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Paper 9
Date: September 16, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TELADOC HEALTH, INC.,
Petitioner,

v.

DATA HEALTH PARTNERS, INC.,
Patent Owner.

IPR2024-00616
Patent 11,144,554 B2

Before ROBERT J. WEINSCHENK, SHARON FENICK, and ANDREAS BALTATZIS, *Administrative Patent Judges*.

BALTATZIS, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. Background and Summary

Teladoc Health, Inc. ("Petitioner") filed a Petition requesting *inter partes* review of claims 1, 2, 4–17, 19, and 20 (the "challenged claims") of U.S. Patent No. 11,144,554 B2 (Ex. 1001, "the '554 patent"). Paper 1 ("Pet."). Data Health Partners, Inc. ("Patent Owner") filed a Preliminary Response. Paper 6 ("Prelim. Resp.").

We have authority to determine whether to institute *inter partes* review. *See* 35 U.S.C. § 314 (2024); 37 C.F.R. § 42.4(a) (2023) ("The Board institutes the trial on behalf of the Director."). We may institute *inter partes* review when "the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. § 314(a). After considering the Petition and the evidence of record, we institute an *inter partes* review as to claims 1, 2, 4–17, 19, and 20 of the '554 patent.

B. Real Parties in Interest

Petitioner identifies Teladoc Health, Inc. as the real party in interest. Pet. 1.

Patent Owner identifies Data Health Partners, Inc. as the real party in interest. Paper 5 (Patent Owner's Mandatory Notices), 1.

C. Related Matters

The parties list the following co-pending litigation as a related matter: *Data Health Partners, Inc. v. Teladoc Health, Inc.*, 1-23-cv-00160-JCG (D. Del. Feb. 13, 2023). Pet. 2; Paper 5, 1.

Petitioner concurrently filed petitions for *inter partes* review challenging claims of related patents: U.S. Patent Nos. 11,151,142 B2 (IPR2024-00617) and 10,061,812 B2 (IPR2024-00618).

D. The '554 Patent (Ex. 1001)

The '554 patent relates to a system and method for tracking goal progression for clients served by providers. Ex. 1001, 1:42–45. For example, the client may be receiving treatment or assistance from the provider. *Id.* at 1:45–46. An administrator assigns clients to one or more providers. *Id.* at 1:47–49. "Goals and a plan of action are established for the client in response to treatments and assistance required." *Id.* at 1:49–51. The system receives data associated with the client from providers and the data is compiled to determine whether the clients are meeting thresholds associated with the goals. *Id.* at 1:51–54.

E. Illustrative Claims

Petitioner challenges claims 1, 2, 4–17, 19, and 20, of which claims 1, 13, and 17 are independent. Claim 1 is illustrative of the claimed subject matter and is reproduced below.[1]

> 1. A method for tracking goal progression, the method comprising:
>
> [a] receiving input, by an administrator, for establishing an account for a client, wherein the client is an individual receiving treatment or assistance, and wherein the accounts are stored in a server available through one or more networks;
>
> [b] assigning the client to one or more of providers in response to selections from the administrator, wherein the one or more providers include at least individuals available to treat or assist the client;
>
> [c] determining, by the one or more providers, treatment and assistance for the client, which is used for establishing goals, a plan of action, and thresholds for the client, wherein the

[1] We adopt the bracketed identifiers added by Petitioner.

thresholds represent certain points of progress towards the goals;

[d] periodically receiving updated data, from the one or more providers, about the status and/or well-being of the client;

[e] compiling data associated with the client received from the one or more providers utilizing computing or communications devices in communication with the server, wherein the computing or communications devices represent devices communicating with the server from any of one or more networks, in order to determine progress of the client towards achieving the goals; and

[f] determining whether the thresholds associated with the goals are being met based on the compiled data; and

[g] modifying the plan of action, by the one or more providers, in response to one or more of the thresholds not being met.

Ex. 1001, 40:47–41:10.

F. Asserted References

Petitioner relies on the following references in its asserted grounds of unpatentability:

Name	Reference	Ex. No.
Wager	US 2006/0149589 A1 (July 6, 2006)	1003
Chitiveli	US 2013/0179450 A1 (July 11, 2013)	1004
Douglas	WO 1999/03045 A1 (Jan. 21, 1999)	1002
Koh	Hian Chye Koh & Gerald Tan, "Data Mining Applications in Healthcare," 19 J. Healthcare Information Management 64 (2005)	1009
Klotsche	J. Klotsche et al., "The DETECT adherence score—structure and psychometric exploration of a novel approach to measure adherence to drug and non-drug interventions in primary care," 20 Int. J. Methods Psychiatr. Res. 82 (2011)	1005

G. Asserted Grounds

Petitioner asserts that claims 1, 2, 4–17, 19, and 20 would have been unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §[2]	Reference(s)/Basis
1, 2, 4, 5, 7, 9, 10, 13, 15, 17	103	Douglas
1, 2, 4, 5, 7, 9, 10, 12, 13, 15, 17	103	Douglas, Wager
6	103	Douglas, Chitiveli
6	103	Douglas, Chitiveli, Wager
11, 16, 19	103	Douglas, Klotsche
11, 16, 19	103	Douglas, Klotsche, Wager
8, 14, 20	103	Douglas, Koh
8, 14, 20	103	Douglas, Koh, Wager

Petitioner supports its challenges with a declaration from Bryan Bergeron, M.D. Ex. 1012.

