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And Everlight Americas, Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

Everlight Electronics Co., Ltd.,

Plaintiff,

v.

Bridgelux, Inc.,

Defendant.

Bridgelux, Inc.,

Counterclaim Plaintiff,

v.

Everlight Electronics Co., Ltd. and
Everlight Americas, Inc.,

Counterclaim Defendants.

Case Number: 4:17-cv-3363-JSW

**RESPONSIVE CLAIM CONSTRUCTION
BRIEF OF EVERLIGHT ELECTRONICS
CO., LTD. AND EVERLIGHT
AMERICAS, INC.**

Dept: Courtroom 5, 2nd Floor
Judge: Hon. Jeffrey S. White

Complaint Filed: June 10, 2017
Am. Answer/Countercl. Filed: July 31, 2017

I. INTRODUCTION

Everlight Electronics Co., Ltd. and Everlight Americas, Inc. (collectively, “Everlight”) respond below to the opening claim construction brief of Bridgelux, Inc. (“Bridgelux”) related to U.S. Patent nos. 6,869,812 (the “’812 Patent”), 8,567,988 (the “’988 Patent”), 8,256,929 (the “’929 Patent”), and 8,092,051 (the “’051 Patent”).

II. CONSTRUCTION OF DISPUTED TERMS OF ‘812, ‘929, ‘988, AND ‘051 PATENTS

A. “the aspect ratio of the active area is between approximately 1.5 to 1 and approximately 10 to 1” (‘812 Patent claim 3)

Everlight’s Construction	Bridgelux’s Construction
The ratio of length to width (of the active area) is within the range of ratios from slightly less than 1.5 to 1 to slightly greater than 10 to 1; the endpoints 1.5 to 1 and 10 to 1 are included within the range.	No construction necessary.

Everlight proposes that this term of the ’812 Patent be construed as “the ratio of length to width (of the active area) is within the range of ratios from slightly less than 1.5 to 1 to slightly greater than 10 to 1; the endpoints 1.5 to 1 and 10 to 1 are included within the range.” Bridgelux asserts that no construction is necessary, but in rejecting Everlight’s proposal Bridgelux seeks to introduce ambiguity on the issue of whether the stated endpoints are included within the range. This ambiguity, Everlight submits, will complicate the fact-finder’s task.

Everlight’s proposed definition is consistent with numerous courts’ constructions of the term “approximately.” When courts construe the term “approximately” (and the similar term “about”), they routinely include the end points of a range and slightly beyond. *E.g.*, *Quantum Corp. v. Rodime, PLC*, 65 F.3d 1577, 1581 (Fed. Cir. 1995) (“[t]he addition of ‘approximately’ which means ‘reasonably close to,’ eliminates the precise lower limit of [a] range, and, in so doing extends the scope of the range[; t]he term ‘at least approximately 600 tpi’ therefore defines an open-ended range starting slightly below 600.”); *see also Ortho-McNeil Pharm., Inc. v. Caraco Pharm. Labs., Ltd.*, 476 F.3d 1321, 1328 (Fed. Cir. 2007) (construing term “about 1:5” to mean “approximately 1:5, encompassing a range of ratios no greater than 1:3.6 to 1:7.1”).

The case of *Cohesive Techs., Inc. v. Waters Corp.*, 543 F.3d 1351 (Fed. Cir. 2008) is

1 “transparent.” This would be an improper result.

2 Finally, Bridgelux argues that the construction of “transparent” from its litigation against
3 Cree was in error “because the court in the Eastern District of Texas, in construing the term
4 ‘transparent,’ effectively and errantly imported the limitation ‘substantially’ into its construction of
5 the term.” Bridgelux Opening Claim Constr. Brf. at 8. Bridgelux provides no evidentiary or legal
6 support for this allegation; rather it is a “hail Mary” designed to avoid the *Cree* Court’s construction
7 of “transparent” at all costs. Bridgelux’s argument also doesn’t make sense, because even if the
8 Eastern District of Texas Court gave a construction for “substantially transparent” (which it did
9 not), the actual term in the ‘812 Patent claim asserted in the instant case is in fact “substantially
10 transparent” so that the definition would be correct in any event.

11 Because Everlight’s proposed definition is consistent with the ‘812 patent, Bridgelux’s
12 arguments in the *Cree* case, the *Cree* Court’s construction of “transparent,” multiple technical
13 dictionaries from the relevant period, and numerous published cases construing the term
14 “transparent,” it should be adopted by the Court.

