

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TELADOC HEALTH, INC.,
Petitioner,

v.

DATA HEALTH PARTNERS, INC.,
Patent Owner.

Case IPR2024-00617
Patent 11,151,142 B2

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DOUGLAS DISCLOSES ASSIGNING THE CLIENT TO ONE OR MORE PROVIDERS IN RESPONSE TO SELECTIONS FROM THE ADMINISTRATOR	1
A.	Obviousness.....	4
III.	DOUGLAS DISCLOSES AUTOMATICALLY COMMUNICATING ALERTS	4
IV.	CLAIM 3 – WIZARD APPLICATION	5
V.	CLAIMS 4, 14 – WIZARD APPLICATION RECEIVES PROJECTED CLOSURE DATA.....	7
VI.	CLAIM 6 – INTERVENTION PLANS	8
VII.	CLAIM 7.....	10
VIII.	CLAIM 10 – DATA ASSOCIATED WITH ASSIGNED CLIENTS	12
IX.	CLAIMS 2 AND 11.....	13
X.	CLAIM 11	14
XI.	CLAIM 16	15
XII.	GROUND 2 AND 8 – DOUGLAS AND WAGER.....	16
A.	PO Repeats Argument from Ground 1	16
B.	Motivation to Combine Douglas and Wager	16
XIII.	CHITIVELI IS A PRINTED PUBLICATION UNDER CURRENT LAW	19
XIV.	A POSITA WOULD HAVE BEEN MOTIVATED TO COMBINE DOUGLAS AND KOH.....	19
XV.	VIRGINIA IS ANALOGOUS PRIOR ART.....	21
XVI.	PETITIONER PROPERLY IDENTIFIED THE COMBINATIONS IN GROUNDS 4, 6, AND 8	23
XVII.	CONCLUSION.....	24

PETITIONER'S EXHIBIT LIST

Exhibit	Shorthand	Description	Previously Used
1001	'142 Patent	U.S. Patent No. 11,151,142 B2	X
1002	Douglas	Pub. No. WO 1999/003045 A1	X
1003	Wager	Pub. No. US 2006/0149589 A1	X
1004	Chitiveli	Pub. No. US 2013/0179450 A1	X
1005		Omitted	
1006		Omitted	
1007		Omitted	
1008	ArchiveDec	Declaration of Nathaniel E Frank-White	X
1009	Koh	Hian Chye Koh & Gerald Tan, <u>Data Mining Applications in Healthcare</u> , 19 J. Healthcare Information Management 64 (2005)	X
1010	KohArchive	Printout of: https://web.archive.org/web/20050418095732/http://www.himss.org/ASP/publications_jhim_issue.asp?issue=3/30/2005 , evidencing 2005 public availability of Koh	X
1011	Hall-Ellis	Declaration of Sylvia D. Hall-Ellis, Ph.D.	X
1012	Bergeron	Declaration of Bryan Bergeron, M.D.	X
1013	BergeronCV	Curriculum Vitae of Bryan Bergeron, M.D.	X
1014	Microsoft	<u>Microsoft Computer Dictionary</u> (5th ed. 2002)	X
1015	ADAA	Printout of https://web.archive.org/web/20100116093130/https://adaa.org/supportgroups	X
1016		Omitted	
1017		Omitted	

1018	NetSuite	Printout of https://web.archive.org/web/20111102042326/https://www.netsuite.co.uk/portal/uk/resource/articles/cloud-computing.shtml	X
1019	Wright	U.S. Patent No. 10,471,588 B2	X
1020	Prgomet	Prgomet et al., <u>The Impact of Mobile Handheld Technology on Hospital Physicians' Work Practices and Patient Care: A Systematic Review</u> , 16 J. Am. Med. Inform. Assoc. 792 (2009)	X
1021	InfoGrasp	Printout of https://web.archive.org/web/20100812105813/https://infograsp.com/technology/benefits-of-web-applications/	X
1022	Virginia	<u>Autism Spectrum Disorders and the Transition to Adulthood</u> , VA Dep't of Educ. (2010)	X
1023	VirginiaArchive	Printout of https://web.archive.org/web/20111208001834/http://www.doe.virginia.gov/special_ed/disabilities/autism/index.shtml , evidencing 2011 public availability of Virginia	X
1024	Ardehali	Deposition Transcript of Hossein Ardehali, M.D.	
1025	BergeronSupp	Supplemental Declaration of Bryan Bergeron, M.D.	

