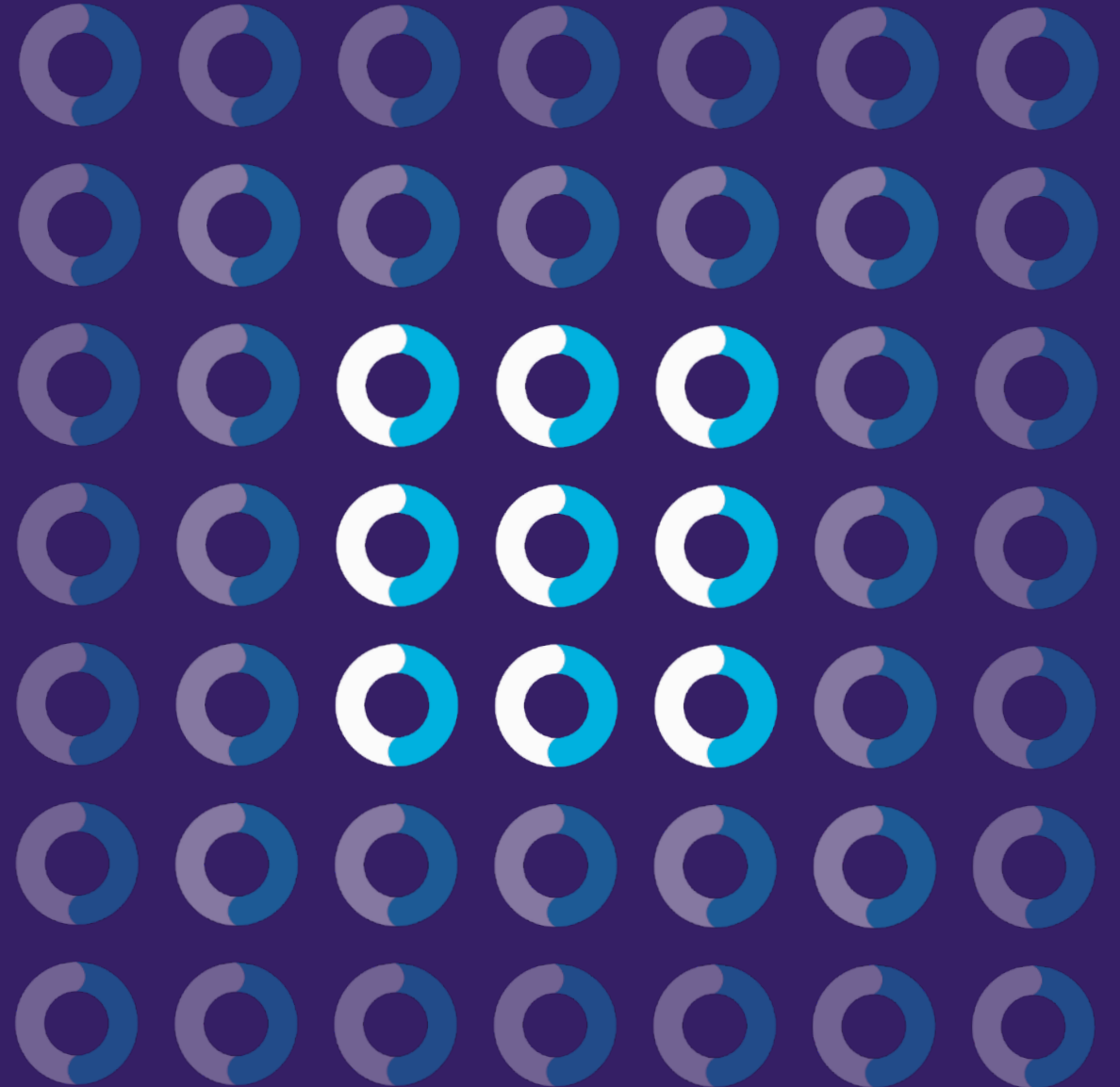




Petitioner's Hearing Demonstratives

IPR2024-00616 (U.S. Patent No. 11,144,554)
IPR2024-00617 (U.S. Patent No. 11,151,142)

June 11, 2025



Teladoc Health, Inc.
Ex. 2026

Teladoc Health, Inc. v. Data Health Partners, Inc., IPR2024-00617

Grounds for IPR2024-00616 ('554 Patent)

Ground	Basis	Reference(s)	Challenged Claims
1	§ 103	Douglas	1, 2, 4, 5, 7, 9, 10, 13, 15, and 17
2	§ 103	Douglas and Wager	1, 2, 4, 5, 7, 9, 10, 12, 13, 15, and 17
3	§ 103	Douglas and Chitiveli	6
4	§ 103	Douglas, Wager, and Chitiveli	6
5	§ 103	Douglas and Klotsche	11, 16, and 19
6	§ 103	Douglas, Wager, and Klotsche	11, 16, and 19
7	§ 103	Douglas and Koh	8, 14, and 20
8	§ 103	Douglas, Wager, and Koh	8, 14, and 20

Petition, Paper 1 at 4

'554 Patent Issues (IPR2024-00616)

Claim Terms/Issues	Same as '617 IPR?
"plan of action" "goals" "thresholds"	No
"assign[/ing] the client to one or more providers in response to ..."	Yes
"client management program"	Yes
"a database in communication with the server..."	Yes
"a processor for executing a set of instructions"	Yes
"determining whether the data required is received from each of the providers" or "sending an alert..."	Yes
Grounds 4, 6, 8 properly discloses details	Yes
Motivation to combine Douglas with Wager	Yes
Motivation to combine Douglas and Koh	Yes
"automatically communicating alerts in response to..."	Yes
Whether Chitiveli is a printed publication	Yes



“plan of action” “goals” “thresholds”

Douglas Discloses “plan of action” “goals” “thresholds”

- [Petitioner has consistently argued these elements are separate](#)

Douglas’s “goals 52” and “final goals 62” correspond to the claimed goals, and Douglas’s “one month goals 61” correspond to the claimed thresholds representing certain points of progress toward the goals. Douglas at 8:1-13, FIGs. 5 and 6; Bergeron at ¶ 70. The claimed plan of action is met by Douglas’s overall “therapeutic program” that includes the above goals. Douglas at 7:5-8:13; *see also* Douglas at 6:24-27. Bergeron at ¶ 70.

Petition, Paper 1 at 25-26

Douglas Discloses “plan of action” “goals” “thresholds”

- Petitioner has consistently argued these elements are separate

Fig 2

HeartLand Prescription Form

22

23

Patient Name Patient ID Date Physician Name Physician ID

1. Fill in diagnosis:

Patient Diagnosis Co-morbid Diagnosis

2. Circle a diagnostic category:

24

Category	Diagnosis	Level 1 (mos.)	Level 2 (mos.)	Level 3 (mos.)	Health and Wellness
I	Current year MI survivor	3	3	6	Contin.>12th month
II	Current year alt. to PTCA or CABG	3	3	6	Contin.>12th month
III	Current year diagnosed CAD	3	3	6	Contin.>12th month
IV	All diagnosed Angina	3	3	6	Contin.>12th month
V	Prior years' post MI/surgical--High Risk	3	3	6	Contin.>12th month
VI	Prior years' post MI/surgical--Low Risk	1	1	10	Contin.>12th month
VII	2 or more Risk factors	0	2	4	Contin.>6th month
VIII	Health and Wellness	0	0	0	Continuous

3. Please circle as appropriate:

30

Does the patient need smoking cessation? Yes No
Have you prescribed nicotine patch or gum? Yes No
Does the patient need weight reduction? Yes No If yes, target weight: _____

32

4. What are patient's current and prescribed medications?

Medication	Standard Dosage	Comments/Changes
HCTZ	25 mg	
Atenolol	50 mg	
Lisinopril	20 mg	
Atorvastatin	20 mg	
Lovastatin	20 mg	
Antioxidant: Vitamin E	400 IU	
Antioxidant: Vitamin C	500 mg	
Other:		
Other:		
Other:		
Other:		

34

5. Circle or fill in desired 3-month targets:

	1200	1500	2000	2500	3000
Daily calories					
Sat Fat Grams	<15	15	18	20	25
Pet Fat Cal	10%	15%	20%	25%	30%
Exercise (Freq/wk/RPE)	20/5x/3	30/5x/4	45/5x/5	50/5x/6	60/5x/7
Max Heart Rate					
Stress Reduction Needs	Low Need	Some	Definite	High	Very High
Lipid Level Target					
Total Cholesterol	140	150	175	200	<225
LDL	60	70	80	<100	<125
HDL	35	37	39	41	>42

Physician's Signature: _____ Telephone: _____

Douglas, EX1002

Douglas Discloses “plan of action” “goals” “thresholds”

- Petitioner has consistently argued these elements are separate

HeartLand 68 Fig 4

Administration — HeartLand Provider/Case Advisor

HeartLand Health Assessment Review

SCREEN 1 OF 3

PATIENT STATUS & GOALS: DETAILS		Now 2/10/98	1 month Goal	GOALS
Name / D.O.B.	Fred Smith 2-5-49			
Starting Date	2/1/98			
Heartland I.D.	23-842			
Height / Sex	5'9" Male			
Weight	193	182		
BMI	28.28	28.28		
Smoke	.5 Packs/Day	.5		
Physical Activity	0 / 0 / 0 minutes / x-week / RPE	20 / 3 / 3		
Alcohol	2 Average Drinks per Day	2		
Eating Habits	40 %Fiber/Complex Carb Intake	60		
	40 %Fatty Food Intake	20		
	40 %Fatty Dairy Intake	20		
Calories	3,600	3,300		
Fat Calories & %	45%	1,500		
Cholesterol - LDL	142	140 mg/dl		
Cholesterol - HDL	35	37 mg/dl		
Cholesterol	246 mg/dl	225		
Resting Pulse Rate	88 Beats Per Minute	68		
Stress	8.5 Scale of 1 to 10 (10 being high stress)	7.0		
Depression	Scale of 1 to 10 (10 being greatest)	10		
Blood Pressure	140/100 systolic/diastolic	140/100		
Seatbelt Use	30 percent of time	60		
Back Pain	Incidents per month	3		
Pharmaceuticals				
- aspirin	325 mg	325 mg/da		
- hydrochlorothzdl	12.5 mg	12.5 mg/da		
- Lovastatin	20 mg	20 mg/da		

