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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 No. IPR2024-00617
U.S. Patent No. 11,151,142

**PATENT OWNER'S RESPONSE
UNDER 37 C.F.R. § 42.120**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
III.	OVERVIEW OF THE '142 INVENTION.....	5
IV.	CHALLENGED CLAIMS	6
V.	CLAIM CONSTRUCTION	10
VI.	ARGUMENT.....	12
A.	All Grounds: Petitioner fails to provide evidence that any reference discloses or suggests “assign[/ing] 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” (all claims).....	12
1.	Petitioner’s obviousness arguments are unavailing.....	19
B.	All Grounds: Petitioner fails to provide evidence that any reference discloses or suggests “automatically communicate alerts in response to the compiled data varying from the one or more thresholds to become significant for the one or more of the clients” (all claims).....	21
C.	Grounds 1 and 2: Petitioner fails to provide evidence that any reference discloses or suggests “establishing desired outcomes for the client associated with treatment or assistance utilizing a wizard application” (claim 3).....	22
D.	Grounds 1 and 2: Petitioner fails to provide evidence that any reference discloses or suggests “wherein the wizard application receives at least a main heading, a start date, a projected closure date, and a desired outcome description” (claims 4 and 14).....	25
E.	Grounds 1 and 2: Petitioner fails to provide evidence that any reference discloses or suggests “wherein the data includes at least intervention plans, desired outcomes and objectives, recorded activities, and general notes” (claim 6)	28

F.	Grounds 1 and 2: Petitioner fails to provide evidence that any reference discloses or suggests “determining whether the data required is received from each of the providers” or “sending an alert to one or more providers in response to determining there is missing data for one or more clients associated with the one or more providers” (claim 7)	29
G.	Grounds 1 and 2: Petitioner fails to provide evidence that any reference discloses or suggests “prompting the providers to provide data associated with assigned clients” (claim 10).....	34
H.	All Grounds: Petitioner’s allegations for claims 2 and 11 cannot both be true (claims 2, 11-15)	36
I.	Grounds 1 and 2: Petitioner fails to provide evidence that Douglas discloses “a database in communication with the server configured to store the data and information associated with the clients and the providers” (claim 11)	37
J.	Grounds 1 and 2: Petitioner fails to provide evidence that Douglas discloses “a processor for executing a set of instructions” (claims 16-20)	38
K.	Ground 2: Petitioner fails to provide evidence that any reference discloses or suggests “assigning each of the clients to one or more of the providers in response to selections from an administrator” (all claims).....	40
L.	Grounds 2, 4, 6, and 8: A POSITA would not have been motivated to combine Douglas with Wager (all claims).....	41
M.	Grounds 3 and 4: Chitiveli is not a printed publication under 35 U.S.C. § 311(b).....	50
N.	Grounds 5 and 6: A POSITA would not have been motivated to combine Douglas and Koh (claims 5, 12, 13, and 18).....	52
1.	Petitioner’s Douglas-Koh system does not render claims 5, 12, or 13 obvious.....	55
2.	Petitioner’s Douglas-Koh system does not render claim 18 obvious	56

O.	Grounds 7 and 8: Virginia is not analogous art (all claims)	57
1.	The Virginia reference is not in the same field of endeavor.	59
2.	The Virginia reference is not reasonably pertinent to the problem addressed by the '142 patent.	60
P.	Grounds 4, 6, and 8: Petitioner has not identified its proposed combinations of Douglas at Wager, Chitiveli, Koh, and Virginia.	62
VII.	CONCLUSION.....	65

TABLE OF AUTHORITIES

Cases

<i>Acceleration Bay, LLC v. Activation Blizzard Inc.</i> , 908 F.3d 765 (Fed. Cir. 2018)	51
<i>Acclarent, Inc. v. Ford Albritton, IV</i> , IPR2018-00268, 2018 WL 2553983 (PTAB May 31, 2018).....	65
<i>Apple Inc. v. Uniloc Luxembourg S.A.</i> , IPR2017-02041 (PTAB Mar. 8, 2018) (Paper 10)	43
<i>ArcelorMittal v. Array Tech., Inc.</i> , IPR2018-00801, 2019 WL 4877350 (PTAB Oct. 2, 2019)	63
<i>ATD Corp. v. Lydall, Inc.</i> , 159 F.3d 534 (Fed. Cir. 1998)	57
<i>Barrday, Inc. v. Lincoln Fabrics Inc.</i> , No. 2022-1903, 2023 WL 7871688 (Fed. Cir. Nov. 16, 2023).....	17
<i>Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP</i> , 616 F.3d 1249 (Fed. Cir. 2010)	18
<i>Black & Decker, Inc. v. Positec USA, Inc.</i> , 646 Fed. Appx. 1019 (Fed. Cir. 2016)	34
<i>BMW of North America, LLC v. Carrum Techs., LLC</i> , IPR2019-00904 (PTAB Oct. 18, 2019) (Paper 10).....	44
<i>Carella v. Starlight Archery & Pro Line Co.</i> , 804 F.2d 135 (Fed. Cir. 1986)	51
<i>Corephotonics, Ltd. v. Apple Inc.</i> , 84 F.4th 990 (Fed. Cir. 2023)	38, 39
<i>Gaus v. Conair Corp.</i> , 363 F.3d 1284 (Fed. Cir. 2004)	18
<i>In re Clay</i> , 966 F.2d 656 (Fed.Cir.1992)	59, 61

<i>In re Cronyn</i> , 890 F.2d 1158 (Fed. Cir. 1989)	51
<i>In re ICON Health & Fitness, Inc.</i> , 496 F.3d 1374 (Fed. Cir. 2007)	59
<i>In re Klopfenstein</i> , 380 F.3d 1345 (Fed. Cir. 2004)	51
<i>In re Magnum Oil Tools Int’l, Ltd.</i> , 829 F.3d 1364 (Fed. Cir. 2016)	18, 28, 38, 63
<i>Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.</i> , 821 F.3d 1359 (Fed. Cir. 2016)	39
<i>Interconnect Planning Corp. v. Feil</i> , 774 F.2d 1132 (Fed. Cir. 1985)	21
<i>Kinetic Concepts, Inc. v. Smith & Nephew, Inc.</i> , 688 F.3d 1342 (Fed. Cir. 2012)	65
<i>KSR Int’l Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007)	46
<i>Kyocera Senco Indus. Tools Inc. v. Int’l Trade Comm’n</i> , 22 F.4th 1369 (Fed. Cir. 2022)	17
<i>Leo Pharm. Prods., Ltd. v. Rea</i> , 726 F.3d 1346 (Fed. Cir. 2013)	49
<i>Live Power Intelligence Co. NA, LLC v. Genscape Intangible Holding, Inc.</i> , IPR2019-00169 (PTAB June 7, 2019) (Paper 7)	18
<i>MModal LLC v. Nuance Commc’ns, Inc.</i> , IPR2018-01355 (PTAB Feb. 5, 2020) (Paper 45), <i>aff’d</i> , 846 F. App’x 900 (Fed. Cir. 2021)	56
<i>Pers. Web Techs., LLC v. Apple, Inc.</i> , 848 F.3d 987 (Fed. Cir. 2017)	54
<i>Rembrandt Wireless Techs., LP v. Samsung Elecs. Co. Ltd.</i> , 853 F.3d 1370 (Fed. Cir. 2017)	49

<i>Samsung Elecs. Co., Ltd. v. Infobridge Pte. Ltd.</i> , 929 F.3d 1363 (Fed. Cir. 2019)	51
<i>Sanofi-Aventis Deutschland GmbH v. Mylan Pharms. Inc.</i> , 66 F.4th 1373 (Fed. Cir. 2023)	58
<i>Sirona Dental Sys. GmbH v. Institut Straumann AG</i> , 892 F.3d 1349 (Fed. Cir. 2018)	18, 63
<i>Universal Imaging Indus., LLC v. Lexmark Int’l, Inc.</i> , IPR2019-01381 (PTAB Feb. 3, 2020) (Paper 7)	28
<i>Universal Imaging Indus., LLC v. Lexmark Int’l, Inc.</i> , IPR2019-01381, 2020 WL 582147 (PTAB Feb. 3, 2020)	63
<i>Voter Verified, Inc. v. Premier Election Sols., Inc.</i> , 698 F.3d 1374 (Fed. Cir. 2012)	51
<i>Wenger Mfg., Inc. v. Coating Mach. Sys., Inc.</i> , 239 F.3d 1225 (Fed. Cir. 2001)	35
<i>Winner Int’l Royalty Corp. v. Wang</i> , 202 F.3d 1340 (Fed. Cir. 2000)	43
<i>Xerox Corp. v. Bytemark, Inc.</i> , IPR2022-00624 (PTAB Aug. 24, 2022) (Paper 9)	32
<i>ZTE (USA) Inc. v. Fundamental Innovation Sys. Int’l LLC</i> , IPR2018-00274 (PTAB Aug. 29, 2018) (Paper 17)	37
Statutes	
35 U.S.C. § 316(e)	63
37 C.F.R. § 42.100(b)	10, 11

I. INTRODUCTION

Petitioner's challenge to U.S. Patent No. 11,151,142 (the "'142 patent") is fundamentally flawed. Data Health Partners, Inc. ("Patent Owner") respectfully submits this Response to demonstrate that Petitioner has failed to meet its burden of proving unpatentability. Using the claims as a blueprint, the Petitioner maps the prior art using conclusory assertions, mischaracterizations of the teachings of the references, and untenable interpretations that contradict both the plain language of the claims and the clear teachings of the '142 patent. The Board should deny the Petition in its entirety.

The '142 patent discloses transformative systems and methods for optimizing goal progression in behavioral health and other treatment contexts. The '142 patent's innovation is rooted in a framework of individualized client data collection from providers, goal-setting, and automated intervention—providing caregivers with actionable insights to improve client adherence to treatment plans. The cited prior art fails to disclose or suggest critical features of the '142 patent; Petitioner's arguments fall short of demonstrating that any of Petitioner's eight purported combinations of prior art discloses, suggests, or renders obvious the claimed invention.

Below, Patent Owner makes clear that Petitioner's proof is riddled with deficiencies. For example, Petitioner's reliance on Douglas as disclosing the

claimed assignment of clients to providers is unavailing because it has not shown that Douglas discloses that any assignment is performed in response to any selection by an administrator, as expressly required by the claims. The Petition further falters in its proposed combinations of Douglas with other references, failing to demonstrate requisite motivation to combine or, in some circumstances, to identify the combinations at all.

In sum, the Board should reject each of Petitioner's insufficient Grounds and confirm the validity of the challenged claims. The '142 patent's invention represents a significant advancement in the field of behavioral health management, addressing a critical unmet need with innovative and practical solutions and fostering better outcomes for clients, providers, and organizations. For these reasons, and as discussed in greater detail below, the Patent Owner respectfully requests that the Board reject the Petition in its entirety.

II. BACKGROUND

Traditional healthcare approaches recognize the importance of increasing patient adherence to goals and regimens prescribed by doctors or other professionals in improving overall outcomes. But achieving adherence to such goals is difficult. Behavioral science has long struggled with the problem of how to induce individuals to follow prescribed advice.

Grafton is a private not-for-profit behavioral health organization that provides a continuum of services to individuals with intellectual, developmental, and behavioral needs. Patient treatment at Grafton relied historically on behavioral strategies, but the traditional aversive safety measures of seclusion and restraint regularly resulted in physical incidents between staff and patients. There was limited tracking and monitoring of patient progress in improving skills and reducing problematic behavior.