I. INTRODUCTION

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

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

PO, in its Response, repeats arguments from the POPR that Douglas does not disclose “assigning the client to one or more of providers” and that such assigning is “in response to selections from the administrator.” *Compare* Paper 6 at 22-26 with Paper 15 at 12-19. The Board rejected both of these arguments and should do so again. Paper 9 at 9-10.

While PO acknowledges the Board’s rejection of its “assigning” argument and appears to have given up on this position, it ignores the Board’s rejection of its “selections” argument, choosing to double down on this failed defense. In the POPR, PO argued that “the case advisor’s entry of the treating physician’s name in the system” “is not done ‘in response’ to any ‘selection[] from the administrator’ –

it merely reflects that a particular provider has already seen and begun treating the patient.” Paper 6 at 26. The Board rejected this position, stating that “the evidence of record indicates that a person of ordinary skill in the art ‘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*.’” Paper 9 at 9-10 (*citing* Bergeron Decl. ¶66).

PO attempts to sidestep this holding, making three unavailing arguments instead. First, PO attempts to rely on a claim construction position that “selection” means a “deliberate and active choice by an administrator.” Paper 15 at 15-16. But PO does not brief this construction, nor provide supporting evidence other than a citation to two sentences in the specification. Unfortunately for PO, these two sentences neither use the term “selection” nor discuss any “deliberate and active choice.”

Based on the plain and ordinary meaning of “selections from the administrator,” as the Board held, the inputs of information from the prescription form by the case administrator in Douglas are selections that assign a client to a provider. Unlike PO’s claim construction arguments, this position is supported by the specification of the ’142 Patent, which uses the term “selection” to indicate picking, using, or otherwise making inputs to user interface elements in its system,

like Petitioner has argued. For example, the specification discusses elements of a user interface for selection by the administrator as “selection components” (’142 Patent at 10:45-48) and describes users interacting with the system by “double tapping” as “making ... selections” (*Id.* at 12:19-22). PO’s expert confirmed this use of “selection” in the ’142 Patent. Ardehali at 86:19-23 (“Q: So selection here in ’554 means one of those items selected by a user; correct? ... A: In that context, that’s what it means”), 85:20-87:16, 89:3-15.¹

PO next argues that the entry of information from the prescription form was “selected” by the physician, not the case administrator. Paper 15 at 16-17. However, this ignores the clear teaching of Douglas in which the information is input *by the case administrator*, as the case administrator sets up the patient in the system. Moreover, the patient in the Douglas system is assigned to a physician *in response to* these selections by the case administrator.

Finally, PO alleges that Petitioner points to the same entry of prescription information as both “selections from an administrator” and “assignment ... to one or more providers in response to selections from an administrator” and that this is

¹ PO’s expert agreed that his testimony for the same claim terms of the ’142 Patent and U.S. Patent No. 11,144,554 in IPR2024-00616 apply equally in both proceedings. Ardehali at 156:2-18.

improper because these elements must be separate and distinct. Paper 15 at 17-18.

This argument also falls flat. As discussed above, the Petition maps “selections from an administrator” to the act in Douglas of “the case administrator set[ing] up the patient on Douglas’s system by entering the information contained in the patient prescription form.” Paper 1 at 18-19. *Separately*, Petitioner maps “assignment ... to one or more providers in response to selections from an administrator” to the assignment resulting from such selections. *See Id.* at 18-23.

A. Obviousness

PO’s challenges to Petitioner’s obvious arguments, which are repackaged from the POPR and also rejected by the Board, are a mere regurgitation of its arguments that Douglas does not disclose assignment of a provider “in response to selections from an administrator.” Paper 15 at 19-21. As such, PO’s obviousness challenges should again be rejected by the Board for the reasons above and in the Institution Decision.

