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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TELADOC HEALTH, INC.,

PETITIONER,

V.

DATA HEALTH PARTNERS, INC.,

PATENT OWNER.

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

PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY

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I. ARGUMENT

A. All Grounds: Petitioner fails to provide evidence of "assign[/ing] the client to one or more of providers in response to selections from the administrator, wherein the one or more providers include at least individuals available to treat or assist the client" (all claims)

Petitioner still fails to identify where Douglas discloses assigning clients to providers ***in response to*** selections from the administrator. (*See* POR, 16-19.) Boiled down, Petitioner's arguments are as follows: (1) "assignment" of the client to a provider is satisfied by the administrator's "entering the patient prescription form" into Douglas's system; and (2) the inputs of information from the prescription form (e.g., by "double tapping") by the case administrator are the claimed "selections." (Petition, 19-20; Reply, 2-3.) But if the entry of the patient prescription form by the administrator into Douglas's system is both "assigning" and "selecting," one cannot be done "in response to" the other as the claims require.

Again, this argument defies both reason and established Federal Circuit case law, which Petitioner ignores altogether. (*See* POR, 17-19; Reply, 3-4.) Instead, Petitioner insists that the Petition maps "'selections from an administrator' to the act in Douglas of 'the case administrator set[ing] [sic] up the patient on Douglas's system by entering the information contained in the patient prescription form'" and then "[***s***]***eparately*** . . . maps 'assignment . . . to one or more providers in response

to selections from an administrator' to the assignment resulting from such selections." (Reply, 4 (citing Petition, 18-23) (emphasis in original).) But this is false and notably not a quotation to any portion of the Petition. There is no independent "assignment resulting from such selections" identified in either Douglas or the Petition.

Indeed, the Petition expressly identifies the "assignment" as the same entry of the patient prescription form, stating that "a POSITA would have understood Douglas's disclosure of the administrator ***entering this patient-physician information from the patient prescription form to be disclosure of the administrator's assignment of the patient to the physician within Douglas's system***." (Petition, 19-20 (emphasis added).) Petitioner cannot now run from its Petition to improperly and belatedly attempt to distinguish between "selections" and "assignment," particularly when there is nothing it could point to in Douglas as any separate or independent assignment, anyway.

Further, Petitioner's argument ignores the fact that the "prescription form" identified in Figure 2 merely represents a paper form that does not, itself, allow the administrator to make any "selection," even if "double tapping" could be found to be a "selection." (Douglas, Fig. 2 ("FAX THIS FORM TO SALUS MEDIA"); *see also id.*, 6:36-10 (describing the physician "***circling*** the appropriate response in field 30" and "***circles or fills in*** desired 3-month targets") (emphasis added).)

Douglas generally discloses that the case administrator "sets up a new patient based on information" in the prescription form but does not describe that process or identify any fields allowing an administrator to make any "selection" other than to generally show patient folders in Figure 3. (*See id.*, Fig. 3, 7:11-16.)[1]

In sum, this argument is more than a hindsight stretch of Douglas's disclosure; it is a distortion of it. Petitioner must convince the Board to agree not only that Douglas's administrator's entry of the paper prescription form filled out by a physician is "assignment" of a physician (ignoring the plain language of that term), that such entry—which is not actually described in Douglas—is also "selections" (ignoring the plain language of that term), and, critically, that Petitioner can point to the same act for both limitations despite established Federal Circuit case law prohibiting doing so, as well as the claim language requiring one to be done "in response to" the other. The Petition fails here.

[1] Petitioner relies on an obviousness argument to transform Douglas's paper prescription form into graphical user interface components, which Patent Owner rebutted. *See* Petition, 20-23. POR, 19-21. Petitioner does not substantively address Patent Owner's rebuttal. *See* Reply, 4.

B. Grounds 1 and 2: Douglas does not disclose a "wizard application" or a "projected closure date" (claims 3, 4, and 14)

In the POR, Patent Owner argued that the words "wizard" and "application" should mean something within the context of the claims and that Petitioner's theory strips both words of their plain and ordinary meaning. POR, 22-25.

