

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF TEXAS  
3 MARSHALL DIVISION

3 OMNI MEDSCI, INC. | DOCKET 2:18CV134  
4 |  
4 VS. | FEBRUARY 6, 2019  
5 | 10:04 A.M.  
6 APPLE INC. | TEXARKANA, TEXAS

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8 VOLUME 1 OF 1, PAGES 1 THROUGH 66

9 REPORTER'S TRANSCRIPT OF CLAIM CONSTRUCTION HEARING

10 BEFORE THE HONORABLE ROBERT W. SCHROEDER, III  
11 UNITED STATES DISTRICT JUDGE  
12 -----

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5 PROCEEDINGS RECORDED USING MECHANICAL STENOGRAPHY;  
6 TRANSCRIPT PRODUCED VIA COMPUTER-AIDED TRANSCRIPTION.  
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1 the frequency, the pulsing of the LED; whereas, varies  
2 the light intensity dealt with other claim language.

3 If you could go over to Slide 7, please.

4 This is a similar -- this is Claim 1 of the  
5 '040 patent. You'll see a similar approach here where up  
6 in one part of the claim, you see "the measurement device  
7 being configured to generate" -- a beam -- "by modulating  
8 at least one of the LEDs having an initial light  
9 intensity." And then down later in the claim, it's got a  
10 different clause for a different part of that apparatus  
11 that says "increasing the light intensity relative to the  
12 initial light intensity."

13 THE COURT: So, Apple's proposed construction  
14 on this term was "varying the frequency of the light";  
15 so, what is the construction you're proposing now?

16 MR. KUSHAN: So, we would just take your  
17 construction and remove the word "amplitude" from it.  
18 So, what that would make clear is it's varying the  
19 frequency. And I think "phase" isn't really addressed in  
20 the patent, but what the patent does is differentiate  
21 varying the frequency. That's what they attribute to  
22 modulating. And they call varying the amplitude or the  
23 intensity something else, which is why we think that's  
24 what the claim is doing here. So, that's a modification  
25 that we had proposed to your construction; and that would

1 get us there.

2 I just want to flag two things. There is a  
3 lot of case law that holds that when a patent claim uses  
4 different words to define different aspects of a device,  
5 you presume that those things have different meanings.  
6 And, so, parsing these claims -- and the case I'll give  
7 you is *CAE Screenplates versus Heinrich*. This is from  
8 the Federal Circuit, 224 F.3d 1308 from 2000. And the  
9 court basically said, "In the absence of any evidence to  
10 the contrary, we must presume that the use of these  
11 different terms in the claims connotes different  
12 meanings." When you look at those claims I just walked  
13 through, you can see that it's doing that exactly. It's  
14 using one phrase to talk about varying the intensity or  
15 amplitude and a different phrase to refer to modifying --  
16 or modulating the light.

17 The next thing I want to just flag, there is a  
18 little bit of confusion, I think, about pulsing and  
19 modulation, how that connects. We think that pulsing is  
20 pretty simple. That's just turning the light on and off.  
21 If it's an LED, just turn it on; turn it off. That's a  
22 pulse.

23 If you can go to Slide 8, please.

24 What the patent does in its specification --  
25 these are a number of specifications -- but the patents