III. DOUGLAS DISCLOSES AUTOMATICALLY COMMUNICATING ALERTS

PO repackages another argument from the POPR which was rejected by the Board, this time seemingly taking a contrary position. Although, in the POPR, PO described Douglas as “teaching limiting automatic alarms and notifications only to ‘health risks,’” PO now argues in its Response that the alarm referred to in Douglas is an option, and therefore cannot be automatic. *Compare* Paper 6 at 21 *with* Paper

15 at 21-22. However, the claim limitation of “automatically communicating alerts in response to compiled data varying from one or more of the thresholds to become significant for the client” does not include any language that precludes the alerts from being set up and/or configured as an option before they are automatically communicated. In fact, the ’142 Patent expressly contemplates that its alerts need to be configured before operating as automatic alerts. ’142 Patent at 12:50-51 (“In one embodiment, the *alerts and notifications 228 may be configured* to communicate information”); 13:19-21 (“Certain activities, *once configured, automatically trigger the alerts* and notifications 228 to send out information and request a response.”) Accordingly, the Petition cites to Douglas’s disclosure that the alarm, even as an option, “automatically notifies the physician or case advisor ... if a health risk is present.” Paper 1 at 30-31 (*citing* Douglas at 11:11-15). And PO’s expert confirmed that this satisfies the meaning of automatic in claims 1, 11, and 16. Ardehali at 129:14-21 (“Well, if an alarm is configured or designed or is made to be automatic, it's automatic.”)

IV. CLAIM 3 – WIZARD APPLICATION

For claim 3, PO first attempts to import a negative limitation that “a ‘wizard application’ cannot be an interactive help utility ‘within an application’; it must *be* the application.” Paper 15 at 11-12, 23. In other words, “the purported functionality [of the claimed wizard application] cannot be within an application to satisfy the

claim; it must be the application.” *Id.* at 23 But PO does not stop there. It goes on to argue that a “wizard application” “would require active facilitation of input through sequential or hierarchical prompts.” *Id.* at 12. Nowhere in the claims or specification of the ’142 Patent is this negative limitation of a standalone wizard application or added limitation of an active facilitation through sequential or hierarchical prompts required.

To the contrary, the specification of the ’142 Patent contemplates implementing various functionality using an application, not isolating functionalities into standalone applications, as PO proposes. For example, the process of FIG. 5 which relates to a “process for generating a goal,” “may be implemented by a server, ***application***, device, or combination of communicating elements referred to as a system.” ’142 Patent at 23:5-11 (emphasis added). As such, the ’142 Patent does not limit any given functionality to a standalone application that excludes other functionalities. BergeronSupp at ¶¶9-12.

Undaunted, PO quotes to a section of the ’142 Patent that does not even use the term “wizard application,” but rather “a goal wizard.” ’142 Patent at 12:30-49. Moreover, there is no requirement in this section that the “goal wizard” be “the application” or that it requires “active facilitation” “through sequential or hierarchical prompts.” Rather, PO has fabricated these unsupported claim limitations in an effort to avoid Douglas’s teachings.

As confirmed by PO's expert, aside from the claims, nowhere in the '142 Patent is the term "wizard application" recited. Ardehali at 169:14-23. Instead, the specification of the '142 Patent uses the term "goal wizard" or "wizard." As such, the Petition relies on the plain and ordinary meaning of the term "wizard application" to a POSITA. Paper 1 at 31; Bergeron at ¶92; Bergeron Supp at ¶¶9-12. In this connection, the Petition and Dr. Bergeron consulted the Microsoft definition for "wizard," which means "[a]n interactive help utility within an application that guides the user through each step of a particular task." *Id.*; Microsoft at 573;

In any event, although not required by the claim, Douglas does disclose PO's added limitation, as "the system prompts the physician or case advisor to assign intensity levels 51 corresponding to the patient's diet, exercise, stress management, need for group support, anticipated compliance, and pharmaceutical requirements." Douglas at 7:33-37; Paper 1 at 31-32. Thus, Douglas discloses "active facilitation of input through sequential or hierarchical prompts," as asserted to be required by PO, since the prompting for assigning of multiple intensity levels associated with different categories is an active facilitating of input and includes sequential or hierarchical prompts. BergeronSupp at ¶¶13-14.

V. CLAIMS 4, 14 – WIZARD APPLICATION RECEIVES PROJECTED CLOSURE DATA

For claims 4 and 14, PO argues that Douglas does not disclose a "wizard application" receiving a "projected closure date," relying on a claim construction

that “the word ‘closure’ necessarily requires some kind of end or finality.” Paper 15 at 25. As an initial matter, there is nothing in the claims or specification of the ’142 Patent that would limit “projected closure date” to be the very “end” or “final” date. And, the very evidence that PO relies upon from the ’142 Patent undercuts its position.