In 2002, James Gaynor became the CEO of Grafton. In the face of rising costs from dangerous injury-prone physical interventions, Mr. Gaynor and other executives at Grafton began developing and refining a formal, systematic, data-management approach that tracked individualized goal outcomes in order to reduce trauma and costs associated with injuries to staff and patients. Eventually, Grafton's efforts paid off. Its approach centered on a cyclical process of collecting data on patients from multiple sources, assessing the various factors and influences that affected patient development, setting individualized goals for the patients, implementing strategies to reach those goals, tracking and continually evaluating patient attainment of their goals, and intervening to improve goal attainment based on that evaluation. For example, Grafton used a concept of "goal mastery" to assess individualized patient progress in attainment of the patient's assigned goals and to understand when the patient was falling short, automatically alerting staff

and enabling them to respond appropriately. And as patients met their specifically assigned goals, their reactive aggressive behavior decreased, leading to a reduced need for crisis intervention strategies and a lower rate of physical incidents between patients and staff.

Grafton's methods eventually led to savings of millions of dollars in decreased costs associated with interventions, while increasing goal attainment rates among the patient population from 35% to over 80%. Grafton's methods also improved overall goals related to patients' ability to engage productively and safely in learning, daily living activities, and social interactions.

Seeing the success of their program, Mr. Gaynor and Lisa Marshall, Ph.D., Grafton's Director of Clinical Services, sought to develop a generalized approach to patient care based on their experience at Grafton. They worked with software developers, including the founder and employees of Data Health, to combine their learned experience in tracking and improving goal outcomes with technology that would enable input of data by users, automatically develop goals and progress-tracking methodologies, and continually monitor collected data to both generate reports on patient progress and provide automated interventions and alerts to users.

In May 2013, AudioEye, Inc., the software company working with Grafton, issued a press release announcing that it had been hired by Grafton "to design, patent, and fully develop a new mobile behavioral health care technology

platform.” (Ex. 2001, 1.) The result was the REBOOT (Reliable Evidence-Based Outcomes Optimization Technologies) software-as-a-service product, which enabled a wide variety of organizations seeking to improve goal outcomes for targeted individuals and stakeholders to take advantage of the methods that had been proven to improve goal mastery at Grafton.

The ’142 patent is based on the REBOOT technology, and claims methods, systems, and controllers that improve outcomes associated with goal-tracking through a specific structure (of data collection, data assessment, and automated alerts and notifications) that has enabled organizations to better attain client adherence to prescribed regimens and improve clients’ baseline conditions.

III. OVERVIEW OF THE ’142 INVENTION

The ’142 patent is entitled “Platform for Optimizing Goal Progression” and was filed on August 2, 2018, claiming priority to U.S. Provisional Application No. 61/791,218 filed on March 15, 2013. The ’142 patent claims methods, systems, and controllers for tracking goal progression:

Input establishing accounts for providers serving clients is received. Each of the clients is assigned to one or more of the providers in response to selections from an administrator. Goals are established for each of the clients in response to treatments and assistance required. Data associated with each of the clients received from the providers is compiled. A determination is made whether the goals are being met in response to rules based on the compiled data. Alerts are automatically

communicated in response to the compiled data varying from a threshold to become significant for one or more of the clients. (Ex. 1001 at abstract.)

The claimed technology offers several advantages over prior art. (*See* Ex. 1001 at 27:39-40.) Specifically, the technology disclosed in the '142 patent allows a provider to define and automate a process for assessment that “drives goals, services, and interventions.” (*Id.*, 27:40-42.) It also improves goal management functionality by “allow[ing] goals to be defined, created, tracked, and analyzed using data.” (*Id.*, 27:42-44.)

For example, claim 1 of the '142 patent generally discloses (1) receiving input for establishing accounts for providers serving clients, (2) creating fields to compile client data, (3) assigning a client to a provider in response to selections from an administrator, (4) establishing desired outcomes with thresholds that indicate whether the desired outcomes are met, (5) compiling data associated with performance of the desired outcomes, (6) automatically determining whether the desired outcomes are being met and whether the data varies from any threshold, and (8) communicating alerts where the data significantly varies from any threshold. (*Id.*, claim 1.)

IV. CHALLENGED CLAIMS

Petitioner challenges claims 1-7, 9-14, 16-18, and 20 of the '142 patent, of which claims 1, 11, and 16 are independent.

Claim 1 recites:

A method for tracking goal progression, the method comprising:

receiving input establishing accounts for providers serving clients, wherein the clients are individuals receiving treatment or assistance, and wherein the accounts are stored in a server available through one or more networks;

creating fields required for compiling data associated with the treatment or assistance of each of the clients from the providers; assigning each of the clients to one or more of the providers in response to selections from an administrator, wherein the one or more of the providers include at least individuals available to treat or assist the client;

establishing desired outcomes for each of the clients based on treatment and assistance required to meet the desired outcomes, wherein one or more thresholds indicates whether the desired outcomes are met;

compiling data associated with at least performance of the desired outcomes by each of the clients received from the providers utilizing computing or communications devices in communication with the server;

automatically determining whether 1) the desired outcomes are being met in response to rules governing data analysis that are utilized based on the compiled data, and 2) the compiled data varies from one or more thresholds to become significant for one or more of the clients; and

automatically communicating alerts in response to the compiled data varying from the one or more thresholds to become significant for the one or more of the clients.

(Ex. 1001 at 31:25-55.)

Claim 11 recites:

A system for tracking goal progression, the system comprising: a server that communicates with communications devices through a transceiver utilizing one or more networks, the server includes a processor that executes a client management program to;

receive input establishing accounts for providers serving clients, wherein the clients are individuals receiving treatment or assistance, and wherein the accounts are stored in a server available through one or more networks;

create fields required for compiling data associated with the treatment or assistance of each of the clients from the providers; assign each of the clients to one or more of the providers in response to selections from an administrator, wherein the one or more of the providers include at least individuals available to treat or assist the client;

establish desired outcomes for each of the clients based on treatment and assistance required to meet the desired outcomes, wherein one or more thresholds indicates whether the desired outcomes are met;

compile data associated with at least performance of the desired outcomes by each of the clients received from the providers utilizing

computing or communications devices in communication with the server;

automatically determine whether 1) the desired outcomes are being met in response to rules governing data analysis that are utilized based on the compiled data, and 2) the compiled data varies from one or more thresholds to become significant for one or more of the clients; and

automatically communicate alerts in response to the compiled data varying from the one or more thresholds to become significant for the one or more of the clients;

a database in communication with the server configured to store the data and information associated with the clients and the providers.

(Ex. 1001 at 32:30-67.)

Claim 16 recites:

A controller comprising:

a processor for executing a set of instructions; and

a memory for storing the set of instructions, wherein the set of instructions are executed by the processor to:

receive input establishing accounts for providers serving clients, wherein the clients are individuals receiving treatment or assistance, and wherein the accounts are stored in a server available through one or more networks;

create fields required for compiling data associated with the treatment or assistance of each of the clients from the providers; assign each of the clients to one or more of the providers in response to selections from an administrator, wherein the one or more of the

providers include at least individuals available to treat or assist the client;

establish desired outcomes for each of the clients based on treatment and assistance required to meet the desired outcomes, wherein one or more thresholds indicates whether the desired outcomes are met;

compile data associated with at least performance of the desired outcomes by each of the clients received from the providers utilizing computing or communications devices in communication with the server;

automatically determine whether 1) the desired outcomes are being met in response to rules governing data analysis that are utilized based on the compiled data, and 2) the compiled data varies from one or more thresholds to become significant for one or more of the clients; and

automatically communicate alerts in response to the compiled data varying from the one or more thresholds to become significant for the one or more of the clients.

(Ex. 1001 at 33:19-35.)

V. CLAIM CONSTRUCTION

The Challenged Claims of the '142 patent are construed “using the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. § 282(b).” 37 C.F.R. § 42.100(b) (Nov. 13, 2018). The '142 patent claim terms are therefore construed “in accordance with the ordinary and

customary meaning of such claim as understood by one of ordinary skill in the art and the prosecution history pertaining to the patent.” *Id.*

Data Health agrees with Petitioner that, for purposes of this Response only, all terms of the ’142 patent have their plain and ordinary meaning. (Pet., 7.) However, Data Health disagrees that the Petitioner has not asked the court to construe any claim term.

The Petition presumes a construction of the term “wizard application,” which Petitioner argues means “[a]n interactive help utility within an application that guides the user through each step of a particular task.” (Petition at 31.) Data Health disagrees that this proposed construction is supported by or consistent with the specification, and Petitioner has not attempted to establish that it is. (*See id.*) Petitioner’s proposed construction also does not reflect the plain and ordinary meaning of the term. As noted *infra*, a “wizard application” cannot be an interactive help utility “within an application”; it must *be* the application. (*See infra* Section VI.D.)

Additionally, the ’142 patent describes an embodiment of the wizard functionality:

In one embodiment, by choosing a heading, the service providers **216** may be presented with information for specific goals and objectives **226**. For example, in a behavioral health field, the goals and objectives **226** may include areas, such as coping skills, fine motor

skills, and physical aggression. The user may utilize a goal wizard or management function to be able to enter headings as well as detailed descriptions or narratives associated with each heading in a hierarchical format. For example, each of the goals and objectives **236** may include a main heading, a start date, a projected closure date, a goal description, a goal narrative, a lead service provider, a data collection method, email notifications (e.g., for individual users associated with the specific client or information for the client), function, and options. Goals may be opened and closed out at any time and may be viewed in separate files, such as active and archived.

(Ex. 1001 at 12:30-49.)

The “wizard application” disclosed in the ’142 Patent is consistent with the plain and ordinary meaning of the term “wizard” and would require active facilitation of input through sequential or hierarchical prompts. (Ex. 2005, ¶¶51-56.)

VI. ARGUMENT

A. All Grounds: Petitioner fails to provide evidence that any reference discloses or suggests “assign[/ing] 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” (all claims)

All Challenged Claims require assignment of 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 at claims 1-20.) The claims expressly require that the assignment of the

physician to a client be done “*in response to selections from the administrator.*”

(*Id.* (emphasis added).)

For this limitation, Petitioner points to Douglas’s Figure 47 (showing the “Responsible Physician” for patient “Fred Smith”), column 15:8-9 (patients “keep in constant contact with their physician.”), claims 11, 25 (“alerting the individual’s physician”), Figure 2 (associating the patient, “Patient Name[/]ID,” with a physician, “Physician Name[/]ID”), and Figure 7 (“Dear Doctor Cavello: This is a status report on your patient”). (Petition at 18-23.) But 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.”

As described by Petitioner, “[a] case administrator creates a patient account based on information contained in the patient prescription form . . . *which is filled out and signed by the physician.* . . . Once the . . . administrator enters the patient into the system, . . . the system . . . recommends a default set of goals based on the patient’s needs and existing medical protocols that may be modified.” (Petition at 8 (emphasis added and internal citations and quotations omitted).)

Douglas discloses two mechanisms for subscribing a patient to Douglas’s behavior modification program. First, after a physician diagnoses an individual with an ailment, the physician may recommend a health care maintenance or

recovery program, measure baseline factors (e.g., blood pressure, heart rate, height), and then input such factors into the system directly via the physician's personal computer. (Douglas at 6:28-35.) Alternatively, the physician can fill out a prescription form and send the information to a "case advisor," who then sets the patient up on the system. (*Id.*)

Patent Owner previously detailed its view that "[s]et[ting] up a new patient based on information contained in the prescription form" cannot fairly be found to be disclosure of "assigning each of the clients to one or more of the providers." (Paper 6, 22-28.) Specifically, Patent Owner argued that because Douglas expressly contemplates that a patient has already been by his or her physician prior to entry into Douglas's behavior modification program, Douglas does not disclose any assignment of any provider to any patient. *See id.* The Institution Decision concluded that "Claim 1 . . . does not prohibit assigning a client to a provider from whom the client received treatment prior to the administrator's selection." (Paper 9, 9.)