Petitioner's citation of the specification's discussion of a "process for generating a goal" is inapposite. Reply, 6. The fact that the specification envisions that some functionality may be performed by things that are not "applications" says nothing about what qualifies as a "wizard application"; here, the patentee specifically used the term "wizard application," not "wizard." *See* POR, 22-25. For this reason, Petitioner's reliance on the dictionary's description of the term "wizard" as being "within an application" is similarly misplaced. (*See id.*)

Petitioner also offers a new declaration from its expert to support its position that, even if active facilitation of input through sequential or hierarchical prompts is required, Douglas still discloses a "wizard application" because it discusses that physicians should be "prompt[ed]" to assign intensity levels. (Reply, 7.) But the passage cited by Petitioner describes, at most, one discrete prompt, not a "wizard" and not an "application," and certainly not a "wizard application" under a plain and ordinary meaning of that term. (*See* POR, 24-25.) As described in the POR, Figures 4-6 merely allow users to navigate freely between goal management

features for entry of data. (*See id.*) This does not satisfy the requirements of claims 3, 4, or 14.

Additionally, Petitioner argues that Douglas's "one month goals 61" function as "projected closure dates" because they "are used to determine whether the patient is properly progressing." Reply at 8. But Petitioner's interpretation twists the claim language beyond recognition, so far past its plain and ordinary meaning that virtually any date would qualify. (*See* Reply, 7-8.) Petitioner tries to run from the specification's express description of a "projected closure date" as "the date at which the goal will end" because Douglas's one-month goals are indisputably not the dates at which the goals will end. (*Id.* (citing Ex. 1001, 6:30-31.)) But even Petitioner's expert conceded that the one month goals are *intermediate goals*, not the date the goals would end. (Ex. 2006, 49:1–6.) Whether or not one-month goals are "predetermined" cannot transform them into the claimed "projected closure date." (*See* Reply, 8.)[2]

[2] Petitioner misrepresents Dr. Ardehali's testimony throughout its Reply—here, it says he confirms that the '142 patent describes that "closure dates" are "predetermined." (Reply, 8.) While Dr. Ardehali acknowledged a projected closure date ***may be*** "predetermined," he did not agree that is how the '142 patent defines "closure date." (Ex. 1024, 176:10-177:20.)

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

Petitioner's read of claim 6's "data" is contrary to the express language of the claims. Specifically, "the data" in claim 6 refers back to claim 1's "data" that is "associated with at least performance of the desired outcomes" and is "received from the providers utilizing computing or communications devices in communication with the server." Claim 6 specifies that the "data associated with at least performance of the desired outcomes" includes "at least intervention plans, desired outcomes and objectives, recorded activities, and general notes."

In other words, claim 6 narrows claim 1's "data associated with at least performance of the desired outcomes" to data that includes "at least intervention plans, desired outcomes and objectives, recorded activities, and general notes." Petitioner tries to silo claim 6's "data" from the requirements for "data" in claim 1, but it cannot because the former is merely a narrowed version of the latter.[3] And

[3] The cited portions of Dr. Ardehali's deposition transcript—again—do not support Petitioner's view; Dr. Ardehali's testimony does not even relate to claim 6, and he merely acknowledged claim 1's requirement that "data associated with at least

there is no dispute that the "data associated with at least performance of the desired outcomes" must be "received from the providers utilizing computing or communications devices in communication with the server" as specified in claim 1. (Reply, 9 ("[N]ot 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.'").)

Petitioner then—inexplicably—says that "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," citing to pages 28 and 29 of the Petition. (Reply, 9-10.) But this is false. The "intervention plan" identified in the Petition as satisfying claim 6's requirement are "positive interventions," "[e]xercise and stress management programs," and "negative interventions" (such as "notify[ing] the physician . . . that . . . goals are not being met.") (Petition, 34.) Those are not the same "updated patient data . . . through data entered by the physician during office visits" that Petitioner cites on pages 28 and 29 as being "received from a provider utilizing computing or communications

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performance of the desired outcomes" must be "received from the providers utilizing computing or communications devices in communication with the server." (*See* Ex. 1024, 179:19-183:2.)

devices in communication with the server." (Petition, 28 (describing FIGs. 40-45 . . . which depict various aspects of patient data collected over time, including, e.g., blood pressure, smoking activity, and physical activity").) And, as stated in the POR, there is no indication in Douglas that the "points for good participation in the program," "exercise and stress management programs," or "notifications sent ***to*** physicians" identified as "intervention plans" are received ***from*** physicians utilizing computing or communications devices in communication with the server." (POR, 29.)

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

Petitioner's Reply sidesteps the central issues Patent Owner raised concerning claim 7. Faced with clear and specific arguments that Douglas neither discloses nor suggests (1) determining whether the required data is received ***from each provider***, nor (2) sending alerts based on a finding of missing data, Petitioner gestures vaguely at Douglas's disclosure of acceptance of updated data ***from the patient***—without ever bridging the conceptual or evidentiary gap required to establish the claimed "determination" and data-specific "alerts." (Reply, 10-12.) That is because it cannot; Douglas simply does not teach or suggest what the claims require.