II. ANALYSIS

A. Legal Standards

"In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable." *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify "with particularity . . . the evidence that supports the grounds for the challenge to each claim")). This burden never shifts to Patent

[2] The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) ("AIA"), included revisions to 35 U.S.C. §§ 102 and 103 that became effective on March 16, 2013, after the filing of the application to which the '554 patent claims priority. *See* Ex. 1001, code (60). Therefore, we apply the pre-AIA versions of Sections 102 and 103.

Owner. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (citing *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1326–27 (Fed. Cir. 2008)) (discussing the burden of proof in *inter partes* review). Furthermore, Petitioner must explain with particularity how the prior art would have rendered the challenged claims unpatentable. 35 U.S.C. § 312(a)(3); 37 C.F.R. § 42.104(b)(4) ("The petition must specify where each element of the claim is found in the prior art patents or printed publications relied upon.").

A claim is unpatentable under 35 U.S.C. § 103 if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious to a person having ordinary skill in the art to which said subject matter pertains. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) objective evidence of nonobviousness, i.e., secondary considerations.[3] *See Graham v. John Deere Co. of Kan. City*, 383 U.S. 1, 17–18 (1966).

B. Level of Ordinary Skill in the Art

Petitioner argues that one of ordinary skill in the art relevant to the challenged claims, as of the earliest claimed priority date, "would have had at least a bachelor's degree in a healthcare field as well as 1–2 years of experience with health information technology, including specific

[3] In the present record, neither party presents arguments or evidence relating to secondary considerations.

experience with computer-based systems for recording, tracking, and analyzing patient health information." Pet. 7 (citing Ex. 1012 ¶ 36).

At this time, Patent Owner does not oppose Petitioner's definition of a person of ordinary skill in the art. Prelim. Resp. 2.

On this record and for the purposes of institution, we determine Petitioner's proposed level of skill comports with the qualifications a person would have needed to understand and implement the teachings of the '554 patent and the prior art of record.

C. Claim Construction

We construe claim terms according to the standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–17 (Fed. Cir. 2005) (en banc), i.e., as construed in a civil action under 35 U.S.C. § 282(b). *See* 37 C.F.R. § 42.100(b). Under *Phillips*, claim terms are afforded "their ordinary and customary meaning." *Phillips*, 415 F.3d at 1312. "[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Id.* at 1313. "Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id.* at 1313.

Petitioner argues that "[n]one of the claim terms of the Challenged Claims require an explicit construction to resolve the current grounds." Pet. 8. Patent Owner "agrees with Petitioner[] that, for purposes of this Preliminary Response only, all terms of the '554 patent have their plain and ordinary meaning." Prelim. Resp. 10.

At this stage of the proceeding and based on the current record, we need not construe explicitly any claim terms because no such construction is

necessary to determine whether to institute. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (stating that "we need only construe terms 'that are in controversy, and only to the extent necessary to resolve the controversy'" (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))). To the extent the parties' arguments implicate claim construction, these are discussed below with reference to limitation 1[b].[4]

D. Obviousness over Douglas (Claims 1, 2, 4, 5, 7, 9, 10, 13, 15, and 17)

Petitioner argues that claims 1, 2, 4, 5, 7, 9, 10, 13, 15, and 17 would have been obvious over Douglas. Pet. 9–50. Patent Owner disputes certain aspects of Petitioner's showing. Prelim. Resp. 11–21.

For the reasons discussed below, we determine that Petitioner demonstrates a reasonable likelihood of prevailing in showing that at least claim 1 would have been obvious over Douglas.

1. Douglas (Ex. 1002)

Douglas relates to an electronic system and method for providing therapeutic behavior modification, including compliance monitoring and feedback. Ex. 1002, code (57), 5:33–38.[5] The system allows for a physician

[4] We request that any claim construction arguments the parties rely upon during trial appear in a clearly designated section of briefing and note that such arguments should "point out the specific portions of the specification, prosecution history, and relevant extrinsic evidence" to be considered, with explanations of the relevancy of that evidence to the arguments presented. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide, at 46, 49 (Nov. 2019) (available at https://www.uspto.gov/TrialPracticeGuide Consolidated).

[5] Petitioner's exhibits include Bates Numbering, but both parties cite to the original pagination of the documents. For consistency with the parties' citations, we refer to the document page numbers.

to assist an individual or patient to make desirable lifestyle and behavior changes. *Id.* at 6:1–5, 6:24–29. Douglas describes an exemplary scenario in which a physician may recommend a health care maintenance program for a patient. *Id.* The physician or a case administrator then enters the patient into the system, and the "system or case advisor recommends a default set of goals based on the patient's needs and existing medical protocols that may be modified by the physician." *Id.* at 7:17–20.

Once the goals are set, "the system accepts updated patient data directly from the patient and through data entered by the physician during office visits." *Id.* at 11:1–5. The system compares the patient's data to the patient's goals to provide patient progress reports to the physician. *Id.* at 11:6–10. The system will further notify the physician that the patient's goals are not being met and provide an alarm for immediate action if a health risk is present. *Id.* at 11:11–25.

2. Independent Claim 1

a) Preamble

The preamble of claim 1 recites "[a] method for tracking goal progression." Ex. 1001, 40:47–48. Petitioner argues that Douglas teaches a method for tracking goal progression by, in part, "correlating the patient's progress with previously established goals." *See* Pet. 11 (citing Ex. 1002, 2:36–3:2; Ex. 1012 ¶ 44).