Specifically, PO cites to the portion of the ’142 Patent stating that the projected closure date is “utilized to keep users and clients focused on reaching a designated goal in a reasonable period of time” and that “the closure date may be pre-determined (e.g., one year)” or “set annually.” Paper 15 at 24 (*citing* ’142 Patent at 6:31-37). As PO concedes, Petitioner cites to Douglas’s one month goals 61 as the projected closure date. These one month goals clearly are “utilized to keep users and clients focused on reaching a designated goal in a reasonable period of time” as they are used to determine whether the patient is properly progressing according to the plan set forth in Douglas. Likewise, as confirmed by PO’s expert, the goals 61 are of a “predetermined” period (one month) described in the ’142 Patent as a closure date. Ardehali at 175:24-177:20.

VI. CLAIM 6 – INTERVENTION PLANS

PO argues that the “intervention plans” of claim 6 must be “received from the providers utilizing computing or communication devices in communication with the

server” and that the Petition fails to discuss Douglas satisfying this alleged requirement. Paper 15 at 28-29. PO is wrong on both fronts.

First, as confirmed by PO’s expert, claim 1 requires “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.” ’142 Patent at 31:43-46 (emphasis added); Ardehali at 179:19-183:2. According to this language, not all data is received from the providers utilizing computing or communication devices; only “data associated with at least performance of the desired outcomes by each of the clients.” This is confirmed by claim 1’s use of the term “data” in multiple locations, and only requiring the “data associated with at least performance of the desired outcomes” to be received from the providers. Thus, the “intervention plans” of claim 6 need not be “received from the providers utilizing computing or communications devices in communication with the server,” as PO argues.

Second, although not required by claim 6 and contrary to PO’s position, the Petition does state that the “intervention plan” disclosed in Douglas is “received from the providers utilizing computing or communications devices in communication with the server.” As set forth in the cited portions of Douglas in the Petition, the physician can determine whether to modify the program and such modified program (i.e., intervention plan) would be “received from the providers

utilizing computing or communications devices in communication with the server,”
i.e., using PC 500 in communication with server 508. Douglas at 11:1-12:2; FIG.
60; Paper 1 at 28-29; BergeronSupp at ¶¶15-18.

VII. CLAIM 7

Regarding claim 7, PO makes two arguments. First, PO argues that “the Petition does not address the claim’s requirement that there be a determination of whether ‘the data required is received *from each of the providers...*’” Paper 15 at 30 (emphasis in original). Once again, PO is mistaken, as the Petition cites to Limitation 1[e] which maps, as PO’s expert confirmed, the claimed “data” to updated patient data received from the providers in Douglas. Paper 1 at 36, 28 (“Douglas discloses receiving data associated with each patient from the providers, as ‘the system accepts updated patient data ... through data entered by the physician during office visits.’ Douglas at 11:1-5, FIG. 60; *see also* claim 14, FIG. 41; Bergeron at ¶83”); Ardehali at 134:17-135:5.

Further, as PO concedes, Douglas “correlates the patient’s input with the physician’s to check for accuracy” and “provides the physician with reports of patient progress.” Paper 15 at 30 (*quoting* Douglas at 11:1-10). Douglas’s system also “periodically correlates the updated patient health information with program goals to determine the patient’s progress and compliance with the program...” Paper 1 at 36 (*citing to* Limitation 1[e]), 28, 30 (*quoting* Douglas at 11:26-28). As such,

if patient data were missing from the provider, it would not correlate with the patient's input or with the program goals, and thus a determination would have been made in Douglas regarding "whether the data required is received from each of the providers" as required by claim 7.

Second, PO argues that, unlike the '142 Patent, patient data "may," but is not required to be, input by the physician or patient in Douglas. Paper 15 at 31 (*citing* Douglas at 11:2-3). This argument is also misguided and misleading, as PO is *citing* from a portion of Douglas that relates to the input by the physician of "additional data, such as that derived from laboratory tests..." Douglas at 11:2-3. The prior sentence in Douglas, as confirmed by PO's expert, is unequivocal that "the system also accepts additional patient data obtained during office visits or directly from the patient..." *Id.* at 11:1-2; Ardehali at 136:3-139:9.