For example, alleging that Douglas discloses "receiving data associated with each patient from the providers" does not establish whether it discloses "***determining*** whether the data required is received from ***each of the providers***." (Reply, 10 (emphasis added).) Petitioner also ignores the permissive nature of even that cited disclosure in Douglas, which makes clear that the system "***accepts***" additional patient data and that the physician "***may***" input additional data into the system. (Douglas, 11:1-5 (emphasis added).) Receiving updated patient data is permitted, but not required. *See id.* Petitioner points to nothing in Douglas that suggests otherwise.

Petitioner also suggests that because Douglas "correlates the patient's input with the physician's to check for accuracy" and "provides the physician with reports of patient progress," the system must necessarily determine whether required data is missing. (Reply, 10-11.) But that inference stretches Douglas beyond its disclosure. The fact that Douglas compares ***available*** data for accuracy does not mean it makes any determination about whether all required data has been received from each provider. Indeed, Douglas offers no indication that it tracks provider-specific data completeness, nor that it triggers alerts in response to missing entries—let alone alerts targeted to individual providers based on such determinations. (POR, 29-34.) And as made clear in the POR, Petitioner's attempt to overcome this failure with conclusory expert testimony that merely tracks the

Petition with no support is unavailing. (POR, 32-33; *Xerox Corp. v. Bytemark, Inc.*, IPR2022-00624, Paper 9 at 15 (PTAB Aug. 24, 2022) (precedential) (denying institution where the expert's declaration "merely repeats, verbatim, the conclusory assertion for which it is offered to support" and "does not cite to any additional supporting evidence or provide any technical reasoning to support his statement. Thus, the cited declaration testimony is conclusory and unsupported, adds little to the conclusory assertion for which it is offered to support, and is entitled to little weight.").)

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

Petitioner does not dispute that the specification's discussion of "prompting" is relevant to analysis of this claim limitation. (Reply, 12.) Instead, it argues that the specification support's Petitioner's view that "prompting" just means "getting a user to enter data," ignoring what the specification actually discloses. (*Id.*) And then Petitioner says that Douglas "get[s] a user to 'provide data associated with assigned clients'" by displaying fields for entering patient data. (*Id.*, 12-13.)

But the word "prompting" must provide some meaning to the claim. *See Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) ("[C]laims are interpreted with an eye toward giving effect to all terms in the claim."). The specification provides examples (i.e., "a series of probes or questions") of things

that might "prompt" a user to complete fields to provide information. (Ex. 1001, 23:11-23.) The Petition identifies nothing in Douglas that could be fairly described as "prompting" providers to provide data associated with clients. In fact, even under Petitioner's view of the term—that "prompting" merely means getting a user to provide data—Petitioner does not say what Douglas does to "get" users to provide data beyond merely including data fields. (Reply, 12-13.)