Patent Owner does not dispute that Douglas teaches the preamble of claim 1. On this record and for the purposes of institution, we are

sufficiently persuaded by Petitioner's argument and evidence that Douglas teaches the preamble of claim 1.[6]

b) Limitation 1[a] (receiving input for establishing a client account)

Claim 1 recites "receiving input, by an administrator, for establishing an account for a client, wherein the client is an individual receiving treatment or assistance, and wherein the accounts are stored in a server available through one or more networks." Ex. 1001, 40:49–53.

Petitioner argues that Douglas teaches a "case administrator sets up a new patient" in a system "based on information contained in the patient prescription form." Pet. 11–12 (citing Ex. 1002, 6:36–7:20, Figs. 2, 60; Ex. 1012 ¶ 45). The patient prescription form may be completed by a physician who recommends a health care maintenance or recovery program to a patient. *See* Ex. 1002, 6:24–27, 6:36–7:4, Fig. 2. The prescription form may include patient identification, health information, and physician information. *See id.* Accordingly, Petitioner argues that Douglas teaches receiving input (patient information) by an administrator for establishing an account for a client. *See* Pet. 11–12 (citing Ex. 1002, 6:36–7:20, Figs. 2, 60; Ex. 1012 ¶ 45).

Petitioner further argues that Douglas teaches "[o]nce the patient is set up on the system," the patient can access his or her behavior modification program by logging into the system with a user ID and password. *Id.* at 12–15 (citing Ex. 1002, 8:28–31, 25:5–10, Fig. 36). The system further includes a network server with access to a database containing patient health

[6] Because Petitioner has sufficiently shown that the prior art teaches the preamble, we need not determine at this time whether the preamble is limiting. *See Nidec*, 868 F.3d at 1017.

information. Ex. 1002, 24:12–26, 24:28–37. Accordingly, Petitioner argues that Douglas teaches establishing an account for a patient (a client receiving treatment or assistance), wherein the account is stored in a server available through a network. *See* Pet. 12–15 (citing Ex. 1002, 8:28–31, 24:12–26, 24:28–37, 25:5–10, Fig. 36; Ex. 1012 ¶¶ 46–50).

Patent Owner does not dispute that Douglas teaches limitation 1[a]. On this record and for the purposes of institution, we are sufficiently persuaded by Petitioner's argument and evidence that Douglas teaches limitation 1[a].

c) Limitation 1[b] (assigning the client to one or more providers)

Claim 1 recites "assigning the client to one or more of providers in response to selections from the administrator, wherein the one or more providers include at least individuals available to treat or assist the client." Ex. 1001, 40:54–57.

Petitioner argues that Douglas teaches assigning a patient to "their physician, who provides treatment or assistance to the patient." Pet. 15–16 (citing Douglas 15:8–9, 21:24–28, claims 11, 25, Figs. 2, 47). Alternatively, Petitioner argues that it would have been obvious to one skilled in the art to assign the patient to the physician because Douglas teaches "that it is the administrator who 'sets up a new patient based on information contained in the prescription form' . . . and the prescription form identifies the patient's physician." *Id.* at 16–17 (citing Ex. 1002, 6:33–7:20; Ex. 1012 ¶ 54).

Petitioner further argues that Douglas "discloses that such assigning of clients to providers is *in response to selections from the administrator*, as the case administrator sets up the patient on Douglas's system by entering the information . . . where such information includes information associating

the patient with a physician." *Id.* at 16 (citing Ex. 1002, Fig. 2; Ex. 1012 ¶ 53) (emphasis added).

Patent Owner argues that "none of the portions of Douglas cited by Petitioner show that Douglas discloses that a physician is 'assigned' to any client, let alone that such assignment is made 'in response to selections from an administrator.'" Prelim. Resp. 15 (citing Ex. 1002, 15:8–9, claims 11, 25, Figs. 2, 7, 47). First, Patent Owner argues that Douglas's patient is not assigned to a physician because "the patient's subscription into Douglas's system is done ***after*** the patient has already seen a physician and the physician has filled out a patient prescription form." *Id.* at 16. Accordingly, Patent Owner argues that the patient's physician "is either directly or indirectly responsible for subscribing the patient to Douglas's program." *Id.* at 17 (citing Ex. 1002, 6:28–35).

Second, Patent Owner argues Douglas's case advisor does not select a physician for the patient. *Id.* Instead, Patent Owner argues that "[a]ny 'selections' made by Douglas's case advisor relate to a treatment plan, not assignment to any provider under a plain and ordinary meaning of the claim." *Id.* at 18 (citing Ex. 1002, 7:11–16). And "[e]ven if the case advisor's entry of the treating physician's name in the system could be fairly characterized as 'assignment' to a 'provider,' it is not done 'in response' to any 'selection[] from the administrator'—it merely reflects that a particular provider has already seen and begun treating the patient." *Id.* at 18–19.

Third, Patent Owner argues that it would not have been obvious "for the case administrator to assign the patient to the physician" using Douglas's system because Douglas envisions that the "patient will have already selected and/or seen a particular physician to begin receiving treatment." *Id.* at 19 (citing Ex. 1002, 6:28–35, 7:11–16). Patent Owner argues "Douglas

does not identify any need or justification for a case advisor, which Douglas describes as a "nurse trained ***in the protocols of the system's software***," to assign physicians to patients." *Id.* at 20 (citing Ex. 1002, 3:11–13).

On this record, Patent Owner's arguments are not directed to the recitations of claim 1. For example, there are no temporal limitations in the claim that require an administrator assigning a provider to a client *before* the provider begins treating or assisting a client. Likewise, there are no limitations that exclude an administrator selecting a provider within the system, even if that provider has already seen and begun treating the client outside of the system.