EDIT DESIGN 50

Douglas, EX1002

Douglas Discloses “plan of action” “goals” “thresholds”

- Petitioner has consistently argued these elements are separate

HeartLand 69 Fig 5

Administration — HeartLand
Provider/Case Advisor
File Edit View Insert Format Tools Table Window Help
MAIN MENU BACK PREVIEW/EDIT PATIENT PROGRAM
HeartLand Health Assessment Review
SCREEN 2 OF 3
HINT: CLICK BOX TO DESIGN PROGRAM

Design a new program for: Fred Smith Date: 3/10/98
Heartland I.D. #: 23-642 Social Security #: 213-48-3947

INITIAL SCALE

	LOW	INTENSITY	HIGH
DIET	☐ 1	☐ 2	☒ 3
EXERCISE	☐ 1	☐ 2	☒ 3
STRESS MANAGEMENT	☐ 1	☒ 2	☐ 3
GROUP SUPPORT	☐ 1	☐ 2	☒ 3
DRUGS	☐ 1	☐ 2	☐ 3
COMPLIANCE	☐ 1	☐ 2	☒ 3

Based on your input, Heartland suggests the following program and goals for: Fred Smith

Diet	15%	Calories From Fat
Exercise	3/4 hr	days per week
Stress Management	1/2 hr	days per week
Group Support	1/2 hr	days per week
Compliance Mgt. Freq.	4	times per Month
Smoking		Cessation
Drug	325 mg/da	
-aspirin	12.5	
-hydrochlorothzid.	20	
-Lovastatin		

Program Detail

Douglas, EX1002

Douglas Discloses “plan of action” “goals” “thresholds”

- Petitioner has consistently argued these elements are separate

HeartLand 70 Fig 6

Administration — HeartLand
Provider/Case Advisor

SCREEN 3 OF 3
Based on your input, here is HeartLand's recommended program for: Fred Smith
Use the buttons to confirm or edit this program.

PATIENT STATUS & GOALS: DETAILS		Now 2/10/98	1 month Goal	GOALS
Name / D.O.B.	Fred Smith 2-5-49			
Starting Date	2/1/98			
Heartland I.D.	23-642			
Height / Sex	6'9" Male			
Weight	193	182	175	170
BMI	28.28	28.28	25.64	25.00
Smoke	.5 Packs/Day	.5	0	0
Physical Activity	0 / 0 / 0 minutes / x-week / RPE	20 / 3 / 3	25 / 6 / 4	4 / 6 / 6
Alcohol	2 Average Drinks per Day	2	1	1
Eating Habits	40 %Fiber/Cmplx Carb Intake	60	70	80
	40 %Fatty Food Intake	20	20	15
	40 %Fatty Dairy Intake	20	10	5
Calories	3,600	3,300	3,100	2,800
Fat Calories & %	45%	45%	20%	15%
Cholesterol - LDL	142	140 mg/dl	125 mg/dl	100 mg/dl
Cholesterol - HDL	35	37 mg/dl	39 mg/dl	45 mg/dl
Cholesterol	246 mldl	225	210	190
Resting Pulse Rate	88 Beats Per Minute	68	65	79
Stress	8.5 Scale of 1 to 10 (10 being high stress)	7.0	6.0	3.5
Depression	Scale of 1 to 10 (10 being greatest)	10	6	0
Blood Pressure	140/100 systolic/diastolic	140/100	130/90	130/90
Seatbelt Use	30 percent of time	50	75	100
Back Pain	Incidents per month	3	2	0
Pharmaceuticals				
- aspirin	325 mg	325 mg/da	325 mg/da	325 mg/da
- hydrochlorothz.	12.5 mg	12.5 mg/da	12.5 mg/da	0 mg/da
- Lovastatin	20 mg	20 mg/da	20 mg/da	0 mg/da

CONFIRM 63
EDIT 64
OPTIONS...

60

Douglas, EX1002

Douglas Discloses “plan of action” “goals” “thresholds”

- [The Board agreed in the ID that these elements are separate](#)

On this record, Petitioner sets forth separate teachings in Douglas corresponding to the separately recited elements of a plan of action (Douglas’s therapeutic program) and goals (Douglas’s final goals). *See* Pet. 25–26. Moreover, Petitioner explains how the therapeutic program is used to generate the goals. *See id.* at 22 (citing Ex. 1002, 8:1–9, Fig. 5; Ex. 1012 ¶ 64). For example, Petitioner identifies where Douglas teaches a plan of action, e.g., weight loss, with specific intermediate and final goals therein, e.g., physical activity, eating habits, calories, etc. *See* Ex. 1002, Fig. 6.

ID, Paper 9 at 16

Douglas Discloses “plan of action” “goals” “thresholds”

- [PO only took issue with example in Board's Decision](#)

First, in the Institution Decision, the Board misapprehends what Petitioner identified as the claimed “plan of action” recited in Douglas. While the Board found that “Douglas teaches a plan of action, e.g., weight loss,” the Petition **never** identified weight loss as the claimed “plan of action” in Douglas. (*Compare* Petition at 25-26 *with* Paper 9 at 16.) Petitioner’s expert confirmed this at

POR, Paper 16 at 16

Douglas Discloses “plan of action” “goals” “thresholds”

- [PO's objection was rebutted in Reply and not responded to in Sur-Reply](#)

PO's only objection to the Board's holding is the citation to Douglas's disclosure of weight loss as an example of a plan of action, arguing that Petitioner never relied upon this example. This is simply not true. Petitioner cites to multiple portions of Douglas which disclose weight loss as an example of a plan of action. *Citations omitted*

PO conveniently relies upon a single sentence of the Petition, ignoring these citations to Douglas in that very sentence and in other portions of the Petition. Paper 16 at 14 (*citing* Paper 1 at 25-26). PO's own expert admitted that these portions of Douglas relied upon in the Petition disclose weight loss as part of a plan of action. *Citations omitted*

Reply, Paper 19 at 1-2

Douglas Discloses “plan of action” “goals” “thresholds”

- [PO is arguing there can be no overlap between elements](#)

Instead, the Petition’s allegation for the recited “plan of action” is relegated to a single sentence, asserting without any further explanation that “[t]he **claimed plan of action is met by Douglas’s overall ‘therapeutic program,’ that includes the above goals.**” (Petition at 25-26 (citing Bergeron, ¶70) (emphasis added).) But this singular allegation must fail because, as explained in Section VI.A., above, the Federal Circuit has repeatedly held that “[w]here a claim lists elements separately, as done here, there is ‘a presumption that those components are distinct.’” *See*

description that overcomes that presumption.”). Thus, in contrast to the Petition’s allegations, the claimed goals cannot be “**included**” in the claimed plan of action—

POR, Paper 16 at 14-15

Douglas Discloses “plan of action” “goals” “thresholds”

- [But PO later admits in Sur-Reply that overlap between elements is proper](#)

standard the Federal Circuit has set forth. It will almost always be the case that separately-listed elements in a claim will be related in some way—this is why they appear in the same claim. The “separateness under *Becton*” that the Federal Circuit describes has nothing to do with being “wholly distinct” as Petitioner argues, but instead is where two separately listed elements cannot “coexist as the same element”; these elements, instead, have distinct and identifiable boundaries. *See*

Sur-Reply, Paper 23 at 3

Douglas Discloses “plan of action” “goals” “thresholds”

- [Intrinsic record supports overlapping of claim elements](#)

regardless of the intrinsic record.” Google, 92 F.4th at 1058. “Rather, we have explained that there is a ‘presumption’ that separately listed claim limitations may indicate separate and distinct physical structure, but that *presumption may always be rebutted in the context of a particular patent.*” *Id.* (emphasis added).

Reply, Paper 19 at 5

Douglas Discloses “plan of action” “goals” “thresholds”

- [Intrinsic record supports overlapping of claim elements](#)

Claim 1

determining, by the one or more providers, treatment and assistance for the client, which is used for establishing goals, a plan of action, and thresholds for the client, wherein the thresholds represent certain points of progress towards the goals;

modifying the plan of action, by the one or more providers, in response to one or more of the thresholds not being met.

7. The method according to claim 1, further comprising: establishing the goals and the plan of action for the client utilizing goal creating and tracking software, wherein the data, goals, plan of action, compiled data, and thresholds are associated with the account of the client.

