

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TELADOC HEALTH, INC.,
Petitioner,

v.

DATA HEALTH PARTNERS, INC.,
Patent Owner.

Case IPR2024-00616
Patent 11,144,554 B2

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DOUGLAS DISCLOSES GOALS, A PLAN OF ACTION, AND THRESHOLDS	1
	A. Claim Construction.....	4
III.	DOUGLAS DISCLOSES ASSIGNING THE CLIENT TO ONE OR MORE PROVIDERS IN RESPONSE TO SELECTIONS FROM THE ADMINISTRATOR	9
	A. Obviousness.....	12
IV.	CLAIMS 6 AND 13.....	12
V.	CLAIM 13	13
VI.	CLAIM 17	14
VII.	GROUND 2 AND 8 – DOUGLAS AND WAGER.....	14
	A. PO Repeats Argument from Ground 1	14
	B. Motivation to Combine Douglas and Wager	14
VIII.	CLAIMS 2, 11	17
IX.	CLAIM 10	18
X.	CHITIVELI IS A PRINTED PUBLICATION UNDER CURRENT LAW	20
XI.	PETITIONER PROPERLY IDENTIFIED THE COMBINATIONS IN GROUNDS 4, 6, AND 8	21
XII.	A POSITA WOULD HAVE BEEN MOTIVATED TO COMBINE DOUGLAS AND KOH.....	22
XIII.	CONCLUSION.....	24

PETITIONER'S EXHIBIT LIST

Exhibit	Shorthand	Description	Previously Used
1001	'554 Patent	U.S. Patent No. 11,144,554 B2	X
1002	Douglas	Pub. No. WO 1999/003045 A1	X
1003	Wager	Pub. No. US 2006/0149589 A1	X
1004	Chitiveli	Pub. No. US 2013/0179450 A1	X
1005	Klotsche	J. Klotsche et al., <u>The DETECT adherence score—structure and psychometric exploration of a novel approach to measure adherence to drug and non-drug interventions in primary care</u> , 20 Int. J. Methods Psychiatr. Res. 82 (2011)	X
1006	Klotsche1Archive	Printout of https://web.archive.org/web/20111208022202/http://onlinelibrary.wiley.com:80/journal/10.1002/(ISSN)1557-0657 , evidencing 2011 public availability of Klotsche	X
1007	Klotsche2Archive	Printout of https://web.archive.org/web/20130215121952/http://onlinelibrary.wiley.com:80/doi/10.1002/mpr.v20.2/is-suetoc , evidencing 2011 public availability of Klotsche	X
1008	ArchiveDec	Affidavit of Nathaniel E Frank-White	X
1009	Koh	Hian Chye Koh & Gerald Tan, <u>Data Mining Applications in Healthcare</u> , 19 J. Healthcare Information Management 64 (2005)	X

Exhibit	Shorthand	Description	Previously Used
1010	KohArchive	Printout of https://web.archive.org/web/20050418095732/http://www.himss.org/ASP/publications_jhim_issue.asp?issue=3/30/2005 , evidencing 2005 public availability of Koh	X
1011	Hall-Ellis	Declaration of Sylvia D. Hall-Ellis, Ph.D.	X
1012	Bergeron	Declaration of Bryan Bergeron, M.D.	X
1013	BergeronCV	Curriculum Vitae of Bryan Bergeron, M.D.	X
1014	Microsoft	<u>Microsoft Computer Dictionary</u> (5th ed. 2002)	X
1015	ADAA	Printout of https://web.archive.org/web/20100116093130/https://adaa.org/supportgroups	X
1016	MayoBP	<u>Blood pressure test</u> , Mayo Clinic, https://www.mayoclinic.org/tests-procedures/blood-pressure-test/about/pac-20393098 (last accessed Oct. 28, 2023)	X
1017	MayoC	<u>Cholesterol test</u> , Mayo Clinic, https://www.mayoclinic.org/tests-procedures/cholesterol-test/about/pac-20384601 (last accessed Oct. 28, 2023)	X
1018	NetSuite	Printout of https://web.archive.org/web/20111102042326/https://www.netsuite.co.uk/portal/uk/resource/articles/cloud-computing.shtml	X
1019		Omitted	
1020		Omitted	
1021		Omitted	
1022		Omitted	

Exhibit	Shorthand	Description	Previously Used
1023		Omitted	
1024	Ardehali	Deposition Transcript of Hossein Ardehali, M.D.	
1025	BergeronSupp	Supplemental Declaration of Bryan Bergeron, M.D.	