But the Challenged Claims *do* expressly require that any "assign[ment]" of a provider to a client be done "in response to selections from an administrator." (Ex. 1001 at cl. 1.) Petitioner conclusorily argues that Douglas discloses this limitation because it posits that, in Douglas at "the case administrator sets up each of the patients on Douglas's system by entering the information contained in the patient

prescription form . . . where such information includes information associating the patient with a physician.” (Petition at 19-20 (citing Douglas at 6:33-7:13, Fig. 2).)

But, in so arguing, Petitioner does not identify any selection made by Douglas’s administrator which may result in assignment of a provider. *See id.* Petitioner merely identifies Douglas’s disclosure that the case administrator enters information already contained in a patient prescription form into Douglas’s system. Specifically, Petitioner states that “by entering the patient prescription form, the case administrator’s assignments of the patients to the physicians constitute the administrator’s selections of each of the patients and of the physician to be assigned to that patient,” without explaining how such entry constitutes “selections from an administrator.” *See id.* Entering information (which a physician had already provided on the prescription form) into Douglas’s system cannot fairly be found to be “selections from an administrator” under a plain and ordinary meaning of the term.

First, the plain and ordinary meaning of the term “selections” envisions a deliberate and active choice by an administrator, which is confirmed by the specification’s discussion of administrators as playing an active role in the assignment process, generally. (*See* Ex. 1001 at 11:13-18 (“Provider administrators 214 may manage their team of service providers 216 who work directly with clients 224 to administer information and data, such as goals and objectives 236.

The provider administrators 214 may have complete access to the service providers 216 and the clients 224 to assign the clients 224 to individual service providers 216 through the user interface 210.”); (Ex. 2005, ¶66.)) Douglas discloses no such selection; Douglas’s administrator merely inputs pre-determined information from the prescription form. (Douglas at 6:33-7:13, Fig. 2; (Ex. 2005, ¶67).)

To the extent that the Board disagrees and finds Douglas’s administrator’s entry of prescription information into the system to be “selections,” such information could only be found to have been “select[ed]” by the physician, not the administrator as required by the claims. Specifically, Douglas discloses that “the physician may fill out a prescription form and send the information to a case advisor, who then . . . sets up a new patient based on information contained in the patient prescription form or accesses the records or existing patients through patient files 40.” (Douglas at 6:33-7:16.) Thus, any such information, if entry of it could be found to be “selection,” would be selected by the physician, not the administrator.

Second, Petitioner does not identify where Douglas discloses that the assignment of one or more providers is made “**in response to**” any such selection made by the administrator. Again, crediting Petitioner with arguing that Douglas’s case advisor’s data entry constitutes “selections from an administrator,” Douglas plainly does not teach that any “assigning” of a provider is done “in response to”

that data entry as required by the claims. Indeed, it could not, because the information entered by the case advisor was *provided by the physician*. (Douglas at 6:33-7:16.)

Finally, to the extent the Board finds the administrator’s entry of prescription information—including identifying the prescribing physician—to be “selections from an administrator,” such entry is also what Petitioner points to as “assign[ment] . . . to one or more of the *providers in response to selections from an administrator*.” (Petition at 19-20 (“A POSITA would have understood Douglas’s disclosure of the administrator entering this patient-physician information from the patient prescription form to be disclosure of the administrator’s assignment of the patient to the physician within Douglas’s system.”) Petitioner’s expert confirms that, according to Petitioner, “the selection of the physician is the assignment of the physician.” (Ex. 2006 at 32:1-6.)

Not only is this wholly illogical given that the assignment must be in response to the selection, but it is also prohibited. The Federal Circuit has repeatedly held that “[w]here a claim lists elements separately, as done here, there is ‘a presumption that those components are distinct.’” *Barrday, Inc. v. Lincoln Fabrics Inc.*, No. 2022-1903, 2023 WL 7871688, at *4 (Fed. Cir. Nov. 16, 2023) (quoting *Kyocera Senco Indus. Tools Inc. v. Int’l Trade Comm’n*, 22 F.4th 1369, 1382 (Fed. Cir. 2022)); see *Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*,

616 F.3d 1249, 1254 (Fed. Cir. 2010) (“Where a claim lists elements separately, ‘the clear implication of the claim language’ is that those elements are ‘distinct component[s]’ of the patented invention.”) (quoting *Gaus v. Conair Corp.*, 363 F.3d 1284, 1288 (Fed. Cir. 2004)). Thus, the claimed “assigning” cannot be wholly subsumed by the claimed “selections from an administrator” (particularly here, given that the assignment must be done “in response to” the selection).

Petitioner has not even addressed this presumption, much less rebutted it, and it cannot make this argument now. *See Live Power Intelligence Co. NA, LLC v. Genscape Intangible Holding, Inc.*, IPR2019-00169, Paper 7 at 13-14 (PTAB June 7, 2019) (“Our role is not to remedy the deficiencies in Petitions that fall short.”) (citing *Sirona Dental Sys. GmbH v. Institut Straumann AG*, 892 F.3d 1349, 1356 (Fed. Cir. 2018) (because “the petitioner’s contentions, not the Director’s discretion, define the scope, it would thus not be proper for the Board to deviate from the grounds in the petition and raise its own obviousness theory instituting a different inter partes review” (quoting *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1356–57 (2018) (cleaned up)); *In re Magnum Oil Tools Int’l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016) (IPRs are “a system that is predicated on a petition followed by a trial in which the petitioner bears the burden of proof.

In sum, Douglas simply does not disclose the process that the ’142 Patent teaches for assignment of a provider—namely that a provider is assigned to a client

in response to selections made by an administrator. (Ex. 1001 at cl. 1.) Petitioner's argument to the contrary strips "assigning" and "selections" of their plain and intended meanings, conflates them, and relies on impermissible hindsight to force a square peg into a round hole.

1. Petitioner's obviousness arguments are unavailing.

Petitioner also argues that it would have been obvious for the case administrator to assign the patient to the physician because "such assignment had to be created to achieve the functionality of Douglas's system." (Petition at 20.) This is false. A major distinction between the '142 patent and Douglas is that Douglas presumes a physician has already been assigned to the patient; the '142 patent does not. (Ex. 2005, ¶73.) Indeed, Douglas discloses that the physician diagnoses an individual with an ailment, then recommends a health care maintenance or recovery program, and then places the patient on the system to help the patient make lifestyle and behavior modifications. (Douglas at 2:25-35; (Ex. 2005, ¶73.) Douglas's system does not contemplate, disclose, or require the assignment of patients to physicians through any functionality within its platform. (*Id.*)

The '142 patent discloses that clients are assigned to providers via the system in response to selections from an administrator, goals are established, and then the client proceeds through the system for goal progression in accordance

with the particular claim requirements. (Ex. 1001 at 1:41-56.) The assignment process is fundamental to the '142 system and precedes the establishment of desired outcomes and subsequent progress tracking. (Ex. 2005, ¶74.) The ability to assign clients to providers through the system facilitates centralized management and data integration, which are absent in Douglas's teachings. (*Id.*)

But even if the Board disagrees and finds that it would have been obvious to assign patients via Douglas's system, this does not cure the fatal deficiency that Douglas does not teach any assignment of a provider "in response to selections from an administrator." *See supra* Section VI.A.

Petitioner alternatively argues that "Douglas also renders obvious the assignment by the administrator of the patient to the physician through selections of graphical user interface ('GUI') components." (Petition at 20.) Pointing to certain GUI components disclosed in Douglas (e.g., check boxes, drop-down menus), Petitioner contends that it would have been obvious for an administrator to use Douglas's GUI components to assign the patient to the physician. (*Id.*, 20-23.)

First, and as noted above, even if the case advisor's selection of the treating physician's name in the system (using GUI components or otherwise) could constitute "assignment" to a "provider" under a plain and ordinary meaning of that term, it would not be done "in response" to any "selection[]" from the administrator." *See supra*, Section VI.A. Indeed, in that scenario, any purported

“assignment” of the physician would still also be the claimed “selection,” precluding the assignment from being performed “in response” to the selection. (*Id.*)

Moreover, Douglas’s inclusion of well-known GUI components such as check boxes, buttons, and drop-down menus does not establish the requisite motivation to fundamentally alter the operation of Douglas’s system. (Ex. 2005, ¶77.) Petitioner cannot rely on the blueprint drawn by the inventor, beginning the analysis at the claimed invention and matching it to the prior art, to establish obviousness. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138 (Fed. Cir. 1985) (“The invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the time.”).

B. All Grounds: Petitioner fails to provide evidence that any reference discloses or suggests “automatically communicate alerts in response to the compiled data varying from the one or more thresholds to become significant for the one or more of the clients” (all claims)

Petitioner also fails to show that Douglas discloses “automatically communicat[e/ing] alerts in response to the compiled data varying from the one or more thresholds to become significant for the one or more of the clients” as independent claims 1, 11, and 16 recite. (Ex. 1001 at cls. 1, 11, 16.) For this limitation, Petitioner identifies Douglas’s “alarm” option (block 1040, Figure 60), which compares patient data with the system’s goals and notifies the physician or

case advisor via email, fax, or pager if a health risk is present, or otherwise notifies the physician or case advisor if goals are not being met. (Petition at 31 (citing Douglas at 11:11-17).)

However, the “alarm” identified by Petitioner is expressly referred to by Douglas as an “option.” (Douglas at 11:11-17.) Specifically, Douglas states that “[a]s part of the feedback process, the system provides an ‘alarm’ *option* (block 1040, FIG. 60).” (*Id.* (emphasis added).) The claim requires that there be an “*automatic[] communicat[ion]*” of an alert in response to the compiled data varying from a threshold to become significant. (Ex. 1001 at cl. 1 (emphasis added).) If the alarm must be enabled, activated, or configured by a user before it can be utilized, it cannot reasonably be found to be “automatic” and therefore does not satisfy the claims. (Ex. 2005, ¶80.) Petitioner has not addressed this explicit language in Douglas and cannot satisfy its burden.

C. Grounds 1 and 2: Petitioner fails to provide evidence that any reference discloses or suggests “establishing desired outcomes for the client associated with treatment or assistance utilizing a wizard application” (claim 3)

Petitioner contends that Douglas discloses “establishing desired outcomes for the client associated with treatment or assistance utilizing a wizard application.” (Petition at 31-32.) To satisfy this claim limitation, Petitioner summarily states that Douglas’s system establishes desired outcomes for the client “utilizing a wizard application.” *Id.* In doing so, Petitioner relies on a proposed

claim construction for the term “wizard application” without actually asking the Board to construe it as such. *Id.* Specifically, Petitioner argues that a “wizard application” is “[a]n interactive help utility within an application that guides the user through each step of a particular task.” *Id.*

Patent Owner disagrees that Petitioner’s proposed construction reflects the plain and ordinary meaning of “wizard application,” and Petitioner has not asked that the term be construed or established that it should be. Critically, Petitioner’s proposed definition strips out the meaning of the word “application”: Petitioner proposes that a “wizard application” is a utility “within an application.” (Petition at 31.) But the purported wizard functionality cannot be *within* an application to satisfy the claim; it must *be* the application. (Ex. 1001 at cl. 3.)

As a threshold matter, then, Petitioner has not alleged or established that the “discrete steps” it points to as disclosure of this claim limitation constitute any “application” at all, nor do they constitute an “application” under a plain and ordinary meaning of the word. (*See* Petition at 31-32.)

The ’142 patent describes an embodiment of the wizard functionality:

In one embodiment, by choosing a heading, the service providers **216** may be presented with information for specific goals and objectives **226**. For example, in a behavioral health field, the goals and objectives **226** may include areas, such as coping skills, fine motor skills, and physical aggression. The user may utilize a goal wizard or

management function to be able to enter headings as well as detailed descriptions or narratives associated with each heading in a hierarchical format. For example, each of the goals and objectives **236** may include a main heading, a start date, a projected closure date, a goal description, a goal narrative, a lead service provider, a data collection method, email notifications (e.g., for individual users associated with the specific client or information for the client), function, and options. Goals may be opened and closed out at any time and may be viewed in separate files, such as active and archived.