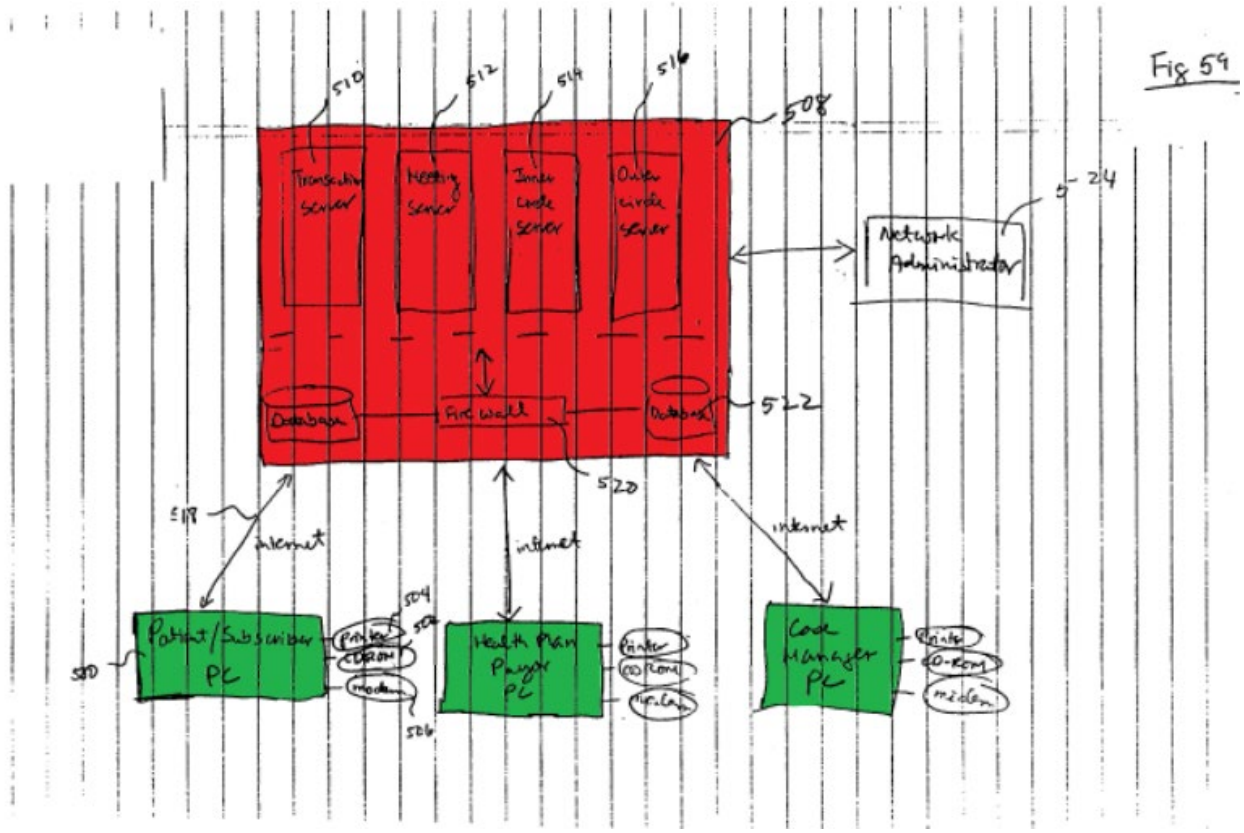
Lastly, Petitioner's attempt to shore up the Petition to add a new obviousness argument via its expert's supplemental declaration is improper. (Reply, 11-12.) *See Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016) ("It is of the utmost importance that petitioners in the IPR proceedings adhere to the requirement that the initial petition identify 'with particularity' the 'evidence that supports the grounds for the challenge to each claim.

F. All Grounds: Petitioner's Inconsistent Allegations for Claims 2 and 11

Claims 2 and 11 each require that the client management program is executed by different devices: claim 2 requires that the "client management program is executed by the computing or communications devices," whereas claim 11 requires that a "server includes a processor that executes a client management program." (Ex. 1001, claims 2, 11.) Petitioner's challenges to both claims 2 and 11 both rely upon Douglas, for which Petitioner alleges that "[a] POSITA would have understood that Douglas's compliance monitoring and feedback system resided on

Douglas's network server 508 and so did the processor that executed it." (Petition, 40.)

However, Petitioners allege that in the Douglas-Chitiveli System, "a client management program is executed by the computing or communications devices" because Douglas's "PCs 500 [green] used by physicians to transmit patient data to the network server [red] … would have done so using a client application like Chitveli's [sic] analytics client 140," where "[s]uch client applications are client management programs," as shown in Douglas's Figure 59, below (Petition, 58.) Not so.



As shown in Chitiveli's Figure 1, below, Chitiveli, like Douglas, discloses a server (red) that executes its program—the content analytics tool (blue)—and the analytics client yellow) contained on the client computer system (green) merely communicates to the content analytics tool on Chitiveli's server through the cloud network 120. (*See* Ex. 1004, [0035]-[0037], [0043] (client computer system executes only the analytics client or web browser used to log in, whereas actual functions of the program, including the analytical processing, generating of reports on the analyzed data to monitor progress on issues, and dynamically generating reports as new data is provided, is performed by the content analysis tool 110, which resides on the server).)