I. INTRODUCTION

In its Response, Patent Owner (“PO”) doubles down on the very same arguments rejected by the Board in the Institution Decision. As the Board correctly held, these arguments are without merit and should therefore be rejected once again. PO does offer arguments for the first time on a few newly challenged grounds, but these arguments also lack merit and should be rejected because they rely on erroneous readings of the claims and prior art at issue, while ignoring portions of the Petition.

II. DOUGLAS DISCLOSES GOALS, A PLAN OF ACTION, AND THRESHOLDS

PO, in its Response, repeats the same argument from its Preliminary Response, now asking for a formal claim construction, that Petitioner fails to allege that Douglas discloses (1) goals (2) a “plan of action” and (3) thresholds. *Compare* Paper 6 at 11-14 *with* Paper 16 at 13-22. The Board rejected this position, holding that Petitioner set forth separate teachings in Douglas corresponding to the claim elements of goals (e.g., goals 52 and goals 62), thresholds (e.g., one month goals 61), and a plan of action (e.g., the overall therapeutic program). Paper 9 at 13-16.

PO’s only objection to the Board’s holding is the citation to Douglas’s disclosure of weight loss as an example of a plan of action, arguing that Petitioner never relied upon this example. This is simply not true. Petitioner cites to multiple portions of Douglas which disclose weight loss as an example of a plan of action.

See, e.g., Paper 1 at 25-26 (*citing* Douglas at 7:5-8:13, 6:24-27; Bergeron at ¶70); Douglas at 6:24-27 (“The physician may then recommend a health care maintenance or recovery program which requires the patient to: ... control risk factors by altering his or her diet, following an exercise program”), 7:5-7 (“Depending on the diagnosis, the physician may recommend that the patient ... lose a targeted amount of weight within a certain period”). In fact, the Petition states that “the claimed plan of action is met by Douglas’s overall ‘therapeutic program’” (Paper 1 at 25-26) and the therapeutic program (plan of action) provides for “weight loss ... and dietary improvements.” *Id.* at 23-24 (*citing* Douglas 8:1-13; FIGs. 5, 6; Bergeron at ¶65).

PO conveniently relies upon a single sentence of the Petition, ignoring these citations to Douglas in that very sentence and in other portions of the Petition. Paper 16 at 14 (*citing* Paper 1 at 25-26). PO’s own expert admitted that these portions of Douglas relied upon in the Petition disclose weight loss as part of a plan of action. Ardehali at 54:21-56:5, 57:4-14, 59:13-18, 61:15-20 (“Q: Okay. So we see here as part of the recommended program weight loss for Fred Smith; is that correct? A: It’s the recommended program for Fred Smith and it has multiple different categories including weight”), 62:15-25 (“Q: So if Fred Smith followed the recommended

program, he would lose weight; is that correct? ... A: Yeah. If he goes from 182 to 170, yeah, he would lose weight.”)¹

Moreover, what the Board discussed is just one example of a plan of action disclosed in Douglas. In the citations noted above from the Petition, Douglas allows for the creation and editing of multiple types of plans of action, including for smoking cessation, the reduction of alcohol consumption, and the management of stress, cholesterol, blood pressure, and back pain. This was confirmed by PO’s own expert. *Id.* at 48:3-22, 49:9-51:10, 56:6-14, 57:4-14 (“Q: So getting back to page 7 of Douglas that we just read, that sentence beginning on line 5, The physician may recommend the patient cease smoking or that he or she lose a target amount of weight within a certain period. Is that correct? A. Yeah, that’s what it says. Depending on the diagnosis, the physician may recommend that the patient cease smoking or that he or she lose a targeted amount of weight within a certain period by circling the appropriate response in field 30”).

PO also tries to make hay out of the memory test given to Dr. Bergeron during his deposition. But he merely stated that he didn’t “recall calling out weight loss ...

¹ PO’s expert agreed that his testimony for the same claim terms of the ’554 Patent and U.S. Patent No. 11,151,142 in IPR2024-00617 apply equally in both proceedings. Ex. 1024 at 156:2-18.

in the text [of his Declaration], but if you want to point me to something I can take a look.” Paper 16 at 16. As noted above, both the Petition and Dr. Bergeron’s Declaration cite to Douglas’s disclosure of weight loss as an example of a plan of action. Similarly, PO also alleges that the Petition and Bergeron Declaration “never relied on Douglas’s Figure 6 at all in its identification of the claimed ‘plan of action,’ which is what the Board relied upon in its *sue sponte* [sic] identification of ‘weight loss’ as Douglas’s ‘plan of action.’” *Id.* at 17. This, of course, is also incorrect, since, as noted above, Paper 1 at 23-24 and ¶¶64-65 of the Bergeron Declaration include and discuss Figure 6 of Douglas regarding weight loss as an example of the plan of action. Accordingly, the Board did not act *sua sponte*.