(Ex. 1001 at 12:30-49.)

The series of interfaces depicted in Douglas's Figures 4-6 are not reflective of the kind of wizard application envisioned by the '142 patent or the plain and ordinary meaning of the term. (Ex. 2005, ¶86.) The "wizard application" disclosed in the '142 Patent is consistent with the plain and ordinary meaning of the term "wizard" and would require active facilitation of input through sequential or hierarchical prompts. (Ex. 2005, ¶85)

Douglas describes that "FIG. 4 is a graphical representation of an exemplary patient file taken from among those represented in FIG. 3." (Douglas at 3:33-34.) Figures 5 and 6 are "graphical representation[s]" corresponding to the program design and program detail options, respectively. *Id.* Douglas describes that "[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.” (Douglas at 8:8-9.)

Douglas’s interface assumes user familiarity with its features and does not actively facilitate input through sequential prompts; it merely allows users to navigate freely between goal management features for entry of data. (Ex. 2005, ¶87.)

What Douglas presents in Figures 4-6 is not a wizard application as a POSITA would understand the term, but ordinary data entry. (Ex. 2005, ¶88.) This does not satisfy the requirements of claim 3. (*See* Ex. 2006 at 37:14-38:1 (“I don’t believe it covers simply entering data.”).)

D. Grounds 1 and 2: Petitioner fails to provide evidence that any reference discloses or suggests “wherein the wizard application receives at least a main heading, a start date, a projected closure date, and a desired outcome description” (claims 4 and 14)

Petitioner’s arguments for claim 4 are similarly unavailing. Specifically, claim 4 requires that “the wizard application receives at least a main heading, a start date, a projected closure date, and a desired outcome description.” (Ex. 1001 at cl. 4.) Petitioner points to various fields within Figure 6 to attempt to identify each of the components identified in the claim. (Petition at 33.)

Douglas lacks disclosure of receipt by any “wizard application” of at least a “projected closure date.” Petitioner does not propose a construction for this term, but the word “closure” necessarily requires some kind of end or finality. (Ex. 2005,

¶92.) The '142 patent confirms the plain and ordinary meaning of the word applies, describing that “[a] projected closure date is the date at which the goal will end.” (Ex. 1001 at 6:30-31.) The projected closure date is “utilized to keep users and clients focused on reaching a designated goal in a reasonable time period. For example, depending upon procedural and regulatory parameters, a projected closure date may be pre-determined (e.g., one year) or may be set by user or agent specification of timeline (e.g., organizational key performance indicators may be set annually).” (*Id.*, 6:31-37.)

For this limitation, Petitioner identifies the words “1 month” in the heading of Douglas’s one month goals 61 in Figure 6. (Petition at 33.) But Petitioner cannot tenably contend that Douglas’s one month goals 61 constitute a “projected closure date.”

Douglas’s Figure 6 presents recommended “one month goals 61 and final goals 62.” (Douglas at 8:10-13.) Figure 6 confirms that Douglas’s one month goals 61 are intermediate goals and that final goals 62 represent the ultimate desired result for a particular metric. Petitioner’s expert agreed. (Ex. 2006 at 49:1-6 (“Q. The goals identified in Column 61 do not represent the final goals, correct? A. That’s correct. Q. The goals identified in Column 61 represent intermediate one month goals, correct? A. Correct.”).)

For example, looking specifically at “physical activity” identified by Petitioner, the patient’s physical activity level as of 2/10/98 is “20/3/3” (minutes/x times per week/RPE), the one month goal activity level is 25/6/4, and the final goal activity level is 4/6/6.¹ (*See* Douglas at Fig. 6.) The projected closure date for this goal—the date at which the goal will end—would be the date at which it is projected that the patient will achieve the final goal activity level of 4/6/6. (*See id.*) (Ex. 2005, ¶95.) There is no projected or target date for completion of that final activity level goal disclosed in Douglas. (*Id.*) Petitioner does not even attempt to establish this.

Instead, Petitioner points to what is indisputably an intermediate goal of 25 minutes / 6 times per week /4 RPE within one month. (Petition at 33.) It cannot be reasonably argued that the date at which the “physical activity” goal will end is one month from the then-current date of February 10, 1998 or the “projected closure date.” Indeed, the program expressly contemplates that the goal will continue past

¹ The number “4” in “4/6/6” appears to be a typographical error given that the final goals for all other categories represent an incremental progression over time. For example, for “weight,” the current weight is 182, the one-month goal weight is 175, and the final goal weight is 170. Similarly for “BMI,” the current BMI is 28.28, the one-month goal BMI is 26.64, and the final goal BMI is 25.00.

that date, at least until the final goal activity level is achieved. (*See* Douglas at Fig. 6.; Ex. 2005, ¶96.) Petitioner’s expert confirmed this in his deposition. (Ex. 2006 at 49: 7-21 (“[Y]ou would agree that the program in Figure 6 envisions Douglas’s plan continuing past one month, correct? A. Correct.”.) As a result, Petitioner’s proof for claim 4 fails.

To the extent Petitioner intended to argue that it would have been obvious for Douglas to have been modified such that a wizard application receives a “projected closure date,” Petitioner did not make that argument, and the Board cannot make it for Petitioner. *See Universal Imaging Indus., LLC v. Lexmark Int’l, Inc.*, IPR2019-01381, Paper 7, 21 (PTAB Feb. 3, 2020) (citing *In re Magnum*, 829 F.3d at 1381) (“We will not, and cannot, piece together Petitioner’s inconsistent and contradictory arguments into a cogent and coherent explanation that supports anticipation. Rather, we must evaluate the Petition’s arguments as presented.”).

E. Grounds 1 and 2: Petitioner fails to provide evidence that any reference discloses or suggests “wherein the data includes at least intervention plans, desired outcomes and objectives, recorded activities, and general notes” (claim 6)

To be clear, “the data” referred to in claim 6 must be (1) “associated with at least performance of the desired outcomes by each of the clients”; (2) “compiled”; (3) “received from the providers utilizing computing or communication devices in communication with the server” in accordance with claim 1. (Ex. 1001 at cl. 1.) Claim 6 additionally requires that such data also “includes at least intervention

plans, desired outcomes and objectives, recorded activities, and general notes.”

(Ex. 1001 at cl. 6.)

To satisfy this claim, Petitioner argues that Douglas’s “data” includes “intervention plans,” pointing to “points for good participation in the program, “exercise and stress management programs,” and notifications sent to physicians when goals are not being met and when a health risk is present. (Petition at 34.) There is no indication in Douglas that any of those aspects of Douglas’s system—assuming they could be fairly interpreted as “intervention plans”—are received from providers utilizing computing/communication devices. (Ex. 2005, ¶100.)

Petitioner acknowledges claim 1’s requirements for “the data,” arguing that such information is “compiled.” (Petition at 35-36.) But Petitioner ignores the requirement that such data must be received “from providers utilizing computing or communication devices in communication with the server.” Because none of any of Petitioner’s purported “intervention plans” are, Petitioner’s proof for this claim fails.

F. Grounds 1 and 2: Petitioner fails to provide evidence that any reference discloses or suggests “determining whether the data required is received from each of the providers” or “sending an alert to one or more providers in response to determining there is missing data for one or more clients associated with the one or more providers” (claim 7)

Claim 7 requires “determining whether the data required is received from each of the providers” and “sending an alert to one or more providers in response

to determining there is missing data for one or more clients associated with the one or more providers.” (Ex. 1001 at cl. 7.) The Petition suffers from a failure of proof for this dependent claim.

First, 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*” or attempt to establish that Douglas or any other reference teaches it.² (Petition at 36.) And Douglas does not teach such a determination.

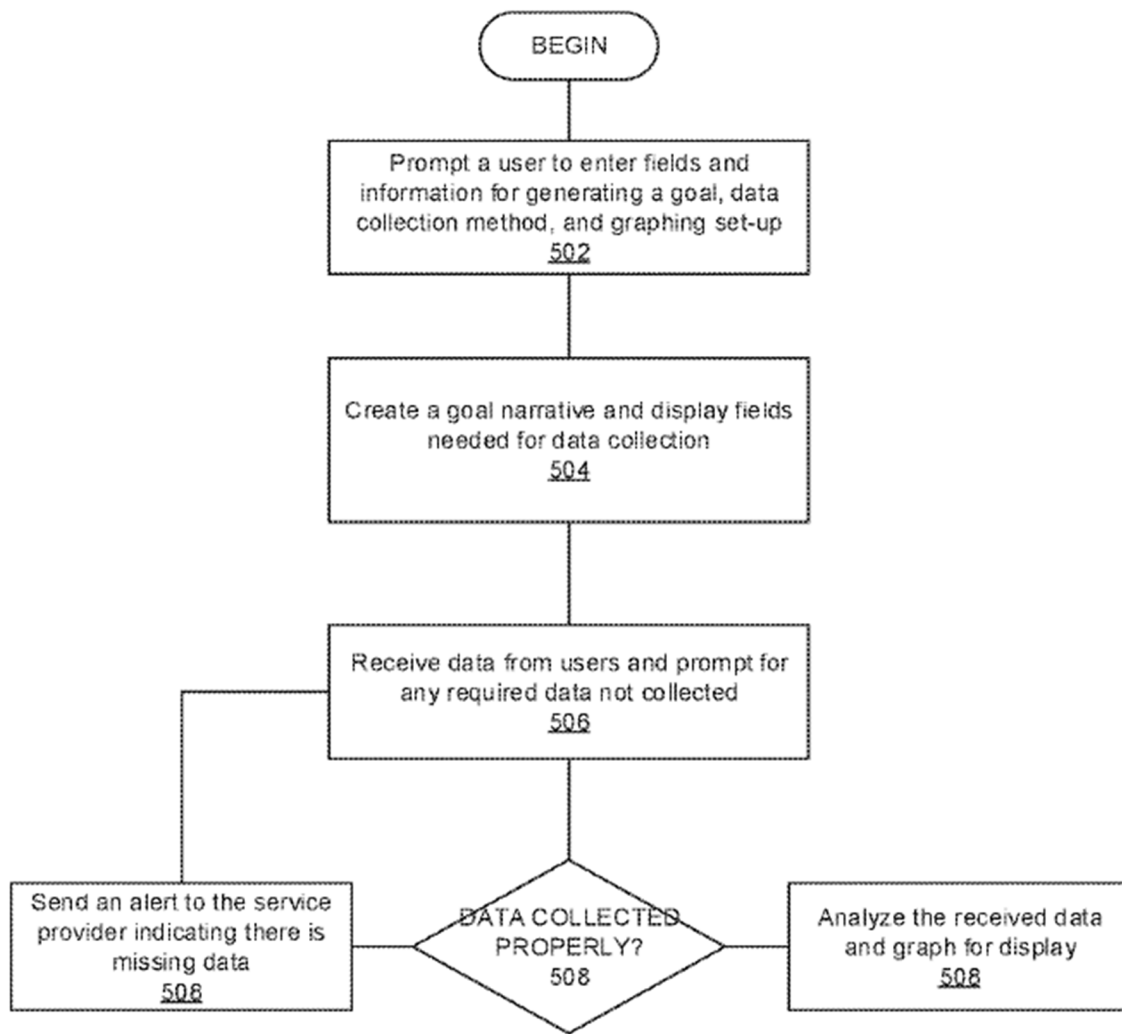
Douglas does disclose that the system can accept updated patient data *from the patient directly* via email or other forms of communication and that it “correlates the patient’s input with the physician’s to check for accuracy” and “provides the physician with reports of patient progress.” (Douglas at 11:1-10.) However, there is no determination of whether data associated with performance of the desired outcomes is received “*from each of the providers*” and Petitioner did not argue otherwise. (Petition at 36; Ex. 2006 at 55:22-56:9 (“I agree that it doesn’t explicitly point out missing data.”); Ex. 2005, ¶106.)

