

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

Omni MedSci, Inc.,

Plaintiff/Counter-Defendant,

v.

Apple Inc.,

Defendant/Counter-Plaintiff.

Case No. 2:18-cv-134-RWS

JURY TRIAL DEMANDED

**AMENDED JOINT CLAIM CONSTRUCTION AND
PREHEARING STATEMENT PURSUANT TO P.R. 4-3**

Plaintiff, Omni MedSci, Inc. (“Omni MedSci”), and Defendant, Apple, Inc. (“Apple”), submit the parties’ Joint Claim Construction and Prehearing Statement pursuant to Patent Local Rule 4-3 and the Court’s Amended Docket Control Order. *See* ECF Nos. 48 and 101.

The patents-in-suit are:

1. U.S. Patent No. 9,651,533
2. U.S. Patent No. 9,757,040
3. U.S. Patent No. 9,867,286
4. U.S. Patent No. 9,885,698

A. Agreed Claim Constructions (P.R. 4-3(a))

Pursuant to P.R. 4-3(a), the parties present below the agreed construction of the claim terms/phrases. If the parties are able to reach further agreement concerning the constructions of any of the remaining claim terms and phrases at issue, they will supplement the Joint Statement.

Patent (Claim Nos.)	Claim Term or Phrase	Agreed Construction
'286 patent (16, 17, 19, 20)	Preamble	The preamble is not limiting
'698 patent (1, 2, 3)	Preamble	The preamble is not limiting
'533 patent (5, 13)	“pulse rate”	Number of pulses of light per unit of time.

B. Disputed Claim Constructions (P.R. 4-3(b))

Pursuant to P.R. 4-3(b), in the chart attached as Appendix A, the parties identify the disputed claim terms and phrases, state their positions on those terms and phrases, identify all references from the specification or prosecution history that support that construction, and identify any extrinsic evidence on which the party intends to rely. Each party may rely on any intrinsic or extrinsic evidence identified by the other party. Each party may amend, correct, or supplement its claim construction positions and supporting evidence in response to any change of position by the other party, in response to information received during claim construction discovery, or for other good cause.

C. Length of the Claim Construction Hearing (P.R. 4-3(c))

Pursuant to P.R. 4-3(c), the parties request an oral argument. If the Court permits an oral argument, the parties request 1.5 hours per side (3 hours total) for the claim construction hearing.

D. Live Witness Testimony at the Claim Construction Hearing (P.R. 4-3(d))

The parties do not believe that live testimony is necessary at the Claim Construction Hearing.

E. Other Issues (P.R. 4-3(e))

Pursuant to P.R. 4-3(e), the parties state that at present they are unaware of any additional issues that might require the scheduling of a prehearing conference. Should either party become aware of such issues that it believes calls for a prehearing conference, it will notify the other party and the Court and propose dates for a prehearing conference.

Dated: January 11, 2019

Respectfully submitted,

/s/ Christopher C. Smith (with permission)

/s/ Kelley Conaty

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email on January 11, 2019.

/s/ Kelley Conaty
Kelley Conaty

	Claim Term or Phrase	Patent (Claim Nos.)	Omni MedSci's Construction	Omni MedSci's Intrinsic/Extrinsic Evidence	Apple's Construction
O1	"modulating [of] at least one of the LEDs"	'286 (16, 19) '698 (1) '040 (1)	Pulsing the light, or varying the frequency of the light, produced by at least one of the LEDs.	'040 (14:45-60, 16:65-17:32, 21:1-19) '698 (14:32-53, 23:7-22, 25:29-62) '286 (17:54-18:2, 20:29-42, 24:11-29) <u>Extrinsic Evidence:</u> The American Heritage Science Dictionary © 2011. Published by Houghton Mifflin Harcourt Publishing Co. (definition of "modulate") (available at http://www.dictionary.com/browse/modulate) IEEE 100 The Authoritative Dictionary of IEEE Standards Terms Seventh Term © 2000 (definition of "pulse-width modulation") Microsoft Computer Dictionary Fourth Edition © 1999 (definitions of "pulse	Varying the frequency of the light produced at least one of the LEDs

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