A. Claim Construction

The crux of PO’s argument, which was repeated from the POPR, is that there can be absolutely no overlap between claim terms and, thus, “the claimed goals cannot be ‘*included*’ in the claimed plan of action.” Paper 16 at 15. PO cites to the same caselaw from the POPR, but now formally requests a claim construction that establishing/to establish “goals, a plan of action, and thresholds” requires “that the established goals, plan of action, and thresholds are separate and distinct components.” *Compare* Paper 6 at 12-14 *with* Paper 16 at 11-13. As such, PO is advocating a *per se* rule that separately listed claim elements must always be construed as separate and distinct components, as PO has included no intrinsic

evidence that the goals, plan of action, and thresholds should be separate and distinct, other than two sentences in the Abstract that provide no such support.

However, this position has been squarely rejected by the Federal Circuit. *Google LLC v. Ecofactor, Inc.*, 92 F.4th 1049 (Fed. Cir. 2024). In *Google*, which PO conveniently ignores and which postdates all of the caselaw relied upon by PO, the Federal Circuit overruled a Board decision because the case law relied upon by the Board, including the *Becton, Dickinson and Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249 (Fed. Cir. 2010) case relied upon by PO in this proceeding, “do not create a *per se* rule that separately listed claim elements are distinct components, regardless of the intrinsic record.” *Google*, 92 F.4th at 1058. “Rather, we have explained that there is a ‘presumption’ that separately listed claim limitations may indicate separate and distinct physical structure, but that ***presumption may always be rebutted in the context of a particular patent.***” *Id.* (emphasis added).

Tellingly, the cases relied upon by PO all involve claims with unequivocal and/or unambiguous language that require separate and distinct structural elements, as confirmed by explicit language in the specification. *Becton*, 616 F.3d at 1253 (“[t]he unambiguous language of the asserted claims, as well as the disclosure in the specification, requires an added spring element that moves the safety guard toward the tip of the needle.”); *Kyocera Senco Indus. Tools Inc. v. ITC*, 22 F.4th 1369 (Fed. Cir. 2022) (“the claims require two distinct structures” as supported by “[m]any

places in the written description”); *Barrday, Inc. v. Lincoln Fabrics Inc.*, 2023 U.S. App. LEXIS 30502 at *10 (Fed. Cir. Nov. 16, 2023) (“claims refer to the upper yarns, lower yarns, and securing yarns as ‘separate structural limitations’” and “[t]he specification exclusively refers to securing yarns as structures that are separate and distinct from warp and weft yarns of the upper and lower layers.”)

Without such restrictive claim constructions, these cases reasoned that the claims at issue would be rendered nonsensical, since the patent owner was pointing to the same structure for multiple claim elements. *Bot M8 LLC v. Sony Interactive Ent. LLC*, 2023 U.S. App. LEXIS 22911 (Fed. Cir. Aug. 30, 2023) (“[P]art of our rationale in *Becton* was that it would render the asserted claims ‘nonsensical’ for the claimed ‘spring means’ to be *connected to* the ‘hinged arm’ if they were the same structure.”) (emphasis in original); *Barrday*, 2023 U.S. App. LEXIS 30502, at *4 (“it would be ‘nonsensical’ to interpret yarns from the upper and lower layers as the same structure as the securing yarns when these distinct terms are used and these yarns are ‘interwoven with’ one another as claimed.”)

Consistent with this caselaw, the Federal Circuit has held that claim elements are not separate and distinct unless required by both the claim language and specification. *Powell v. Home Depot U.S.A., Inc.*, 663 F.3d 1221, 1231-32 (Fed. Cir. 2011) (unlike *Becton*, the claim language did not suggest that the two components must be “separate structures” ... Additionally, “the specification teaches that the

cutting box may also function as a ‘dust collection structure’’); *Retractable Techs., Inc. v. Becton, Dickinson and Co.*, 653 F.3d 1296, 1303 (Fed. Cir. 2011) (“[t]he claims and the specifications indicate that the ‘needle holder’ and ‘retainer member’ need not be separately molded pieces’’); *Google*, 92 F.4th at 1057-58 (the claim language was broad and “place[d] no constraint on the manner in which the inputs are used’’); *Bot M8 LLC v. Sony Interactive Ent. LLC*, 2023 U.S. App. LEXIS 22911 (Fed. Cir. Aug. 30, 2023).

