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Transcript of Bryan Bergeron, MD

Date: December 13, 2024

Case: Teladoc Health, Inc. -v- Data Health Partners, Inc. (PTAB)

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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

TELADOC HEALTH, INC.,	Case No. IPR2024-00616
Petitioner,	
V.	U.S. Patent No.
DATA HEALTH PARTNERS, INC.,	11,144,554
Patent Owner.	

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

TELADOC HEALTH, INC.,	Case No. IPR2024-00617
Petitioner,	
V.	U.S. Patent No.
DATA HEALTH PARTNERS, INC.,	11,151,142
Patent Owner.	

ORAL AND VIDEOCONFERENCED DEPOSITION OF

BRYAN BERGERON, MD

DECEMBER 13, 2024

(Reported remotely.)

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ORAL AND VIDEOCONFERENCED DEPOSITION OF
BRYAN BERGERON, MD, produced as a witness at the instance
of the Patent Owner, taken in the above-styled and
-numbered cause on the 13th day of December, 2024, A.D.,
beginning at 9:06 a.m. CST to 11:17 a.m., before Kelly
Hassell, RPR, CLR, CSR, in and for the State of Texas,
located in Brookline, Massachusetts, in accordance with
the Federal Rules of Civil Procedure and the agreement
hereinafter set forth.

R E M O T E A P P E A R A N C E S

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EXHIBITS

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FOR IPR2024-00616:

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FOR IPR2024-00617:

Exhibit 1001	United States Patent No. 11,151,142 B2	19
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1 P R O C E E D I N G S

2 REMOTE TECHNICIAN: Thank you to everyone
3 for attending this proceeding remotely, which we
4 anticipate will run smoothly. Please remember to speak
5 slowly and do your best not to talk over one another.
6 Please be aware that we are recording this proceeding for
7 backup purposes. Any off-the-record discussions should
8 be had away from the computer. Please remember to mute
9 your mic for those conversations.

10 Please have your video enabled to help the
11 reporter identify who is speaking. If you are unable to
12 connect with video and are correcting via phone, please
13 identify yourself each time before speaking. We will
14 provide a complimentary unedited recording of this
15 deposition with purchase of a transcript. I apologize in
16 advance for any technical-related interruptions. Thank
17 you.

18 THE COURT REPORTER: The time on the
19 record is 9:06 a.m. Central Time.

20 If counsel could please state their
21 appearances for the record.

22 MS. SPIRES: Sarah Spires on behalf of the

1 Patent Owner.

2 MR. SOLOMITA: Michael Solomita from
3 Norton Rose Fulbright on behalf of Petitioner Teladoc.

4 THE COURT REPORTER: I'm Kelly Hassell,
5 Certified Shorthand Reporter, located in Dallas, Texas.
6 The witness is located in Brookline, Massachusetts.

7 (The witness was duly sworn.)

8 THE COURT REPORTER: Thank you.

9 You may proceed.

10 BRYAN BERGERON, MD,
11 having been first duly cautioned and sworn to testify the
12 truth, the whole truth and nothing but the truth,
13 testified on his oath as follows:

14 DIRECT EXAMINATION

15 BY MS. SPIRES:

16 Q Thank you for being here this morning.

17 Have you been deposed before?

18 A I have, yes.

19 Q Okay. So I'll just briefly run through the
20 ground rules so that -- no need to go over in detail
21 everything that you probably already know.

22 But, first --

1 A Yes, ma'am.

2 Q -- it's important that we have verbal answers,
3 because the court reporter is transcribing, and so it's
4 very difficult to transcribe head nods, head shakes, that
5 sort of thing.

6 A Understood.

7 Q Also, because -- especially because this is
8 over Zoom, if -- it's very helpful for the court reporter
9 if we can try not to talk over each other, since she can
10 only transcribe one person at a time. So, I will do my
11 absolute best to let you finish your answers, and I'd
12 just ask if you let me finish my questions and --

13 A Understood. Yeah.

14 Q If you don't understand any question that I ask
15 today, please ask me to rephrase or let me know what you
16 don't understand about a question. Because if you don't
17 tell me that you don't understand, I will assume that you
18 do understand my questions. Is that fair?

19 A Yes.

20 Q I will try to take a break about every hour.
21 I'm sometimes bad about watching the clock, so if you
22 need a break and I haven't asked for one, please don't

1 hesitate to ask. All I ask for is that if there is a
2 question pending, that you go ahead and answer that
3 before asking for a break.

4 A Fair enough.

5 Q Is there any reason that would prevent you from
6 giving truthful testimony today?

7 A No.

8 Q Do you have any notes in front of you today?

9 A No. I can't -- I didn't -- just so you know, I
10 do have the files that -- that were being essentially on
11 my computer as files in case there's a problem with the
12 Internet, but I don't have them open or anything like
13 that.

14 Q Okay. That's perfect. And that certainly does
15 happen sometimes.

16 A Yes.

17 Q So I'll say, personally, I don't care what
18 version of the documents you look at today, you are
19 looking at, so long as you are looking at clean versions.
20 So if it's been dropped into a chat or one you have, as
21 long as it's clean, that's fair game for me.

22 A These are clean versions given to me by my

1 counselor in folders.

2 Q Perfect. So whatever makes you comfortable
3 looking at the documents, that's fine.

4 A Okay.

5 Q Did you do anything to prepare for today's
6 deposition?

7 A I did.

8 Q What did you do to prepare?

9 A I met with Counselor Michael. It's one, two,
10 three -- three days over the past week or so, about an
11 hour and a half per day.

12 Q And did you meet with anyone other than
13 Michael?

14 A There were two other attorneys, very briefly,
15 just for a few minutes, but it was mainly Michael.

16 Q Did you meet with anyone other than attorneys
17 in preparing for today's deposition?

18 A No.

19 Q Did you review any documents in preparing for
20 today's deposition?

21 A I did.

22 Q Have you been retained by Petitioner Teladoc

1 Health, Inc. before in any prior cases?

2 A I have.

3 Q Approximately how many?

4 A I think one -- one prior case. One prior case.

5 Q And what was that case?

6 A I'm trying to remember how long I think -- it
7 dealt with an outside computing device, a robot, as I
8 recall, a mobile -- mobile -- mobile device for -- for --
9 for the ward.

10 THE COURT REPORTER: I'm sorry. For the
11 what?

12 THE WITNESS: I'm sorry. The wards,
13 W-A-R-D-S. Hospital wards.

14 Q (BY MS. SPIRES) Was that a patent case?

15 A Yes, it was. As I recall, yes.

16 Q Was that a district court case, if you recall?

17 A I don't know. I don't know. I don't recall.

18 Q Have you been retained by Norton Rose Fulbright
19 before in any other cases?

20 A Not that I know of, no. No.

21 Q You submitted a declaration in IPR2024-00616.
22 Is that right?

1 A 616. You mean in a previous case?

2 Q In this case.

3 This may help. This is just to try to
4 make it clearer, because we're working with two
5 declarations today.

6 MS. SPIRES: If we want to pull up
7 Exhibit 1012 from both IPRs, if we could throw those into
8 the chat, just so that we can make sure that we're clear
9 on what declarations we're looking at today.

10 REMOTE TECHNICIAN: Yes. Sorry, Counsel.
11 Could you say the exhibits again?

12 MS. SPIRES: 1012. It's both 1012s.

13 REMOTE TECHNICIAN: Both 1012s. Stand by.
14 (Exhibit 1012 marked.)

15 REMOTE TECHNICIAN: Would you like these
16 on the screen or just in the chat?

17 MS. SPIRES: Just in the chat is fine.

18 THE WITNESS: So I drag these over to my
19 machine, or do I just click to view?

20 REMOTE TECHNICIAN: You should be able to
21 just click to view.

22 THE WITNESS: Okay. I'm just waiting for

1 it to show up.