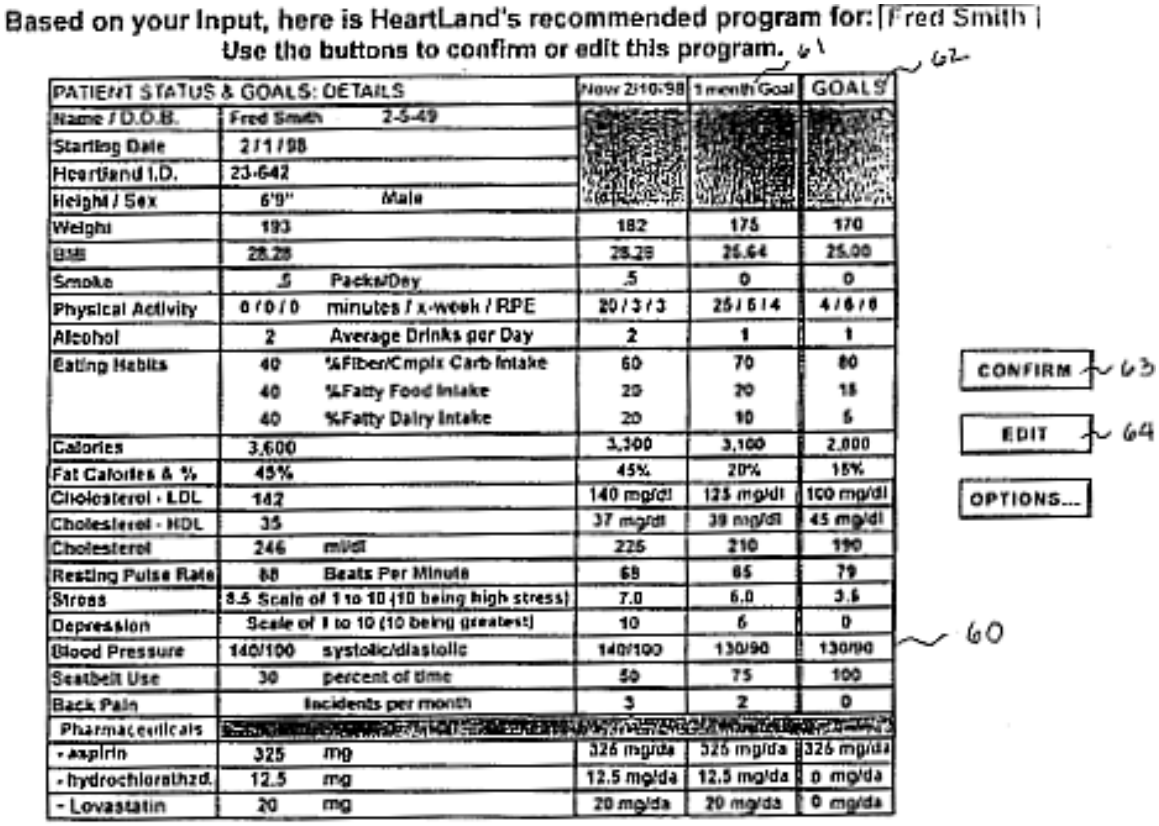
We determine that, on this record, Petitioner establishes sufficiently for the purposes of institution that Douglas teaches or suggests assigning a patient to a physician in response to a selection by an administrator. *See* Pet. 15–17 (citing Ex. 1002, 11:7–8, 15:8–9, 21:24–28, Fig. 47; Ex. 1012 ¶¶ 55–62). More specifically, we agree with Petitioner that an administrator assigns a physician to a patient's account within the system. Likewise, on this record, we are persuaded by Petitioner that it would have been obvious for an administrator to select a physician to assign to a patient account within the system.

d) Limitation 1[c] (establishing goals, plan of action, and thresholds)

Claim 1 recites "determining, by the one or more providers, treatment and assistance for the client, which is used for establishing goals, a plan of action, and thresholds for the client, wherein the thresholds represent certain points of progress towards the goals." Ex. 1001, 40:58–62.

Petitioner argues that Douglas teaches "'the system . . . generates a set of goals 52' for the patient as part of 'a therapeutic program' for the patient"

based on input information. Pet. 21–22 (citing Ex. 1002, 8:1–9, Fig. 5). The input information may include "patient characteristics 'such as age, sex, [and] weight.'" *Id.* Petitioner argues that Douglas teaches "'[t]he physician or case advisor may view details as to how the suggested goals may be implemented by selecting the system's Program Detail option 54, which shows 'recommended one month goals 61 and final goals 62,' as shown in FIG. 6." *Id.* at 22 (citing Ex. 1002, 8:8–11, Fig. 6). Douglas's Figure 6 is excerpted below.