PO also argues that, even though not required by the claims, Douglas does not disclose a framework or logic for triggering an alert for missing data and that this would not have been obvious. However, as noted above, Douglas discloses the functionality or logic of periodically inspecting and processing the data, which includes the data received from the providers. Paper 1 at 30, 28, 36 (*citing* Douglas at 11:26-28). Any adaptation of this existing functionality or logic is well within the level of skill of a POSITA motivated to ensure completeness of the data to enable detection of threatening or dangerous situations, as discussed in the Petition.

BergeronSupp at ¶¶19-24; Paper 1 at 36; *In re Noll*, 545 F.2d 141, 143–44 (CCPA 1976) (obvious to implement programming of “detailed functioning ... described in the ... specification”); *Fonar Corp. v. General Electric Co.*, 107 F.3d 1543 (Fed. Cir. 1997) (implementing code “is within the skill of the art, not requiring undue experimentation, once its functions have been disclosed.”).

VIII. CLAIM 10 – DATA ASSOCIATED WITH ASSIGNED CLIENTS

PO argues that Douglas fails to disclose the limitation of “prompting the providers to provide data associated with assigned clients” of claim 10, based on a proposed construction that “prompting” requires “guid[ing] the user through completing fields” via, e.g., “a series of probes or questions.” Paper 15 at 34-35. However, PO’s citation to the ’142 Patent actually undercuts its position and, instead, supports the plain and ordinary meaning of “prompting,” which is getting a user to enter data: “the process may begin by prompting a user to enter fields and information for generating a goal, data collection method, and graphing set-up.” *Id.* (citing ’142 Patent at 23:11-23); BergeronSupp at ¶¶25-26.

The remaining portions of PO’s citation to the ’142 Patent contain examples. *Id.* It is black letter law that mere unclaimed “examples” in a specification are not to be read into the claims. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1346–47 (Fed. Cir. 2015); *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571 (Fed. Cir. 1988).

Douglas satisfies the plain and ordinary meaning of “prompting” as it discloses getting a user to “provide data associated with assigned clients.” As discussed in the Petition, Douglas discloses the prompting by displaying “fields for entering patient data ... by providing a space for entering data labeled with the type of data that is to be entered (*see* Douglas at FIG. 4 (fields 46 and 48 for receiving, e.g., “Blood Pressure” data)), Douglas at FIG. 46 (space for entering, e.g., “TOTAL ... CALORIES”).” Paper 1 at 37; BergeronSupp at ¶27.

PO’s further contention that the Petitioner’s read of “prompting” on these aspects of Douglas would render claims 1 and 10 identical in scope is also incorrect. First, the “data associated with assigned clients” of claim 10 is different than the “data associated with the treatment or assistance of each of the clients” of claim 1. Second, Douglas’s fields must first be created (like in claim 1) before they can be displayed for prompting (in claim 10) the “entering [of] patient data ... by providing a space for entering data labeled with the type of data that is to be entered.” BergeronSupp at ¶¶28-29. The fields in Douglas are clearly “prompting the providers to provide data associated with assigned clients” according to the plain and ordinary meaning of claim 10.

IX. CLAIMS 2 AND 11

PO next argues that Petitioner’s positions regarding claims 2 and 11 are contradictory. As an initial matter, claims 2 and 11 are not related by dependency

and thus there can be no inconsistency between the Petition's positions for these claims. Indeed, claim 2 depends from claim 1 and states that "a client management program is executed by the computing or communications device," while independent claim 11 states that the "server includes a processor that executes a client management program."

Moreover, PO misquotes Petitioner's prior art position for claim 2, omitting the portion mapping the client management program executed by computing or communication devices to "a client application like Chitveli's analytics client 140." Paper 1 at 58. The Petition therefore maps the client management program executed by the computing or communication devices in claim 2 to a Chitveli client in a Douglas-Chitveli System, while it maps the claimed server/processor executing the client management program in claim 11 to the Douglas compliance monitoring and feedback system on Douglas' network server. As such, there is no contradiction between Petitioner's positions for claims 2 and 11.