2 Yes. I'm sorry. Yes. I was -- I was --
3 mine have numbers (unintelligible) --

4 THE COURT REPORTER: I'm sorry. I'm not
5 understanding you.

6 THE WITNESS: Sorry.

7 A So this is the correct -- correct declaration.
8 I'm sorry. I had the -- in my mind, I was thinking of
9 the 142 number as opposed to the 617. Yes.

10 Q (BY MS. SPIRES) Okay. And so I just want to
11 get our terminology straight for today so that it's
12 clear, when I'm asking you questions, what I'm asking you
13 questions about.

14 A Okay.

15 Q So if you'll look at the declaration,
16 Exhibit 1012, for the 616 IPR.

17 A I'm opening it now.

18 Okay. So the 616 case, yes.

19 Q So this declaration that you submitted in
20 IPR2024-00616, is this the declaration you submitted that
21 you've got on the screen?

22 A Yes.

1 Q Okay. Are you comfortable today if I call this
2 the 616 IPR?

3 A This is not on -- for some reason, I -- I know
4 these by the patent names, but that's -- that's fine.
5 616 is the '554 patent. That's fine.

6 Q I can also call it the '554 IPR, if that's
7 easier.

8 A That will help me, actually, yes.

9 Q Sure.

10 A Yes.

11 Q Okay. And so this is -- the IPR -- the 616 IPR
12 is related to Patent 11,144,554, right?

13 A That is correct, yes.

14 Q Okay. And so today, I will just call this the
15 '554 IPR for clarity.

16 A Thank you.

17 Q For the declaration you submitted in the '554
18 IPR proceeding, how did you go about preparing it?

19 A I prepared this originally with counsel, so
20 I -- some which are his -- some are mine, some are his,
21 but they're all my -- my opinions.

22 Q I couldn't -- you said something was yours and

1 something were his. I'm not --

2 A Some of the words, the wording for several, are
3 from me. Some are from counsel. I didn't type
4 everything myself, obviously. But the -- all of the
5 opinions are mine. I agree with all the content here.

6 Q Was some of your declaration in the '554 IPR
7 prepared by copying and pasting from the '554 IPR
8 petition into the declaration?

9 A I'm not sure. I know that the -- for example,
10 the legal aspects of the case were all obviously not from
11 me. They're from counsel.

12 Q Have you looked --

13 A (unintelligible) -- sorry.

14 There was the law, explaining the law, I
15 mean, which -- you know, which laws apply. Those were
16 not supplied by me. Those were supplied by counsel.

17 Q Sure.

18 Could I have you look at Paragraph 157 of
19 your declaration, the '554 declaration.

20 A Paragraph?

21 Q 157.

22 A Okay. Thank you.

1 It starts off "Grounds 5 and 6"?

2 Q Yes.

3 A Yes.

4 Q Do you see, at the end of that paragraph,
5 there's a citation to Bergeron at Paragraph 157?

6 A I do.

7 Q Is that indicative of the fact that this
8 paragraph was copied and pasted from the petition into
9 your declaration?

10 MR. SOLOMITA: Objection; form.

11 A I don't know.

12 Q (BY MS. SPIRES) Do you know why this paragraph
13 cites to the same paragraph that it's in?

14 A I don't. I don't recall.

15 Q Have you had discussions with anyone, other
16 than your counsel, related to the declaration you
17 submitted in the '554 IPR?

18 A Again, other than the -- there were two other
19 counselors, I guess, yesterday before briefly spoke with
20 me. That's it.

21 Q And that's it for the entirety of the time
22 you've worked on the declaration of the '554 IPR?

1 A Yes.

2 Q If I can have you look at your other
3 declaration that you submitted in this case, which I
4 think is also in the chat.

5 A That's the Patent '142.

6 Q Yes.

7 A Yes.

8 Q So this is also Exhibit 1012, but is for
9 IPR2024-617 and is for Patent 11,151,142; is that right?

10 A That is correct, yes.

11 Q And so for clarity today, will you be
12 comfortable if I call this the '142 IPR?

13 A Yes.

14 Q And, similarly, are you comfortable if I call
15 the patent this relates to the '142 patent?

16 A Yes.

17 Q Did you go about preparing the declaration for
18 the '142 IPR in the same way that you prepared your
19 declaration for the '554 IPR?

20 A Yes, I did.

21 Q And have you had discussions with anyone, other
22 than your counsel, relating to the declaration you

1 submitted for the '142 IPR?

2 A Again, with the exception of the two counselors
3 the last couple of days briefly, no.

4 Q What do you mean, "with the exception of" --

5 A Well, the -- so I had -- it was my counsel.
6 There were two other attorneys from the same -- same law
7 firm that I spoke to briefly.

8 Q Understood.

9 MS. SPIRES: I'd like to start looking at
10 the '554 patent, which is Exhibit 1001 in the 616 IPR.

11 REMOTE TECHNICIAN: 1001?

12 MS. SPIRES: Yes.

13 REMOTE TECHNICIAN: Stand by.

14 And, Counsel, is this both of them?

15 MS. SPIRES: You can go ahead and pull up
16 both.

17 REMOTE TECHNICIAN: Okay.

18 MS. SPIRES: For now, we're looking at the
19 '554 patent that's the 616 IPR, but we'll need them both,
20 so it's fine --

21 REMOTE TECHNICIAN: Okay.

22 MS. SPIRES: -- to put them both in the

1 chat.

2 REMOTE TECHNICIAN: Thank you.

3 (Exhibit 1001 marked.)

4 A Okay. Bradley. I have it.

5 Q (BY MS. SPIRES) Okay. If you pull up
6 Exhibit 1001 that is the '554 patent, can you turn to
7 Claim 1 of the '554 patent?

8 A Okay. Page -- I found 40, yes. Okay.

9 Q If you look about halfway down in Claim 1, do
10 you see the element of Claim 1 that reads, "Determining,
11 by the one or more providers, treatment and assistance
12 for the client, which is used for establishing goals, a
13 plan of action, and thresholds for the client"?

14 A I do.

15 Q You provided an opinion in your '554
16 declaration that the Douglas prior art reference
17 discloses the claim element "determining, by the one or
18 more providers, treatment and assistance for the client,
19 which is used for establishing goals, a plan of action,
20 and thresholds for the client," correct?

21 A Correct.

22 Q When forming this opinion, did you do so with

1 the understanding that the goals and plan of action
2 recited in Claim 1 of the '554 patent must be distinct
3 elements?

4 MR. SOLOMITA: Objection; form.

5 A Distinct elements. Let me -- let me turn to
6 the -- that part of my report.

7 That was Limitation C, correct?

8 Q (BY MS. SPIRES) I'm sorry?

9 A That was Limitation C, determining?

10 Okay. Because I can't -- I can't put a --
11 well, I can't -- I can't just put them side by side on my
12 machine. I can't put the -- I can't put the patent and
13 the -- my report side by side. There's one window, so
14 I'll just have to flip between them. Okay.

15 Your question again, please, was, did I
16 consider?

17 Q Sure.

18 When forming your opinion that the Douglas
19 prior art reference discloses "determining, by one or
20 more providers, treatment and assistance for the client,
21 which is used for establishing goals, a plan of action,
22 and thresholds for the client," did you form your opinion

1 with the understanding that the goals and plan of action
2 must be distinct claim elements?

3 MR. SOLOMITA: Objection; form.

4 Q (BY MS. SPIRES) Must be a distinct element?

5 MR. SOLOMITA: Objection; form.

6 A Well, I think I just requested in Paragraph 69
7 of my report, and I see that Douglas discloses either
8 term of treatment and the assistance being used for
9 establishing goals and thresholds for the client, when
10 the thresholds represent certain points of progress
11 toward the goals.

12 So in this case, in this mapping, they --
13 so the goal in the threshold points are -- is that the --
14 one and the same. So there's -- the thresholds are sort
15 of a contin- -- a continuation towards the goal and
16 eventually becomes the goal, if that's what you're
17 asking, so they're -- they're not distinct, but they --
18 it's a continuum in this mapping.