² Petitioner merely (conclusorily) argued that it would have been obvious for Douglas’s system to determine whether client data was missing. (Petition at 36.) But that ignores the claim’s requirement that the data be “received from each of the providers.”

Second, regarding the claim’s requirement that an alert be sent in response to a determination that there is missing data, Petitioner concedes that Douglas does not actually disclose this limitation and argues that it would have been obvious to “send an alert to the provider associated with the client” if client data was missing. (Petition at 36.) Petitioner argues “it would have encouraged the provider to enter the missing data,” but Douglas teaches that updated patient data “*may*” be input by the physician or directly from the patient. (Douglas at 11:1-5 (emphasis added).) It is not required. (Ex. 2005, ¶107.)

Indeed, Douglas assumes a certain level of patient engagement in the system and focuses on encouraging patients to meet behavioral milestones rather than managing provider data entry. (See Douglas at 8:28-31 (“Once the patient is set up on the system, it assists him or her in complying with his or her behavior modification program (block 1020, FIG. 60). To use the program, the patient logs into 30 the system network via telephone line, cable modem, cellular connection, satellite link or other communication method that allows for a connection into a network server.”); Ex. 2005, ¶108.)

This stands in contrast to the disclosure in the ’142 patent, which expressly describes the process for alerting physicians as to missing patient data:



(Ex. 1001 at Fig. 5; Ex. 2005, ¶109.)

Bergeron’s declaration does not bridge the gap. First, it is conclusory and merely parrots the Petition and should therefore be afforded little weight. *See Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (PTAB Aug. 24, 2022) (Precedential) (denying institution where the expert’s declaration “merely repeats, verbatim, the conclusory assertion for which it is offered to support” and

“does not cite to any additional supporting evidence or provide any technical reasoning to support his statement. Thus, the cited declaration testimony is conclusory and unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight.”). Bergeron’s testimony amounts to hindsight reconstruction, improperly using the claims of the ’142 patent as a blueprint for identifying features absent from Douglas.

Additionally, detecting missing data requires implementing rules or logic to define what constitutes “required” data and determining when its absence is significant enough to trigger an alert. (Ex. 2005, ¶110.) Petitioner does not identify a specific motivation or benefit to adding missing data alerts to Douglas’s system beyond an unsupported assertion that it would “have encouraged the provider to enter the missing data.” (Petition at 36.)

But Douglas does not provide any framework or logic for handling missing data as an actionable condition. (Ex. 2005, ¶110.) The existing alert mechanisms are designed to support compliance monitoring and risk mitigation without addressing data completeness. (*Id.*) Implementing this functionality would require significant modifications to the system’s architecture and operational logic—demonstrating non-obviousness—all without any motivating basis for doing so. (*Id.*) Petitioner’s argument fails. *See Black & Decker, Inc. v. Positec USA, Inc.*,

646 Fed. Appx. 1019, 1027 (Fed. Cir. 2016) (“[W]hat one of skill in the art . . . ‘could have’ done to meet the limitation . . . is not sufficient”).

G. Grounds 1 and 2: Petitioner fails to provide evidence that any reference discloses or suggests “prompting the providers to provide data associated with assigned clients” (claim 10)

Claim 10 depends from claim 1 and further requires “prompting the providers to provide data associated with assigned clients.” (Ex. 1001 at cl. 10.)

Petitioner contends that Douglas’s “disclosed or obvious fields for entering patient data . . . prompt the providers to provide data associated with the clients by providing a space for entering data labeled with the type of data that is to be entered.” (Petition at 31 (citing Douglas at Figs. 4 and 46).) In other words, Petitioner argues the mere presentation of a field for data entry satisfies the requirement that the provider be “prompt[ed] to provide patient data. (*See id.*)

Yet again, Petitioner seeks to strip the plain and ordinary meaning of a well-established word such as “prompt” from the claims to evade its burden. The specification confirms that “prompt[ing]” in the context of the ’142 patent requires “guid[ing] the user through completing fields” via, e.g., “a series of probes or questions”:

In one embodiment, *the process may begin by prompting a user to enter fields and information for generating a goal*, data collection method, and graphing set-up (step 502). For example, *a series of probes or questions may guide the user through completing fields* that may

generate the goal/objective narrative, data collection method set up, and graphing setup schedule. Step 502 may help ensure all elements are included in the goal/objective narrative to make specific, objective, and measurable goals. ***The process may also ensure information is entered*** to define how the process facilitates data collection, graph set-up, graph scheduling, and alert/notifications associated with these processes.

(Ex. 1001 at 23:11-23 (emphasis added); Ex. 2005, ¶114.)

Additionally, claim 1 already requires there be creation of “fields required for compiling data associated with the treatment or assistance of each of the clients from the providers.” (Ex. 1001 at cl. 1.) If Petitioner’s interpretation of this limitation is correct and “prompting” merely requires presentation of fields for compiling data, claims 1 and 10 are identical in scope. There is, instead, a presumption that they are different in scope which is strengthened by the dependency of claim 10 on claim 1. *Wenger Mfg., Inc. v. Coating Mach. Sys., Inc.*, 239 F.3d 1225, 1234 (Fed. Cir. 2001) (“Because claim 3 recites a separate and distinct function (i.e., ‘recirculating’), one that is not recited in claim 1, the doctrine of claim differentiation indicates that these claims are presumptively different in scope. . . . The dependency of claim 3 on claim 1 strengthens this presumption.”). Petitioner has not rebutted or even addressed this presumption.

H. All Grounds: Petitioner’s allegations for claims 2 and 11 cannot both be true (claims 2, 11-15)

Claim 2 recites that “*a client management program is executed by the computing or communications devices,*” and claim 1 specifies that the “computing or communications devices” are utilized by providers. (Ex. 1001 at cls. 1-2.) Claim 11, in contrast (and claims 12-15 depending from it), recites that the “*the server includes a processor that executes a client management program.*” (Ex. 1001 at claims 6, 13 (emphasis added).)

In analyzing claim 2, both Petitioner and its expert allege that “*a client management program is executed by the computing or communications devices* and is utilized to receive the data and track progress of the goals, since, in the system, PCs 500 used by physicians to transmit patient data to the network server for tracking patients’ progress toward their goals in Douglas.” (Petition at 58 (emphasis added); Ex. 1012 at ¶ 158.) By contrast, in their analysis of claim 11, both Petitioner and its expert alleged that “[a] POSITA would have understood that *Douglas’s system resided on Douglas’s network server 508 and so did the processor that executed it.*” (Petition at 40 (emphasis added); Ex. 1012 at ¶ 107.)

Because Petitioner must prove its case by a preponderance of the evidence—which is prohibited by Petitioner’s two contradictory allegations, each of which stands no more than a 50/50 chance of being correct (assuming even one of the allegations is right)—both of Petitioner’s challenges based on these contradictory

allegations must fail. *See ZTE (USA) Inc. v. Fundamental Innovation Sys. Int’l LLC*, IPR2018-00274, slip op. at 17 (PTAB Aug. 29, 2018) (Paper 17) (holding that “Petitioner fails to establish that the [claimed] combination renders obvious” a claim limitation “because, *inter alia*, the combination deviates from standard USB signaling, thus, contradicting Petitioner’s reasoning” elsewhere in the Petition). Additionally, the reliability of Petitioner’s expert, who parroted these contradictory allegations verbatim, must also be called into question for the remainder of Petitioner’s challenges.

I. Grounds 1 and 2: Petitioner fails to provide evidence that Douglas discloses “a database in communication with the server configured to store the data and information associated with the clients and the providers” (claim 11)

Claim 11 (and claims 12-15 that depend from claim 13) recites “*database in communication with the server* configured to store the data and information associated with the clients and the providers.” (Ex. 1001 at cl. 11 (emphasis added).) Despite this recitation, Petitioner and its expert rely solely on Douglas at and merely allege “that network server 508 *includes* ‘one or more relational databases 522,’” but never alleges that network server 508’s inclusion of relational database 522 requires that database 522 is “*in communication*” with server 508 as claim 11 recites. (Petition at 41 (citing Ex. 1012 at ¶ 110).) Indeed, the phrase “in communication” never appears in the Petition’s analysis of claim 11 outside of the section headings reciting the claim language. (Petition at 37-44.)

As such, Petitioner has failed to provide any evidence at all, much less the required “understandable explanation of the element-by-element specifics of the patentability challenges” that the law requires, and so Petitioner’s challenged must fail as to claims 11-15. *See Corephotonics, Ltd. v. Apple Inc.*, 84 F.4th 990, 1001–02 (Fed. Cir. 2023) (“The IPR petition[] must provide an understandable explanation of the element-by-element specifics of the patentability challenges, including the identification of particular portions of prior art on which the petitioner is relying.”).

J. Grounds 1 and 2: Petitioner fails to provide evidence that Douglas discloses “a processor for executing a set of instructions” (claims 16-20)

Claim 16 (and claims 17-20 that depend from claim 16) recites “a processor for executing a set of *instructions*.” (Ex. 1001 at cl. 16 (emphasis added).) Despite this recitation, Petitioner and its expert rely solely on Douglas and merely allege, without any explanation, that “Douglas discloses or renders obvious a processor within network server 508 for executing a set of instructions, specifically those for implementing Douglas’s system.” (Petition at 45 (citing Section VIII.A.8(b) (Limitation 11[a])).) But this conclusory allegation, which merely repeats the claim language without citing to any evidence, is insufficient to meet Petitioner’s statutory burden of proving unpatentability. *See In re Magnum*, 829 F.3d at 1380 (“To satisfy its burden of proving obviousness, a petitioner cannot employ mere

conclusory statements. The petitioner must instead articulate specific reasoning, based on evidence of record, to support the legal conclusion of obviousness.”).

While Petitioner does refer back to its analysis of Limitation 11[a], that cannot salvage Petitioner’s challenge of claims 16-20, as neither claim 11—nor Petitioner’s analysis of claim 11—even contains the word “instructions,” much less any evidence demonstrating an “understandable explanation of the element-by-element specifics” of why Douglas discloses the instructions recited in claims 17-20. (Petition at 38-43.) *See Corephotonics*, 84 F.4th at 1001–02. As such, Petitioner’s challenged must fail as to claims 17-20. (Ex. 2005, ¶123.) *See Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) (“It is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that the initial petition identify ‘with particularity’ the ‘evidence that supports the grounds for the challenge to each claim’...[T]he expedited nature of IPRs bring[s] with it an obligation for petitioners to make their case in their petition to institute. While the Board’s requirements are strict ones, they are requirements of which petitioners are aware when they seek to institute an IPR.”).

K. Ground 2: Petitioner fails to provide evidence that any reference discloses or suggests “assigning each of the clients to one or more of the providers in response to selections from an administrator” (all claims)

In Ground 2, Petitioner attempts to shore up Douglas’s failure to disclose the “assigning” limitation by proposing that a POSITA would have been motivated to combine Douglas with Wager, a system for managing clinical workforces.

(Petition at 47-53.) Specifically, Petitioner proposes that a POSITA would have been motivated to modify Douglas to include Wager’s interface to allow an administrator to assign a patient to a physician. (*Id.*, 50.) In the Douglas-Wager System, Petitioner asserts, a case administrator would have assigned to each patient a physician, and the assignment would have been performed by “selecting or highlighting a nurse, therapist, technician or other from provider list 126 and dragging that name or other object on top of a patient name in the patient list 114.” (*Id.*, 52 (citing Wager at ¶ [0021])).