'554 Patent, Ex1001; Reply, Paper 19 at 7

Douglas Discloses “plan of action” “goals” “thresholds”

- [Intrinsic record supports overlapping of claim elements](#)

restriction. Paper 16 at 12. On the contrary, the specification of the '554 Patent indicates that a plan of action contains goals and thresholds, and that these elements are intermingled and overlap. '554 Patent at 11:26-28 (system data includes “service plans 234, goals and objective 236”), 11:60-67 (providers “view elements of service plan 234, view and add goals and objectives 236 for clients”), 30:35-40 (“providers ... may modify the course of action based on thresholds”); 32:52-58 (“[t]he threshold may be applicable to one or multiple factors, goals, parameters, or criteria.”) In fact,

Reply, Paper 19 at 8; '554 Patent, Ex1001

Douglas Discloses “plan of action” “goals” “thresholds”

- [PO's caselaw involves the same component alleged to satisfy multiple claim terms](#)
- *Regeneron Pharms., Inc. v. Mylan Pharms. Inc.*, 130 F.4th 1372, 1377 (Fed. Cir. 2025)
 - Defendant's buffer alleged to satisfied both “VEGF antagonist” and “buffer” limitations
- *Barrday, Inc. v. Lincoln Fabrics, Inc.*, 2023 WL 7871688, at *2 (Fed. Cir. Nov. 16, 2023)
 - Upper and lower layers of defendant's fabric alleged to satisfy each of the “upper woven layer,” “lower woven layer,” and “securing yarns” limitations
- *Becton, Dickinson & Co. v. Tyco Healthcare Group, LP*, 616 F.3d 1249, 1251 (Fed. Cir. 2010)
 - Hinged arm of defendant's safety needle alleged to satisfy both “hinged arm” and “spring means”
- *HTC Corp. v. Cellular Commc'ns Equip., LLC*, 701 F. App'x 978, 980–81 (Fed. Cir. 2017)
 - “Diverting unit” and “controlling entity” limitations mapped to a single prior art element, the “interception module”
- *Comcast Cable Commc'ns, LLC v. Promptu Sys. Comp.*, 838 F. App'x 551, 552–53 (Fed. Cir. 2021)
 - “Speech recognition system” and “wireless node” limitations, which must be “coupled” and thus required separate structures, were mapped by petitioner to a single prior art element
- *Willis Elec. Co., Ltd. v. Polygroup Macau Ltd. (BVI)*, 777 F. App'x 495, 498–99 (Fed. Cir. 2019)
 - “inner void” and “channel void” limitations were construed by petitioner as the same element.

Paper 19 at 5-9; Paper 23 at 1-5

Douglas Discloses “plan of action” “goals” “thresholds”

- [PO rests on “presumption” and abstract](#)

F.4th at 1377. There is no requirement of evidence—whether “unequivocal and/or unambiguous” or not—needed to support the *Becton* presumption. *See Kyocera*, 22

Sur-Reply, Paper 23 at 5

The presumption that the claimed “plan of action” must be distinct from the separately-claimed “goals” and “thresholds” is also consistent with the ’554 patent’s specification. (*See, e.g.*, Ex. 1001 at Abstract (“Goals and a plan of action are established in response to treatments and assistance required. Data associated with the client received from the providers is compiled. A determination is made whether thresholds associated with the goals are being met based on the compiled data.”, 1:49-54 (same)).) *See HTC*, 701 F. App’x at 982 (holding that “[t]he

POR, Paper 16 at 12

Douglas Discloses “plan of action” “goals” “thresholds”

- Petitioner does not conflate “weight loss” with “plan of action”

so. Douglas at 8:12-13; Bergeron at ¶ 65. Indeed, Douglas’s program provides “goals 52,” “one month goals 61,” and “final goals 62” for, e.g., weight loss, smoking cessation, reduction of alcohol consumption, and dietary improvements.

Douglas at 8:1-13, FIGs. 5, 6; Bergeron at ¶ 65. The presence of these goals in the program evidence that they are aspects for which the provider determined the patient needs treatment and assistance. Bergeron at ¶ 65.

Petition, Paper 1 at 23-24

Douglas Discloses “plan of action” “goals” “thresholds”

- Petitioner does not conflate “weight loss” with “plan of action”

Fig 2

HeartLand Prescription Form

23

Patient Name: _____ Patient ID: _____ Date: _____ Physician Name: _____ Physician ID: _____

1. Fill in diagnosis:

Patient Diagnosis	Co-morbid Diagnoses

2. Circle a diagnostic category:

Category	Diagnosis	Level 1 (mos.)	Level 2 (mos.)	Level 3 (mos.)	Health and Wellness
I	Current year MI survivor	3	3	6	Contin.>12th month
II	Current year alt. to PTCA or CABG	3	3	6	Contin.>12th month
III	Current year diagnosed CAD	3	3	6	Contin.>12th month
IV	All diagnosed Angina	3	3	6	Contin.>12th month
V	Prior years' post MI/surgical--High Risk	3	3	6	Contin.>12th month
VI	Prior years' post MI/surgical--Low Risk	1	1	10	Contin.>12th month
VII	2 or more Risk factors	0	2	4	Contin.>6th month
VIII	Health and Wellness	0	0	0	Continuous

3. Please circle as appropriate:

Does the patient need smoking cessation? Yes No

Have you prescribed nicotine patch or gum? Yes No

Does the patient need weight reduction? Yes No If yes, target weight: _____

4. What are patient's current and prescribed medications?

Medication	Standard Dosage	Comments/Changes
HCTZ	25 mg	
Atenolol	50 mg	
Lisinopril	20 mg	
Atorvastatin	20 mg	
Lovastatin	20 mg	
Antioxidant: Vitamin E	400 IU	
Antioxidant: Vitamin C	500 mg	
Other:		
Other:		
Other:		

5. Circle or fill in desired 3-month targets:

	1200	1500	2000	2500	3000
Daily calories					
Sat Fat Grams	<15	15	18	20	25
Pot Fat Cal	10%	15%	20%	25%	30%
Exercise (Frog/w/RPE)	20/5x/3	30/5x/4	45/5x/5	50/5x/6	60/5x/7
Max Heart Rate					
Stress Reduction Needs	Low Need	Some	Definite	High	Very High
Lipid Level Target					
Total Cholesterol	140	150	175	200	<225
LDL	60	70	80	<100	<125
HDL	35	37	39	41	>42

Physician's Signature: _____ Telephone: _____

FAX THIS FORM TO SALUS MEDIA: (805) 969-3601
You will receive Fax confirmation within 24 Hours. For Assistance please call: (805) 969-2234

HeartLand 70 Fig 6

Administration — HeartLand

Provider/Case Advisor

SCREEN 3 OF 3

Based on your Input, here is HeartLand's recommended program for: Fred Smith

Use the buttons to confirm or edit this program.

PATIENT STATUS & GOALS: DETAILS		Now 2/10/98	1 month Goal	GOALS
Name / D.O.B.	Fred Smith 2-5-49			
Starting Date	2/1/98			
Heartland I.D.	23-642			
Height / Sex	6'9" Male			
Weight	193	182	175	170
BMI	28.28	28.28	26.64	25.00
Smoke	5 Packs/Day	.5	0	0
Physical Activity	0 / 0 / 0 minutes / x-week / RPE	20 / 3 / 3	25 / 5 / 4	4 / 6 / 8
Alcohol	2 Average Drinks per Day	2	1	1
Eating Habits	40 %Fiber/Complex Carb Intake	60	70	80
	40 %Fatty Food Intake	20	20	15
	40 %Fatty Dairy Intake	20	10	5
Calories	3,600	3,300	3,100	2,800
Fat Calories & %	45%	45%	20%	15%
Cholesterol - LDL	142	140 mg/dl	125 mg/dl	100 mg/dl
Cholesterol - HDL	35	37 mg/dl	39 mg/dl	45 mg/dl
Cholesterol	246	226	210	190
Resting Pulse Rate	88 Beats Per Minute	88	88	79
Stress	8.5 Scale of 1 to 10 (10 being high stress)	7.0	6.0	3.5
Depression	Scale of 1 to 10 (10 being greatest)	10	6	0
Blood Pressure	140/100 systolic/diastolic	140/100	130/90	130/90
Seatbelt Use	30 percent of time	50	75	100
Back Pain	Incidents per month	3	2	0
Pharmaceuticals				
- aspirin	325 mg	325 mg/ds	325 mg/ds	325 mg/ds
- hydrochlorothz.	12.5 mg	12.5 mg/ds	12.5 mg/ds	0 mg/ds
- Lovastatin	20 mg	20 mg/ds	20 mg/ds	0 mg/ds

CONFIRM ~ 63

EDIT ~ 64

OPTIONS...

Douglas, EX1002

DEMONSTRATIVE EXHIBIT – NOT EVIDENCE



“assign[/ing] the client to one or more providers in response to ...”

Douglas Discloses “assigning ... in response to selections ...”

- The Board agreed in the ID that Douglas discloses “assigning the client to one or more providers in response to selections from the administrator”

On this record, Patent Owner’s arguments are not directed to the recitations of claim 1. For example, there are no temporal limitations in the claim that require an administrator assigning a provider to a client *before* the provider begins treating or assisting a client. Likewise, there are no limitations that exclude an administrator selecting a provider within the system, even if that provider has already seen and begun treating the client outside of the system.

We determine that, on this record, Petitioner establishes sufficiently for the purposes of institution that Douglas teaches or suggests assigning a patient to a physician in response to a selection by an administrator. *See* Pet. 15–17 (citing Ex. 1002, 11:7–8, 15:8–9, 21:24–28, Fig. 47; Ex. 1012 ¶¶ 55–62). More specifically, we agree with Petitioner that an administrator assigns a physician to a patient’s account within the system. Likewise, on this record, we are persuaded by Petitioner that it would have been obvious for an administrator to select a physician to assign to a patient account within the system.

Douglas Discloses “assigning ... in response to selections ...”

- PO now argues that Petitioner maps “assigning” and “selections” to the same elements

Petitioner still fails to identify where Douglas discloses assigning clients to providers *in response to* selections from the administrator. (See POR, 26-28.)

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, 16-17; Reply, 10-11.) 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.

Sur-Reply, Paper 23 at 7-8

Douglas Discloses “assigning ... in response to selections ...”

- But the Petition maps “assigning” and “selections” to separate elements

“selections” maps to entry of info from prescription form:

Douglas further discloses that such assigning of clients to providers is in response to selections from the administrator, as the case administrator sets up the patient on Douglas’s system by entering the information contained in the patient prescription form, as discussed above for Limitation 1[a], where such information includes information associating the patient with a physician. Douglas at FIG. 2 (“Physician” name, ID, and signature); Bergeron at ¶ 53. A POSITA would have

Petition, Paper 1 at 16

Douglas discloses receiving input by an administrator. In Douglas’s method, “the case administrator sets up a new patient based on information contained in the patient prescription form” (Douglas at 6:36-7:20), which involves the administrator “enter[ing] the patient into the system” (*id.*) and entering patient information online (*id.* at FIG. 60), each of which constitutes input by the administrator. Bergeron at ¶ 45. The patient prescription form is illustrated in Douglas FIG. 2 (reproduced below):

Petition, Paper 1 at 11

Douglas Discloses “assigning ... in response to selections ...”