19 Q (BY MS. SPIRES) And what about goals and the
20 plan of action in Claim Element 1C? Are those distinct,
21 or are they also a continuum in your mapping?

22 A I -- I think the continuum in my -- my mapping,

1 because the map on Figure 6, which is in Paragraph 64, I
2 guess, there's the current -- current value, a former
3 goal and a final goal. So I say that's a mapping -- this
4 is a continuum from the criteria to where -- where you're
5 going to be, eventually, with the goal. If that's -- if
6 that -- if I understand your question.

7 Q How about if I have you look at Paragraph 70.

8 A Okay.

9 Q In the last sentence of Paragraph 70, you said,
10 "The claimed plan of action is disclosed by Douglas's
11 overall 'therapeutic program' that includes the above
12 goals," right?

13 A That's correct, yes.

14 Q So is it true that in your opinion, the goals
15 that you're mapping from Douglas to Claim Element 1C are
16 a subset of the plan of action that you say is disclosed
17 by Douglas?

18 MR. SOLOMITA: Objection; form.

19 A I'm not sure what you mean. What -- what I
20 think I'm -- what I'm saying here in 70 is that the --
21 the over- -- the overall program includes, you know,
22 eventually achieving the goals. And so the -- there's

1 going to be a progress -- or a checkpoint that's saying
2 what's our progress toward the goal and that the
3 progress -- the progress and the even- -- and that
4 eventual goal are all part of the program.

5 Q (BY MS. SPIRES) And --

6 A Which includes --

7 Q I'm sorry?

8 A I'm sorry. I was just going to read the last
9 sentence again, which "includes the above goals."

10 Q And Douglas's therapeutic program, in your
11 opinion, is the plan of action in Claim Element 1C of the
12 '554 patent, correct?

13 A Hold on. Let me get back to the claim.

14 So, again, the question is?

15 What's -- what -- repeat, please, the
16 question.

17 Q I said that Douglas's therapeutic program, in
18 your opinion, is the plan of action in Claim Element 1C
19 of the '554 patent?

20 MR. SOLOMITA: Objection; form.

21 A Well, the plan of action can include the --
22 there are goals and a plan of action. They are --

1 they're distinct. So -- you're saying if they're the
2 same, they're -- the plan of action is part of the
3 limitation, but it's not the same as the goal. So the
4 goals are separate from the plan of action.

5 Q (BY MS. SPIRES) But the plan of action
6 includes the goals?

7 A Well, again, back to the figure we just saw,
8 there's the -- a column of current values and current --
9 and the thresholds, and then the -- the value of the
10 final goals. And so the plan of action is -- is meant to
11 move the person from that -- the current -- the current
12 values to the final goals, so they are -- they're
13 separate if you have a -- the -- the plan of action is in
14 reference to goals, but isn't -- the goals aren't part of
15 the plan of action.

16 Q How do you reconcile that with your statement
17 in Paragraph 70 that the claim plan of action is
18 disclosed by Douglas's overall therapeutic program that
19 includes the above goals?

20 MR. SOLOMITA: Objection; form.

21 A I think -- I think it's compatible. The --
22 there's -- there -- in the way Douglas is set up,

1 there's -- there are -- you establish goals. You
2 establish thresholds along the way to get to those goals,
3 and then a plan to get removed -- removed from the
4 current status of the patient to the goal -- to the goal
5 set. And all -- taken all together there, that's part of
6 the -- that's -- that's the -- that's the treatment for
7 the patient. That's -- that's the -- that's what
8 you're -- that's what you're bringing to -- to bear on
9 the patients, on the user, the -- their current status.
10 The goals are intended for the patient, and then moving
11 from -- from that -- from the current status to the
12 goals. I think -- I think that's compatible with -- with
13 what I said in the last -- with Paragraph -- or it's 70,
14 I guess. 70.

15 Q (BY MS. SPIRES) In your declaration, did you
16 ever state that the claimed plan of action is moving the
17 patient from their current status to the claimed goals?

18 MR. SOLOMITA: Objection; form.

19 A Where did I state that? I don't -- I don't
20 recall stating that. I can search for it. If you -- if
21 you see any -- if you see the -- that I have a reference,
22 I can look it up, but I don't recall making that

1 statement.

2 Q (BY MS. SPIRES) In your declaration, you
3 mapped the plan of action to Douglas's therapeutic
4 program, correct?

5 MR. SOLOMITA: Objection; form.

6 A Action -- (unintelligible) mappings, yes. As I
7 recall, yes.

8 THE COURT REPORTER: I'm sorry. You
9 said it --

10 A That's -- that's --

11 THE COURT REPORTER: -- too fast.

12 A -- one of the --

13 THE WITNESS: I'm sorry.

14 A That's -- that's one of the mappings I recall,
15 yes.

16 Q (BY MS. SPIRES) Do you recall any other
17 mapping that you included in your declaration for the
18 claimed plan of action?

19 MR. SOLOMITA: Objection; form.

20 A Well, the mappings that I -- I -- the mappings
21 that I included are -- are in my report. I'm just
22 reviewing them, Mappings 1 and 2. I don't recall making

1 any other mappings regarding that. So they're on page --
2 they would be in Paragraphs 65 through 70.

3 Q (BY MS. SPIRES) In your '554 declaration, did
4 you ever identify weight loss as a plan of action in
5 Douglas?

6 MR. SOLOMITA: Objection; form.

7 A Identify weight loss. It appears, in Douglas
8 Figure 6, weight loss or weight is -- is one of the goals
9 in the program, so moving from the pig's weight of 193 to
10 a final goal of 170. So in that regard, yes. If you're
11 asking me did I -- did I -- do I have text supporting
12 that statement, I don't recall the text.

13 So this would be Line 1, 2, 3, 4 -- Line 5
14 of Douglas Figure 6, which on -- which is on
15 Paragraph 64.

16 Q (BY MS. SPIRES) Okay. I see that Douglas's
17 Figure 6 has weight in the left-hand column. Is that
18 what you're referring to?

19 A Has weight on the label in the left-hand
20 column, and then the -- the values moving to the right,
21 193 -- let's see, 182, 175 and 170. So the 193 was the
22 initial weight. The current weight is 182. And there's

1 a one-month goal of 175 and then the final goal of 170.

2 Yes.

3 Q My question is, when you were mapping the
4 claimed plan of action in your declaration, did you ever
5 identify weight loss?

6 MR. SOLOMITA: Objection; form.

7 A I don't recall calling out weight loss as a --
8 as a -- in the text, but if you want to point me to
9 something, I can take a look. But I don't recall
10 actually stating -- having a statement about weight loss,
11 other than referring to the Figure 6 in general.

12 Q (BY MS. SPIRES) In your declaration, did you
13 refer to Figure 6 in your mapping of Douglas's disclosure
14 to the claimed plan of action?

15 MR. SOLOMITA: Objection; form.

16 A In Paragraph 65, I talk about -- second half of
17 the paragraph, I talk about how the -- the Douglas
18 program provides the goals and the intermediate goals for
19 weight loss, and how the presence of these goals in the
20 program shows that the -- that your aspects for which the
21 provider provided -- I'm sorry -- the provider determined
22 patient needs, treatment and assistance.

1 So to that extent, there's -- that's the
2 answer to your question.

3 Q (BY MS. SPIRES) Are you mapping the claimed
4 plan of action in Paragraph 65 of your declaration?

5 MR. SOLOMITA: Objection; form.

6 A Am I -- am I mapping Paragraph 65?

7 Q (BY MS. SPIRES) Are you mapping the claimed
8 plan of action in Paragraph 65 of your declaration?

9 MR. SOLOMITA: Objection; form.

10 A I don't -- if I'm -- if I'm clear on your
11 question, I believe what I'm saying in Paragraph 65 is
12 that the -- these goals to -- the last sentence, for
13 example, says that, "The presence of these goals in the
14 program show" they're "aspects for which the provider
15 determined the patient needs treatment and assistance."