Here, the claim language at issue and specification of the ’554 Patent do not support PO’s restrictive construction. Rather, the claim language is broad and unrestrictive. In fact, by their very wording, the claim elements are interrelated and overlap as the “treatment and assistance” “is used for establishing goals, a plan of action, and thresholds for the client;” “the thresholds represent certain points of progress towards the goals;” and “the plan of action” is modified “in response to one or more thresholds not being met.” Indeed, the claims indicate that the plan of action can ***include*** goals, given that “the plan of action” can be “establish[ed] ... utilizing ***goal creating and tracking*** software.” ’554 Patent at claim 7 (emphasis added). And PO’s construction of a “plan of action” wholly distinct from the “goals” and “thresholds” contradicts the claims’ requirement of the plan of action being modified based on the thresholds.

Likewise, there is nothing in the specification that states that these elements must be separate and distinct. Tellingly, PO's only reference to intrinsic evidence is a citation to the Abstract, which merely repeats the claim elements, without any restriction. Paper 16 at 12. On the contrary, the specification of the '554 Patent indicates that a plan of action contains goals and thresholds, and that these elements are intermingled and overlap. '554 Patent at 11:26-28 (system data includes "service plans 234, goals and objective 236"), 11:60-67 (providers "view elements of service plan 234, view and add goals and objectives 236 for clients"), 30:35-40 ("providers ... may modify the course of action based on thresholds"); 32:52-58 ("[t]he threshold may be applicable to one or multiple factors, goals, parameters, or criteria.") In fact, PO's construction would exclude the FIG. 7 embodiment relating to the claim requirement noted above of "modifying the plan of action ... in response to one or more of the thresholds not being met" or a similar feature. '554 Patent at claims 1, 13, 17; 32:42-58; *Google*, 92 F.4th at 1058 ("We normally do not interpret claim terms in a way that excludes embodiments disclosed in the specification.")

Finally, interpreting the claims terms according to their plain and ordinary meaning and without the restrictions advocated by PO would not render the claims non-sensical. Contrary to the caselaw relied upon by PO, Petitioner is not citing to the same structure to satisfy multiple claim elements. *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, at 1333 n.3. (Fed. Cir. 2006) ("the use of two

terms in a claim requires that they connote different *meanings*, not that they necessarily refer to two different *structures*.”) (emphasis in original).

III. DOUGLAS DISCLOSES ASSIGNING THE CLIENT TO ONE OR MORE PROVIDERS IN RESPONSE TO SELECTIONS FROM THE ADMINISTRATOR

In its Response, PO next repeats another argument from the POPR, that Douglas does not disclose “assigning the client to one or more of providers” and that such assigning is not “in response to selections from the administrator.” *Compare* Paper 6 at 14-19 *with* Paper 16 at 22-28. The Board also rejected both of these arguments and should do so again. Paper 9 at 13.

While PO acknowledges the Board’s rejection of its “assigning” argument and appears to have given up on this position, it ignores the Board’s rejection of its “selections” argument, choosing to double down on this failed defense. As the Board recognized, the Petitioner argued “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 11-12 (*citing* Paper 1 at 16). In the POPR, PO argued that “the case advisor’s entry of the treating physician’s name in the system” “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.” Paper 6 at 18-

19. The Board rejected this position, stating that “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.” Paper 9 at 13.

PO attempts to sidestep this holding, making three unavailing arguments instead. First, PO attempts to rely on a claim construction position that “selection” means a “deliberate and active choice by an administrator.” Paper 16 at 25. But, contrary to the Board’s instructions, PO does not brief this construction in a designated section, nor provide supporting evidence other than a citation to two sentences in the specification. *See* Paper 9 at n.4. Unfortunately for PO, these two sentences neither use the term “selection” nor discuss any “deliberate and active choice.”

