

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 IPR2024-00617
Patent 11,151,142 B2

**PETITIONER'S OBJECTIONS TO PATENT OWNER'S PRELIMINARY
RESPONSE EVIDENCE**

Petitioner objects to the following evidence that was served concurrently with

Patent Owner's Preliminary Response ("POPR") (Paper 6).

Ex. Number and PO's Description	Objections
2001. PR Newswire, May 13, 2013: <i>AudioEye and Grafton Integrated Health Network Announce Technology Development Partnership</i> , https://www.prnewswire.com/news-releases/audioeye-and-grafton-integrated-health-network-announce-technology-development-partnership-207169341.html	<u>Hearsay</u>. Fed. R. Evid. 801(c) and 802. Patent Owner ("PO") relies on statements in this exhibit as true: e.g., AudioEye, Inc. was hired by Grafton to "to design, patent, and fully develop a new mobile behavioral health care technology platform." POPR at 4-5 (quoting Ex. 2001 at 1). These statements are therefore hearsay. PO has not offered evidence sufficient to demonstrate that these statements are not hearsay or fall within any hearsay exception. <u>Relevance</u>. FRE 401-403. PO has not even alleged a connection between Ex. 2001 and any issue relevant to this proceeding. See POPR at 4-5. Ex. 2001 is therefore irrelevant under FRE 401 and thus inadmissible under FRE 402 or inadmissible under FRE 403 as lacking probative value and being unfairly prejudicial, confusing the issues, and/or wasting time.
2002. Rhodes, Penny, <i>et al.</i> , <i>Relationship continuity: when and why do primary care patients think it is safer?</i> , British Journal of General Practice (Dec. 2014)	<u>Authentication</u>. Fed. R. Evid. 901(a). PO has not produced evidence sufficient to support a finding that this exhibit is what PO purports it to be. <u>Hearsay</u>. Fed. R. Evid. 801(c) and 802. Given that Ex. 2002 post-dates the alleged time of the invention (<i>compare</i> Ex. 2002 at 1 ("December 2014") <i>with</i> POPR at 5 (March 15, 2013)), the statements in Ex. 2002 relied on by PO—e.g., "Relationship continuity ... has been a core feature of primary care [that] is popular with patients and practitioners" (Ex. 2002 at 1 (quoted in POPR at 32))—were not available for the non-hearsay purpose of having an impact on a POSITA. PO thus apparently relies on those statements as true, rendering them hearsay. PO has not offered evidence sufficient to

	demonstrate that these statements are not hearsay or fall within any hearsay exception.
2003. Hill, Alison P., and George K. Freeman, <i>Promoting Continuity of Care in General Practice</i> , Royal College of General Practitioners (Mar. 2011)	<u>Authentication</u>. Fed. R. Evid. 901(a). PO has not produced evidence sufficient to support a finding that this exhibit is what PO purports it to be. <u>Hearsay</u>. Fed. R. Evid. 801(c) and 802. PO relies on Ex. 2003’s statements that, e.g., “[t]here is a lot of evidence that a good relationship with a freely chosen primary care doctor ... is associated with better, more appropriate care” and “trust [] builds up through relationship continuity,” as true. POPR at 32-33, 37 (quoting Ex. 2003 at 11-12). These statements are therefore hearsay. PO has not offered evidence sufficient to demonstrate that these statements are not hearsay or fall within any hearsay exception; for instance, PO has not established that Ex. 2003 was indeed available to have an impact on a POSITA as of its “March 2011” date (Ex. 2003 at 1), which is, itself, also hearsay.
2004. Pronovost, Peter, <i>et al.</i> , <i>Procuring Interoperability: Achieving High-Quality, Connected, and Person-Centered Care</i> , National Academy of Medicine (2018)	<u>Authentication</u>. Fed. R. Evid. 901(a). PO has not produced evidence sufficient to support a finding that this exhibit is what PO purports it to be. <u>Hearsay</u>. Fed. R. Evid. 801(c) and 802. Given that Ex. 2004 post-dates the alleged time of the invention (<i>compare</i> Ex. 2004 at 1 (“2018”) <i>with</i> POPR at 5 (March 15, 2013)), the statements in Ex. 2004 relied on by PO were not available for the non-hearsay purpose of having an impact on a POSITA. These statements are that, e.g.: • “most EHRs ... are not interoperable;” • “fewer than one in three hospitals [was] able to electronically ... [handle] patient information from another provider;” • “most providers still rely on paper or fax to some extent;” and • The “stage 2 Meaningful Use program ... required hospitals to send the care record summaries

	electronically ... for ... 10 percent of care transitions” only. POPR at 36-37 (quoting Ex. 2004 at 28). PO thus apparently relies on these statements as true, rendering them hearsay. PO has not offered evidence sufficient to demonstrate that these statements are not hearsay or fall within any hearsay exception.
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Dated: October 1, 2024

Respectfully submitted,
/Jeremy Albright/
Jeremy Albright (Reg. No. 73,379)

Backup Counsel for Petitioner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on October 1, 2024, a complete copy of Petitioner's Objections to Patent Owner's Preliminary Response Evidence was served on Lead and Backup Counsel for Patent Owner via email (by consent) to:

Lead Counsel: Sarah E. Spires (Reg. No. 61,501)
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Backup Counsel: Paul J. Skiermont (awaiting *pro hac vice* motion)
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/Jeremy Albright/

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