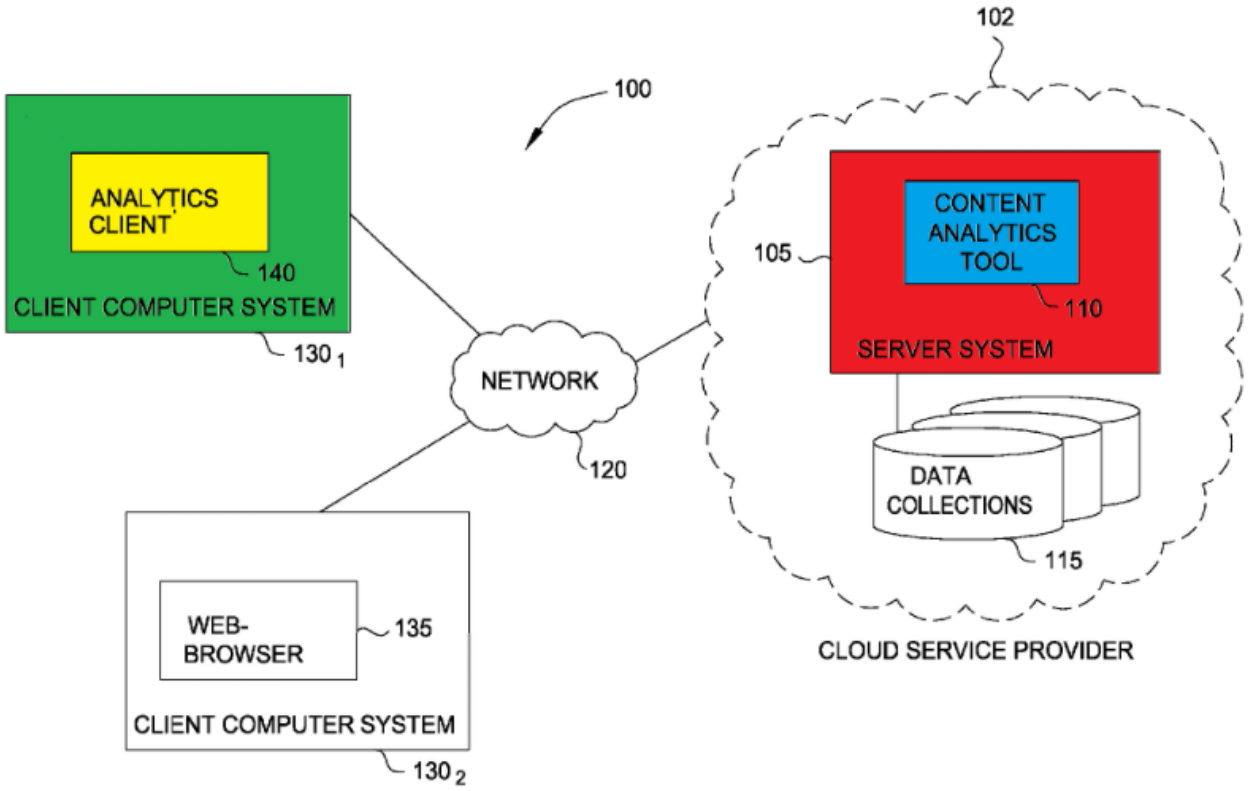


FIG. 1

Thus, Petitioner's reliance on Douglas's combination with Chitiveli does nothing to remove the execution of the claimed client management program from the server, as Petitioner alleges is the case for Douglas. In sum, Petitioner cannot be right that Douglas and the similarly-functioning Douglas/Chitiveli combination discloses execution of the client management program on both the server as claim 2 requires and on the computing or communication devices as claim 11 requires.

Additionally, Petitioner's argument on Reply that its arguments are not inconsistent because claims 2 and 11 are not related by dependency misses the point. The disclosures of Douglas and Chitiveli are not impacted by the language

of claims 2 and 11, and the Board has consistently refused to credit arguments that inconsistently map the elements of the prior art to different claim elements. *See ZTE (USA) Inc. v. Fundamental Innovation Sys. Int'l LLC*, IPR2018-00274, Paper 34 at 17 (PTAB Aug. 29, 2018) (holding that "Petitioner fails to establish that the [claimed] combination renders obvious" a claim limitation "because, *inter alia*, the combination deviates from standard USB signaling, thus contradicting Petitioner's reasoning" elsewhere in the Petition); *Apple Inc. v. Zentian Ltd.*, IPR2023-00037, Paper 34 at 31 (PTAB June 11, 2024) (finding no challenged claims unpatentable where Petitioner's contention "that to perform speech recognition, the processors in each cluster would not need to access the memories of the other clusters" "is inconsistent with Petitioner's contention that '[o]nce the cumulative probability score is calculated, inter-cluster processing of the results for each tree search would be communicated.'"); *see also Ultratec, Inc. v. CaptionCall, LLC*, 872 F.3d 1267, 1272–73 (Fed. Cir. 2017) (noting that it would "be in the interest of justice to consider sworn inconsistent testimony on the identical issue," which "would be highly relevant to both the Board's analysis of the specific issues on which [the expert] gave inconsistent testimony and to the Board's overall view of his credibility.").