PATIENT STATUS & GOALS: DETAILS			Now 2/10/98	1 month Goal	GOALS
Name / D.O.B.	Fred Smith	2-5-49			
Starting Date	2/1/98				
Heartland I.D.	23-642				
Height / Sex	6'9"	Male			
Weight	193		182	175	170
BMI	28.28		28.28	25.64	25.00
Smoke	.5	Packs/Day	.5	0	0
Physical Activity	0 / 0 / 0	minutes / x-week / RPE	20 / 3 / 3	25 / 5 / 4	4 / 6 / 6
Alcohol	2	Average Drinks per Day	2	1	1
Eating Habits	40	%Fiber/Cmplx Carb Intake	60	70	80
	40	%Fatty Food Intake	20	20	15
	40	%Fatty Dairy Intake	20	10	5
Calories	3,600		3,300	3,100	2,800
Fat Calories & %	45%		45%	20%	15%
Cholesterol - LDL	142		140 mg/dl	125 mg/dl	100 mg/dl
Cholesterol - HDL	35		37 mg/dl	39 mg/dl	45 mg/dl
Cholesterol	246	ml/dl	225	210	190
Resting Pulse Rate	88	Beats Per Minute	88	85	79
Stress	8.5	Scale of 1 to 10 (10 being high stress)	7.0	6.0	3.5
Depression	Scale of 1 to 10 (10 being greatest)		10	6	0
Blood Pressure	140/100	systolic/diastolic	140/100	130/90	130/90
Seatbelt Use	30	percent of time	50	75	100
Back Pain		Incidents per month	3	2	0
Pharmaceuticals					
- aspirin	325	mg	325 mg/da	325 mg/da	325 mg/da
- hydrochlorathzd.	12.5	mg	12.5 mg/da	12.5 mg/da	0 mg/da
- Lovastatin	20	mg	20 mg/da	20 mg/da	0 mg/da

Douglas's Figure 6 (excerpt) illustrates a recommended program for a patient.

The program is shown as a table with first and second columns labeled "PATIENT STATUS & GOALS" followed by several rows of physical (e.g., height, sex, weight), health (e.g., body mass index, cholesterol, blood pressure), and lifestyle (e.g., smoker, alcohol, calories,

seatbelt use) information. *See* Ex. 1002, Fig. 6. The program includes three additional columns labeled "Now", "1 month Goal" 61, and "GOALS" 62. *Id.* Petitioner argues that Douglas teaches the physician can use buttons to "confirm 63 or edit 64 the suggested program to modify the goals by making appropriate selections." Pet. 23 (citing Ex. 1002, 8:11–13; Ex. 1012 ¶ 64).

Petitioner asserts that a physician confirming or modifying the suggested program teaches determining treatment and assistance for the client. *Id.* (citing Ex. 1002, 8:12–13; Ex. 1012 ¶ 65). Petitioner further asserts "Douglas's program provides 'goals 52,' 'one month goals 61,' and 'final goals 62' for, e.g., weight loss, smoking cessation, reduction of alcohol consumption, and dietary improvements." *Id.* at 23–24 (citing Ex. 1002, 8:1–13, Figs. 5, 6; Ex. 1012 ¶ 65). Accordingly, Petitioner asserts that "Douglas's 'goals 52' and 'final goals 62' correspond to the claimed goals," "Douglas's 'one month goals 61' correspond to the claimed thresholds, representing certain points of progress toward the goals," and "Douglas's overall 'therapeutic program'" corresponds to the claimed plan of action. *Id.* at 25–26 (citing Ex. 1002, 6:24–27, 7:5–8:13, Figs. 5, 6; Ex. 1012 ¶ 70).

Patent Owner argues that "Petitioner[] fail[s] to allege that Douglas discloses 'determining, by the one or more providers, treatment and assistance for the client, which is used for establishing' both goals and a 'plan of action,' which the Challenged Claims recite as distinct elements." Prelim. Resp. 11–12 (citing Pet. 46, 50). Instead, Patent Owner argues that "the claimed goals cannot be wholly consumed by the claimed plan of action because the Challenged Claims list 'goals' and 'a plan of action' separately." *Id.* at 13 (citing Ex. 1001, 40:58–62, 42:5–9, 42:48–52). Moreover, Patent Owner argues that Petitioner does not support its allegation that Douglas's

"therapeutic program" teaches a "plan of action." *Id.* at 12 (citing Pet. 25–26; Ex. 1012 ¶ 70).

On this record, Petitioner sets forth separate teachings in Douglas corresponding to the separately recited elements of a plan of action (Douglas's therapeutic program) and goals (Douglas's final goals). *See* Pet. 25–26. Moreover, Petitioner explains how the therapeutic program is used to generate the goals. *See id.* at 22 (citing Ex. 1002, 8:1–9, Fig. 5; Ex. 1012 ¶ 64). For example, Petitioner identifies where Douglas teaches a plan of action, e.g., weight loss, with specific intermediate and final goals therein, e.g., physical activity, eating habits, calories, etc. *See* Ex. 1002, Fig. 6.

We determine that, on this record, Petitioner establishes sufficiently for the purposes of institution that Douglas teaches or suggests a provider determining treatment and assistance for the client, which is used for establishing goals, a plan of action, and thresholds for the client, wherein the thresholds represent certain points of progress towards the goals. *See* Pet. 21–25 (citing Ex. 1002, 6:24–27, 7:5–8:13, Figs. 5, 6; Ex. 1012 ¶¶ 65–70). Accordingly, we agree with Petitioner on this record that Douglas teaches a plan of action (therapeutic program), with thresholds (one month goals) representing points of progress towards established goals (final goals). *See id.*

e) Limitation 1[d] (receiving updated data)

Claim 1 recites "periodically receiving updated data, from the one or more providers, about the status and/or well-being of the client." Ex. 1001, 63–65.

Petitioner argues that Douglas teaches "the system accepts updated patient data . . . through data entered by the physician during office visits." Pet. 26 (citing Ex. 1002, 11:1–5). Petitioner further argues that Douglas's

"system periodically correlates the updated patient health information with the program goals to determine the patient's progress and compliance with the program." *Id.* (citing Ex. 1002, 11:6–12: Figs. 5, 6, 60; Ex. 1012 ¶ 72).