X. CLAIM 11

For claim 11, PO argues that Petitioner never alleges that relational database 522 of Douglas is "in communication" with server 508. In making this argument, PO ignores the citation by Petitioner to Douglas 24:28-37 (Paper 1 at 43), which makes clear that "[t]he servers 510-516 *have access to* one or more relational databases 522 (such as SQL) that contain all the health plan data, including

information input to the journal and schedule book information.” Douglas at 24:28-30 (emphasis added); *see also* Ardehali at 96:25-97:15. Since the inner servers 510-516, which are part of server 508 (*see* Paper 1 at 43-44 referring to Section VIII.A.2(b) (Limitation 1[a]) and FIG. 59 of Douglas), have access to, and ***thus must communicate with***, relational database 522, PO’s argument fails. BergeronSupp at ¶¶30-34.

XI. CLAIM 16

For claim 16, PO alleges that Petitioner sets forth conclusory allegations that a processor within network server 508 of Douglas executes a set of instructions. As PO recognizes, for claim 16, the Petition cites to the discussion of Limitation 11[a], which explains that “Douglas’s system is software and therefore a processor executes the system” and cites to Douglas at 25:22-26, which makes clear that its “system is constructed using the C++ programming language in conjunction with SQL 6.5, Cold Fusion ... Visual Basic ... and HTML.” Paper 1 at 45, 39. Thus, the Petition sufficiently explains that Douglas discloses a processor executing a set of instructions, as its system is constructed using the C++ programming language, which is used to generate the set of instructions, as would be understood by a POSITA. BergeronSupp at ¶¶35-40.

XII. GROUNDS 2 AND 8 – DOUGLAS AND WAGER

A. PO Repeats Argument from Ground 1

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

B. Motivation to Combine Douglas and Wager

PO next argues that a POSITA would not have been motivated to combine Douglas and Wager for Grounds 2 and 8. Tellingly, PO does not address the first motivation to combine discussed in the Petition—that incorporating the interface of Wager would have helped ensure that the assigned physician was equipped with the proper skill set to treat the patient. Paper 1 at 51. This reason was recognized by the Board and remains a strong motivation to modify Douglas in view of Wager. Paper 9 at 19.

Rather, PO first repackages the second argument from the POPR that Fig. 57 of Douglas fails to provide evidence that the patients are not evenly distributed. However, as confirmed by PO’s expert, Fig. 57 clearly shows that different physicians in the same specialty have different caseloads. Ardehali at 108:20-110:3. Thus, Douglas’s Fig. 57 supports the second motivation to combine Douglas and Wager set forth in the Petition—to help ensure a physician has the capacity to treat a patient and is not overloaded. Paper 1 at 51-52. Moreover, the Petition also cites

to other evidence in support—Wager’s discussion of the need to properly balance caseloads. *See Id.* (discussing Wager’s teaching of “manag[ing] against fluctuating clinical demands”); Ardehali at 110:14-112:6.

PO’s second argument is a repeat of its first argument from the POPR that Wager’s system is redundant of the assignment process in Douglas because a patient in Douglas is subscribed to the system after they have selected and seen their physician. The Board rejected this position because “[e]ven if a patient already saw a physician, the evidence of record indicates that Wager’s interface would have improved Douglas’s system by allowing the case administrator to assign a physician that has the appropriate skills and capacity to treat the patient.” Paper 9 at 18. For this reason and the reasons set forth above in Section II, the Wager interface may be used to assign a patient to a provider, and is thus not redundant of Douglas. Wager’s interface is also not redundant because it would have facilitated reassignments in situations, as confirmed by PO’s expert, where they become necessary and/or are beneficial. BergeronSupp at ¶¶41-47; Ardehali at 113:9-115:4.

PO’s third, fourth, and fifth challenges, which repackage and amplify the third, fourth, and sixth arguments from the POPR, all argue that there is no motivation to combine Douglas and Wager because of harm to a patient due to a disruption in the continuity of care. However, as already discussed, the proposed combination of Douglas and Wager does not require forcibly reassigning patients

against their will—nowhere in the Petition is this suggested, or any combination proposed that would result in this. BergeronSupp at ¶¶48-49. Instead, a POSITA operating the combined Douglas-Wager system would not have used it in this way. Instead, as discussed above and in the Petition, the incorporated interface of Wager provides a way to effectively assign and reassign patients according to the patient’s desires and to provide improved care for the patient. Paper 1 at 47-53.