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

The law is clear than an "IPR petition[] must provide an understandable explanation of the element-by-element specifics of the patentability challenges, including the identification of particular portions of prior art on which the petitioner is relying." *Corephotonics, Ltd. v. Apple Inc.*, 84 F.4th 990, 1001–02 (Fed. Cir. 2023).

Although claim 11 requires "a database in communication with the server," the Petition merely alleged "that network server 508 ***includes*** 'one or more relational databases 522,'" but never alleges that network server 508's inclusion of relational database 522 requires that database 522 is "***in communication***" with server 508. (Petition, 40-41 (citing Bergeron, ¶110), 43.) On Reply, Petitioner relies on an unexplained citation to Douglas 24:28-37, which states that "[t]he servers 510-516 have access to one or more relational databases 522." Petitioner's argument fails for at least two reasons.

First, a server having access to a database does not mean it actually communicates with that database as claim 13 requires, and the Petition provided no evidence to the contrary. ***Second***, Petitioner's attempt to provide this evidence on Reply is improper and should be stricken, as "the expedited nature of IPRs bring with it an obligation for petitioners to make their case in their petition to institute,"

such that Petitioners cannot "cure the petition's deficiencies in its subsequent briefing to the Board." *Wasica Fin. GmbH v. Cont'l Auto. Sys., Inc.*, 853 F.3d 1272, 1286 (Fed. Cir. 2017) (quoting *Intelligent Bio-Sys.*, 821 F.3d at 1369.)

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

Although Claim 16 requires "a processor for executing a set of instructions," Petitioner failed to provide *any* explanation as to why Douglas allegedly "discloses or renders obvious a processor within network server 508 for executing a set of instructions for implementing Douglas's system." (Petition, 45.) Instead, on Reply, Petitioner relies on its citation to its discussion of Limitation 11[a]—which notably says nothing about "a processor for executing a set of instructions"—and that discussion's citation to Douglas, 25:22-26 as support for the statement that "Douglas's system is software and therefore a processor executes the system." (Reply, 15.) From this citation, Petitioner now asks the Board to credit a new argument not contained in the Petition—that this citation to Douglas also "makes clear that its 'system is constructed using the C++ programming language'" such 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." (*Id.*) This could not be further from the "understandable explanation of the element-by-element specifics

of the patentability challenges, including the identification of particular portions of prior art on which the petitioner is relying," that the Petition requires. *Corephotonics*, 84 F.4th at 1001–02. Indeed, the Federal Circuit has held that "the Board is not permitted to entertain '[s]hifting arguments' but must, instead, reject any 'entirely new theory of *prima facie* obviousness absent from the petition,' if the petitioner attempts to inject such a theory into the proceeding post-petition." (*Id.*, 1002 (quotation omitted).)

Even worse, Petitioner for the first time attempts to support this knowledge of a POSA with a supplemental declaration. (*Id.* (citing BergeronSupp at ¶¶35-40).) This is the epitome of impermissible new evidence submitted on Reply for the purpose of establishing the prima facie case Petitioners were required to have made in the Petition. *See* U.S. Patent Trial and Appeal Board, Consolidated Trial Practice Guide, 73-75 (Nov. 2019) ("***Petitioner may not submit new evidence or argument in reply*** that it could have presented earlier, e.g. ***to make out a prima facie case of unpatentability***. … Examples of ***indications that a new issue has been raised in a reply include new evidence necessary to make out a prima facie case*** for the patentability or unpatentability of an original or proposed substitute claim, such as newly raised rationale to combine the prior art references that was not expressed in the petition) (emphasis added); *see Intelligent Bio-Sys.*, 821 F.3d at 1369–70 (holding that the Board did not err in refusing the reply brief as

improper under 37 C.F.R. § 42.23(b) because petitioner relied on an entirely new rationale to explain why one of skill in the art would have combined the references at issue). It is also ***improper for a reply to present new evidence (including new expert testimony) that could have been presented in a prior filing, for example newly cited prior art references intended to "gap-fill" by teaching a claim element that was not present in the prior art presented with the petition***."). As such, the Board should not consider this evidence and Patent Owner requests that it be stricken from the record and from the Reply. *See Intelligent Bio-Sys.*, 821 F.3d at 1369 ("Once the Board identifies new issues presented for the first time in reply, neither this court nor the Board must parse the reply brief to determine which, if any, parts of that brief are responsive and which are improper. As the Board noted, 'it will not attempt to sort proper from improper portions of the reply.'" (quotation omitted).)