Patent Owner does not dispute limitation 1[d]. On this record we are sufficiently persuaded by Petitioner's argument and evidence that Douglas teaches periodically receiving updated data from the provider about the status of the client. *See* Pet. 26 (citing Ex. 1002, 11:1–12:2; Ex. 1012 ¶¶ 71–72).

f) Limitation 1[e] (compiling data)

Claim 1 recites "compiling data associated with the client received from the one or more providers utilizing computing or communications devices in communication with the server, wherein the computing or communications devices represent devices communicating with the server from any of one or more networks, in order to determine progress of the client towards achieving the goals." Ex. 1001, 40:66–41:5.

Petitioner argues that Douglas teaches "[t]he system generat[es] reports on patient progress based on the data shown in FIGS. 40–45." Pet. 27 (citing Ex. 1002, 20:33–34). Specifically, Petitioner argues that Douglas's Figures 40–45 "depict various aspects of patient data collected over time, namely, blood pressure, smoking activity, physical activity, pulse, weight, stress level, medication intake, caloric intake, cholesterol level, and attitude toward change, charted against respective patient goals." *Id.* (citing Ex. 1002, 20:3–37, Figs. 40–45). Petitioner further argues that Douglas teaches the physician using a PC to provide information that is then uploaded to a network server via the Internet. *Id.* at 27–28 (citing Ex. 1002, 24:3–36, Ex. 1012 ¶ 74).

Patent Owner does not dispute limitation 1[e]. On the present record and for the purposes of institution, we are sufficiently persuaded by Petitioner's argument and evidence that Douglas teaches compiling client data received from the provider utilizing communication devices communicating with the server to determine progress of the client towards achieving the goals. *See* Pet. 27–28 (citing Ex. 1002, 20:14–19, 24:3–36; Ex. 1012 ¶¶ 73–75).

g) Limitation 1[f] (determining whether thresholds are met)

Claim 1 recites "determining whether the thresholds associated with the goals are being met based on the compiled data." Ex. 1001, 41:6–7.

Petitioner argues that Douglas teaches the "'system compares actual data about the patient with the goals and parameters residing in the system's database' and will 'notify the physician or case advisor [if] these goals are not being met.'" Pet. 28–29 (citing Ex. 1002, 11:18–12:2). According to Petitioner, Douglas further teaches that "the system periodically correlates the updated patient health information with the program goals to determine the patient's progress and compliance with the program." *Id.* (citing Ex. 1002, 11:6–12:2, Figs. 5, 6, 60; Ex. 1012 ¶ 76).

Patent Owner does not dispute limitation 1[f]. On the present record and for the purposes of institution, we are sufficiently persuaded by Petitioner's argument and evidence that Douglas teaches determining whether the thresholds associated with the goals are being met based on the compiled data. *See* Pet. 28–29 (citing Ex. 1002, 11:6–12:2; Ex. 1012 ¶ 76).

h) Limitation 1[g] (modifying plan of action)

Claim 1 recites "modifying the plan of action, by the one or more providers, in response to one or more of the thresholds not being met." Ex. 1001, 41:8–10.

Petitioner argues that Douglas teaches "the physician or case advisor may recommend that the program be modified to suit the patient's condition," when "these goals are not being met." Pet. 29 (citing Ex. 1002, 11:18–25). For example, the physician may "modify the program by altering the goals or moving the patient into a different diagnostic category." *Id.* (citing Ex. 1002, 11:26–34).

Patent Owner does not dispute limitation 1[g]. Accordingly, on the present record and for the purposes of institution, we are sufficiently persuaded by Petitioner's argument and evidence that Douglas teaches the provider (physician) modifying the plan of action (therapeutic program) in response to thresholds (intermediate goals) not being met. Pet. 29 (citing Ex. 1002, 11:28–34; Ex. 1012 ¶ 77).

i) Conclusion Regarding Claim 1

Based on the current record, there is a reasonable likelihood that Petitioner will prevail in demonstrating that claim 1 is unpatentable as obvious in view of Douglas.

3. Analysis of Claims 2, 4, 5, 7, 9, 10, 13, 15, and 17

Petitioner presents evidence that Douglas teaches the limitations of claims 2, 4, 5, 7, 9, 10, 13, 15, and 17. Pet. 30–50. Patent Owner does not separately argue these claims at this stage of the proceeding. Patent Owner may raise any arguments regarding these claims in its Patent Owner Response after institution. On this record, Petitioner shows sufficiently that Douglas teaches the limitations of claims 2, 4, 5, 7, 9, 10, 13, 15, and 17.

E. Obviousness over Douglas and Wager (Claims 1, 2, 4, 5, 7, 9, 10, 12, 13, 15, and 17)

Petitioner argues that claims 1, 2, 4, 5, 7, 9, 10, 12, 13, 15, and 17 would have been obvious over Douglas and Wager. Pet. 51–57. Patent Owner disputes certain aspects of Petitioner's showing. Prelim. Resp. 21–30.

For the reasons discussed below, we determine that Petitioner demonstrates a reasonable likelihood of prevailing in showing that at least claim 1 would have been obvious over Douglas and Wager.

1. Wager (Ex. 1003)

Wager relates to a management interface for assigning patients to care-providers. Ex. 1003 ¶ 3. A staff manager for a hospital or other clinical care facility may operate the workforce management interface to assign patients to providers, for example, "nurses, therapists, technicians, physicians, interns, or other clinical or . . . personnel." *Id.* ¶ 11. The workforce management system may provide a patient list with patient information to be matched to a provider list with provider information. *Id.* ¶¶ 12, 14. Wager further describes a graphical user interface ("GUI") that the staff manager may use to "highlight, grab, click or otherwise activate a provider name in provider list 126, and drag and drop that identifier onto assignment bar 120 for [a] patient, or otherwise associate the provider with the patient." *Id.* ¶ 15, Fig. 2.