Based on the plain and ordinary meaning of “selections from the administrator,” as the Board held, the inputs of information from the prescription form by the case administrator in Douglas are selections that assign a client to a provider. Unlike PO’s claim construction arguments, this position is supported by the specification of the ’554 Patent, which uses the term “selection” to indicate picking, using, or otherwise making inputs to user interface elements in its system, like Petitioner has argued. For example, the specification discusses elements of a user interface for selection by the administrator as “selection components.” ’554 Patent at 11:20-23. In another example, the specification describes users interacting

with the system through double tapping as “making ... selections.” *Id.* at 12:61-64. PO’s expert confirmed this use of “selection” in the ’554 Patent. Ardehali at 86:19-23 (“Q: So selection here in ’554 means one of those items selected by a user; correct? ... A: In that context, that’s what it means”), 85:20-87:16, 89:3-15.

PO next argues that the entry of information from the prescription form was “selected” by the physician, not the case administrator. Paper 16 at 26. However, this ignores the clear teaching of Douglas in which the information is input *by the case administrator*, as the case administrator sets up the patient in the system. Moreover, as the Board held, the patient in the Douglas system is assigned to a physician *in response to* these selections by the case administrator. Paper 9 at 11-12.

Finally, PO alleges that Petitioner points to the same entry of prescription information as both “selections from an administrator” and “assignment ... to one or more providers in response to selections from an administrator” and that this is improper because these elements must be separate and distinct. Paper 16 at 26-27. This argument also falls flat. As discussed above, the Petition maps “selections from an administrator” to the act in Douglas of “the case administrator set[ing] up the patient on Douglas’s system by entering the information contained in the patient prescription form.” Paper 1 at 16. *Separately*, Petitioner maps “assignment ... to one or more providers in response to selections from an administrator” to the

assignment resulting from such selections, which the Petition discusses enables the various reporting, alarm, and notification features of the system. *See Id.* at 15-17.

A. Obviousness

PO's challenges to Petitioner's obvious arguments, which are repackaged from the POPR and also rejected by the Board, are a mere regurgitation of its arguments that Douglas does not disclose assignment of a provider "in response to selections from an administrator." Paper 16 at 28-31. As such, PO's obviousness challenges should again be rejected by the Board for the reasons above and in the Institution Decision.

IV. CLAIMS 6 AND 13

PO next argues for the first time that Petitioner's positions regarding claims 6 and 13 are contradictory. As an initial matter, claims 6 and 13 are not related by dependency and thus there can be no inconsistency between the Petition's positions for these claims. Indeed, claim 6 depends from claim 1 and states that "a client management program is executed by the computing or communications device," while independent claim 13 states that the "server includes a processor that executes a client management program."

Moreover, PO misquotes Petitioner's prior art position for claim 6, omitting the portion mapping the client management program executed by computing or communication devices to "a client application like Chitveli's analytics client 140."

Paper 1 at 62. The Petition therefore maps the client management program executed by the computing or communication devices in claim 6 to a Chitiveli client in a Douglas-Chitiveli System, while it maps the claimed server/processor executing the client management program in claim 13 to the Douglas compliance monitoring and feedback system on Douglas' network server. As such, there is no contradiction between Petitioner's positions for claims 6 and 13.

V. CLAIM 13

For claim 13, PO argues that Petitioner never alleges that relational database 522 of Douglas is "in communication" with server 508. In making this argument, PO ignores the citation by Petitioner to Douglas 24:28-37 (Paper 1 at 47), which makes clear that "[t]he servers 510-516 *have access to* one or more relational databases 522 (such as SQL) that contain all the health plan data, including information input to the journal and schedule book information." Douglas at 24:28-30 (emphasis added); *see also* Ardehali at 96:25-97:15. Since the inner servers 510-516, which are part of server 508 (*see* Paper 1 at 47 referring to Section VII.A.9(b) (Limitation 13[a]) and FIG. 59 of Douglas), have access to, and *thus must communicate with*, relational databases 522, PO's argument fails. BergeronSupp at ¶¶9-13.

VI. CLAIM 17

For claim 17, PO alleges that Petitioner sets forth conclusory allegations that a processor within network server 508 of Douglas executes a set of instructions. As PO recognizes, for claim 17, the Petition cites to the discussion of Limitation 13[a], which explains that “Douglas’s system is software and therefore a processor executes the system” and cites to Douglas at 25:22-26, which makes clear that its “system is constructed using the C++ programming language in conjunction with SQL 6.5, Cold Fusion ... Visual Basic ... and HTML.” Paper 1 at 48, 41. Thus, the Petition has sufficiently explained that Douglas discloses a processor executing a set of instructions, as its system is constructed using the C++ programming language, which is used to generate the set of instructions, as would be understood by a POSITA. BergeronSupp at ¶¶14-19.

