a permanent injunction.

"The district court committed legal error, based on clearly erroneous findings of fact, in holding that the asserted claims were not invalid," Everlight argued. "Those findings ignored stipulated facts, the broader teachings in the references, and the very high level of ordinary skill in the art."

But Everlight also argued that Judge Gilstrap's decision not to issue an injunction was correct, saying Nichia by its own admission did not suffer any irreparable harm because of Everlight.

Both Everlight and Nichia seek to toss out parts of Judge Gilstrap's ruling that found Everlight infringed the asserted claims of Nichia's three patents but declined to enter a permanent injunction on the grounds that the companies are not major competitors in the United States.

Nichia appealed Judge Gilstrap's decision in February and [argued in April](#) that Judge Gilstrap abused his discretion by not finding any irreparable harm based on a purported lack of "meaningful competition" between the companies. The company argued that Everlight is a direct competitor as it has targeted Nichia customers in the U.S., and that Judge Gilstrap did not take this evidence into account.

Nichia's appeal seeks to vacate Judge Gilstrap's decision denying the permanent injunction, and remand the case with instructions to enter an injunction, or to correct certain legal errors and reconsider the injunction.

Nichia counsel Robert P. Parker of Rothwell Figg Ernst & Manbeck PC told Law360 on Friday that the Nichia team believes the Federal Circuit will rule in the company's favor.

"We are confident the court of appeals will affirm the district court's decision on the infringement and validity issues," Parker said. "It will then follow from that decision that Nichia is entitled to injunctive relief."

Everlight filed its cross-appeal in March and argued on Friday that Judge Gilstrap erred in finding that Everlight's products infringe the three patents, which are for semiconductor parts used in LED lighting manufacturing.

Everlight argued that in the case of one patent, the court incorrectly misconstrued the words "lead" and "planar" as they relate to the patents and Everlight's products.

The brief also asked the court to overturn Judge Gilstrap's decision relating to the validity of the three patents, saying that the claims are obvious and thus not patentable.

"The district court did not find that any objective criteria or secondary considerations supported nonobviousness," Everlight argued. "In view of the foregoing, the court should reverse the conclusions of law holding the asserted claims not invalid."

But the court correctly denied an injunction because the two companies do not have a meaningful competition in the U.S. market, Everlight argued.

Nichia has granted licenses for the patents-in-suit to companies representing approximately 27 percent of the worldwide LED market, the appeal brief said. Further, Everlight argued, Nichia did not prove any past or future damages or nexus for a permanent injunction.

During the seven-year period where Nichia claims infringement, Everlight did not make a sale to any of Nichia's top U.S. customers, the appeal brief argued.

"The court did not conclude, as Nichia argues, that Nichia and Everlight were not competitors," Everlight argued. "Instead, the court concluded the competition was not meaningful. The court thus honored the stipulation as well as the evidence showing a lack of meaningful competition between Nichia and Everlight in the U.S."

Attorneys for Everlight did not immediately respond to requests for comment.

The patents-in-suit are U.S. Patent Numbers 8,530,250; 7,432,589 and 7,462,870.

Nichia is represented by Robert P. Parker, Martin Zoltick, Steven P. Weihrouch, Michael H. Jones and Daniel R. McCallum of Rothwell Figg Ernst & Manbeck PC.

Everlight is represented by B. Todd Patterson, Jayme Partridge and Jerry R. Selinger of Patterson & Sheridan LLP, and Richard C. Vasquez, Robert McArthur, Stephen C. Steinberg, Jeffrey T. Lindgren and Eric W. Benisek of Vasquez Benisek & Lindgren LLP.

The case is Nichia Corp. v. Everlight Americas Inc. et al., case number 16-01585, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Mark Lebetkin.