16 So the -- in themselves, it's not the
17 mapping. It's -- but it's these -- these goals or
18 subgoals provide the motivation to -- or to the -- the --
19 especially to the provider that determines the needed
20 treatment.

21 Q (BY MS. SPIRES) But you don't refer to the
22 claimed plan of action in Paragraph 65 of your

1 declaration, correct?

2 MR. SOLOMITA: Objection; form.

3 A I don't -- I didn't directly -- correct.
4 That's correct, yes.

5 Q (BY MS. SPIRES) I'd like to move to the '142
6 patent, which should be in the chat.

7 A Try to get there. Hold on. The -- they're all
8 the -- the names are so short. I guess the exhibit
9 number and Bergeron, I can't see what follows that, so...

10 Q No rush.

11 A Okay. I have the '142 patent, Marshall, yes.

12 Q If you could look at Claim 1 of the '142
13 patent.

14 A Okay. I'm there.

15 Q And about a third of the way down in this
16 claim, it says, "Assigning each of the clients to one or
17 more of the providers in response to selections from an
18 administrator."

19 Do you see that?

20 A I do, yes.

21 Q And it's your opinion that Douglas discloses
22 this limitation because, in Douglas, the case

1 administrator sets up each of the patients on Douglas's
2 system by entering the information contained in the
3 patient prescription form, where such information
4 includes information associating the patient with the
5 physician, right?

6 MR. SOLOMITA: Objection; form.

7 A Hold on. I need to get back to what you were
8 reading.

9 Q (BY MS. SPIRES) And for clarity, I'm looking
10 at Paragraph 66 of your declaration, if you -- if it's
11 easier to just go there.

12 A Okay.

13 So I think that's what -- I'm pretty sure
14 that's what you read, and that's -- I agree with that
15 statement, yes. 66, yes.

16 Q Yes.

17 And then say -- looking at Paragraph 68,
18 you say, "To be clear, to assign the patient to their
19 physician requires the selection of that patient and the
20 selection of that physician," right?

21 A So this is in reference to Douglas Figure 2.
22 Correct, yes. Yes.

1 Q So in that scenario, you're discussing, in
2 Paragraph 68, the selection of the physician is the
3 assignment of the physician; is that right?

4 MR. SOLOMITA: Objection; form.

5 A It's the assignment of a physician to a
6 patient, yes.

7 Q (BY MS. SPIRES) I'd like to look at
8 Paragraph 78 of your declaration.

9 A Okay. I'm there.

10 Q And here, I'm wanting to clarify -- I think
11 this is a typo, but I'm wanting to just make sure. So
12 to -- for you to verify, we might need to pull up
13 Douglas, which is Exhibit 1002.

14 REMOTE TECHNICIAN: Stand by.

15 (Exhibit 1002 marked.)

16 Q (BY MS. SPIRES) While Douglas is coming up
17 into the chat, I'll just tell you my question.

18 So in Paragraph 78, you refer to Douglas's
19 Goals 51, 61 and 62.

20 Do you see that?

21 A I do.

22 Q And whenever you're able to get up Douglas,

1 Douglas's 51 refers to intensity levels. And so -- which
2 is in Douglas Figure 5. And so we're wanting to just
3 confirm that you're meaning to refer to Douglas's
4 Goals 52 and not intensity levels, 51, in this portion of
5 your declaration.

6 A I'm -- I'm not looking at the -- I'm not
7 looking at Douglas now, but I recall this is one of the
8 typos, yes. Sorry. Yes.

9 Q Okay. So here, Douglas's 50 goals, 51,
10 referred to in Paragraph 78 is intended to be Douglas's
11 Goals 52?

12 A I believe that's correct, yes. Yes.

13 Q Okay.

14 A So --

15 Q That's what I thought, but I wanted to make
16 sure.

17 MR. SOLOMITA: Sorry, Sarah. I'm looking
18 at the transcript. Your question says, "So here,
19 Douglas's 50 goals." I just want to make sure we're
20 clear for the record what you were asking because we're
21 correcting a typo.

22 MS. SPIRES: Sure. So -- yeah, I'm not

1 trying to introduce more typos. I get it. They happen.
2 That's just why we want to clarify.

3 Q (BY MS. SPIRES) In Paragraph 78, it says,
4 Douglas -- "Douglas's Goals 51, 61" and "62 are each a
5 desired outcome."

6 And we wanted to see if you -- what you
7 meant here was Douglas's Goals 52, 61, 62 are each a
8 desired outcome.

9 A And 52 refers to Douglas Figure 5?

10 Q Yes. And if you meant to refer to Douglas 51,
11 that's fine. We just wanted to clarify because
12 Douglas's -- our reading of it --

13 A I believe you're -- believe you're correct,
14 because the -- it states the following goals, and then
15 the 52. So I agree with that. I think --

16 Q Okay.

17 A -- it's a typo.

18 Q Okay. So we'll just replace 51 for 52 in
19 Paragraph 78, right?

20 A Yes.

21 Q Okay. We're all clear.

22 I'd like to look back at the claims again

1 of the '142 patent. And here, I'm looking at Claim 3 and
2 4. Both of these claims refer to a wizard application.

3 Do you see that?

4 A Yes, I do. Yes.

5 Q Did you set forth a proposed claim construction
6 for wizard application in your declaration?

7 MR. SOLOMITA: Objection; form.

8 A No, I did not address claim construction in my
9 application -- my declaration, other than all the terms
10 that I've used are -- are considered -- are plain and
11 ordinary meaning, so I made no attempt at construction.

12 Q (BY MS. SPIRES) In your declaration, you rely
13 on Microsoft dictionary definition of wizard, right?

14 MR. SOLOMITA: Objection.

15 A That's correct. I believe it's a -- yes. It's
16 in the references. Yes.

17 Q (BY MS. SPIRES) What is the distinction
18 between a wizard and a wizard application, in your view?

19 MR. SOLOMITA: Objection; form,
20 foundation.

21 A Wizard or wizard application.

22 Well, in -- in general, unless I -- unless

1 I have something else in my report here, the
2 application --

3 THE COURT REPORTER: I'm sorry, sir.

4 THE WITNESS: Sorry.

5 THE COURT REPORTER: I didn't understand
6 that.

7 THE WITNESS: I'm sorry.

8 THE COURT REPORTER: You're going really
9 fast.

10 THE WITNESS: I'll start over. Thank you.
11 Sorry.

12 A Unless there's something else in my report
13 which I don't recall, in my mind, an application is a
14 computer -- computer program application, and a wizard
15 application is a wizard program. And in context of if
16 we're dealing with computers, a wizard and wizard
17 application would be the same thing. I'm not making a
18 distinction, in my mind, that there's a difference
19 between a wizard and a wizard application.

20 Q (BY MS. SPIRES) Do you have an opinion as to
21 how the inclusion of wizard application in Claim 3
22 affects the scope of the claim?

1 MR. SOLOMITA: Objection; form.

2 A Scope of the claim.

3 Again, I'm not -- I'm not trying to --
4 I -- I've made no -- just want you to know I've made no
5 attempt at claim construction. But I -- I don't -- or --
6 or any -- any comment on the scope of the -- of the claim
7 with that -- that term. I have no opinion on that.

8 Q (BY MS. SPIRES) To what extent is a wizard
9 application distinct from other kinds of data entry?

10 MR. SOLOMITA: Objection; relevance, form,
11 and foundation.

12 A I'd have to have time to think about that.
13 I -- I don't -- I don't have an opinion right now.

14 Q (BY MS. SPIRES) In your opinion, would a
15 disclosure in Douglas of data entry automatically
16 disclose the claimed wizard application?