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

Petitioner claims that PO has not addressed its argument that "incorporating the interface of Wager [into Douglas] would have helped ensure that the assigned physician was equipped with the proper skill set to treat the patient." (Reply, 16.) Not so. Petitioner ignores the fact that in support of this argument, it alleged that the purpose of this incorporation was to "make appropriate provider-to-patient assignments." (Petition, 54.) But as the POR discussed in detail, a POSA utilizing

Douglas would have been subscribed into the system by their own physician, and so would not need or desire further provider assignments. (POR, 41-50.)

Petitioner then doubles down on its argument that Douglas's "Fig. 57 clearly shows that different physicians in the same specialty have different caseloads" such that Wager would "help ensure a physician has the capacity to treat a patient and is not overloaded," despite the fact that Petitioner's own expert admitted this is factually incorrect. (Reply, 16.) Petitioner falsely claims that its argument about Douglas's Figure 57 is "confirmed by PO's expert," but Petitioner's citation to Dr. Ardehali's deposition transcript never mentions Douglas, much less its paragraph 57. (Reply, 17 (citing Ex. 1024, 110:14-112:6).) Yet in another portion of his deposition, Dr. Ardehali reiterates what Petitioner's own expert stated: Douglas's Figure 57 says nothing about a physician's total caseloads, but only that the two listed cardiologists have different year-to-date (not current) coronary artery disease cases—without providing any information about the physician's total caseloads, much less current caseloads, and so say nothing about any physician being overloaded. As the POR discusses, Petitioner's own expert confirmed the inaccuracy of Petitioner's Reply. (Ex. 2006, 63:14-64:11; POR, 41-44.)

Petitioner then continues to ignore the evidence that a POSA would not have looked to the "automatically generated" assignments of Wager to fill any patient provider need, but would have instead looked to the personalized referrals

provided by a patient's primary care provider. (Ex. 2003, 7 ("GPs are key to the future…because they are trusted by their patients….trust reinforced through continuity of care directly improves healthcare outcomes. In order to deliver effective primary care GPs need to be expert generalists. Each consultation has exceptional power to manage healthcare costs, for example when the effective management of disease risk is negotiated, and when prescribing and **referral decisions** are made….They also manage the uncertainty inherent in the early presentation of health problems by arranging expectant care. In addition, GPs act as gatekeepers for the patients' entry into more specialised care, using their expertise to direct patients to where they will receive the most benefit at the right time. GPs understand the complex set of circumstances that accompany individuals and their healthcare history. It is through their professional training and a relationship built on trust and continuity that GPs act as gatekeepers to other NHS services. This saves the NHS money by preventing wasted out-patient assessments, unnecessary investigations and hospital admissions.") (citation omitted).

Petitioner finally argues, without support, that Douglas/Wager "automatically generated" assignments would have had the advantage of "prompt care," but the evidence shows the opposite to be true. (*See* Ex. 2003, 17 ("There may also be a problem when many doctors are involved. Those without a continuing relationship with a patient may assume that the usual doctor knows

about, and will deal with, aspects of long-term care, when in fact no one takes responsibility for any action until it becomes urgent. This has been called the Collusion of Anonymity and it still causes deaths."), 19 ("Her GP…sent photographs of the rash with the ***referral letter*** *and,* ***on the strength of that****, Catherine was* ***seen urgently*** by a dermatologist.") (emphasis added).)

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

When pressed to identify a specific reason why a POSA would combine Douglas with Koh, Petitioner's Reply still only points generically to the patient health data generated by Douglas's system and Koh's aspirational statements that data mining could be developed to identify effective treatments and best practices, without specifying how. (Reply, 19-20 (quoting Koh, 65); *see also* Koh, 66 ("There is vast ***potential*** for data mining applications in healthcare."); *see id.* ("Data mining applications ***can be developed*** to evaluate the effectiveness of medical treatments."); *see id.* ("To aid healthcare management, data mining applications ***can be developed*** to better identify and track chronic disease states and high risk patients, design appropriate interventions, and reduce the number of hospital admissions and claims.") (emphasis added).) Petitioner then summarily concludes that "there is clear motivation to combine Douglas and Koh so that Douglas's copious data is mined based on Koh's teachings." (*Id.*) But motivation

to combine requires an articulated explanation with a rational underpinning. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Petitioner provides neither.