VII. GROUNDS 2 AND 8 – DOUGLAS AND WAGER

A. PO Repeats Argument from Ground 1

In its defense to Ground 2 regarding the combination of Douglas and Wager, PO repeats its arguments regarding the “in response to selections from the administrator” limitation. For the reasons discussed above, this argument fails for Ground 2 as well.

B. Motivation to Combine Douglas and Wager

PO next argues that a POSITA would not have been motivated to combine Douglas and Wager for Grounds 2 and 8. Tellingly, PO does not address the first

motivation to combine discussed in the Petition—that incorporating the interface of Wager would have helped ensure that the assigned physician was equipped with the proper skill set to treat the patient. Paper 1 at 54. This reason was recognized by the Board and remains a strong motivation to modify Douglas in view of Wager. Paper 9 at 21-22.

Rather, PO first repackages the second argument from the POPR that Fig. 57 of Douglas fails to provide evidence that the patients are not evenly distributed. However, as confirmed by PO’s expert, Fig. 57 clearly shows that different physicians in the same specialty have different caseloads. Ardehali at 108:20-110:3. Thus, Douglas’s Fig. 57 supports the second motivation to combine Douglas and Wager set forth in the Petition—to help ensure a physician has the capacity to treat a patient and is not overloaded. Paper 1 at 55. Moreover, the Petition also cites to other evidence in support—Wager’s discussion of the need to properly balance caseloads. *See id.* (discussing Wager’s teaching of “manag[ing] against fluctuating clinical demands”); Ardehali at 110:14-112:6.

PO’s second argument is a repeat of its first argument from the POPR that Wager’s system is redundant of the assignment process in Douglas because a patient in Douglas is subscribed to the system after they have selected and seen their physician. The Board rejected this position because assignment “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.” Paper 9 at 22. For this reason and the reasons set forth above in Section III, the Wager interface may be used to assign a patient to a provider, and is thus not redundant of Douglas. Wager’s interface is also not redundant because it would have facilitated reassignments in situations, as confirmed by PO’s expert, where they become necessary and/or are beneficial. BergeronSupp at ¶¶20-28; Ardehali at 113:9-115:4.

PO’s third, fourth, and fifth challenges, which repackage and amplify the third, fourth, and sixth arguments from the POPR, all argue that there is no motivation to combine Douglas and Wager because of harm to a patient due to a disruption in the continuity of care. However, nowhere in the Petition is there a suggestion or proposed combination of Douglas and Wager that requires forcibly reassigning patients against their will. Indeed, a POSITA operating the combined Douglas-Wager system would not have used it in this way. BergeronSupp at ¶¶29-30. Instead, as discussed above and in the Petition, the incorporated interface of Wager provides a way to effectively assign and reassign patients according to the patient’s desires and to provide improved care for the patient. Paper 1 at 51-57.

Moreover, as the Board held, “the problem raised by Patent Owner [regarding continuity of care] appears to be the same problem that Wager is seeking to solve with a computerized clinical workplace management interface.” Paper 9 at 24. The

Board also held that the “disadvantage of being reassigned to a different physician may be weighed against the advantages of receiving prompt care,” and “there is reasonable likelihood that the advantages raised by Petitioner ... would outweigh the disadvantages raised by Patent Owner.” *Id.* at 23.

PO’s final argument is yet another recycle from the POPR (fifth argument) that Douglas teaches against accomplishing goals in an in-person setting like Wager. The Board also rejected this argument stating “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.” *Id.* at 24 (*citing* Douglas at 11:1-2); Ardehali at 118:10-119:6.

VIII. CLAIMS 2, 11

PO attempts to defend claims 2 and 11 from Grounds 1-2, 5-6 on the basis that the alarm referred to in Douglas is described as an option, and therefore cannot be automatic. Paper 16 at 46-47. However, the claim limitation of “automatically communicating alerts in response to compiled data varying from one or more of the thresholds to become significant for the client” does not include any language that precludes the alerts from being set up and/or configured as an option before they are automatically communicated. In fact, the ’554 Patent expressly contemplates that its alerts need to be configured before operating as automatic alerts. ’554 Patent at

13:25-26 (“In one embodiment, the *alerts and notifications 228 may be configured* to communicate information”); 13:61-63 (“Certain activities, *once configured, automatically trigger the alerts* and notifications 228 to send out information and request a response.”) Accordingly, the Petition cites to Douglas’s disclosure that the alarm, even as an option, “automatically notifies the physician or case advisor ... if a health risk is present.” Paper 1 at 30 (citing Douglas at 11:11-15). And PO’s expert confirmed that this satisfies the meaning of automatic in claims 2 and 11. Ardehali at 129:14-21 (“Well, if an alarm is configured or designed or is made to be automatic, it's automatic.”)