17 MR. SOLOMITA: Objection; form,
18 foundation, relevance.

19 A Again, I'm not attempting claim construction.
20 I think, if we look at the -- if you want to look at the
21 Microsoft dictionary for definition of the wizard, it
22 would -- wouldn't -- I don't believe it covers simply

1 entering data.

2 THE COURT REPORTER: I'm sorry. "I don't
3 believe it covers" something data?

4 THE WITNESS: Simply entering data.

5 Q (BY MS. SPIRES) So in your --

6 A Can we -- can we see the definition? Just to
7 refresh my memory, can we turn to the dictionary?

8 Q Sure.

9 A I just want to...

10 MS. SPIRES: That is Exhibit 1014 in the
11 617 IPR.

12 REMOTE TECHNICIAN: You said "1014"?

13 MS. SPIRES: Yes.

14 REMOTE TECHNICIAN: Stand by.

15 (Exhibit 1014 marked.)

16 THE WITNESS: Thank you. I see it.

17 A Okay. So the -- the wizard -- third -- with --
18 now, the first one's a person. Second one is a multiuser
19 dimension -- multiuser dungeon -- person, game.

20 The third is that one applies here. It's
21 an interactive help utility within an application that
22 guides the user through each step of a particular task,

1 such as starting up a word processing document on the
2 correct format for a business letter.

3 So it's an active -- it's within an
4 application and it guides the user through steps with a
5 particular task. So that's the definition I used. It's
6 a plain and ordinary meaning.

7 Q (BY MS. SPIRES) And if you could look at
8 Douglas Figure 4.

9 A Douglas Figure 4. Hold on.

10 Do we have Douglas up on the shared? Is
11 Douglas shared on the server?

12 Q Yeah. Sorry. It's Exhibit 1002.

13 A Okay. Can I have -- unfortunately, my monitor
14 has everything piled onto one screen, with all the tabs
15 on top, all compressed, and I can't read them.

16 Okay. There's Douglas. All right. I'm
17 sorry. So I'm at Douglas now.

18 Q Figure 4.

19 A Figure 4.

20 Yes. Okay. I'm there.

21 Q Does Douglas disclose whether Figure 4 is --
22 strike that.

1 Does Douglas disclose whether the data
2 entered in Figure 4 is via a wizard application or simple
3 data entry?

4 MR. SOLOMITA: Objection; form.

5 A Let's see how the (inaudible) do it.

6 So I -- I believe that assesses in my
7 report -- (unintelligible) we're on the '142 patent now?
8 Which -- which patent are we --

9 THE COURT REPORTER: I'm sorry?

10 A I'm sorry. Which -- which patent are we
11 discussing now?

12 Q (BY MS. SPIRES) The '142.

13 A '142? All right.

14 Q Yes.

15 A I'm in -- I'm in my report right now. I'm
16 looking for a reference to -- to that figure of the item
17 design which is titled -- labeled 50, which is -- which
18 is as I understand it, part of this setup, so -- so that
19 Douglas discloses more than simply entering data into a
20 field as part of the design.

21 And if we go down -- if we go to -- I
22 don't see my reference here, but if we go to Douglas --

1 the very last figure in Douglas or very close to the end
2 of Douglas itself, there's a -- a flowchart which --
3 which shows how a wizard would be involved in the system
4 with the flow through.

5 Q So in your opinion, Douglas's Figure 4 shows
6 that it is using a data wizard to enter data because of
7 the button at the bottom right labeled Design 50; is that
8 right?

9 A Well, I'm looking for -- well, that's part of
10 it. I'm looking for the -- I'm looking for more -- for
11 backup for that. I'm looking for the reference by Design
12 50. I don't I don't see it in my text, unless I am
13 missing it.

14 But I'm saying in addition to Figure 4,
15 Douglas's -- the very last figure in this -- in this
16 document, in this application or this patent, is the --
17 shows a flowchart which includes the -- how the wizard
18 operates.

19 I am saying that that -- I would show
20 the -- I would say Figure 4 FIG. 50, in conjunction with
21 the flowchart at the end of Douglas, would support the
22 wizard.

1 Q Is the flowchart that you're referring to the
2 one at the top of the page says, 60 of 60?

3 A I believe that's right, yes.

4 Q But your declaration does not refer to the
5 Design 50 of Douglas's 54 for this flowchart labeled 60
6 of 60, correct?

7 MR. SOLOMITA: Objection; form.

8 A Well, that's -- I'm looking for the note. I
9 don't see it. I don't see the reference to it directly.

10 Q (BY MS. SPIRES) Earlier you said that the
11 wizard application is more than simple data entry. Can
12 you clarify on what the wizard application in the claims
13 requires beyond simple data entry?

14 MR. SOLOMITA: Objection; form.

15 A I will just refer back to the -- to the plain
16 and ordinary meaning, which is in the definition we read
17 in the Microsoft dictionary.

18 MS. SPIRES: Okay. We have been going
19 about an hour. If you want to take break for a few.

20 THE WITNESS: Sure.

21 MR. SOLOMITA: When do you want to come
22 back, Sarah?

1 MS. SPIRES: 10 minutes is fine with me
2 but I'm open.

3 THE WITNESS: Sure.

4 MR. SOLOMITA: Okay.

5 THE COURT REPORTER: We're off the record
6 at 10:11 a.m.

7 (Break taken from 10:11 a.m. to 10:22
8 a.m.)

9 THE COURT REPORTER: Back on the record at
10 10:22 a.m.

11 Q (BY MS. SPIRES) One follow-up question from
12 earlier. You had said that for -- strike that.

13 Is there any other evidence that you're
14 relying on that Douglas's Figure 4 uses a wizard
15 application other than the Design 50 button in Figure 4
16 and the last figure in Douglas labeled 60 of 60 at the
17 top?

18 MR. SOLOMITA: Objection; form.

19 A Yes. So in the Paragraph 94 of my report -- or
20 declaration, I know that Douglas's wizard application
21 also presents the user with a program Detail Option 54,
22 which allows the users to view details as to how the

1 suggested goals may be implemented by showing the
2 recommended one-month goals 61 and follow-up 62.

3 THE COURT REPORTER: I'm sorry.

4 A Now --

5 THE COURT REPORTER: The recommended?

6 A I'm sorry, the recommended one month goals 61
7 and --

8 THE COURT REPORTER: Month goals?

9 A I'm sorry, recommended one month goals, sorry,
10 61 and final goals 62. This is Figure 6.

11 Finally, the wizard application allows the
12 user to edit 64, the suggested program, which is also at
13 Figure 6 in Douglas.

14 Q Is there anything else?

15 A I'm searching for the wizard in my report. I
16 believe there's one other paragraph. Let me -- I
17 detailed, I mentioned in Douglas's -- the wizard in
18 Paragraph 95 about how the ap- -- application receives
19 the main heading, start date, projected closure date and
20 decided outcome description displayed in Figure 6, and
21 also in Paragraph 96 I discuss the wizard.

22 Q And --

1 A In terms of the -- that's it.

2 Q For Claim 4, you are pointing solely to
3 Douglas, correct?

4 A Claim 4?

5 Q Claim 4 of the '142 patent.

6 A Actually, I'm also using it in Grounds 2,
7 Douglas and Wager.

8 THE COURT REPORTER: I'm sorry, Douglas
9 and?

10 THE WITNESS: Wager, W-A-G-E-R.

11 Q (BY MS. SPIRES) Are you relying on Wager for
12 the claimed wizard application of Claim 4?

13 A I'm sorry, the -- the numbering in my
14 paragraphs are off from the -- from the index, so I'm
15 trying to find that Claims 2. But -- but Douglas --
16 Douglas provides the -- looking at that -- let's see,
17 that's 4. So at Paragraph 95, the Douglas discloses the
18 wizard application for -- for Claim 4.