- Douglas (as cited by the Petition at 11):

Referring to FIG. 2, an exemplary prescription form 22 contains identification information 23 such as the patient's name and identification. Using the form, the physician selects a diagnostic category 24 and prescribes a recovery program level 26. In the exemplary embodiment, eight separate diagnostic categories exist that correspond to the state of the patient's health. Category I, for example, includes patients who have suffered from a heart attack within the current year, while Category VIII includes patients who suffer from no particular ailment but are on the plan simply to promote wellness. Other categories may also be added as necessary.

Depending on the diagnosis, the physician may recommend that the patient cease smoking or that he or she lose a targeted amount of weight within a certain period by circling the appropriate response in field 30. The physician may also enter other information, such as the patient's medications 32. The physician then circles or fills in desired 3-month targets 34 relating to, among other things, daily calorie intake, percent daily intake of saturated fat, maximum heart rate, and cholesterol level.

Referring to FIG. 3, the case administrator sets up a new patient based on information contained in the patient prescription form or accesses the records of existing patients through patient files 40. In this example, the patient files 40 are identified by the patient's name and social security number. To create or modify the program for a particular patient, the administrator creates a new folder or selects a preexisting folder 42 corresponding to the patient in question.

Once the physician or case administrator enters the patient into the system, either the system or case advisor recommends a default set of goals based on the patient's needs and existing medical protocols that may be modified by the physician (blocks 1010 and 1012, FIG. 60). FIG. 4 illustrates an exemplary patient record after selection of the desired patient file

Douglas, Ex. 1002 at 6:36-7:20

Fig. 2

22 ~ HeartLand Prescription Form

23 ~

Patient Name	Patient ID	Date	Physician Name	Physician ID
--------------	------------	------	----------------	--------------

1. Fill in diagnosis:

Patient Diagnosis	Co-morbid Diagnosis
-------------------	---------------------

2. Circle a diagnostic category:

Category	Diagnosis	Level 1 (mos.)	Level 2 (mos.)	Level 3 (mos.)	Health and Wellness
I	Current year MI survivor	3	3	6	Contin.>12th month
II	Current year alt. to PTCA or CABG	3	3	6	Contin.>12th month
III	Current year diagnosed CAD	3	3	6	Contin.>12th month
IV	All diagnosed Angina	3	3	6	Contin.>12th month
V	Prior years' post MI/surgical--High Risk	3	3	6	Contin.>12th month
VI	Prior years' post MI/surgical--Low Risk	1	1	10	Contin.>12th month
VII	2 or more Risk factors	0	2	4	Contin.>6th month
VIII	Health and Wellness	0	0	0	Continuous

3. Please circle as appropriate:

Does the patient need smoking cessation?	Yes	No
Have you prescribed nicotine patch or gum?	Yes	No
Does the patient need weight reduction?	Yes	No

If yes, target weight: _____

32 ~ 4. What are patient's current and prescribed medications?

Medication	Standard Dosage	Comments/Changes
HCTZ	25 mg	
Atenolol	50 mg	
Lisinopril	20 mg	
Atorvastatin	20 mg	
Lovastatin	20 mg	
Antioxidant: Vitamin E	400 IU	
Antioxidant: Vitamin C	500 mg	
Other:		
Other:		
Other:		
Other:		

34 ~ 5. Circle or fill in desired 3-month targets:

Daily calories	1200	1500	2000	2500	3000
Sat Fat Grams	<15	15	18	20	25
Pet Fat Cal	10%	15%	20%	25%	30%
Exercise (Frog/wk/RPE)	20/5x/3	30/5x/4	45/5x/5	50/5x/6	60/5x/7
Max Heart Rate					
Stress Reduction Needs	Low Need	Some	Definite	High	Very High
Lipid Level Target					
Total Cholesterol	140	150	175	200	<225
LDL	60	70	80	<100	<125
HDL	35	37	39	41	>42

Physician's Signature: _____ Telephone: _____

FAX THIS FORM TO SALUS MEDIA: (805) 969-3601
You will receive Fax confirmation within 24 Hours. For Assistance please call: (805) 969-2234

Douglas Discloses “assigning ... in response to selections ...”

- But the Petition maps “assigning” and “selections” to separate elements

“assigning” maps to achieving state of being assigned:

Douglas also discloses assigning the client to a provider. In Douglas’s system, the patient is assigned to their physician, who provides treatment or assistance to the patient (*see* Section VIII.A.2(b) (Limitation 1[a])). Douglas at 21:24-28, FIG. 47 (showing the “Responsible Physician” for patient “Fred Smith”), 15:8-9 (patients “keep in constant contact with their physician.”), claims 11, 25 (“alerting the individual’s physician”), FIG. 2 (associating the patient, “Patient Name[/]ID,” with a physician, “Physician Name[/]ID”), FIG. 7 (“Dear Doctor **Cavello**: This is a status report on your patient”); Bergeron at ¶ 51. Indeed, such patient-to-physician assignment is required for Douglas’s system to, *inter alia*, “provide[] the physician with reports of patient progress,” “send an alarm to the physician,” or otherwise “notify the physician” of the patient’s progress. Douglas at 11:6-12:2; Bergeron at ¶ 52. Douglas’s physician is the claimed provider. *See* ’554 Patent at 4:64-5:7 (“a provider is ... [a] caregiver” who “care[s] for ... patients.”); Bergeron at ¶ 52.

Petition, Paper 1 at 15-16

Douglas Discloses “assigning ... in response to selections ...”

- Douglas (as cited by the Petition at 15-16):

The communications feature of the system further allows users to keep in constant contact with their physician, case advisor, or other users of the system. Although in the

Douglas, Ex. 1002 at 15:8-9

comparing the health-related data against accepted medical protocols and alerting the individual’s physician or case advisor when a health-risk is present;

Douglas, Ex. 1002 at 28:30-31

for accuracy. In addition, the system automatically provides the physician with reports of patient progress. Depending on the patient’s plan requirements, the case advisor periodically

Douglas, Ex. 1002 at 11:7-8

FIG. 60). The system compares actual data about the patient with the goals and parameters residing in the system’s database and automatically notifies the physician or case advisor via e-mail or facsimile (or pager depending upon the severity of the problem), if a health risk is present (block 1042, FIG. 60). For instance, if a patient’s current blood pressure is potentially dangerous, the system will automatically send an alarm to the physician or case advisor and require his or her immediate action.

If the difference between current data and goals does not present a threatening situation, the system will simply notify the physician or case advisor that these goals are not being met.

Douglas, Ex. 1002 at 11:12-19

and compliance with the program (block 1050). If the patient is progressing in accordance with his or her program, the system informs the physician and/or case advisor (block 1052,

Douglas, Ex. 1002 at 11:28-29

The system also notifies the physician or case advisor if the patient is not progressing toward program goals or is not using the system (block 1060, FIG. 60). The case advisor

Douglas, Ex. 1002 at 11:35-36

HeartLand 80 Fig. 47

Heartland Communications Center

Send Messages to...

☒ Subscriber ☒ Auto Fill

☐ Responsible Physician

☐ Other

Select Type of Message

☒ Audio E-Mail ☒ CC: Resp. Physician

☐ Text E-Mail ☐ Subscriber

☐ FAX ☐ Other

BCC: ☐ Other

Type Text Message here:

Record Message here:

SEND MESSAGE

Heartland Recommendations for: Fred Smith

Date: 3/10/98

1. INCREASE EXERCISE TO: 45 minutes

2. INCREASE RPE TO: Level 5

see the Village Gym for suggestions and preferences

3. INDICATE TO PHYSICIAN BLOOD PRESSURE IN YELLOW ZONE AT: 146/92

4. CHOOSE REWARD FROM: Village Mall For 30 Smoke Free Days

5. Good support group attendance

6. OTHER: Diet, Exercise, Stress, Support

Best Wishes,
Susan, your case advisor

Douglas, Ex. 1002 at Fig. 47

HeartLand Patient Progress Report

Date: April 2, 1997

Dear Doctor Cavello:

This is a status report on your patient, Fred Smith, SSN: 565-76-2334, Plan No. 011-066754

Your diagnosis was: non-complicated anterior MI and co-morbid diagnosis none,

Patient entered the HeartLand program on . March 12, 1997. He/she has been on the program 3 weeks.

Progress toward goals:

Parameter	Current Status	Suggested Next steps	Target
Blood Pressure	146/92	144/90	140/90
Weight	172	170	170

Douglas, Ex. 1002 at Fig. 7

Douglas Discloses “assigning ... in response to selections ...”

- [Petitioner repeats this mapping in its Reply:](#)

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 improper because these elements must be separate and distinct. Paper 16 at 26-27. 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 16. Separately, Petitioner maps “assignment ... to one or more providers in response to selections from an administrator” to the assignment resulting from such selections, which the Petition discusses enables the various reporting, alarm, and notification features of the system. See Id. at 15-17.

Reply, Paper 19 at 11-12

Douglas Discloses “assigning ... in response to selections ...”

- PO also advocates a claim construction for “selections” as being “a deliberate and active choice by an administrator”:

First, the plain and ordinary meaning of the term “selections” envisions a deliberate and active choice by an administrator, which is confirmed by the specification’s discussion of administrators as playing an active role in the assignment process, generally. (*See* Ex. 1001 at 11:54-60 (“Provider administrators 214 may manage their team of service providers 216 who work directly with clients 224 to administer information and data, such as goals and objectives 236. The provider administrators 214 may have complete access to the service providers 216 and the clients 224 to assign the clients 224 to individual service providers 216 through the user interface 210.”); (Ex. 2005 at ¶ 78.)) Douglas discloses no such selection. Douglas’s administrator merely inputs pre-determined information from the prescription form. (Douglas at 6:33-7:13, Fig. 2; (Ex. 2005 at ¶ 79.)