As a threshold matter, Petitioner’s proposed modified system does not cure the error in its proof. The claims still require the assignment of clients to one or more providers must be done “in response to selections from an administrator.” (Ex. 1001 at cl. 1; Ex. 2005, ¶125.) Petitioner does not identify with any specificity what particular selections would have been made by an administrator in the Douglas-Wager modified system to which a provider would have been assigned in response. To the extent Petitioner intended to identify “selecting or highlighting a

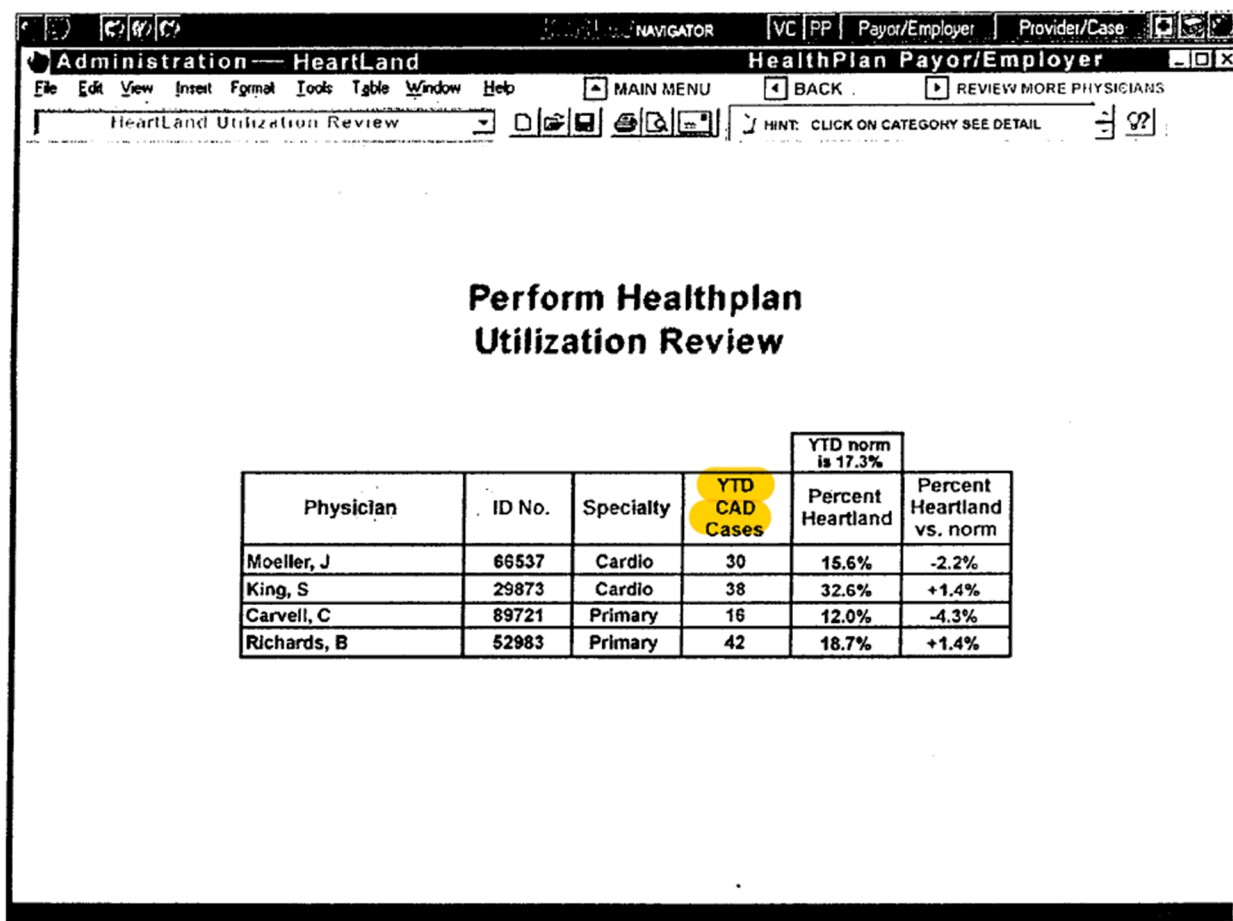
nurse, therapist, technician, or other from provider list 126 and dragging that name or other object on top of a patient name in the patient list 114” as the claimed “selections,” Petitioner has also pointed to such selecting/highlighting as the claimed “assigning.” (Ex. 2005, ¶125.)

For the reasons described in Section VI.A, this is presumptively improper. (*See supra*, Section VI.A.) Moreover, a POSITA would not have been motivated to combine Douglas with Wager, as described in Section VII.G., below.

L. Grounds 2, 4, 6, and 8: A POSITA would not have been motivated to combine Douglas with Wager (all claims)

A POSITA would not have been motivated to combine Douglas with Wager—a combination upon which Petitioner relies for Grounds 2, 4, 6, and 8. Specifically, Petitioner alleges that “it would have been obvious to modify Douglas’s system to include an interface like Wager’s that provide the administrator with ‘an intuitive, visual interface for generating patient-to-care provider assignments, including capacity computation, skill set matching, [and] ratio management’ through which the administrator assigned a patient to a physician.” (Petition at 50.) Not so.

First, Petitioner points to Douglas’s Figure 57 (copied below) as evidence that the patients in Douglas “were not evenly distributed amongst physicians,” implying that Wager could provide a benefit by redistributing the patients among the physicians listed in Figure 57. (Petition at 51.)



(Douglas at Fig. 57 (annotated).)

However, at deposition, Petitioner's expert acknowledged that Douglas's Figure 57 says nothing about whether patients were evenly distributed amongst physicians. Rather, as Petitioner's expert testified, Figure 57 merely lists the number of year-to-date coronary artery disease cases (whether open or closed) each physician had treated, without regard to each physician's total patient caseload (or current patient caseload):

Q: So based on Figure 57, you would – of Douglas at you would not be able to tell the current case load of any of the listed physicians, correct?

A: Current case load. The current case load it could be – current case load is not on this list on any of these columns. It would depend how you – how you define, usually, cases. So a *case would be either – either define cases as in process or completed*. And so – so I’m not sure why but – so again, for each of these cases – so in this list, Mueller or Moeller had 30 cases this year to date; King had 38; Carvell had 16 and Richards had 42.

Q: And those numbers you just listed are the *year to date coronary artery disease cases* for each of those patients – or each of those physicians, correct?

A: *Correct.*

Q: But *there’s no indication on how many non-coronary artery disease year to date cases any of these physicians listed in Figure 57 have, correct?*

A: *Correct.*

(Ex. 2006, 63:14-64:11 (emphasis added); Ex. 2005, ¶130.)

Thus, Petitioner has provided no evidence that a POSITA would have seen a need in Douglas for balancing patient ratios among physicians, contrary to the Petition’s allegations. (Ex. 2005, ¶130.) *Winner Int’l Royalty Corp. v. Wang*, 202 F.3d 1340, 1349-50 (Fed. Cir. 2000) (affirming nonobviousness where “there was no apparent disadvantage” to the prior art mechanism); *Apple Inc. v. Uniloc Luxembourg S.A.*, IPR2017-02041, Paper 10 at 24-25 (PTAB Mar. 8, 2018)

(declining to institute IPR because “Petitioner, however, fails to articulate or show sufficiently why achieving a Passwordable ID with uniqueness to a device and user would be necessary or helpful to Schull’s system. For instance, Petitioner does not address whether Schull’s existing methods of generating a Passwordable ID already attain such uniqueness.”) (citation omitted).

Second, a POSITA viewing Douglas’s system would not look to Wager’s system of “generating patient-to-care provider assignments” as Petitioner argues because in Douglas at patients are subscribed to the system only after they have selected and seen their own physician. (See Douglas at 6:28-35; Petition at 50; Ex. 2005, ¶131.) Thus, a POSITA would understand that Wager’s system is redundant of this aspect of Douglas at in which patients are only subscribed to the system because they are already assigned to a physician. (Ex. 2005, ¶131.) See *BMW of North America, LLC v. Carrum Techs., LLC*, IPR2019-00904, Paper 10 at 14 (PTAB Oct. 18, 2019) (no motivation to combine because when “[one prior art reference] discloses methods for identifying when a vehicle has entered a curve..., it is not evident why [a POSITA] would have looked to [a second prior art reference] to obtain additional methods of determining curve entry.”).

Third, a POSITA would further understand that because in Douglas, patients are subscribed to the system only after they have selected and seen their own physician, the patients in Douglas would be harmed, rather than benefitted, by

utilization of Wager’s system. (Ex. 2005, ¶132.) Specifically, a POSITA would recognize the importance of continuity of care to accomplishing the very goals of Douglas— “adherence to their physician’s medical recommendations.” (Ex. 2006 at 10-11 (“Results for our sample show a significant association between the patient-physician relationship and patients’ adherence to their physician’s medical recommendations and healthy eating behavior.”); Ex. 2005, ¶132.) Yet despite this importance, Petitioner’s expert acknowledged that he did not “consider the impact of a patient’s relationship continuity with their physician” when rendering his opinions in this case. (Ex. 2006 at 65:21-66:1.)

Fourth, a POSITA would recognize that this continuity of care is important to patients as well, such that the threat of being reassigned to a new physician would deter their willingness to be enrolled in the proposed Douglas-Wager system. (*See, e.g.*, Ex. 2007 at 10 (“The vulnerability and dependency inherent in being ill and at a knowledge disadvantage, the necessity of revealing personal information, and the sheer importance of the service make finding—and keeping—a ‘good doctor’ a consumer priority.”); Ex. 2003 at 11-12 (“There is a lot of evidence that a good relationship with a freely chosen primary care doctor, preferably over several years, is associated with better, more appropriate care, better health and much lower healthcare costs. These advantages come from the trust that builds up through relationship continuity.”); Ex. 2005, ¶134.)

Fifth, Douglas is specifically directed to “an ongoing support program . . . for patients who have undergone surgery and must make subsequent lifestyle changes . . .” (Douglas at 1:29-31). A POSITA would readily recognize that a patient who has undergone surgery would not want to, and should not, change post-surgery care providers just because the proposed Douglas-Wager system found a provider with greater capacity. (Ex. 2005, ¶135.) *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007) (“Rigid preventative rules that deny factfinders recourse to common sense, however, are neither necessary under our case law nor consistent with it.”). This is particularly the case where 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. (Ex. 2005, ¶135; *see* Douglas at 9:21-10:32, explaining that patients can enter their own data updates into Douglas’s system, including that “a user may then sign up for the meeting that best fits his or her schedule. Other factors, such as the city in which the other members are located 108 may also influence the user’s choice . . . The journal also provides a diary used to make a daily record of information pertinent to accomplishing the user’s goals. The journal 94A provides an important tool that lets the patient express his or her feelings and fears in a context other than that of a support group. . . . The user may also record his or her personal comments in the journal. . . . The user may, for example, input

information as to his or her exercise schedule (such as 30 minutes walking on Tuesdays, Thursdays, and Saturdays) or meditation schedule into the journal. . . . In addition to allowing the patient to electronically enter his or her updated health information . . .”).)

Finally, a POSITA would recognize that the reason the combined Douglas-Wager system would harm, rather than benefit patients, is because Wager envisions its invention being used to coordinate staffing in a clinical setting such as a hospital—where each patient does need a medical professional inside the facility to be assigned to them. (Ex. 2005, ¶136; Wager at [0004] (invention directed to “clinical workforce management” and “the task of promulgating shift-by-shift patient assignments”), [0005] (invention to assist “[c]harge nurses or other unit or other managers [who] thus must frequently rely on manual notes, memory and intuition to assemble a staff schedule . . . Staff managers may moreover have little time to generate such a floor schedule for the next shift . . . Other problems in clinical workforce management exist.”), [0011] “The staff manager may access the workforce management interface 106 before, during or after a work shift for a unit 110 such as an emergency room, acute care unit, post-operative unit or other section, division, department, floor or other organizational unit of a hospital or other clinical care facility.”), [0013] (“For instance, the assignment bar 120 may indicate that for an eight-hour shift from 11 p.m. to 7 a.m. or other period, the patient is covered by

assignment of a primary care nurse, or other personnel. Conversely, if a patient does not have a designated care provider for that or other period, the assignment bar 120 may display a gap 122 . . . ”).) Petitioner’s expert agrees with this characterization of Wager. (Ex. 2006 at 66:6-19.)