2. Independent Claim 1

Petitioner cites Wager as an additional teaching for limitation 1[b]. Specifically, Petitioner asserts that "it would have been obvious to modify Douglas's system to include an interface like Wager's that provided the administrator with 'an intuitive, visual interface for generating patient-to-

care provider assignments . . . through which the administrator assigned the patient to a physician." Pet. 54 (citing Ex. 1003 ¶ 3; Ex. 1012 ¶ 127).

Petitioner argues that Wager teaches a workforce management interface in which a staff manager may assign a care provider to a patient. Pet. 52 (citing Ex. 1003 ¶ 11). The workforce management interface may include a patient list with patient ratings and a provider list detailing a "provider's experience level, specialized training, [and] patient continuity." *Id.* (citing Ex. 1003 ¶¶ 12, 14). Petitioner further argues that Wager teaches the staff manager may use the interface to assess patient care needs, "assess and determine available care providers," and match the patients' time- and skill-needs to the care providers' capacities and skill sets. *Id.* at 53 (citing ¶¶ 18–22; Ex. 1013 ¶ 125).

Petitioner asserts that one reason to modify Douglas with Wager would be to help "ensure that the assigned physician had the capacity to effectively treat the patient," given the number and variety of patients in Douglas's system. Pet. 54–55 (citing Ex. 1002, 6:6–14, 6:36–7:4, Figs. 51, 57; Ex. 1012 ¶ 129). Petitioner asserts that Wager addresses this problem by presenting the staff manager "with a suite of provider assignment options and alternatives, to automatically organize and drive assignment ratios and other assignment parameters and options with compliance, capacity, best practice and other criteria taken into account." *Id.* at 54 (citing Ex. 1003 ¶¶ 6–7; Ex. 1012 ¶ 128). Petitioner further argues that the combination "would have also helped ensure that the assigned physician had the capacity to effectively treat the patient" because Wager's interface effectively manages capacity issues against fluctuating clinical demands, thereby increasing quality of care for the patient. *Id.* at 55 (citing Ex. 1003 ¶¶ 6, 8, 20; Ex. 1012 ¶ 129).

Patent Owner makes six different arguments that one of ordinary skill would not have been motivated to combine Douglas with Wager. Prelim. Resp. 22–30. First, Patent Owner argues that in "Douglas, patients are subscribed to the system only after they have selected and seen their own physician," and "Wager's system is redundant of this aspect of Douglas, in which patients are only subscribed to the system because they are already assigned to a physician." *Id.* at 22–23 (citing Ex. 1002, 6:28–35). However, as discussed above, the claim limitation may be met simply by a case administrator assigning a patient to a physician by selecting a physician within the system, even if the same physician already prescribed monitoring for the patient outside the system.

Second, Patent Owner argues that one of ordinary skill in the art would not evenly distribute patients amongst primary care doctors and specialists (e.g., cardiologists) because it would require reassigning patients from specialists to primary care physicians. *Id.* at 23–24 (citing Ex. 1002, Fig. 57). Patent Owner argues that this would be detrimental to patient care. *Id.* However, this argument does not address Wager's teaching of matching provider qualifications to the patient (*see* Ex. 1003 ¶ 20) and further implies that the person of ordinary skill in the art would have ignored patient care in making the assignments. *See KSR*, U.S. 550 at 421 ("A person of ordinary skill is also a person of ordinary creativity, not an automaton.").

Third, Patent Owner argues "that patients would not agree to participate in Douglas's system if doing so meant that they were going to be unassigned from their own primary care physician." Prelim. Resp. 25 (citing Ex. 2002, 1; Ex. 2003, 11–12). Patent Owner argues that it is even more unlikely for a patient to want to change physicians in Douglas's specific embodiment of an ongoing support program "for patients who have

undergone surgery." *Id.* at 25–26 (citing Ex. 1002, 1:29–31). Patent Owner argues "there is no evidence that having a patient subscribed to Douglas's system takes up much of the physician's time, as most of the patient's interactions with Douglas's system are done without requiring action on the part of the physician." *Id.* at 26 (citing Ex. 1002, 9:21–10:32). However, Patent Owner's own exhibit indicates that patient-provider continuity was steadily diminishing as of 2002 due to changes in healthcare policy and practice organization. *See* Ex. 2002, 1. Accordingly, the disadvantage of being reassigned to a different physician may be weighed against the advantages of receiving prompt care in a larger practice organization. *See Intel Corp. v. Qualcomm Inc.*, 21 F.4th 784, 795 (Fed. Cir. 2021) (holding that "simultaneous advantages and disadvantages do not necessarily obviate motivation to combine") (alterations omitted). On this record, there is reasonable likelihood that the advantages raised by Petitioner (*see* Ex. 1012 ¶¶ 128–129) would outweigh the disadvantages raised by Patent Owner.

Fourth, Patent Owner argues that a physician subscribing a patient to Douglas's system "would be unlikely to assign their patients to the combined Douglas-Wager system if this meant that an administrator would then reassign their patient to another physician who had fewer patients." Prelim. Resp. 27. Patent Owner argues that "common sense dictates that most professionals refer their patients and clients to others only when necessary." *Id.* (citing *KSR*, 550 U.S. at 421). Unlike the previous argument on patient-provider continuity, Patent Owner does not support this attorney argument with evidence. On this record, there is reasonable likelihood that the advantages raised by Petitioner (*see* Ex. 1012 ¶¶ 128–129) would outweigh Patent Owner's unsupported argument.