POR, Paper 16 at 25

Douglas Discloses “assigning ... in response to selections ...”

- PO does not brief or otherwise provide sufficient support for this construction:

means a “deliberate and active choice by an administrator.” Paper 16 at 25. But, contrary to the Board’s instructions, PO does not brief this construction in a designated section, nor provide supporting evidence other than a citation to two sentences in the specification. *See* Paper 9 at n.4. Unfortunately for PO, these two sentences neither use the term “selection” nor discuss any “deliberate and active choice.”

Reply, Paper 19 at 10

Provider administrators **214** may manage their team of service providers **216** who work directly with clients **224** to administer information and data, such as goals and objectives **236**. The provider administrators **214** may have complete access to the service providers **216** and the clients **224** to assign the clients **224** to individual service providers **216** through the user interface **210**. In one embodiment, the

'554 Patent, Ex. 1001 at 11:54-60

Douglas Discloses “assigning ... in response to selections ...”

- [The specification of the '554 Patent supports a broader interpretation](#)

In one embodiment, the user interface **210** may display any number of icons, images, drop-down menus, videos, hyperlinks, internal links, scroll wheels, tabs, Windows, or other selection or display components.

'554 Patent , Ex. 1001 at 11:20-23

medication and special monitoring or precautions. Each of the authorized users may be able to view additional details by making further selections, such as double tapping a portion of the client data **226** presented on a touchscreen.

'554 Patent , Ex. 1001 at 12:61-64

PO's expert confirmed this use of “selection” in the '554 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.

Reply, Paper 19 at 11

Douglas Discloses “assigning ... in response to selections ...”

- Douglas also renders obvious GUI-based “selections from the administrator”

components. Bergeron at ¶ 56. Douglas discloses several GUI components, including check boxes, drop-down menus, and buttons, which are shown in, for example, Douglas’s FIG. 47 (reproduced below):

Petition, Paper 1 at 17

It would have been obvious to use Douglas’s GUI components to assign the patient to the physician in each of the following ways:

- (1) by selecting a check box associated with the physician in a list of physicians and selecting a button to assign the patient to the physician; and
- (2) by selecting the physician from a list of physicians in a drop-down menu and selecting a button to assign the patient to the physician.

Bergeron at ¶ 58.

Petition, Paper 1 at 18

First, each of these options represents an obvious “combination of familiar elements according to known methods ... [that] does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 401 (2007); Bergeron at ¶ 59.

Petition, Paper 1 at 19

Second, any of these options would have accomplished the necessary patient-to-physician assignment in Douglas’s system (*supra*) in a way that furthered Douglas’s desire for that system to be GUI-based and using the GUI components it already leverages. Douglas at 2:16-24 (“The present invention [] provides for [a] ...

Petition, Paper 1 at 19-20



“client management program”

The '554 Patent's "Client Management Program[s]"

- Claims 6 and 13 recite client management programs **executed by different hardware** and **performing different functions**.
- Claim 6: “[A] client management program [] executed by the computing or communications devices is utilized to receive the data and track progress of the goals,” where, per claim 1, the computing or communications devices are utilized by providers and are “in communication with the server.”
- Claim 13: “[T]he server includes a processor that executes a client management program to:
 - **receive** input ... for establishing an account...
 - **assign** [a] client to one or more [] providers ...
 - **determine** ... treatment and assistance for the client ...
 - **compile** data associated with the client ...
 - **determine** whether [] thresholds ... are being met ...
 - **modify** the plan of action.”

Claims 13 and 6 Are Not Related via Dependency

The '554 Patent's “Client Management Program[s]”

- Consistently, the Petition maps these client management programs to different client management programs in the prior art.

Claim 6

Petition, Paper 1 at 62

through, a cloud network, as in Chitiveli. Bergeron at ¶ 146. The Douglas-Chitiveli System also discloses that a client management program is executed by the computing or communications devices and is utilized to receive the data and track progress of the goals, since, in the system, PCs 500 used by physicians to transmit patient data to the network server for tracking patients' progress toward their goals in Douglas (see Section VIII.A.2(f) (Limitation 1[e])) would have done so using a client application like Chitveli's analytics client 140. Bergeron at ¶ 146. Such client applications disclose the claimed client management program, and they are utilized in the combination so that Douglas's system can receive the data and track progress of the goals. Bergeron at ¶ 146.

Claim 13

Petition, Paper 1 at 40-41

Douglas further discloses a client management program, specifically, Douglas's “therapeutic behavior modification program's compliance monitoring and feedback system.” Douglas at 5:22-25, FIGs. 59 and 60; Bergeron at ¶ 93. That system manages a patient in that it:

- provides for the creation of a patient account (Douglas at 6:33-35, FIG. 60 (block 1008));
- “recommends a default set of goals based on the patient's needs and existing medical protocols that may be modified by the physician” (*id.* at 7:17-20, FIG. 60 (blocks 1010, 1012));
- “assists [the patient] in complying with his or her behavior modification program” (*id.* at 8:28-29, FIG. 60 (block 1020));



The '554 Patent's “Client Management Program[s]”

- Patent Owner does not contest, in the POR, that Douglas's server-side system and Chitiveli's client-side analytics client are “client management program[s]” in the Douglas-Chitiveli combination. POR, Paper 16 at 31-32.
- Instead, Patent Owner contends that these mappings cannot both be true.

Because Petitioner must prove its case by a preponderance of the evidence—which is prohibited by Petitioner's two contradictory allegations, each of which stands no more than a 50/50 chance of being correct (assuming even one of the allegations is right)—both of Petitioner's challenges based on these contradictory allegations must fail. *See ZTE (USA) Inc. v. Fundamental Innovation Sys. Int'l*

POR, Paper 16 at 32

- But the mappings fit Patent Owner's claims to distinct client management programs, and—although not required—do co-exist in the Douglas-Chitiveli System.

Petition, Paper 1 at 40-41, 62; Reply, Paper 19 at 12-13

Chitiveli's Analytics Client is a "Client Management Program"

- '554 Sur-Reply at 11-12: "Chitiveli discloses a server [] that executes its program ... and the analytics client [] contained on the client computer system [] merely communicates to the [program] on Chitiveli's server."
- This argument, not raised in the POR, is forfeited. See POR, Paper 16 at 31-32.

Patent Owner may file—

- a. A response to the petition (37 C.F.R. § 42.120). If Patent Owner elects not to file a response, Patent Owner must arrange a conference call with the parties and the Board. Patent Owner is cautioned that any arguments not raised in the response may be deemed forfeited.

Scheduling Order, Paper 10 at 9

Chitiveli's Analytics Client is a "Client Management Program"

- PO's forfeited Sur-Reply argument is also wrong.

6. The method according to claim 1, wherein the server is accessed through a cloud network, and wherein a client management program is executed by the computing or communications devices is utilized to receive the data and track progress of the goals.

'554 Patent, EX1001 at Claim 6

- Petition, Paper 1 at 58-62:
 - "Using [Chitiveli's] analytics client ..., a user can 'upload enterprise data associated with a given tenant as well as access the resulting data collections 115 hosted by the service provider 102.' Chitiveli at ¶ [0036]; Bergeron at ¶ 137."
 - In the Douglas-Chitiveli System, "PCs 500 used by physicians to transmit patient data to the network server for tracking patients' progress toward their goals in Douglas would have done so using a client application like Chitiveli's analytics client 140."
 - "Such client applications ... are utilized in the combination so that Douglas's system can receive the data and track progress of the goals."



“a database in communication with the server...”

Douglas's Server “[C]ommunicate[s]” with Databases

- (i) *Limitation 13[h]: a database in communication with the server configured to store the data, goals, plan of action, compiled data, and thresholds with the account associated with the client and the one or more providers.*

Douglas discloses that network server 508 includes “one or more relational databases 522 (such as SQL) that contain all the health plan data” as well as “[a]ll the information needed by a user of the system.” Douglas at 24:28-37; Bergeron at ¶ 109. Such includes data and compiled data. See Section VIII.A.9(b) (Limitation 13[a]). It also includes Douglas’s disclosure of goals, plan of action, and thresholds,

Petition, Paper 1 at 47

The network server 508 may be located at a health plan payor facility with an independent third party that acts as an Internet Service Provider or elsewhere. The 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, EX1002 at 24:28-37

Petition, Paper 1 at 41-42.

First, as Douglas explains, network server 508 includes an “inner circle” server 515” that “is dedicated to handle sensitive data, such as medical records.” Douglas at 24:13-19, FIG. 59; Bergeron at ¶ 95. Such handling of sensitive medical records is what the relied-on portions of Douglas’s system do. *See, e.g., infra* Sections VIII.A.9(c) and VIII.A.9(d) (Limitations 13[b] and 13[c]) (setting up an

• • •

Bergeron at ¶ 95. A POSITA would have thus understood, per Douglas, that these relied-on portions of Douglas’s system are implemented by “inner circle” server 515 of network server 508. Bergeron at ¶ 95.

Douglas's Server “[C]ommunicate[s]” with Databases

- PO argued that Petitioner never used “the phrase ‘in communication with’.” POR, Paper 16 at 32-33.
- The '554 Reply re-iterated that “access to” means “in communication with.” Reply, Paper 19 at 13; see *also* Supp. Bergeron Dec., EX1025 at ¶¶ 9-13.
- Patent Owner's unsupported Sur-Reply argument fails facially:

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

Sur-Reply, Paper 23 at 15



“a processor for executing a set of instructions”

Douglas's Software Is a "Set of Instructions"

(b) *Limitation 17[a]: a processor for executing a set of instructions*

Douglas discloses or renders obvious a processor within network server 508 for executing a set of instructions for implementing Douglas's system. See Section VIII.A.9(b) (Limitation 13[a]).

