

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

Omni MedSci, Inc.,

Plaintiff/Counter-Defendant,

vs.

Apple Inc.

Defendant/Counter-Plaintiff.

Civil Action No. 2:18-cv-134-RWS

Jury Trial Demanded

**DEFENDANT APPLE INC.'S PRELIMINARY CLAIM CONSTRUCTIONS AND
EXTRINSIC EVIDENCE PURSUANT TO PATENT LOCAL RULE 4-2**

Pursuant to the Court's Amended Docket Control Order (ECF No. 65) and Patent Local Rule 4-2, Defendant Apple Inc. ("Apple") submits the following preliminary claim constructions and extrinsic evidence in connection with the following proposed claim terms, phrases and clauses for U.S. Patent Nos. 9,651,533 (the "'533 patent"), 9,757,040 (the "'040 patent"), 9,861,286 (the "'286 patent"), and 9,885,698 (the "'698 patent") (collectively the "Patents-in-Suit").

Apple's extrinsic evidence can be found at APL-OMNI_00075906 – 76040. Apple reserves the right to add extrinsic evidence, particularly for constructions on which the parties disagree. Apple further reserves the right to supplement or amend its constructions, if necessary, in light of, for example, Plaintiff's Proposed Constructions and Extrinsic Evidence.

| Apple Proposed Terms/Phrases/Clauses | Patents (Asserted Claim(s)) | Proposed Construction |
|---|---|--|
| “Beam” | 533 patent (5, 13) 040 patent (1) 698 patent (1, 3) 286 patent (16) | A collection of nearly parallel rays of light transmitted to a particular location by a light source |
| “Pulse rate” | ’533 patent (5, 13) | frequency at which an LED turns on and off |
| “wherein at least a portion of the one or more [plurality of] optical wavelengths is a near-infrared wavelength between 700 nanometers and 2500 nanometers” | ’533 patent (5, 13) ’040 patent (1) ’698 patent (1) ’286 patent (16) | wherein at least a portion of the one or more optical wavelengths originates from a near-infrared light source |
| “[a plurality of / one or more] lenses” | ’533 patent (5, 13) ’040 patent (1) ’698 patent (1) ’286 patent (16) | [a plurality of / one or more] transparent, curved surface used to focus or make photons of light parallel |
| Whether the preamble of claims 16-17, 19, and 20 of the 286 patent are limiting | ’286 patent (16, 17, 19, 20) | Not limiting |
| Whether the preamble of claims 1-3 of the 698 patent are limiting | ’698 patent (1, 2, 3) | Not limiting |

| Omni Proposed Terms/Phrases/Clauses | Patents (Asserted Claim(s)) | Proposed Construction |
|---|---|---|
| “the receiver is configured to be synchronized to [pulses of/modulation of] the light source” | 533 patent (5, 13) 040 patent (2) | No construction needed |
| “first distance” / “second distance” / “different distance” | 533 patent (8, 16) 040 patent (4) 286 patent (20) | The “first distance” is the distance between the receiver and a first |

| Omni Proposed Terms/Phrases/Clauses | Patents (Asserted Claim(s)) | Proposed Construction |
|---|---|--|
| | | light emitting diode. The “different, second distance” is the distance between the receiver and a second light emitting diode, which is different from the “first distance.” |
| “modulating [of] at least one of the LEDs” | 698 patent (1) 286 patent (16, 19) 040 patent (1) | changing or varying the intensity of at least one LED |
| “use a lock-in technique that detects the modulation frequency” | 698 patent (1) | No construction needed |

Date: November 1, 2018

Respectfully submitted,

/s/ Kelley A. Conaty

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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2018 a copy of the foregoing document entitled **DEFENDANT APPLE INC.'S PRELIMINARY CLAIM CONSTRUCTIONS AND EXTRINSIC EVIDENCE PURSUANT TO PATENT LOCAL RULE 4-2**, including all attachments, was delivered via electronic mail to counsel of record for Omni MedSci, Inc. as follows:

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