15 **C. “[mounted / mounting...] directly to the reflective surface” (All asserted claims**
16 **of ‘929 Patent, ‘988 Patent, and ‘051 Patent)**

Everlight’s Construction	Bridgelux’s Construction
Mounted to the reflective surface with no intervening elements present.	Bridgelux proposed “plain and ordinary meaning” in the Joint Claim Construction and Prehearing Statement. Bridgelux changed its proposal in its opening claim construction brief to “mounted / mounting directly to the reflective surface by adhesive or other means with no intervening elements present.”

23 The parties dispute the definition of “[mounted/mounting...] directly to the reflective
24 surface.” The key issue between the parties is whether the phrase should be construed consistent
25 with the express definition in the patent specification and the patentee’s distinction over the prior art
26 during prosecution (Everlight’s position), or whether the Court should modify the specification’s
27 express definition by inserting the term “by adhesive or other means” (Bridgelux’s position).

28 The asserted ‘988, ‘929, and ‘051 Patents each *define* the meaning of “directly on” and

1 *specifically contrast* the term “on” from the term “directly on,” depending on whether there are any
2 intervening elements present:

3 “It will be understood that when an element such as a region, layer, section,
4 substrate, or the like, is referred to as being “on” another element, it can be directly on the
5 other element or intervening elements may also be present. In contrast, ***when an element is***
6 ***referred to as being “directly on” another element, there are no intervening elements***
7 ***present.***”

8 Ex. 2, ‘929 Patent at 3:32-38 (emphasis added). Everlight’s proposed construction – “Mounted to
9 the reflective surface with no intervening elements present” – is taken verbatim from the patent
10 applicant’s own definition as stated in the patent specification. The patent specification makes clear
11 that the purpose of avoiding intervening elements is to allow for an efficient thermal path between
12 the LED chips and metal substrate. *Id.* at 4:60-65 (“Therefore, the LED chip 100 provides for
13 different electrical and thermal paths to enable the LED chip 100 to be directly mounted to a metal
14 substrate without the need for an insulating dielectric, thereby providing an efficient thermal path to
15 reduce or minimize the degrading effects of heat on light output.”).

16 The patentee also explained the purpose of mounting “directly on” with “no intervening
17 elements present” in arguing over the prior art in PTO proceedings. In U.S. Pat. Appl. No.
18 12/240,011, the PTO examiner rejected Bridgelux’s claims over the reference Yamada. Ex. 5, Final
19 Rejection, April 23, 2012 at 2-3 (rejecting all pending claims over Yamada, including “a plurality of
20 LED chips (2) mounted directly to the reflective surface of the metal substrate to allow for thermal
21 dissipation.”) In response to this rejection, Bridgelux argued to the Examiner that Yamada did not
22 disclose the “mounted directly” element because it placed an insulating layer between the LEDs and
23 metal substrate, as follows (with added emphasis):

24 “To set the stage for the discussion, it is noted that *the term “directly” is defined as*
25 *excluding any intervening elements (between the plurality of LED chips and the surface of*
26 *metal substrate), cf, above-identified application paragraph [0019]. Because in general*
27 *metals have high thermal conductivity, such direct mounting results in creation of an*
28 *efficient thermal path allowing heat to pass from the plurality of LED chips to the metal*

1 substrate, cf. claim 1, application paragraph [0026]. As such, the claim language is not an
2 intended use, but limitation, as explained below.

3 ***

4 “[T]he LED chips [in Yamada] are *not mounted directly* to the reflective surface of the metal
5 substrate as the term is defined because of the present of an *intervening insulating* materials
6 [sic] applied to the metallic base structure.”

7 Ex. 6, Applicant’s Argument/Remarks Made in an Amendment, July 20, 2012 at 6, 8.

8 The patentee—Bridgelux—thus explicitly defined “mounted directly to the reflective
9 surface” to mean mounted to the reflective surface with no intervening elements present. This is
10 exactly the definition for this term proposed by Everlight and, respectfully, it should be adopted by
11 the Court. Indeed, on page 10 of its opening claim construction brief Bridgelux states that
12 “Everlight’s proposed construction is consistent with the plain and ordinary meaning of the
13 term...,” thus conceding the correctness and accuracy of Everlight’s proposal.

14 Up to and including in the Joint Claim Construction and Prehearing Statement, Bridgelux
15 took the position that no construction of this term was required. However, in its opening claim
16 construction brief, Bridgelux for the first time inserts new claim elements into the “mounted
17 directly” term.¹ More specifically, Bridgelux seeks to insert the phrase “by adhesive or other
18 means” into Everlight’s proposed language, so that the term would be defined as “mounted /
19 mounting directly to the reflective surface *by adhesive or other means* with no intervening elements
20 present.” The problem with Bridgelux’s new proposal is that it would categorically permit *all*
21 adhesives placed between the chip and substrate to meet the elements of the claim, which is not
22 supported by the intrinsic record.