Petitioner also does not identify any "teachings" from Koh that provide the limitations that Petitioner claims it supplies. Koh's generic references to data mining applications do not disclose any particular methods or motivations for individualized feedback or integration into a compliance system such as Douglas's. (*See* Koh, 65-66.) Petitioner accuses Patent Owner of ignoring the "details of the combination of Douglas and Koh in the Petition" but then does not identify any such details. (Reply, 19.) Indeed, the proposed "Douglas-Koh system" described in the Petition is just Douglas, modified to generically use data mining to perform the limitations of claims 5, 12, 13, and 18. (*See* Petition, 63-64.) There are no specific features, details, or aspects of Koh that are incorporated into the proposed "system"—it is merely a functional rewriting of Douglas with the benefit of hindsight.

Petitioner waves away the failure of proof arguments made in the POR that detail the deficiencies in Petitioner's proof for claims 5, 12, and 13 and wholly fails to respond to Patent Owner's argument regarding claim 18. (Reply, 20.) Petitioner's assertion in the Petition that data mining would be used to "identify . . . a therapeutic plan for a patient comes nowhere close to alleging—much less establishing—that Douglas discloses "recommending the best practices to

providers ***in response to*** the best practices being associated with a client assigned to the providers." (Ex. 1001, cl. 5 (emphasis added).) Petitioner's proof for these claims remains deficient.

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

Petitioner argues that Virginia overlaps with the '142 patent because it purportedly involves "tracking progress towards goals," "doing so for individuals with disabilities such as autism," and "using evidence-based mathematical assessments of progress." (Reply at 22 (citing *Virginia* at 27–28). But the field of endeavor of the '142 patent is not merely goal tracking in the abstract; the computer-implemented goal tracking disclosed in the '142 patent is done through a specific structure—i.e., data compilation via computing devices, data assessment, and automated alerts and notifications. (POR, 4-6; Ex. 1001, Abstract, 5:8-15.)

For example, Petitioner cites to language in the specification referring to applications for "educational instruction," but that sentence specifically states that "[t]he illustrative embodiments may be applied to distinct outcome processes and content ***that involve the same or similar steps as described herein***, such as . . . educational instruction." (Ex. 1001, 4:26-32 (emphasis added).) This means that ***where*** distinct educational instructive processes and content ***involve the same or similar steps as described herein***, the illustrative embodiments may be applied—not that the solutions described in the '142 patent are applicable to any and all

educational instruction applications. At most, Petitioner identifies certain overlapping subject matter, not a shared field of endeavor; under Petitioner's view, any document that uses the word "goal" could be found to be in the same field of endeavor as the '142 patent. (*See* Reply, 21-22.)

Petitioner accuses Patent Owner of narrowly focusing on the technological aspects of the specification, but they are, in fact, the crux of the invention; the title of the '142 patent refers to the "platform" on which the solution is centered, and the claims are structured around computer-based compilation of patient data, automatic analysis of that data, and computer-originated alerts responsive to that analysis. (Ex. 1001, cl. 1.) Petitioner ignores that the expressly stated goal of Virginia is to "describe how to help persons with autism move from adolescence to adulthood" and "discuss the specific issues that transition teams should attend for students with ASD" in the specific context of educational transition plans and IEPs. (Ex. 1022, 6, 11.)

And as stated in the POR, the Virginia reference, "centered on educational frameworks and legal requirements for transition planning, would not 'logically' have drawn the attention of an inventor tasked with solving the technical challenges addressed by the '142 patent," so it is also not reasonably pertinent to the problem the '142 patent solves. (POR, 61 (citing Ex. 2005, ¶164.) Petitioner's

attempt to again supplement its Petition via its supplemental expert declaration is improper. *See Intelligent Bio-Sys.*, 821 F.3d at 1369.

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

Patent Owner spent nearly four pages of its POR outlining specific facial deficiencies in its identification of its proposed combinations for Grounds 4, 6, and 8. (POR, 62-65.) In response, Petitioner waves them away and provides descriptions of its proposed combinations that appear nowhere in the Petition and cites only to a supplemental declaration from its expert, not the Petition itself. (*See* Reply, 23-24.) Even in view of Petitioner's improper, belated discussions of its combinations, they are still deficient for the reasons in the POR. (POR, 62-65.)

II. CONCLUSION

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

Dated: May 9, 2025

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Under the provisions of 37 CFR § 42.24(d), the undersigned hereby certifies that the Microsoft Office word count for the foregoing Patent Owner's Sur-Reply to Petitioner's Reply, excluding the table of contents, table of authorities, certificate of word count, and certificate of service, totals 5,540 words, which is less than the 5,600 words allowed under 37 C.F.R. § 42.24(c)(4).

Dated: May 9, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 9th day of May, 2025, the foregoing document is being served by e-mail on counsel of record for Petitioner as follows:

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