IX. CLAIM 10

Regarding claim 10, PO makes two arguments. First, PO argues that “the Petition does not address the claim’s requirement that there be a determination of whether ‘the data required is received *from each of the providers...*’” Paper 16 at 48 (emphasis in original). Once again, PO is mistaken, as the Petition cites to Limitation 1[d] which maps, as PO’s expert confirmed, the claimed “data” to updated patient data received from the providers in Douglas. Paper 1 at 38, 26 (“Douglas discloses receiving updated data, from one or more providers, as ‘the system accepts updated patient data ... through data entered by the physician during office visits.’ Douglas at 11:1-5, FIG. 60; *see also* claim 14, FIG. 41 (‘Physician reported’ blood pressure); Bergeron at ¶71”); Ardehali at 134:17-135:5.

Further, as PO concedes, Douglas “correlates the patient’s input with the physician’s to check for accuracy” and “provides the physician with reports of patient progress.” Paper 16 at 48 (*quoting* Douglas at 11:1-10). Douglas’s system also “periodically correlates the updated patient health information with program goals to determine the patient’s progress and compliance with the program...” Paper 1 at 38 (*citing* to Limitation 1[d]), 26 (*quoting* Douglas at 11:26-28). As such, if patient data were missing from the provider, it would not correlate with the patient’s input or with the program goals, and thus a determination would have been made in Douglas regarding “whether the data required is received from each of the providers” as required by claim 10.

Second, PO argues that, unlike the ’554 Patent, patient data “may,” but is not required to be, input by the physician or patient in Douglas. Paper 16 at 49 (*citing* Douglas at 11:2-3). This argument is also misguided and misleading, as PO is citing from a portion of Douglas that relates to the input by the physician of “additional data, such as that derived from laboratory tests...” Douglas at 11:2-3. The prior sentence, in Douglas, as confirmed by PO’s expert, is unequivocal that “the system also accepts additional patient data obtained during office visits or directly from the patient...” *Id.* at 11:1-2; Ardehali at 136:3-139:9.

PO also argues, even though not required by the claims, that Douglas does not disclose a framework or logic for triggering an alert for missing data and that this

would not have been obvious. However, as noted above, Douglas discloses the functionality or logic of periodically inspecting and processing the data, which includes the data received from the providers. Paper 1 at 26, 38 (*citing* Douglas at 11:26-28). Any adaptation of this existing functionality or logic is well within the level of skill of a POSITA motivated to ensure completeness of the data to enable detection of threatening or dangerous situations, as discussed in the Petition. Paper 1 at 38; BergeronSupp at ¶¶31-36; *In re Noll*, 545 F.2d 141, 143–44 (CCPA 1976) (obvious to implement programming of “detailed functioning ... described in the ... specification”); *Fonar Corp. v. General Electric Co.*, 107 F.3d 1543 (Fed. Cir. 1997) (implementing code “is within the skill of the art, not requiring undue experimentation, once its functions have been disclosed.”).

X. CHITIVELI IS A PRINTED PUBLICATION UNDER CURRENT LAW

PO next argues that Chitiveli is not prior art under 35 U.S.C. § 311(b), advocating for a change in the current law. The Federal Circuit recently addressed this issue, holding “that §§ 311(b) and 102(e)(1) permit IPR challenges based upon published patent applications, and such published patent applications can be deemed prior art in IPRs as of their filing date.” *Lynk Labs, Inc. v. Samsung Elecs. Co.*, 125 F.4th 1120 (Fed. Cir. 2025). As such, PO’s position is legally defective under current law.

XI. PETITIONER PROPERLY IDENTIFIED THE COMBINATIONS IN GROUNDS 4, 6, AND 8

PO argues that Wager was discussed in Ground 2, but not in Ground 4, except in the heading. According to PO, it is unclear how Wager's visual interface of Ground 2 would have been incorporated into the Douglas-Chitiveli combination of Ground 4. Tellingly, PO does not dispute that the Douglas-Chitiveli System is sufficiently disclosed for Ground 3 regarding the implementation of Douglas using a cloud and client architecture of Chitiveli. And Ground 4 simply takes the Douglas-Wager System of Ground 2 and adds Chitiveli to Douglas in the same way recited for Ground 3. BergeronSupp at ¶¶37-43. The Douglas-Wager System of Ground 2 remains unchanged in Ground 4, and, thus, there is no need to repeat the discussion of the Douglas-Wager System for Ground 4.