23 Bridgelux’s proposal—that all adhesives are not prohibited “intervening layers”—raises
24 three problems. First, it is a fundamental principle of claim construction that courts “do not read
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26 ¹ The Court’s Standing Order for Patent Cases mandates that “if it becomes necessary for a party to
27 propose a construction that is different from the one found in the joint claim construction statement,
28 that party must clearly set forth the new construction and explain the basis for the change.”
Bridgelux has not provided any explanation of basis for the change of its construction of this term.
While Bridgelux cites Everlight’s invalidity contentions, that document was served over nine
months ago and well before claim construction started.

1 limitations from the embodiments in the specification into the claims.” *Hill-Rom Services, Inc. v.*
2 *Stryker Corp.*, 755 F.3d 1367, 1371 (Fed. Cir. 2014). Here, Bridgelux expressly defined the term
3 “directly on” to mean “no intervening elements present.” There is no basis to read additional
4 limitations into that express definition.

5 Second, Bridgelux’s proposal ignores the objective of the patents: an efficient thermal path
6 between the chip and substrate. As the specification states, a chip that is “mounted directly” has an
7 efficient thermal path to dissipate heat, resulting in benefits such as the reduction in loss of optical
8 power:

9 “By mounting the LED chip 100 directly on a metal substrate, an efficient thermal
10 path is created (as indicated by the arrow 116) to allow heat to pass from the LED chip 100
11 to the metal substrate. By providing the efficient thermal path 116, the LED chip 100 is able
12 to reduce or minimize any loss in optical power due to the effects of heating.”

13 *E.g.*, Ex. 2, ’929 Patent 4:45-59. An “intervening element,” conversely, interferes with the efficient
14 thermal path and is prohibited by the claim.

15 The specification explains that an adhesive may be used to directly mount an LED chip to a
16 substrate, provided that an efficient thermal path maintained. *Id.* It is the case that some adhesive
17 layers have qualities that result in an efficient thermal path. They are not “intervening layers” that
18 interfere with efficient heat transfer, and therefore fall within the scope of the “mounted directly”
19 claim element. For example, the prior art reference EP Patent Publication No. 1 895 602 (“Sanpei”)
20 discloses an adhesive layer that creates an efficient thermal path and, therefore, satisfies the
21 “mounted directly” claim element. Indeed, Sanpei is one of the references cited by Everlight in its
22 Petitions for Inter Partes Review for the ‘929, ‘988, and ‘051 Patents. *E.g.*, Ex. 7, Petition For Inter
23 Partes Review Of U.S. Patent No. 8,256,929 Under 35 U.S.C § 312 And 37 C.F.R. § 42.104.

24 But Bridgelux’s proposed construction would categorically permit *all* adhesives placed
25 between the chip and substrate to meet the elements of the claim, even if the adhesives are
26 configured as an insulating layer that blocks an efficient thermal path between the LED chips and
27 metal substrate. If an adhesive layer obstructs or interferes with efficient thermal transfer, it would
28 be considered an intervening element, and using such an adhesive layer would prevent the LED

1 chip from being mounted “directly” to the substrate. Thus, some adhesives may satisfy the claim
2 element, others may not; that is a fact question to be determined for each product or prior art
3 reference. Bridgelux’s proposed construction oversimplifies this question and allows for any and
4 all adhesives “or other means” to be positioned between the LED chips and metal substrate, even if
5 they defeat the very purpose of the invention. Everlight believes that its proposed claim definition
6 most closely aligns with the intrinsic record and avoids Bridgelux’s overly-simplified view.

7 Third, Bridgelux’s proposed language “or other means” has no basis in any asserted claim or
8 patent disclosure. There is no support in the specification text or drawings for “other means” of
9 mounting the LED chip and adding this term will simply confuse the fact finder. Moreover, adding
10 the term “means” to the claim definition would arguably convert otherwise clear claim language
11 into a Sec. 112(f) means-plus-function claim because of its use of the term “means.” Applicable
12 precedent forbids this change in claim scope in a judicial proceeding. *Cf. Keystone Bridge Co. v.*
13 *Phoenix Iron Co.*, 95 U.S. 274, 278 (1877) (“[T]he courts have no right to enlarge a patent beyond
14 the scope of its claim as allowed by the Patent Office...When the terms of a claim in a patent are
15 clear and distinct (as they always should be), the patentee, in a suit brought upon the patent, is
16 bound by it.”); *Chef Am., Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1374 (Fed. Cir. 2004) (“Thus,
17 in accord with our settled practice we construe the claim as written, not as the patentees wish they
18 had written it.”)

19 Based on the foregoing, Everlight respectfully requests that its definition of “mounted
20 directly” be adopted by the Court.
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2 Date: August 17, 2018

Respectfully submitted,

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