Moreover, as the Board held, “even if Patent Owner is correct that Petitioner’s proposed combination would involve some tradeoff, the evidence of record indicates that the benefits gained outweigh any benefits potentially lost.” Paper 9 at 19. This is especially true when considering that Petitioner does not even propose forced or unwanted assignments or reassignments, as discussed above.

PO’s final argument is yet another recycle from the POPR (fifth argument) that Douglas teaches against accomplishing goals in an in-person setting like Wager. The Board also rejected this argument stating “Petitioner does not propose combining Douglas and Wager so that Douglas’s system is limited to in-person use. *See* Pet. 47-52. Rather, as discussed above, Petitioner only proposes modifying Douglas’s system to include Wager’s electronic workforce management interface.” *Id.* at 20. Moreover, as confirmed by PO’s expert, “Douglas teaches alternatives to remote monitoring, including in-person visits.” Douglas at 11:1-2; Ardehali at 118:10-119:6.

XIII. CHITIVELI IS A PRINTED PUBLICATION UNDER CURRENT LAW

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

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

PO’s next posits that there is no motivation to combine Douglas and Koh. First, PO argues that Douglas and Koh address “distinct and unrelated problem-solution frameworks” with Douglas focused on “individualized compliance tracking” and Koh focused on “applications for aggregated organizational data... .” Paper 15 at 52. This position, however, improperly treats the references individually and ignores the details of the combination of Douglas and Koh in the Petition.

For example, the Petition quotes the portion of Douglas that recommends a default set of goals based on a patients needs, which can then be modified by a provider in a therapeutic program throughout the patient’s treatment. Paper 1 at 62. The Petition goes on to state that Douglas does not explicitly disclose how those

initial default recommendations are made. *Id.* But Douglas’s system, as confirmed by PO’s expert, generates a copious amount of patient health data and Koh states that data mining can be used to “identify[] effective treatments and best practices” to benefit “healthcare providers.” *Id.* at 61-62 (*quoting* Koh at 65); Ardehali at 147:14-150:5. Thus, there is clear motivation to combine Douglas and Koh so that Douglas’s copious data is mined based on Koh’s teachings. Paper 1 at 61-65.

PO goes on to argue that Douglas and Koh are not interoperable. Paper 15 at 53-54. However, contrary to PO’s assertion, as discussed above, the use of the data mined best practices in Koh in the proposed Douglas-Koh System provides a default set of therapeutic programs and goals, which can then be customized as discussed in Douglas. Therefore, Douglas and Koh fit well together.

PO’s final argument is that the Douglas-Koh System does not satisfy the limitation of Claims 5, 12, or 13 because Petitioner does not allege and Koh does not disclose “deriving actionable insights specific to individual clients.” *Id.* at 55-57. As confirmed by PO’s expert, this allegedly missing association is explicitly addressed in the Petition and Bergeron Declaration. *See* Paper 1 at 63-64; Bergeron at ¶172 (“In the Douglas-Koh System, data mining would be used to identify ... *a therapeutic plan for a patient...*”) (emphasis added); Ardehali at 153:16-155:25. That plan, associated with that patient, would accordingly be “recommended” to that provider. *Id.*

XV. VIRGINIA IS ANALOGOUS PRIOR ART

Contrary to PO's arguments, Virginia is analogous art. First, Virginia is from the same field of endeavor as the '142 Patent. As the Board held, and as discussed in the Petition and conceded by PO and its expert, the '142 Patent is directed to "tracking goal progression" for "organizations and institutions that help individuals with disabilities and significant emotional or behavioral challenges," such as "individuals with ... autism, ... mental disorders, behavioral problems," and can be used for "educational instruction." Paper 1 at 69, '142 Patent at Abstract, 1:12-26, 4:26-32; Paper 15 at 5-6; Ardehali at 183:3-186:5. The '142 Patent also discloses data tracking and graphing using a "minimum growth line [as] a reference point against which ongoing data ratings are compared to assess status and level of progress." '142 Patent at 6:48-50.