19 Q So for the wizard application of Claim 4,
20 you're relying solely on Douglas, correct?

21 A Correct.

22 Q And specifically, you're relying on Douglas's

1 Figure 6 for the wizard application of Claim 4; is that
2 right?

3 MR. SOLOMITA: Objection; form.

4 A I used Exhibit 6 to illustrate the wizard,
5 correct.

6 Q (BY MS. SPIRES) Are you relying on any other
7 wizard applications in Douglas for Claim 4?

8 MR. SOLOMITA: Objection; form.

9 A I have offered figures at Paragraphs 95 and 96.
10 Other than that, no.

11 Q (BY MS SPIRES) Looking back at Douglas
12 Figure 4, Figure 4 represents an exemplary patient
13 record, correct?

14 MR. SOLOMITA: Objection; form.

15 A Douglas Figure 4. One second. Do you have a
16 paragraph number I didn't see?

17 Q (BY MS. SPIRES) If you look at Douglas
18 Page 7 --

19 A Got it. Got it, 54, 53. Yes, thank you. Got
20 it. Figure 4. And this represents a --

21 Q An exemplary patient record.

22 MR. SOLOMITA: Objection; form.

1 A Record. On Method 1 in my Paragraph 53 showing
2 the patient record of Douglas's Figure 4 just below, so
3 yes. Yes, this is a patient record.

4 Q (BY MS. SPIRES) Okay. I'm looking at
5 Douglas's Figure 4. For the projected disclosure date --
6 or sorry, projected closure date that's claim -- in Claim
7 4, you're pointing to the words "one month" and "one
8 month goals 61"; is that right?

9 MR. SOLOMITA: Objection; form.

10 A That -- let me -- let me turn to Douglas in my
11 report. The -- this Figure 4 doesn't look the same as
12 the one I recall with the -- the numbers -- the number is
13 different. One second. Huh, it's the same. Sorry,
14 it's -- I thought -- I was thinking about Figure 6, which
15 had more data on it. So could you repeat the question,
16 please? I thought we were referring to Figure 6 but
17 obviously it is Figure 4.

18 Q (BY MS. SPIRES) So for -- oh, we are on Figure
19 6, sorry. So for --

20 A Figure 6. Okay.

21 Q Yeah. Sorry, that's my mistake.

22 A Now I understand what's going on. Okay. Yes.

1 Q Okay. Now we're on the same page.

2 A Okay.

3 Q So for the Claim 4 of the '142 patent --

4 A Okay.

5 Q -- for the projected closure date, you're
6 pointing to the words "one month" and "one month goals of
7 61" of Figure 6; is that right?

8 MR. SOLOMITA: Objection; form.

9 A Are you referencing a particular paragraph in
10 my -- my report for the projected closure date?

11 Q (BY MS. SPIRES) I'm looking at Paragraph 95.

12 A 95. Okay.

13 It's painful navigating this thing, so
14 let's see.

15 That's -- that's correct.

16 Q And then Douglas separately identifies one
17 month goal 61 and final goals 62, correct?

18 MR. SOLOMITA: Objection; form.

19 A It does, correct.

20 Q (BY MS. SPIRES) And the goals identified in
21 Column 62 of Figure 6 represent the final goals, correct?

22 A Correct.

1 Q The goals identified in Column 61 do not
2 represent the final goals, correct?

3 A That's correct.

4 Q The goals identified in Column 61 represent
5 intermediate one month goals, correct?

6 A Correct.

7 Q The program shown in Douglas's Figure 6
8 envisions that the plan will continue past one month,
9 correct?

10 MR. SOLOMITA: Objection; form.

11 A I don't believe it's -- I don't believe it's
12 actually stated here, but -- but logically, looking at
13 this, if the final -- final goal was, say, for weight of
14 170 and the current weight is 175 over one month, it
15 would make sense that it's -- it's -- it would be
16 intermediate in the overall plan, yes.

17 Q (BY MS. SPIRES) So at least based on the
18 weight goal, you would agree that the program in Figure 6
19 envisions Douglas's plan continuing past one month,
20 correct?

21 A Correct.

22 Q The '142 patent says that a projected closure

1 date is the date at which the goal will end, correct?

2 MR. SOLOMITA: Objection; form.

3 A Can you point me to where it says that? Is it
4 in my report, the claim?

5 Q (BY MS. SPIRES) It's in the '142 patent.
6 Say -- look at Column 6, lines, say, 30-ish.

7 A Sorry, I just got there. So column -- column
8 number --

9 Q Column 6.

10 A 6.

11 Q About Line 30.

12 A Yes. Correct.

13 Q Is this the projected closure date that you
14 applied when rendering your opinions in the '142
15 declaration?

16 MR. SOLOMITA: Objection; form,
17 foundation.

18 A Obviously, yes. In the -- you know, by what's
19 described in this paragraph, the projected closure date
20 is the date in which the goal ends, but it's also -- you
21 like to keep the -- the users focused on reaching the
22 goal in a reasonable period of time -- time period, so it

1 could be a -- a closure date but not the final date. So
2 it's -- it's a closure date for say a one month segment
3 of activity versus the full activity, which might go for
4 a year or whatever, some larger, larger time pan -- time
5 span.

6 Q (BY MS. SPIRES) And where are you seeing that
7 the goal may end beyond the projected closure date?

8 A Well, Figure 6. With this Figure 6, we have a
9 one month goal, and then we have this -- the ultimate
10 goal sometime in the future of the -- the final outcome.

11 Q Did you see any examples in the '142 patent of
12 a goal ending beyond the projected closure date?

13 MR. SOLOMITA: Objection; form.

14 A I would have to read the patent to -- to verify
15 that or not. I don't -- I don't recall such a date, but
16 again, it's been a while since I've looked at this. I
17 haven't read the patent in detail in a year. I don't --
18 I don't recall such a date, no.

19 Q (BY MS. SPIRES) You didn't read the patent in
20 detail in preparing for today's deposition?

21 A Correct.

22 Q Let's move on to Claim 7 of the '142 patent.

1 A Claim 7. Okay. That's Paragraph 101. Got it.

2 Q So Claim 7 includes sending an alert to one or
3 more providers in response to determining there is
4 missing data from one or more clients associated with the
5 one or more providers; is that right?

6 A That's correct, yes.

7 Q And just quickly I would like to look at the --
8 pull up the '554 patent.

9 REMOTE TECHNICIAN: Counsel, is that one
10 we've pulled up before or something new?

11 MS. SPIRES: It's one we pulled up before.
12 It was the first Exhibit 1001 we looked at.

13 REMOTE TECHNICIAN: Thank you.

14 A Okay. Claim 4?

15 Q (BY MS. SPIRES) Yeah, the '554 patent, Claim
16 10.

17 A Claim 10. Okay. I see it.

18 Q And Claim 10 has this same limitation that's in
19 Claim '142 -- or strike that. Claim 10 of the '554
20 patent has this same limitation that we just saw in Claim
21 7 of the '142 patent which is sending an alert to one or
22 more providers in response to determining there is

1 missing data for one or more clients associated with the
2 one or more providers, correct?

3 A Correct.

4 Q Is it fair if I just ask you questions about
5 one of these claims that your answers would apply to
6 both, or do you think the answers may be the same?

7 A Well, the patents are different patents, so
8 let's go separately.

9 Q Okay. So let's start with the -- it doesn't
10 really matter -- since we've got it up, the '554 patent,
11 Claim 10.

12 A '554, Claim 10. Let me -- let me get my '554
13 report or I mean my report on '554.

14 THE COURT REPORTER: Did you say, "my
15 report up like before"?

16 THE WITNESS: I'm sorry. Let me just get
17 the '554 patent up on my screen. Sorry.

18 A So we're at claim number --

19 Q (BY MS. SPIRES) It's Claim 10 for --

20 A Okay.

21 Q -- the '554 patent has this limitation.

22 A Okay. I'm there.

1 Q Okay. So let's see. Let me get to the right
2 paragraph.

3 So for this claim element, Claim 10 of the
4 '554 patent, you are relying on the fact that Douglas
5 discloses sending an alert to a clients provider should
6 the client's data indicate a threatening situation.