Similarly, PO argues that Ground 6 is insufficiently disclosed because Petitioner fails to mention Wager or how Wager would interact with Klotsche's score and that Ground 8 is insufficiently disclosed because Petitioner fails to mention Wager or how Wager's interface would interact with Koh's data mining. Again, Petitioner is simply taking the Douglas-Wager System of Ground 2 and adding Klotsche for Ground 6 and Koh for Ground 8 in the same way that Douglas is modified by Klotsche in Ground 5 and by Koh in Ground 7, respectively. BergeronSupp at ¶¶44-47. Thus, there is no need to repeat the descriptions for the Douglas-Klotsche System of Ground 5 for Ground 6 and the Douglas-Koh System

of Ground 7 for Ground 8, particularly since PO does not dispute that Ground 5 and 7 are sufficiently disclosed.

XII. A POSITA WOULD HAVE BEEN MOTIVATED TO COMBINE DOUGLAS AND KOH

PO's last argument in its Response is that there is no motivation to combine Douglas and Koh. First, PO argues that Douglas and Koh address "distinct and unrelated problem-solution frameworks" with Douglas focused on "individualized compliance tracking" and Koh focused on "applications for aggregated organizational data..." Paper 16 at 58. This position, however, improperly treats the references individually and ignores the details of the combination of Douglas and Koh in the Petition.

For example, the Petition quotes the portion of Douglas that recommends a default set of goals based on a patient's needs, which can then be modified by a provider in a therapeutic program throughout the patient's treatment. Paper 1 at 69. The Petition goes on to state that Douglas does not explicitly disclose how those initial default recommendations are made. *Id.* But Douglas's system, as confirmed by PO's expert, generates a copious amount of patient health data and Koh states that data mining can be used to "identify[] effective treatments and best practices" to benefit "healthcare providers." Paper 1 at 68-70 (*quoting* Koh at 65); Ardehali at 147:14-150:5. Since, as discussed in the Petition, Douglas recommends default goals, but does not discuss where they come from, and Koh discloses data mining

practices to identify effective treatments and best practices, there is clear motivation to combine Douglas and Koh so that Douglas's copious data is mined based on Koh's teachings. Paper 1 at 69-72.

PO goes on to argue that Douglas and Koh are not interoperable. Paper 16 at 59-60. However, contrary to PO's assertion, as discussed above, the use of the data mined best practices in Koh in the proposed Douglas-Koh System provides a default set of therapeutic programs and goals, which can then be customized as discussed in Douglas. Therefore, Douglas and Koh fit well together.

PO's final argument is that the Douglas-Koh System does not satisfy the limitation of Claims 8, 14, or 20 because Petitioner does not allege, and Koh does not disclose, "deriving actionable insights specific to individual clients." *Id.* at 60-61. As confirmed by PO's expert, this allegedly missing association is explicitly addressed in the Petition and Bergeron Declaration. *See* Paper 1 at 70-71; Bergeron at ¶169 ("In the Douglas-Koh System, data mining would be used to identify ... ***a therapeutic plan for a patient*** based on therapeutic plans for similarly situated patients that were correlated with improvement in compiled data or other positive outcomes, such as compliance with the program or a lack of re-hospitalization, heart attack, or surgery...") (emphasis added); Ardehali at 153:16-155:25. That plan, associated with that patient, would accordingly be "recommended" to that provider. *Id.*

XIII. CONCLUSION

For the above reasons, PO's responses to the Petition should be rejected and the Challenged Claims held invalid.

Dated: March 28, 2025

/Michael Solomita/
Michael Solomita (Reg. No. 53,940)

CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(a)(i), the undersigned certifies that this Paper—exclusive of the table of contents, certificate of service, and this certificate of word count—includes 5,585 words.

/Michael Solomita/
Michael Solomita (Reg. No. 53,940)

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The undersigned certifies that on this 28th day of March, 2025, the foregoing document is being served by e-mail on counsel of record for Patent Owner as follows:

Sarah E. Spires (Reg. No. 61,501)
sspires@skiermontderby.com

Paul J. Skiermont (*pro hac vice application to be submitted*)
pskiermont@skiermontderby.com

/Michael Solomita/
Michael Solomita (Reg. No. 53,940)