By contrast, a POSITA would recognize that Douglas teaches against accomplishing its goals in an in-person setting like the one to which Wager is directed. (Ex. 2005, ¶137; Douglas at 1:29-35 (“Participation in an ongoing support program is often effective for patients who have undergone surgery and must make subsequent lifestyle changes, but *currently available in-person programs involve costly medical staff and facilities. It can also be inconvenient for the patient to travel to such programs on a regular basis. Because of their cost and the potential for inconvenience, many support programs last for only a limited time, which is often insufficient for the patient to modify behavior thoroughly and effectively.*”)) (emphasis added).) Instead, Douglas expresses that its invention is designed for use remotely—where there is no need for an in-facility medical professional to be assigned to the patient. (Ex. 2005, ¶137; Douglas at 2:5-7 (“The development of a therapeutic program that could effectively motivate patients to modify their behavior and change their lifestyles to prevent or recover from ailments, and could be *delivered to them electronically at home, work, or while traveling, would be highly*

desirable.”) (emphasis added)). Petitioner’s expert agrees with this characterization of Douglas. (Ex. 2006 at 67:16-68:2.)

While Douglas teaches that its system “also accepts additional patient data obtained during office visits,” a POSITA would recognize that, for the reasons described above, it would be in the patient’s best interest to maintain the patient’s continuity of care by allowing the patient to have these office visits with their original physician who subscribed them to Douglas’s system, instead of utilizing the proposed Douglas-Wager system to reassign the patient to a new physician. (Ex. 2005, ¶138; Ex. 2007 at 10-11 (“Results for our sample show a significant association between the patient-physician relationship and patients’ adherence to their physician’s medical recommendations and healthy eating behavior.”).) *See Rembrandt Wireless Techs., LP v. Samsung Elecs. Co. Ltd.*, 853 F.3d 1370, 1380 (Fed. Cir. 2017) (“Even if Upender does not teach away, its statements regarding users’ preferences are relevant to a finding regarding whether a skilled artisan would be motivated to combine”) (quotation omitted); *Leo Pharm. Prods., Ltd. v. Rea*, 726 F.3d 1346, 1355 (Fed. Cir. 2013) (“Turi’s guidance actually teaches away from the Board’s posited combination or, at a minimum, provides no evidence of motivation to combine Turi with those prior solvents.”).

For each of these reasons, a POSITA would not have been motivated to combine Douglas and Wager in the manner that the Petition alleges, and so the Petition’s challenge additionally fails.

M. Grounds 3 and 4: Chitiveli is not a printed publication under 35 U.S.C. § 311(b)³

Petitioner’s grounds fail because Chitiveli is not available as prior art under 35 U.S.C. §311(b). IPRs may challenge claims “only on the basis of prior art consisting of patents or printed publications.” 35 U.S.C. § 311(b). Chitiveli is a published patent application—not an issued patent—and does not qualify under § 311(b) as “patents.” Nor does Chitiveli qualify as a “printed publication” because its date of publication (July 11, 2013) is after the priority date of the ’142 patent—March 15, 2013.

Petitioner presumes that Chitiveli qualifies as prior art under 35 U.S.C. §102(e). (Petition at 4.) But §102(e) does not dictate whether prior art is available in IPR—§311(b) does. “Printed publication” as it appears in §311(b) is a

³ The issue of whether §102(e) art qualifies as a printed publication under §311(b) is on appeal at the Federal Circuit in, for example, *VLSI v. Patent Quality Assurance LLC*, No. 23-2298 (Fed. Cir. 2023), and this section is intended to preserve this argument should the Federal Circuit find that §311(b) requires printed publications to be publicly available as of the relevant date.

longstanding subset of prior art. Pre-AIA 35 U.S.C. §102 provides that the prior art includes inventions that “w[ere]...described in a printed publication . . . before” the invention, §102(a), or “in a printed publication . . . more than one year prior to the date of [the] application for patent,” §102(b). The effective date of “printed publication” prior art is the date it is “published, i.e., accessible to the public.” *Samsung Elecs. Co., Ltd.. v. Infobridge Pte. Ltd.*, 929 F.3d 1363, 1368, 1370 (Fed. Cir. 2019). Under §102(a) and (b) alike, the question is whether the document “was publicly available by the [relevant] date and therefore qualifies as a prior art ‘printed publication.’” *Voter Verified, Inc. v. Premier Election Sols., Inc.*, 698 F.3d 1374, 1381 (Fed. Cir. 2012); *see Carella v. Starlight Archery & Pro Line Co.*, 804 F.2d 135, 138–39 (Fed. Cir. 1986). Said another way:

The statutory phrase “printed publication” has been interpreted to mean that ***before the [relevant] date*** the reference must have been ***sufficiently accessible to the public*** interested in the art; dissemination and public accessibility are the keys to the legal determination whether a prior art reference was “published.”

In re Klopfenstein, 380 F.3d 1345, 1348 (Fed. Cir. 2004) (emphases added) (quoting *In re Cronyn*, 890 F.2d 1158, 1160 (Fed. Cir. 1989)); *Acceleration Bay, LLC v. Activation Blizzard Inc.*, 908 F.3d 765, 772-73 (Fed. Cir. 2018) (affirming finding reference was not a printed publication where Petitioner did not prove publicly accessibility prior to critical date).

Here, Chitiveli was not accessible to the public at all until after the priority date of the '142 patent. Thus, it is not a “printed publication” within the meaning of §311(b) and may not be used as prior art in IPR.

N. Grounds 5 and 6: A POSITA would not have been motivated to combine Douglas and Koh (claims 5, 12, 13, and 18)

Petitioner asserts that Douglas and Koh can be combined to render the challenged claims of the '142 patent obvious, primarily by arguing that Koh's data mining techniques would enhance the compliance monitoring system in Douglas. (Petition at 61-64.) However, as detailed below, Petitioner fails to establish a credible motivation for the combination.

Petitioner argues that combining Douglas and Koh would have benefited Douglas's healthcare providers and patients by identifying “effective treatments and best practices.” (Petition at 64.) But Douglas addresses individualized compliance tracking with user-specific interactions, while Koh's focus on applications for aggregated organizational data lacks any disclosed capability for individualized feedback or integration into a compliance system. (*See* Ex. 1009, 7 (“To aid healthcare management, data mining applications *can be developed* to better identify and track chronic disease states and high-risk patients, design appropriate interventions, and reduce the number of hospital admissions and claims”) (emphasis added).) The distinct and unrelated problem-solution frameworks of these references provide no reasonable basis for their combination.

Douglas is directed to a therapeutic behavior modification program that utilizes compliance monitoring and feedback to assist individuals in making lifestyle changes for medical or wellness purposes. (Ex. 2005, ¶142.) It focuses on compliance, monitoring, and feedback, which supports the design of customized therapeutic behavior and lifestyle modification programs. (*Id.*) Conversely, Koh describes the application of data mining techniques in healthcare, particularly focusing on identifying patterns in vast datasets for predictive insights and operational improvements. (*Id.*; Ex. 1009, 11 (“[I]t is critical that the healthcare industry consider how data can be better captured, stored, prepared, and mined. Possible directions include the standardization of clinical vocabulary and the sharing of data across organizations to enhance the benefits of healthcare data mining applications.”)) These distinct objectives address entirely different problems: patient engagement and compliance versus applications for organizational data analysis. (Ex. 2005, ¶142.) There is no logical nexus between these two systems to suggest that a POSITA would combine their teachings.

Petitioner also cannot establish that Douglas and Koh would be interoperable. Douglas’s system centers on user-specific, interactive compliance tracking, where individual patients actively engage with a prescribed program. (*Id.*, ¶143; Douglas at 6:1-14 (“The system provides at least two separate benefits: it helps the patient comply with the program through an electronically-implemented

support mechanism; and further assists in monitoring such compliance.”).)

Petitioner’s suggestion that Koh’s data mining capabilities could be adapted for patient-specific recommendations lacks any basis in Koh’s disclosure, which centers on broad data aggregation and trend analysis at an organizational level.

(Ex. 2005, ¶144; Ex. 1009 at 7 (“As another example, Blue Cross has been implementing data mining initiatives to improve outcomes and reduce expenditures through better disease management.”).) Integrating these systems would require substantial technical modifications to align their functionalities. (Ex. 2005, ¶145.)

Petitioner fails to show how such integration could be achieved without undue experimentation or how the combined system would improve upon the prior art.

See Pers. Web Techs., LLC v. Apple, Inc., 848 F.3d 987, 994 (Fed. Cir. 2017)

(reversing Board where “the Board nowhere clearly explained, or cited evidence showing, how the combination of the two references was supposed to work,” because “a clear, evidence-supported account of the contemplated workings of the combination is a prerequisite to adequately explaining and supporting a conclusion that a [POSITA] would have been motivated to make the combination and reasonably expect success in doing so.”).

Even assuming that a POSITA would have been motivated to combine Douglas and Koh, the resulting combination would not satisfy the limitations of the ’142 patent claims, as detailed below. Petitioner’s reliance on Koh’s data mining

capabilities fails to address the specific requirements for individualized best practices and recommendations outlined in the claims.

1. Petitioner’s Douglas-Koh system does not render claims 5, 12, or 13 obvious

Claim 5 requires a system capable of “data mining the compiled data to determine best practices” and “recommending the best practices to providers in response to the best practices being associated with a client assigned to the providers.” (Ex. 1001 at cl. 5.) Douglas lacks any disclosure of data mining techniques; its functionality is limited to compliance monitoring and milestone tracking for individual users. (Ex. 2005, ¶149; Douglas at 6:1-14.) Koh, while discussing data mining, is focused on organizational-level analysis rather than deriving actionable insights specific to individual clients, as required by the claim. (Ex. 2005, ¶150; Ex. 1009, 7 (“To aid healthcare management, data mining applications can be developed to better identify and track chronic disease states and high-risk patients, design appropriate interventions, and reduce the number of hospital admissions and claims.”).) Combining these references does not bridge this gap, as neither inherently teaches or suggests this claim element.

Nor does Petitioner even allege that it does. For example, the claim requires “recommending the best practices to the providers *in response to the best practices being associated with a client assigned to the providers.*” (Ex. 1001 at cl. 5.) Petitioner generally alleges that Koh’s analysis of data mining would have

motivated a POSITA to implement data mining practices into Douglas’s system, but Petitioner does not allege that, in doing so, any “best practice” would be “associated with a client assigned to the providers” such that “best practices” could be recommended to the providers in response. (Petition at 62-65.) And neither Koh nor Douglas discloses such association or responsive recommendation. (Ex. 2005, ¶151.)

Because there is no showing that Koh and Douglas can be combined to disclose “associat[ing] best practices” with any particular client, this failure also extends to claims 12 and 13, which require such association. *See MModal LLC v. Nuance Commc’ns, Inc.*, IPR2018-01355, Paper 45 at 23 (PTAB Feb. 5, 2020), *aff’d MModal LLC v. Nuance Commc’ns, Inc.*, 846 F. App’x 900, 906 (Fed. Cir. 2021) (Board holding that “Petition’s failure to address adequately” a claim element “is fatal. . . . W]e require a petition to identify . . . ‘[h]ow the construed claim is unpatentable’ (37 C.F.R. § 42.104(b)(4)). Because the Petition does not explain coherently how” the prior art discloses a claim element, “the Petition fails to comply with our rules. This is dispositive.”).