Virginia substantially overlaps with this field of endeavor of the '142 Patent. As discussed in the Petition, and as confirmed by PO's expert, Virginia is a guide to transitioning students with autism to adulthood using an individualized plan, having measurable educational goals, and assessing progress towards those goals using an "evidence-based teaching strategy" involving "collect[ing] data in order to either verify the success of the instructional strategy or decide to revise the strategy." Paper 1 at 67-69; Virginia at 27; Ardehali at 195:17-202:18. As part of this approach, again as confirmed by PO's expert, Virginia includes a substantial discussion of

using a “minimum growth line” against which performance can be compared and the strategy potentially revised as a result. Paper 1 at 67-69; Virginia at 27-28; Ardehali at 202:19-204:17. Virginia thus overlaps with the field of endeavor of the ’142 Patent at least with respect to tracking progress towards goals, doing so for individuals with disabilities such as autism using evidence based mathematical assessments of progress such as a minimum growth line, and doing so in the context of educational instruction. BergeronSupp at ¶¶50-54.

In an effort to exclude Virginia from the field of endeavor, PO’s proposed field of endeavor too narrowly focusses on “technology-driven systems,” “sophisticated software platforms,” and “data intelligence,” and ignores large areas of subject matter addressed in the ’142 Patent. For example, PO ignores the ’142 Patent’s substantial discussion of tracking goal progression in the context of individuals with disabilities such as autism and other conditions, the use of minimum growth lines to measure progress towards goals, and the application of its purported invention to education. BergeronSupp at ¶55; *Netflix, Inc. v. DivX, LLC*, 80 F. 4th 1352, 1359 (Fed. Cir. 2023) (the “field of endeavor is ‘not limited to the specific point of novelty, the narrowest possible conception of the field, or the particular focus within a given field.’”)

Second, although it is only necessary to satisfy one of the tests for analogous art, Virginia also satisfies the second test, as it is reasonably pertinent to the problem

addressed by the '142 Patent—“how to assess an individual’s progress toward a goal.” Paper 1 at 69. In fact, PO admits this by describing the problem addressed by the '142 Patent as “how to efficiently track, analyze, and manage goal progression to improve outcomes for clients in behavioral health settings.” Paper 15 at 60. This problem is not exclusive to technology, as PO argues, but a problem fundamental to goal tracking. Thus, since the inventors of the '142 Patent were concerned with solving problems related to tracking goal progression in behavioral health settings, such as for individuals with autism, they would have logically looked to Virginia regarding tracking goal progression for individuals with autism. BergeronSupp at ¶56.

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

PO argues that it is unclear how Wager’s visual interface of Ground 2 would have been incorporated into the Douglas-Chitiveli combination of Ground 4. Tellingly, PO does not dispute that the Douglas-Chitiveli System is sufficiently disclosed for Ground 3 regarding the implementation of Douglas using a cloud and client architecture of Chitiveli. And Ground 4 simply takes the Douglas-Wager System of Ground 2 and adds Chitiveli to Douglas in the same way recited for Ground 3. BergeronSupp at ¶¶57-62. The Douglas-Wager System of Ground 2 remains unchanged in Ground 4, and, thus, there is no need to repeat the discussion of the Douglas-Wager System for Ground 4.

Similarly, PO argues that Ground 6 is insufficiently disclosed because Petitioner fails to mention Wager or how Wager's interface would interact with Koh's data mining and that Ground 8 is insufficiently disclosed because Petitioner fails to mention how Virginia's disclosure regarding autism treatment frameworks would integrate with Wager's interface. Petitioner is simply taking the Douglas-Wager System of Ground 2 and adding Koh for Ground 6 and Virginia for Ground 8 in the same way that Douglas is modified by Koh in Ground 5 and by Virginia in Ground 7, respectively. For Ground 6, the Wager assignment interface and the Koh data mining do not interact, and for Ground 8, the Wager assignment interface and the Virginia autism treatment frameworks do not interact. Thus, there is no need to repeat the descriptions for the Douglas-Koh System of Ground 5 for Ground 6 and the Douglas-Virginia System of Ground 7 for Ground 8, particularly since PO does not dispute that Ground 5 and 7 are sufficiently disclosed. BergeronSupp at ¶¶63-66.

XVII. CONCLUSION

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

Dated: March 28, 2025

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

CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(a)(i), the undersigned certifies that this Paper—exclusive of the table of contents, certificate of service, and this certificate of word count—includes 5,599 words.

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

CERTIFICATE OF SERVICE

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

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

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

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