7 A Correct.

8 Q And so it would have been obvious for Douglas's
9 system to determine whether client data was missing and,
10 if so, send an alert to the provider associated with the
11 client, right?

12 A Actually it would have been beneficial.

13 Q What would have been beneficial?

14 A I'm saying you had it as it would have been
15 obvious, but yes, it is beneficial, Paragraph 89.

16 THE COURT REPORTER: I'm sorry, Paragraph
17 9?

18 A I'm sorry, my Paragraph 89 of the declaration,
19 the way you read it you said it would have been obvious
20 for Douglas's system to determine whether the patient
21 data was missing, and all I'm saying actually it was
22 beneficial, not obvious.

1 Q (BY MS. SPIRES) You're right. I was -- I had
2 the wrong document up. Now my computer is frozen. I'm
3 trying to get that document up. One second. Okay. Now
4 it's up.

5 And so if we look at what you're
6 referencing here in Douglas, you cite in Paragraph 89 of
7 your declaration Douglas at Column 11, Lines 11 to 19,
8 right?

9 A Yes.

10 Q Can we turn to that portion of Douglas?

11 A Sure. Hold on. Let me find it. So it starts
12 off as -- as part of the feedback process?

13 Q Yes.

14 A Okay. I'm there. Okay.

15 Q And so here, Douglas gives the example in this
16 paragraph that starts around Line 11 of Page 11 that, for
17 instance, if a patient's current blood pressure is
18 potentially dangerous, the system will automatically send
19 an alarm to the physician or case advisor and require his
20 or her immediate action, right?

21 A Correct. Yes.

22 Q Douglas does not disclose sending an alert to a

1 provider when there is missing data for a particular
2 patient, correct?

3 MR. SOLOMITA: Objection; form.

4 A Well, I agree that it doesn't explicitly point
5 out missing data. However, clinically, if there's
6 something missing that -- that's relevant, there would
7 be -- there would be an alarm sent out or -- or at least
8 a notice. There's a -- the next paragraph -- Paragraph
9 7 -- page -- Line 18.

10 Q (BY MS. SPIRES) So it's your position that if
11 data is missing -- if patient data is missing from
12 Douglas, there would be an alert sent out or --

13 A I'm saying it doesn't -- it does not say that.
14 It doesn't say that the -- in other words, no data could
15 be data. No data could be, let's say, if you're on a --
16 on a pre- -- prescription drug, the few drugs, for
17 example, that are listed in this -- listed in this
18 example in Douglas. If, for example, the patient didn't
19 take the medications, there would be missing data. So if
20 you say how many tablets did you take today, there's
21 nothing there, so that would be missing data. And that
22 would be, in my opinion, a POSITA, a wrong position -- a

1 wrong condition. So I'm saying that there's no call out.
2 Specifically, that missing data is -- is the wrong data,
3 but missing data clinically can be a threatening
4 situation warranting an alarm.

5 THE COURT REPORTER: Something situation
6 warranting an alarm? I'm sorry.

7 THE WITNESS: The -- a threatening
8 situation.

9 THE COURT REPORTER: Warranting --

10 THE WITNESS: Warranting an alarm. Yes,
11 warranting an alarm.

12 Q (BY MS. SPIRES) So it's your opinion that when
13 Douglas says that the system compares actual data about
14 the patient with the goals and parameters residing in the
15 system's database, that this actual data includes missing
16 data as well?

17 A I'm saying that it doesn't -- it doesn't rule
18 out missing data as -- it doesn't rule out missing data
19 as -- as -- a missing data value doesn't mean that
20 there's no data, I guess, over this. The data -- it
21 doesn't rule out missing data as -- as problematic. So
22 missing data could -- missing data could be a threatening

1 situation.

2 THE COURT REPORTER: In a what situation?

3 THE WITNESS: Again, the same word,
4 "threatening."

5 A Missing data could be a threatening situation.
6 For example, if the -- if the -- the data let's say was
7 the daily, you know, medication wasn't followed.

8 Q (BY MS. SPIRES) Did you provide this analysis
9 in your declaration that you view missing data to be a
10 threatening situation warranting an alert within
11 Douglas's system?

12 A I can't recall doing that, no. Can we --
13 what -- intentionally, can we go -- can we take look at
14 60 which we just referenced again, so --

15 Q Can we go to --

16 A As part -- part of the explanation for your 60
17 which is on -- referenced in that paragraph which I
18 believe is the last -- the last figure. That's the one
19 with the flowchart.

20 Q So you're looking at Figure 60 of Douglas, that
21 one that says, 60 of 60, at the top?

22 A I -- I believe it's -- I'm going to say yes.

1 Let me --

2 Q I'm there.

3 A -- just -- just go down there. So in Figure 60
4 in -- at the -- at line number -- or figure -- or for
5 three point -- we're going to call it 1040, which is on
6 the left toward the middle of the document, which is a
7 long value, and above that the case advisor periodically
8 reviews patient data. So the -- it doesn't -- doesn't
9 necessarily say that the -- it doesn't -- it doesn't put
10 much qualification on the type of data that we're looking
11 at if we're missing or if it's too large, too low, but
12 that the case advisor produces the patient data to
13 determine if there's an alarm value.

14 Q Would you provide this analysis of Paragraph 60
15 in your declaration -- strike that.

16 Did you provide this analysis of Douglas's
17 Figure 60 in your declaration?

18 I will change the question to make it
19 easier.

20 Did you provide this analysis of Douglas's
21 Figure 60 in your declaration with respect to Claim 10 of
22 the '554 patent?

1 A No.

2 Q I would like to flip back over to Claim 7 of
3 the '142 patent, which we mentioned earlier is the same
4 claim limitation.

5 A Okay. Got it. Page 51. Okay.

6 Q Looking at your analysis of Claim 7 of the '142
7 patent at Paragraph 101 --

8 A Got it.

9 Q -- you are relying on the same portion of
10 Douglas for your analysis of the '142 patent's Claim 7 as
11 you did for Claim 10 of the '554 patent, right?

12 A That's correct, yes.

13 Q And that's Douglas at 11, Lines 11 to 19?

14 A That's correct, yes.

15 Q Do you see any additional analysis of this
16 claim element for Claim 7 of the '142 patent that you did
17 not include in Claim 10 of the '554 patent?

18 MR. SOLOMITA: Objection; form.

19 A No, I don't.

20 Q (BY MS. SPIRES) Do you believe that your
21 answers for Claim 7 of the '142 patent for this claim
22 element are the same as the ones you gave for Claim 10 of

1 the '554 patent?

2 A Well, you can put it side by side, but I
3 believe it's the same text, same paragraph for both.

4 Q I believe so too but feel free to --

5 A No, I get the feeling that they're the same. I
6 don't -- I don't see any differences from here.

7 Q And so since the text of your analysis is the
8 same for Claims 10 of the '554 patent and Claim 7 of the
9 '142 patents, you believe that your answers to my
10 questions would also be the same for the two claim
11 elements?

12 A I believe so, yes. Yeah.

13 Q I would like you to look at Douglas Figure 57.

14 A Do you know if that figure is in my report or
15 do we just stay in one place or is it --

16 Q Let me see.

17 A Well, I guess I'll find it and see, so could
18 you --

19 Q Yeah, you reference it in your report but I
20 don't think --

21 A Yeah.

22 Q -- you include it in your report.

1 A So --

2 Q At least not that I'm seeing.

3 A So Douglas figure?

4 Q Figure 57.

5 A 57. Got it. That's the figure with the
6 Perform Healthcare -- Healthplan Utilization Review.

7 Q Yes, that's right.

8 A Okay. I see it.

9 Q In Douglas's Figure 57, you see in the column
10 where the physician is King with -- is it cardiologist
11 with it looks like 38 patients; is that right?