2. Petitioner’s Douglas-Koh system does not render claim 18 obvious

Claim 18 requires “[t]he server according to claim 16, wherein the set of instructions are further executed to . . . recommend best practices to the providers in response to historic success with the clients.” (Ex. 1001 at cl. 18.) Petitioner

summarily asserts that “it would have been obvious for the processor executing Douglas’s system . . . to also execute data mining of that compiled data to protect the confidentiality of the compiled data” and “that therapeutic program and modifications to the same reflected best practices determined to be historically successful through data mining.” (Petition at 67.)

Petitioner asks the Board to make the leap from Koh’s general disclosure of the use of data mining in healthcare applications to disclosure of a particular “set of instructions” that can be “executed to . . . recommend best practices to the providers in response to historic success with the clients.” (Petition at 67.)

Petitioner does not identify these instructions with any specificity, or why it would have been obvious for a POSITA to rely on Koh’s discussion of data mining applications (which lacks any processor-level specifics) to alter any purported instructions executed by Douglas’s processor. (Ex. 2005, ¶155.) Petitioner’s analysis smacks of hindsight and should be rejected. *See, e.g., ATD Corp. v. Lydall, Inc.*, 159 F.3d 534, 546 (Fed. Cir. 1998) (“Determination of obviousness cannot be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention.”).

O. Grounds 7 and 8: Virginia is not analogous art (all claims)

Virginia is not analogous art because it is neither within the field of the inventor’s endeavor nor reasonably pertinent to the particular problem to which the

challenged patent is directed. Virginia is entitled “Autism Spectrum Disorders and the Transition to Adulthood” and describes that, “[i]n this Guide, we discuss the issues, challenges, and strategies that are involved in helping young people like Dan fully participate in society. Our focus in this guide is about what young people with autism can do and how to design the supports to expand opportunity and potential. . . . The chapters in this Guide will describe how to help persons with autism move from adolescence to adulthood, and overcome the barriers that their disability presents.” (Ex. 1022, 6.)

“Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor’s endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.” *Sanofi-Aventis Deutschland GmbH v. Mylan Pharms. Inc.*, 66 F.4th 1373, 1377 (Fed. Cir. 2023). In evaluating whether a reference is analogous, the Federal Circuit has “consistently held that a patent challenger must compare the reference to the challenged patent.” *Id.* “A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor’s endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor’s attention in considering his problem.” *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379–80 (Fed. Cir.

2007) (quoting *In re Clay*, 966 F.2d 656, 659 (Fed.Cir.1992)). Virginia does not qualify as analogous art under either test.

1. The Virginia reference is not in the same field of endeavor.

First, Virginia is not in the same field of endeavor as the '142 patent. The '142 patent squarely addresses the field of technology-driven systems for optimizing behavioral goal progression. (Ex. 2005, ¶159.) Specifically, it discloses a sophisticated software platform designed to systematically collect, analyze, and monitor goal-related data, complete with automated alerts and visual reporting tools. (*See, e.g.*, Ex. 1001 at 1:12-3:49, Fig. 5.) It is a solution tailored to enhance client outcomes in behavioral health and therapy settings through automation and data intelligence. (*See id.*; Ex. 2005, ¶159.)

In contrast, the Virginia reference is a transition guide for students with Autism Spectrum Disorder (ASD). (Ex. 1022, 1.) Authored by the Virginia Department of Education, it offers practical guidance for educational and vocational programs, life skills planning, and individualized education programs (IEPs) for special-needs students. The reference describes that “[t]he chapters in this Guide will describe how to help persons with autism move from adolescence to adulthood, and overcome the barriers that their disability presents.” (*Id.*, 6.) It is a programmatic and educational resource, generally devoid of technological systems, software algorithms, or mechanisms for automated data tracking. (*See* Ex.

1022, 33 (describing data collection methods as including review of records, interviews, review of incident reports and behavioral data, and observations of the person in their working and learning environments); Ex. 2005, ¶160)

Petitioner summarily states that Virginia is “directed to tracking goal progression.” (Petition at 69.) But this is a distortion of the reference; Virginia relies on educational foundations to “discuss the issues, challenges, and strategies that are involved in helping young people [with autism] fully participate in society. Our focus in this guide is about what young people with autism can do and how to design the supports to expand opportunity and potential.” (Ex. 1022, 6.)

The Virginia reference is centered on education and transition planning; the ’142 patent teaches technology-enabled goal tracking. These fields do not overlap. (Ex. 2005, ¶161.)

2. The Virginia reference is not reasonably pertinent to the problem addressed by the ’142 patent.

Nor is the Virginia reference reasonably pertinent to the problem addressed by the ’142 patent. The ’142 patent addresses a highly specific technological problem: how to efficiently track, analyze, and manage goal progression to improve outcomes for clients in behavioral health settings. (*See, e.g.*, Ex. 1001 at 1:12-3:49, Fig. 5; Ex. 2005, ¶162.)

The Virginia reference, however, concerns a fundamentally different issue: how to guide educational programs for transitioning students with ASD. (Ex. 1022,

6, 28-32.) It provides broad, generalized strategies for life and employment readiness, not a solution for technological goal tracking. (*See* Ex. 1022, 33 (describing data collection methods).) Simply put, there is no overlap in the problems being solved. (Ex. 2005, ¶163.)

Under *In re Clay*, 966 F.2d at 659, a reference outside the field of endeavor must “logically [commend] itself to an inventor’s attention in considering his problem.” The Virginia reference, centered on educational frameworks and legal requirements for transition planning, would not “logically” have drawn the attention of an inventor tasked with solving the technical challenges addressed by the ’142 patent. (Ex. 2005, ¶164.) Virginia offers nothing in the way of technological teachings, suggestions, or motivation applicable to goal optimization systems. (Ex. 2005, ¶164.)

Thus, the Virginia reference is neither in the same field of endeavor as the ’142 patent nor reasonably pertinent to the problem the patent solves. (*Id.*, ¶165.) Conceptual proximity alone—such as the general idea of “goals”—cannot transform an educational resource into analogous art for a technical invention. As a result, the Virginia reference does not qualify as analogous art and should be disregarded entirely.

P. Grounds 4, 6, and 8: Petitioner has not identified its proposed combinations of Douglas at Wager, Chitiveli, Koh, and Virginia.

Grounds 4, 6, and 8 are deficient because they were insufficiently disclosed. For Grounds 4, 6, and 8, Petitioner relies on a combination of Douglas and Wager, plus a third reference (Chitiveli, Koh, and Virginia, respectively). (Petition at 53, 61, 67.) While Petitioner discusses Wager in the context of its Ground 2 arguments, it does not so much as mention Wager in Grounds 4, 6, or 8 except in the headings. (*See id.*)

These Grounds fail because it is unclear what Petitioner contends is the proposed combination for each. For example, in Ground 2, Petitioner relies on Wager’s disclosure of “an intuitive, visual interface for generating patient-to-care provider assignments” and argues that it would have been obvious to modify Douglas’s system to include an interface like Wager’s.⁴ (Petition at 53.) Ground 4 is a proposed combination of Douglas at Wager, and Chitiveli, and Petitioner discusses a proposed modification of Douglas in view of Chitiveli “using a SaaS provider like Chitiveli discloses for his content analytics tool . . . to upload patient data.” (Petition at 56.) Chit Veli’s tool uses an “analytics client or a web browser” to upload data. (Petition at 54-55.)

⁴ Petitioner refers to this modified system as the “Douglas-Wager” system.

But Petitioner never discloses any purported Douglas-Wager-Chitiveli combination. (*See id.*) Petitioner does not specify what aspects of Wager, if any, are to be incorporated into this combination. (Ex. 2005, ¶168.) Petitioner may contend in its Reply that its proposed combination would reflect the modifications to Douglas in view of Wager disclosed in Ground 2, as well as the modifications to Douglas in view of Chitiveli disclosed in Ground 3. But the Petition never says this, and the Board cannot credit Petitioner with arguments it did not make; rather, the Board must “evaluate the Petition’s arguments as presented.” *See Universal Imaging Indus., LLC v. Lexmark Int’l, Inc.*, IPR2019-01381, 2020 WL 582147, at *9 (PTAB Feb. 3, 2020) (citing *In re Magnum*, 829 F.3d at 1381); *see also see Sirona Dental Sys.*, 892 F.3d at 1356 (finding it would “not be proper for the Board to deviate from the grounds in the petition and raise its own obviousness theory.”).

Even if Petitioner had made such an assertion, it still would have been insufficient to satisfy Petitioner’s burden to identify the proposed combination with specificity. *See ArcelorMittal v. Array Tech., Inc.*, IPR2018-00801, 2019 WL 4877350, at *11 (PTAB Oct. 2, 2019) (“[T]he Petition must explain the way in which the elements would allegedly be brought together to achieve the claimed invention.”) (citing 35 U.S.C. § 316(e)).

Specifically, it is unclear how Petitioner contends Wager’s visual interface would have been incorporated into a combination of Douglas with Chitiveli,

particularly given that Chitiveli itself teaches upload of data “[u]sing the analytics client or the web browser.” (Petition at 54 (citing Chitiveli, ¶[0036]).) There is no discussion of how or whether Wager’s interface interacts with Chitiveli’s client/web browser, how it would be implemented alongside Chitiveli’s analytics tool, or whether the functionalities of Wager and Chitiveli can coexist without conflict or redundancy. (Ex. 2005, ¶168.) This absence of explanation renders the proposed combination speculative and unsupported, and the Board cannot assume the manner in which Wager’s teachings are incorporated into Ground 3.

Grounds 6 and 8 suffer the same failures. In Ground 6, Petitioner proposes combining Douglas at Wager, and Koh, but fails to mention Wager or articulate how Wager’s visual interface would interact with Koh’s data mining methods in the context of Douglas’s compliance monitoring system. (Petition at 61-65; Ex. 2005, ¶170.) Similarly in Ground 8, Petitioner discusses modification of Douglas to “evaluate compliance with the program by analyzing the patient’s updated data using an MGL-based approach” but provides no specific explanation of how Virginia’s disclosures regarding autism treatment frameworks would integrate with Wager’s interface. (Petition at 69; Ex. 2005, ¶172.) The lack of any substantive discussion about (or even any mention of) Wager in these contexts, apart from its inclusion in the heading, underscores the inadequacy of Petitioner’s proof. This omission makes it impossible to determine whether the proposed combination

would be feasible and whether such combination would satisfy the claim limitations.

Petitioner will undoubtedly insist that this is an improper bodily incorporation argument, but this misses the mark. Patent Owner challenges the Petitioner's failure to even identify, at a basic level, what the combination is. Petitioner's vague reference to Wager in the headings of Grounds 4, 6, and 8 is "too thin a reed to support a conclusion of obviousness here." *Acclarent, Inc. v. Ford Albritton, IV*, IPR2018-00268, 2018 WL 2553983, at *6 (PTAB May 31, 2018); *see also Kinetic Concepts, Inc. v. Smith & Nephew, Inc.*, 688 F.3d 1342, 1368 (Fed. Cir. 2012) ("We must still be careful not to allow hindsight reconstruction of references to reach the claimed invention without any explanation as to how or why the references would be combined to produce the claimed invention.") (internal citation omitted).

VII. CONCLUSION

Patent Owner respectfully requests the Board confirm that the Challenged Claims of the '142 patent are patentable.

Dated: December 23, 2024

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Under the provisions of 37 C.F.R. § 42.24(d), the undersigned hereby certifies that the Microsoft Office word count for the foregoing Patent Owner's Response under 37 C.F.R. § 42.120, excluding the table of contents, table of authorities, claim listing, certificate of word count, and certificate of service, totals 13,548 words, which is less than the 14,000 words allowed under 37 C.F.R. § 42.24(b)(2).

Dated: December 23, 2024

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 23rd day of December, 2024, the foregoing document is being served by e-mail on counsel of record for Petitioner as follows:

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