Petition, Paper 1 at 48-49

Douglas further discloses a client management program, specifically, Douglas's "therapeutic behavior modification program's compliance monitoring and feedback system." Douglas at 5:22-25, FIGs. 59 and 60; Bergeron at ¶ 93. That

Douglas's system is software and therefore a processor executes the system.

Douglas at 25:22-26, 3:10-13, 2:25-27; Bergeron at ¶ 93.

Petition, Paper 1 at 40-41

In the preferred embodiment, the system is constructed using the C++ programming language in conjunction with SQL 6.5, Cold Fusion, commercially available from Alaire Company, Visual Basic, commercially available from Microsoft Corporation), and HTML. Active X and Java components may also be invoked to handle the multimedia functions of the system.

Douglas, EX1002 at 25:22-26 (Cited in Petition at 41)

Douglas's Software Is a "Set of Instructions"

- PO argues that "Petitioner's [cross-cited] analysis of claim 13 [does not] even contain[] the word 'instructions....'" POR, Paper 16 at 34-35.
- The '554 Reply re-iterated the Petition's mapping—Douglas's software is a set of instructions. Reply, Paper 19 at 14.
- PO does not contest that Douglas's software is a set of instructions (see POR, Paper 16 at 34-35), rather that PO did not "understand," from the Petition, that Douglas's software is a set of instructions:

set of instructions, as would be understood by a POSITA." (Reply. 14.) 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.

Sur-Reply, Paper 23 at 16



“determining whether the data required is received from each of the providers” or “sending an alert...”

Douglas Discloses Claim 10 Elements

- “data” in claim 10 is “updated data, from ... providers”

10. The method according to claim 1, further comprising:
determining whether the data required is received from
each of the one or more providers; and
sending an alert to the one or more providers in
response to determining there is missing data for the
client associated with the one or more providers.

Claim 1
periodically receiving updated data, from the one or more
providers, about the status and/or well-being of the
client;

'554 Patent, EX1001

Douglas Discloses Claim 10 Elements

- “data” in claim 10 is “updated data, from ... providers”

However, there is no determination of whether data associated with performance of the desired outcomes is received “from each of the providers” and Petitioner did not argue otherwise. (Petition at 38; Ex. 2006 at 55:22-56:9 (“I agree that it doesn’t

POR, Paper 16 at 48

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-

Sur-Reply, Paper 23 at 19

Douglas Discloses Claim 10 Elements

- [Petitioner argues obviousness](#)

Douglas discloses sending an “alert” to a client’s provider should the client’s data indicate a “threatening” situation. *See* Section VIII.A.3 (Claim 2); Bergeron at ¶ 89. Given that client data may indicate a “threatening” or “potentially dangerous” situation (Douglas at 11:11-19), it would have been obvious for Douglas’s system to determine whether client data was missing and, if so, send an alert to the provider associated with the client. Bergeron at ¶ 89. Doing so would have encouraged the provider to enter the missing data (*see* Section VIII.A.2(e) (Limitation 1[d])), thereby allowing Douglas’s system to identify (and potentially uncover) a threatening or potentially dangerous situation indicated by the data. Bergeron at ¶ 89.

Petition, Paper 1 at 38

Douglas Discloses Claim 10 Elements

- Petitioner argues obviousness

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 16 at 48 (*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 38 (*citing* to Limitation 1[d]), 26 (*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 10.

Douglas Discloses Claim 10 Elements

- “alert” in Douglas is unequivocal

required is received from *each of the providers*.” (Reply, 19.) 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.)

Sur-Reply, Paper 23 at 18

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.

Douglas Discloses Claim 10 Elements

- [Petitioner's expert's supplemental declaration is un rebutted](#)

31. Regarding claim 10, I understand that PO argues that Douglas does not disclose a framework or logic for triggering an alert for missing data and that this would not have been obvious. Paper 16 at 51.

32. I disagree with PO's position. Douglas's "system periodically correlates the updated patient health information with the program goals to determine the patient's progress and compliance with the program." Paper 1 at 38, 26 *citing* Douglas at 11:26-28. Thus, Douglas discloses its system has the functionality or logic of periodically inspecting and processing the data, which includes the data received from the providers.

Sup. Bergeron Dec., EX1025 at ¶¶ 31-36



Grounds 4, 6, 8 properly discloses
details

Grounds 4, 6, and 8 Sufficiently Disclosed in Petition

- [Petition has hot-links to other portions re Douglas and Douglas + Wager](#)

Ground 3: See Section VIII.A.2 (Claim 1). [\(Link to Douglas\)](#)

Ground 4: See Section VIII.B.4 (Claim 1). [\(Link to Douglas + Wager\)](#)

Grounds 3 and 4: See Sections VIII.C.2-VIII.C.3. The Douglas-Chitiveli
Petition, Paper 1 at 62

Ground 3 = Douglas + Chitiveli → Not Disputed by PO

Ground 4 = Douglas + Wager + Chitiveli

➤ Chitiveli applied in the same way in Grounds 3 and 4

Ground 5: See Section VIII.A.3 (Claim 2). [\(Link to Douglas\)](#)

Ground 6: See Section VIII.B.4 (Claim 2). [\(Link to Douglas + Wager\)](#)

Grounds 5 and 6: See Sections VIII.D.2-VIII.D.3. The Douglas-Klotsche
Petition, Paper 1 at 67-68

Ground 5 = Douglas + Klotsche → Not Disputed by PO

Ground 6 = Douglas + Wager + Klotsche

➤ Klotsche applied in the same way in Grounds 5 and 6

Ground 7: See Section VIII.A.2 (Claim 1). [\(Link to Douglas\)](#)

Ground 8: See Section VIII.B.4 (Claim 1). [\(Link to Douglas + Wager\)](#)

Grounds 7 and 8: The Douglas-Koh System (see Sections VIII.E.2-VIII.E.3)
Petition, Paper 1 at 72-74

Ground 7 = Douglas + Koh → Not Disputed by PO

Ground 8 = Douglas + Wager + Koh

➤ Koh applied in the same way in Grounds 7 and 8



Motivation to combine Douglas with Wager

A POSITA would have been motivated to combine Douglas and Wager

- The Board agreed in the ID that a POSITA would have been motivated to modify Douglas to include the Wager interface for generating patient-to-provider assignments:

In sum, we are persuaded that Petitioner has sufficiently shown, on the present record and for the purposes of institution, that Petitioner sufficiently shows that one of ordinary skill in the art would have made (and would have been successful in making) the proposed combination of Douglas and Wager.

ID, Paper 9 at 24-25

A POSITA would have been motivated to combine Douglas and Wager

- PO offers a new argument in its Sur-Reply that a patient would have looked to primary care provider referrals instead of assignments via an incorporated Wager interface:

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

Sur-Reply, Paper 23 at 22

- PO did not raise this argument in the POR, and the Board should not consider it.
- Nonetheless, even if a patient utilized such referrals, a POSITA still would have been motivated to make assignments using the Wager interface, such as when a primary care provider did not have a referral for a specific ailment, or when the referral was of low quality, etc.

A POSITA would have been motivated to combine Douglas and Wager

- PO offers another new argument in its Sur-Reply that assignments via the Wager interface would not have the advantage of prompt care:

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).)

Sur-Reply, Paper 23 at 23-24

- PO did not raise this argument in the POR, and the Board should not consider it.
- Nonetheless, there is no suggestion in the Petition of assigning “many doctors.”

A POSITA would have been motivated to combine Douglas and Wager

- The Petition's first motivation to combine was to ensure an assigned provider had the proper skill set to treat the patient:

Doing so would have helped ensure that the assigned physician was equipped, in terms of skill set, to treat the patient, particularly in view of Douglas's patients having varied needs and Douglas's physicians having varied skill sets (*supra* Section VIII.B.2). Bergeron at ¶ 128. This is explicitly taught by Wager, whose “invention overcome[s] ... problems,” including “the unit or other managers ...[needs to] rely on manual notes, memory and institution to ... make appropriate provider-to-patient assignments,” by the “staff manager [being] presented with a suite of provider assignment options and alternatives, to automatically organize and drive assignment ratios and other assignment parameters and options with compliance, capacity, best practice and other criteria taken into account.” Wager at ¶¶ [0006]-[0007]; Bergeron at ¶ 128.

Petition, Paper 1 at 54

A POSITA would have been motivated to combine Douglas and Wager

- The Petition's second motivation to combine was to ensure an assigned provider had the capacity to treat the patient:

The Douglas-Wager System would have also helped ensure that the assigned physician had the capacity to effectively treat the patient. Bergeron at ¶ 129. Evidenced by Douglas's FIG. 51, there are many patients on Douglas's system. Douglas at FIG. 51 ("12,984" patients on the program); Bergeron at ¶ 129. And those patients were not evenly distributed amongst physicians. See Douglas at FIG. 57; Bergeron at ¶ 129. As a POSITA would have understood, a physician's capacity to tend to a patient decreases as the number of patients that the physician treats increases. Bergeron at ¶ 129. Through use of Wager's interface, such capacity issues "may be more effectively managed against fluctuating clinical demands" (Wager at ¶ [0006]; *see also* Wager at ¶¶ [0008], [0020]), ultimately increasing quality of care for the patient. Bergeron at ¶ 129.