Fifth, Patent Owner argues that "Douglas teaches away from Wager by teaching against accomplishing its goals in an in-person [clinical] setting like the one to which Wager is directed." *Id.* at 27–28 (citing Ex. 1003 ¶¶ 4, 5, 11, 13). Patent Owner argues that Douglas's system is designed for remote monitoring of patients to avoid the costs and inconvenience of in-person programs. *Id.* (citing Ex. 1002, 1:29–35, 2:5–7). On this record, we do not agree that Douglas teaches away from a combination with Wager's interface simply because the interfaces may be used in different environments. Moreover, Douglas teaches alternatives to remote monitoring, including in-person visits. *See* Ex. 1002, 11:1–2 ("The system also accepts additional patient data obtained during office visits."); *see In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004) ("The prior art's mere disclosure of more than one alternative does not constitute a teaching away from . . . alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed.").

Finally, Patent Owner argues that "assign[ing] the patient to a different physician than the one that subscribed the patient to the system" likely would cause "the pat[i]ent's continuity of care [to] suffer due to the fact that, in 2013, most electronic health records (EHR) were not interoperable." Prelim. Resp. 29–30 (citing Ex. 2004, 28; Ex. 2003, 12). However, the problem raised by Patent Owner appears to be the same problem that Wager is seeking to solve with a computerized clinical workface management interface. *See* Ex. 1003 ¶ 6.

In sum, we are persuaded that Petitioner has sufficiently shown, on the present record and for the purposes of institution, that Petitioner sufficiently shows that one of ordinary skill in the art would have made (and

would have been successful in making) the proposed combination of Douglas and Wager.

Based on the current record, there is a reasonable likelihood that Petitioner will prevail in demonstrating that claim 1 is unpatentable as obvious in view of Douglas and Wager.

3. Analysis of Claims 2, 4, 5, 7, 9, 10, 12, 13, 15, and 17

Petitioner presents evidence that the combination of Douglas and Wager teaches the limitations of claims 2, 4, 5, 7, 9, 10, 12, 13, 15, and 17. Pet. 55–57. Patent Owner does not separately argue these claims at this stage of the proceeding. Patent Owner may raise any arguments regarding these claims in its Patent Owner Response after institution. On this record, Petitioner shows sufficiently that the combination of Douglas and Wager teaches the limitations of claims 2, 4, 5, 7, 9, 10, 12, 13, 15, and 17.

F. Obviousness over Douglas and Chitiveli or Douglas, Wager and Chitiveli (Claim 6)

Petitioner argues that claim 6 would have been obvious over Douglas and Chitiveli. Pet. 58–61. Petitioner identifies evidence indicating that the Douglas and Chitiveli combination teaches the limitations of claim 6 and that a person of ordinary skill in the art would have had reason to combine these references. *Id.* Alternatively, Petitioner argues that claim 6 would have been obvious over Douglas, Wager, and Chitiveli. *Id.* at 62. Petitioner identifies evidence indicating that the Douglas, Wager, and Chitiveli combination teaches the limitations of claim 6, and that a person of ordinary skill in the art would have had reason to combine these references. *Id.* Patent Owner does not raise any arguments relating to these asserted grounds. On this record, Petitioner demonstrates a reasonable likelihood of prevailing in

showing that claim 6 would have been obvious over Douglas and Chitiveli or Douglas, Wager, and Chitiveli.

G. Obviousness over Douglas and Klotsche (Claims 11, 16, and 19)

Petitioner argues that claims 11, 16, and 19 would have been obvious over Douglas and Klotsche. Pet. 63–68. Petitioner identifies evidence indicating that the Douglas and Klotsche combination teaches the limitations of claims 11, 16, and 19 and that a person of ordinary skill in the art would have had reason to combine these references. *Id*. Patent Owner does not raise any arguments relating to this asserted ground. On this record, Petitioner demonstrates a reasonable likelihood of prevailing in showing that claims 11, 16, and 19 would have been obvious over Douglas and Klotsche.

H. Obviousness over Douglas and Koh (Claims 8, 14, and 20)

Petitioner argues that claims 8, 14, and 20 would have been obvious over Douglas and Koh. Pet. 68–74. Petitioner identifies evidence indicating that the Douglas and Koh combination teaches the limitations of claims 8, 14, and 20 and that a person of ordinary skill in the art would have had reason to combine these references. *Id*. Patent Owner does not raise any arguments relating to this asserted ground. On this record, Petitioner demonstrates a reasonable likelihood of prevailing in showing that claims 8, 14, and 20 would have been obvious over Douglas and Koh.

III. CONCLUSION

Following 35 U.S.C. § 314, we have determined that the totality of the information presented at this stage shows there is a reasonable likelihood that Petitioner would prevail with respect to at least one of the claims challenged in the Petition, and we institute on all grounds raised and all claims challenged in the Petition. *See* 37 C.F.R. § 42.108(a).

Our factual findings, conclusions of law, and determinations at this stage of the proceeding are preliminary, and based on the evidentiary record developed thus far. This is not a final decision as to the patentability of claims for which *inter partes* review is instituted. Our final decision will be based on the record as fully developed during trial.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that *inter partes* review of claims 1, 2, 4–17, 19, and 20 of the '554 patent is instituted on all grounds in the Petition; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial; the trial will commence on the entry date of this decision.

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