

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

Thomas A. Lewry LEAD COUNSEL  
(MI Bar No. P36399)  
John S. LeRoy (MI Bar No. P61964)  
Robert C. J. Tuttle (MI Bar No. P25222)  
John M. Halan (MI Bar No. P37616)  
Christopher C. Smith (MI Bar No. P73936)  
BROOKS KUSHMAN P.C.  
1000 Town Center, Twenty-Second Floor  
Southfield, Michigan 48075  
Telephone: (248) 358-4400  
Facsimile: (248) 358-3351  
Email: tlewry@brookskushman.com  
jleroy@brookskushman.com  
rtuttle@brookskushman.com  
jhalan@brookskushman.com  
csmith@brookskushman.com

T. John Ward, Jr.  
Texas State Bar No. 00794818  
E-mail: jw@wsfirm.com  
Claire Abernathy Henry  
Texas State Bar No. 24053063  
E-mail: claire@wsfirm.com  
WARD, SMITH & HILL, PLLC  
PO Box 1231  
Longview, Texas 75606  
Telephone: (903) 757-6400  
Facsimile: (903) 757-2323

*Attorneys for Omni MedSci, Inc.*

Kelley A. Conaty (TX Bar No.: 24040716)  
SIDLEY AUSTIN LLP  
2021 McKinney Avenue Suite 2000  
Dallas, TX 75201  
Phone: (214) 981-3300 / Fax: (214) 981-3400  
Email: kconaty@sidley.com

Melissa Richards Smith (TX Bar No. 24001351)  
GILLAM & SMITH, LLP  
303 South Washington Avenue  
Marshall, TX 75670  
Phone: (903) 934-8450 / Fax: (903) 934-9257  
Email: melissa@gillamsmithlaw.com

Ching-Lee Fukuda  
SIDLEY AUSTIN LLP  
787 Seventh Avenue  
New York, NY 10019  
Phone: (212) 839-5300 / Fax: (212) 839-5599  
Email: clfukuda@sidley.com

Irene Yang  
SIDLEY AUSTIN LLP  
555 California Street, Suite 2000  
San Francisco, CA 94104  
Phone: (415) 772-1200 / Fax: (415) 772-7400  
Email: dlanderson@sidley.com  
Email: irene.yang@sidley.com

Jeffrey Kushan  
Thomas A. Broughan III  
SIDLEY AUSTIN LLP  
1501 K Street, N.W.  
Washington, DC 20005  
Phone: (202) 736-8000 / Fax: (202) 736-8711  
Email: jkushan@sidley.com  
Email: tbroughan@sidley.com

David T. Pritikin  
SIDLEY AUSTIN LLP  
One South Dearborn  
Chicago, IL 60603  
Telephone: (312) 853-7359  
Facsimile: (312) 853-7036  
Email: dpritikin@sidley.com

*Attorneys for Apple Inc.*

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

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.