Petition, Paper 1 at 55

A POSITA would have been motivated to combine Douglas and Wager

- PO asserts that because the provider-patient relationship is already initiated in Douglas, the Wager interface would have been redundant to Douglas, and thus a POSITA would not have been motivated to incorporate it:

Second, a POSITA viewing Douglas’s system would not look to Wager’s system of “generating patient-to-care provider assignments” as Petitioner argues because in Douglas, patients are subscribed to the system only after they have selected and seen their own physician. (See Douglas at 6:28-35; Petition at 54; Ex. 2005 at ¶ 103.) Thus, a POSITA would understand that Wager’s system is redundant of this aspect of Douglas, in which patients are only subscribed to the system because they are already assigned to a physician. (Ex. 2005 at ¶ 103.) See *BMW of North America, LLC v. Carrum Techs., LLC*, IPR2019-00904, Paper 10 at 14 (PTAB Oct. 18, 2019) (no motivation to combine because when “[one prior art reference] discloses methods for identifying when a vehicle has entered a curve..., it is not evident why [a POSITA] would have looked to [a second prior art reference] to obtain additional methods of determining curve entry.”).

POR, Paper 16 at 40

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, 15.) 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, 37-45.)

Sur-Reply, Paper 23 at 21

A POSITA would have been motivated to combine Douglas and Wager

- But the Board agreed in the ID that the Wager interface enables assignments within the Douglas system, and thus is not redundant to any pre-existing provider-patient relationship in Douglas:

Patent Owner makes six different arguments that one of ordinary skill would not have been motivated to combine Douglas with Wager. Prelim. Resp. 22–30. First, Patent Owner argues that in “Douglas, patients are subscribed to the system only after they have selected and seen their own physician,” and “Wager’s system is redundant of this aspect of Douglas, in which patients are only subscribed to the system because they are already assigned to a physician.” *Id.* at 22–23 (citing Ex. 1002, 6:28–35). However, as discussed above, the claim limitation may be met simply by a case administrator assigning a patient to a physician by selecting a physician within the system, even if the same physician already prescribed monitoring for the patient outside the system.

ID, Paper 9 at 22

A POSITA would have been motivated to combine Douglas and Wager

- Additionally, as Petitioner has argued, and Petitioner's Expert Dr. Bergeron's unrebutted testimony makes clear, a need for further patient-provider assignments can arise naturally even if an initial provider-patient relationship has already been initiated:

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 ¶¶20-28; Ardehali at 113:9-115:4.

Reply, Paper 19 at 16

24. A POSITA would have understood that reassignments could be voluntarily desired or needed by a patient in a number of scenarios.

25. For example, a patient would voluntarily desire a reassignment if the patient determines that he or she does not like an initially assigned provider and would instead like a different provider. A patient may grow to dislike a provider for a number of reasons, such as disliking the provider's perceived effectiveness or personality, or as a byproduct of developing a desire to try the services of a different provider.

26. In another example, a patient voluntarily needs a reassignment when an initially assigned provider retires or leaves the practice, where without such a reassignment the patient would be left without a provider.

27. In yet another example, a patient voluntarily needs a reassignment when a patient's medical condition takes an unexpected turn, and the initially assigned provider is no longer appropriate or sufficient, and instead the patient's condition requires a different provider, such as having a different area of experience or expertise.

28. I understand that PO's expert confirmed that there are instances in which it would be beneficial to switch providers. Ardehali at 113:9-115:4.

Supp. Bergeron Dec., Ex. 1025 at 6

A POSITA would have been motivated to combine Douglas and Wager

- PO also argues, in response to Petitioner's second motivation, that Douglas FIG. 57 does not provide evidence of a need for rebalancing assignments:

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, 15.) 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, 15 (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, 37-40.)

A POSITA would have been motivated to combine Douglas and Wager

- But PO ignores that Petitioner has consistently asserted that Wager also discloses a need for assignment balancing irrespective of Douglas Fig. 57:

increases. Bergeron at ¶ 129. Through use of Wager’s interface, such capacity issues “may be more effectively managed against fluctuating clinical demands” (Wager at ¶ [0006]; *see also* Wager at ¶¶ [0008], [0020]), ultimately increasing quality of care for the patient. Bergeron at ¶ 129.

Petition, Paper 1 at 55

violated. Because in one regard an entire range of workforce management functions may be integrated in one interface, and that interface or tool may automatically present and analyze core capacity and other variables and options, as well as store resulting assignments and schedules to distribute to staff and form a basis for or input to further schedules, the overall task of timely workforce assignments may be achieved more efficiently, compliance may be better ensured while capacity may be more effectively managed against fluctuating clinical demands.

a patient and is not overloaded. Paper 1 at 55. 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.

Reply, Paper 19 at 15

Wager, Ex. 1003 at [0006]

A POSITA would have been motivated to combine Douglas and Wager

- [Additionally, Douglas Fig. 57 does disclose a general need for balancing cardiac cases:](#)

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.

Reply, Paper 19 at 15

HeartLand 64

Fig 57

Administration — HeartLand HealthPlan Payor/Employer

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HeartLand Utilization Review HINT: CLICK ON CATEGORY SEE DETAIL

Perform Healthplan Utilization Review

Physician	ID No.	Specialty	YTD CAD Cases	YTD norm is 17.3%	Percent Heartland vs. norm
				Percent Heartland	
Moeller, J	66537	Cardio	30	15.6%	-2.2%
King, S	29873	Cardio	38	32.6%	+1.4%
Carvell, C	89721	Primary	16	12.0%	-4.3%
Richards, B	52983	Primary	42	18.7%	+1.4%

Douglas, Ex. 1002 at Fig. 57

A POSITA would have been motivated to combine Douglas and Wager

- PO also makes several arguments that assignments via the Wager interface would disrupt care and harm the patient. But the Petition does not suggest forcible reassignment, and instead the proposed combination can be used for voluntary/ beneficial reassignment, as confirmed in Dr. Bergeron's unrebutted testimony:

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, nowhere in the Petition is there a suggestion or proposed combination of Douglas and Wager that requires forcibly reassigning patients against their will. Indeed, a POSITA operating the combined Douglas-Wager system would not have used it in this way. BergeronSupp at ¶¶29-30. 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 51-57.

Reply, Paper 19 at 16

24. A POSITA would have understood that reassignments could be voluntarily desired or needed by a patient in a number of scenarios.

25. For example, a patient would voluntarily desire a reassignment if the patient determines that he or she does not like an initially assigned provider and would instead like a different provider. A patient may grow to dislike a provider for a number of reasons, such as disliking the provider's perceived effectiveness or personality, or as a byproduct of developing a desire to try the services of a different provider.

26. In another example, a patient voluntarily needs a reassignment when an initially assigned provider retires or leaves the practice, where without such a reassignment the patient would be left without a provider.

27. In yet another example, a patient voluntarily needs a reassignment when a patient's medical condition takes an unexpected turn, and the initially assigned provider is no longer appropriate or sufficient, and instead the patient's condition requires a different provider, such as having a different area of experience or expertise.

28. I understand that PO's expert confirmed that there are instances in which it would be beneficial to switch providers. Ardehali at 113:9-115:4.

A POSITA would have been motivated to combine Douglas and Wager

- The Board also agreed in the ID that these PO arguments were not persuasive:

practice organization. *See* Ex. 2002, 1. Accordingly, the disadvantage of being reassigned to a different physician may be weighed against the advantages of receiving prompt care in a larger practice organization. *See*

ID, Paper 9 at 23

However, the problem raised by Patent Owner appears to be the same problem that Wager is seeking to solve with a computerized clinical workforce management interface. *See* Ex. 1003 ¶ 6.

ID, Paper 9 at 24



Motivation to combine Douglas and Koh

A POSITA would have been motivated to combine Douglas and Koh

- Petitioner has consistently maintained that a POSITA would have modified Douglas to use Koh's data mining to provide a default set of goals for a patient:

Douglas recommends default goals, but does not indicate how they are made, although has a large amount of data:

Douglas's system "recommends a default set of goals based on the patient's needs and existing medical protocols that may be modified by the physician."

Douglas at 7:17-20; Bergeron at ¶ 166. "This is done by correlating patient information such as age, sex, weight information relating to the health, life situation and diagnostic category of the patient," and "the patient's medication and other health conditions" to "established medical protocols for that type of patient."

Petition, Paper 1 at 69

Douglas does not explicitly disclose—apart from "established medical protocols"—how those initial or subsequent recommendations are made. Bergeron at ¶ 167. But Douglas's system contains a copious amount of patient health data;

Petition, Paper 1 at 69

Koh teaches that large amounts of health data can be mined to provide treatments and best practices:

66; Bergeron at ¶ 164. Per Koh, data mining "aims to identify valid, novel, potentially useful, and understandable correlations and patterns in data by combing through copious data sets to sniff out patterns that are too subtle or complex." Koh

Petition, Paper 1 at 68

analyzed by traditional methods." Koh at 65; Bergeron at ¶ 164. For this reason, and because data mining can, *inter alia*, "identify[] effective treatments and best practices" from such a data set and thereby benefit "healthcare providers, such as

Petition, Paper 1 at 68

A POSITA would have been motivated to combine Douglas and Koh

- PO further complains that Petitioner has not incorporated enough detail from Koh

Petitioner also does not identify any “teachings” from Koh that provide the

limitations that Petitioner claims it supplies. Koh’s generic references to data

Sur-Reply, Paper 23 at 25

- But the claims do not require any particular type of data mining—instead just “data mining the compiled data to determine best practices,” which is taught by the relied upon parts of Koh:
- The specification also provides no details as to any specific type of data mining—instead only vaguely references data mining as known in the art:

Provider A **112** or client **114**. The database **206** may be configured for data mining of available information and data as is known in the art.

'554 Patent, Ex. 1001 at 10:26-28



“automatically communicating alerts
in response to...”