12 A It's year to date coronary artery disease, 38
13 cases to date.

14 Q So year to date coronary artery disease cases
15 would indicate the number of coronary artery disease
16 cases that each of these physicians had at that time --

17 A (inaudible).

18 Q -- so far; is that right?

19 A Correct.

20 Q But is not indicative -- strike that. Year to
21 date coronary artery disease cases in Figure 57 of
22 Douglas is not indicative of the total number of cases

1 that any of these patients have year to date, correct?

2 MR. SOLOMITA: Objection; form.

3 A I'm not sure. It says that the -- it says --
4 to me understand the columns reads, it says: Year to
5 date; CD, coronary artery disease, and cases. So up to
6 whatever this date is today, it's six months into the
7 year, whatever, that six months, Mr. King had 38 cases of
8 coronary artery disease.

9 Q (BY MS. SPIRES) Does Figure 57 provide any
10 information as to how many cases any of these physicians
11 listed have year to date that are not coronary artery
12 disease cases?

13 A No.

14 Q So based on Figure 57, you would -- of Douglas,
15 you would not be able to tell the current case load of
16 any of the listed physicians, correct?

17 A Current case load. The current case load it
18 could be -- current case load is not on this list on any
19 of these columns. It would depend how you -- how you
20 define, usually, cases. So a case would be either --
21 either define cases as in process or completed. And
22 so -- so I'm not sure why but -- so again, for each of

1 these cases -- so in this list, Mueller or Moeller had 30
2 cases this year to date; King had 38; Carvell had 16 and
3 Richards had 42.

4 Q And those numbers you just listed are the year
5 to date coronary artery disease cases for each of those
6 patients -- or each of those physicians, correct?

7 A Correct.

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

11 A Correct.

12 Q Do you agree that a patient's relationship
13 continuity with the specific physician is associated with
14 better patient outcomes?

15 MR. SOLOMITA: Objection; form and
16 foundation.

17 A That's -- well, the -- the hypothetical
18 depends. It depends how you -- you --

19 THE COURT REPORTER: I'm sorry. The
20 some --

21 THE WITNESS: That depends.

22 THE COURT REPORTER: What depends?

1 THE WITNESS: The hypothetical depends.

2 A Do you want to point me to where in my report
3 where I discuss that?

4 Q (BY MS. SPIRES) I'm asking for your opinions
5 sitting here today as -- as a POSITA if you agree that in
6 general a patient's relationship continuity with a
7 specific physician is associated with better patient
8 outcomes?

9 MR. SOLOMITA: Objection; form, relevance,
10 foundation.

11 A Again, it would depend.

12 Q (BY MS. SPIRES) What would it depend on?

13 A Well, a number of factors. I have -- you know,
14 I wasn't -- I was asked to opine on this aspect of this
15 case, but as a POSITA, there are -- there are -- so
16 there's a physician/patient relationship -- well, I'm
17 getting -- I'm getting the case, so -- I mean, I can tell
18 you as a physician what the answer would be, what my --
19 my personal opinion is, but it's not -- not based on this
20 case.

21 Q Okay. Did you consider the impact of a
22 patient's relationship continuity with their physician

1 when rendering your opinions in this case?

2 MR. SOLOMITA: Objection; form.

3 A Again, I don't recall doing so, but if -- if
4 you want to point me in my report somewhere having to --
5 to review that, I don't recall doing so.

6 Q (BY MS. SPIRES) You agree that the Wager
7 reference envisions its invention being used to
8 coordinate staffing in a clinical setting such as a
9 hospital where each patient needs a medical professional
10 inside the facility to be assigned to them?

11 MR. SOLOMITA: Objection; form.

12 A That sounds right, but if you want to -- again,
13 if you want to point me to my report.

14 Q (BY MS. SPIRES) I -- I'm just asking based on
15 your recollection of Wager, or I can -- we can put Wager
16 up in the chat if that's helpful.

17 A That's correct. I believe that's correct. I
18 just want to make sure all the words are correct, but in
19 general that's how I recall Wager, yes.

20 Q Do you agree that Douglas teaches that the
21 development of a therapeutic program that could
22 effectively motivate patients to modify their behavior

1 and change their lifestyles to prevent or recover from
2 ailments and could be delivered to them electronically
3 while at home, work, or while traveling would be highly
4 desirable?

5 MR. SOLOMITA: Objection; form.

6 A Are you -- again, do you want to point me to my
7 discussions of Douglas --

8 Q (BY MS. SPIRES) Looking --

9 A -- to answer your question?

10 Q If you pull up Douglas, Page 2 --

11 A Page 2.

12 Q Look at about Line 5, that second paragraph.

13 A Page 2, line 5. 5. That's what you said, yes.

14 Q And do you agree --

15 A Agreed.

16 Q Would a POSITA agree with this first sentence
17 in the second paragraph of Douglas, Page 2, where it
18 says, "The development of a therapeutic program that
19 could effectively motivate patients to modify their
20 behavior and change their lifestyles to prevent or
21 recover from ailments and could be delivered
22 electronically to them at home, work, or while traveling

1 would be highly desirable?

2 A Yes.

3 Q During a break today did you talk to your
4 counsel about the substance of your testimony?

5 A I spoke to no one during the break.

6 MS. SPIRES: Okay. I don't have any
7 further questions. If your counsel does --

8 MR. SOLOMITA: No questions for me, sir.

9 MS. SPIRES: All right. I think you're
10 free to go unless --

11 THE WITNESS: Thank you.

12 MR. SOLOMITA: Unless the court reporter
13 has any questions.

14 THE COURT REPORTER: Mr. Solomita, did you
15 want to order a copy of the transcript?

16 MR. SOLOMITA: Yes.

17 REMOTE TECHNICIAN: Would you like
18 exhibits attached to that?

19 MR. SOLOMITA: Sure.

20 THE COURT REPORTER: Okay. Off the record
21 at 11:17 a.m.

22 (End of proceedings at 11:17 a.m.)

1 (According to Federal Rule 30(e)(1)
2 Deponent or party must request to read and sign before
3 the deposition is completed. Since this was not done,
4 signature is considered waived for this transcript.)
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1 STATE OF TEXAS)

2 I, Kelly Hassell, RPR, CLR, CSR in and for the State
3 of Texas, do hereby certify that, pursuant to the
4 agreement hereinbefore set forth, there came before me on
5 the 13th day of December, A.D., 2024, at 9:06 a.m. CST,
6 located in the City of Brookline, State of Massachusetts,
7 the following named person, to wit: BRYAN BERGERON, MD,
8 who was by me duly cautioned and sworn to testify the
9 truth, the whole truth and nothing but the truth, of his
10 knowledge touching and concerning the matters in
11 controversy in this cause; and that he was thereupon
12 carefully examined upon his oath, and his examination was
13 reduced to writing under my supervision; that the
14 deposition is a true record of the testimony given by the
15 witness, same to be sworn to and subscribed by said
16 witness before any Notary Public, pursuant to the
17 agreement of the parties; and that the amount of time
18 used by each party at the deposition is as follows:

19 Ms. Spires - 2 hours;

20 I further certify that I am neither attorney or
21 counsel for, nor related to or employed by, any of the
22 parties to the action in which this deposition is taken,

1 and further that I am not a relative or employee of any
2 attorney or counsel employed by the parties hereto, or
3 financially interested in the action.

4 In witness whereof, I have hereunto set my hand and
5 affixed my seal this 16th day of December, A.D., 2024.

6 I further certify that before the completion of the
7 deposition, the deponent and/or a party did not request
8 to review the transcript pursuant to Federal Rule
9 30(e)(1).

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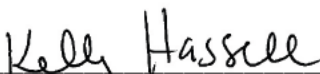
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Conducted on December 13, 2024

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