Douglas Discloses Automatically Communicating Alerts

- [Petitioner's Reply arguments are unrebutted](#)
- POR argued that the alarm in Douglas is an option and not automatic (POR, Paper 16 at 46-47)
- Reply rebutted this argument (Reply, Paper 19 at 17-18):
 - Claim language does not preclude alerts being set up and/or configured before they are automatically communicated
 - '554 Patent expressly contemplates that its alerts need to be configured before operating as automatic alerts
- PO did not respond to these arguments in its Sur-Reply



Whether Chitiveli is a printed publication

Chitiveli is a Printed Publication

- [Petitioner's Reply arguments are unrebutted](#)
 - POR argued that Chitiveli is not a printed publication under 35 USC § 311 (POR, Paper 16 at 52-53)
 - Reply rebutted this argument (Reply, Paper 19 at 20):
 - Federal Circuit recently rejected this position in *Lynk Labs, Inc. v. Samsung Elecs. Co.*, 125 F.4th 1120 (Fed. Cir. 2025)
 - “such published patent applications can be deemed prior art in IPRs as of their filing date.”
- PO did not respond to these arguments in its Sur-Reply

Grounds for IPR2024-00617 ('142 Patent)

Ground	Basis	Reference(s)	Challenged Claims
1	§ 103	Douglas	1, 3, 4, 6, 7, 10, 11, 14, 16, and 17
2	§ 103	Douglas and Wager	1, 3, 4, 6, 7, 10, 11, 14, 16, and 17
3	§ 103	Douglas and Chitiveli	2 and 20
4	§ 103	Douglas, Wager, and Chitiveli	2 and 20
5	§ 103	Douglas and Koh	5, 12, 13, and 18
6	§ 103	Douglas, Wager, and Koh	5, 12, 13, and 18
7	§ 103	Douglas and Virginia	9
8	§ 103	Douglas, Wager, and Virginia	9

Petition, Paper 1 at 4

'142 Patent Issues (IPR2024-00617)

Claim Terms/Issues	Same as '616 IPR?
"assign[/ing] the client to one or more providers in response to ..."	Yes
"wizard application" or "projected closure date" ('142 Patent, claims 3, 4, 14)	No
"wherein the data includes at least intervention plans" ('142 Patent, claim 6)	No
"determining whether the data required is received from each of the providers" or "sending an alert..."	Yes
"prompting the providers to provide data associated with assigned clients" ('142 Patent, claim 10)	No
"client management program"	Yes
"a database in communication with the server..."	Yes
"a processor for executing a set of instructions"	Yes
Motivation to combine Douglas with Wager	Yes
Motivation to combine Douglas and Koh	Yes
Whether Virginia is analogous art	No
Grounds 4, 6, 8 properly discloses details	Yes
"automatically communicate alerts in response to..."	Yes
Whether Chitiveli is a printed publication	Yes



“wizard application” or “projected
closure date”

Douglas Discloses “wizard application”

- [PO imports limitations into “wizard application”](#)

31.) But the purported wizard functionality cannot be *within* an application to satisfy the claim; it must *be* the application. (Ex. 1001 at cl. 3.)
ordinary meaning of the term. (Ex. 2005, ¶86.) The “wizard application” disclosed in the ’142 Patent is consistent with the plain and ordinary meaning of the term “wizard” and would require active facilitation of input through sequential or hierarchical prompts. (Ex. 2005, ¶85)

POR, Paper 15 at 23-24

Douglas Discloses “wizard application”

- [PO's interpretation contrary to specification and ordinary usage](#)
- '142 Patent specification uses the term “goal wizard” or “wizard,” not “wizard application”
- No requirement in claims or specification that “wizard application” be “the application” or requires “active facilitation” “through sequential or hierarchical prompts”
- Specification contemplates implementing various functionality using an application, not isolating functionalities into standalone applications, as PO proposes. Reply, Paper 18, at 6.
- Petitioner relies on plain and ordinary meaning of “wizard” to POSITA:
 - “[a]n interactive help utility within an application that guides the user through each step of a particular task.” Microsoft, EX1014 at 573.

Douglas Discloses “wizard application”

- [In any event, Douglas discloses PO's limitation](#)

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.

Reply, Paper 18 at 7

Douglas Discloses “a projected closure date”

- [PO interpretation unsupported by intrinsic record](#)

“projected closure date.” Petitioner does not propose a construction for this term, but the word “closure” necessarily requires some kind of end or finality. (Ex. 2005,

POR, Paper 15 at 25

30 is reached. A projected closure date is the date at which the goal will end. The projected closure date is utilized to keep users and clients focused on reaching a designated goal in a reasonable time period. For example, depending upon procedural and regulatory parameters, a projected closure date
35 may be pre-determined (e.g., one year) or may be set by user or agent specification of timeline (e.g., organizational key performance indicators may be set annually). The final

'142 Patent, EX1001 at 6:31-37 as cited in POR, Paper 15 at 26

Douglas Discloses “a projected closure date”

- [Douglas's one-month goal's 61 satisfy PO's evidence](#)

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.

Reply, Paper 18 at 8



“wherein the data includes at least intervention plans”

Douglas discloses “the data includes at least intervention plans”

- Claim 1 includes “data associated with the treatment or assistance of each of the clients” and “data associated with at least performance of the desired outcomes by each of the clients”—but only requires the latter data to be “received from the providers utilizing computing or communication devices”:
 1. A method for tracking goal progression, the method comprising:
 - receiving input establishing accounts for providers serving clients, wherein the clients are individuals receiving treatment or assistance, and wherein the accounts are stored in a server available through one or more networks;
 - creating fields required for compiling data associated with the treatment or assistance of each of the clients from the providers;
 - assigning each of the clients to one or more of the providers in response to selections from an administrator, wherein the one or more of the providers include at least individuals available to treat or assist the client;
 - establishing desired outcomes for each of the clients based on treatment and assistance required to meet the desired outcomes, wherein one or more thresholds indicates whether the desired outcomes are met;
 - compiling data associated with at least performance of the desired outcomes by each of the clients received from the providers utilizing computing or communications devices in communication with the server;
 - automatically determining whether 1) the desired outcomes are being met in response to rules governing data analysis that are utilized based on the compiled data, and 2) the compiled data varies from one or more thresholds to become significant for one or more of the clients; and
 - automatically communicating alerts in response to the compiled data varying from the one or more thresholds to become significant for the one or more of the clients.

Douglas discloses “the data includes at least intervention plans”

- Claim 6 includes “data includ[ing] intervention plans,” but this is not “data associated with at least performance of the desired outcomes by each of the clients”—and therefore need not be “received from the providers utilizing computing or communication devices”:

1. A method for tracking goal progression, the method comprising:
 - receiving input establishing accounts for providers serving clients, wherein the clients are individuals receiving treatment or assistance, and wherein the accounts are stored in a server available through one or more networks;
 - creating fields required for compiling data associated with the treatment or assistance of each of the clients from the providers;
 - assigning each of the clients to one or more of the providers in response to selections from an administrator, wherein the one or more of the providers include at least individuals available to treat or assist the client;
 - establishing desired outcomes for each of the clients based on treatment and assistance required to meet the desired outcomes, wherein one or more thresholds indicates whether the desired outcomes are met;
 - compiling data associated with at least performance of the desired outcomes by each of the clients received from the providers utilizing computing or communications devices in communication with the server;
 - automatically determining whether 1) the desired outcomes are being met in response to rules governing data analysis that are utilized based on the compiled data, and 2) the compiled data varies from one or more thresholds to become significant for one or more of the clients; and
 - automatically communicating alerts in response to the compiled data varying from the one or more thresholds to become significant for the one or more of the clients.

6. The method according to claim 1, wherein the data includes at least intervention plans, desired outcomes and objectives, recorded activities, and general notes.



“prompting the providers to provide data associated with assigned clients”

Douglas Discloses “prompting” of claim 10

- PO's proposes narrow construction of “prompting”

established word such as “prompt” from the claims to evade its burden. The specification confirms that “prompt[ing]” in the context of the '142 patent requires “guid[ing] the user through completing fields” via, e.g., “a series of probes or questions”:

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

POR, Paper 15 at 34-35 citing '142 Patent, EX1001 at 23:11-23

Douglas Discloses “prompting” of claim 10

- [Douglas satisfies plain and ordinary meaning of “prompting”](#)

Douglas’s disclosed or obvious fields for entering patient data (*see* Section VIII.A.2(c) (Limitation 1[b]) prompt the providers to provide data associated with the clients by providing a space for entering data labeled with the type of data that is to be entered (*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”), Wright at FIG. 4 (space for entering, e.g., “Heart Rate”)). Bergeron at ¶ 102.

Petition, Paper 1 at 37

Douglas Discloses “prompting” of claim 10

- [Claims 10 and 1 are different](#)

Claim 1

creating fields required for compiling data associated with the treatment or assistance of each of the clients from the providers;

10. The method according to claim 1, further comprising:
prompting the providers to provide data associated with assigned clients.

'142 Patent, EX1001



Virginia is analogous art

Virginia is Analogous Prior Art

'142 Patent and Virginia are in the same field of endeavor

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

Reply, Paper 18 at 21-22

Virginia is Analogous Prior Art

- PO proposes narrow field of endeavor not supported by specification

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.)

Sur-Reply, Paper 22 at 24

A system, method, server, and computer readable medium for tracking goal progression. Input establishing accounts for providers serving clients is received. Each of the clients is assigned to one or more of the providers in response to selections from an administrator. Goals are established for each of the clients in response to treatments and assistance required. Data associated with each of the clients received from the providers is compiled. A determination is made whether the goals are being met in response to rules based on the compiled data. Alerts are automatically communicated in response to the compiled data varying from a threshold to become significant for one or more of the clients.

'142 Patent, EX1001 at Abstract

In one embodiment, a health network and system may be utilized to provide software as a service (SaaS). For example, a health network provider may make server-level applications, local applications, web programs, and mobile applications available to a number of providers. Individual users may then enter, retrieve, manage, and view information and data through any number of wired or wireless computing and communications devices. The different soft-

'142 Patent, EX1001 at 5:8-15

Virginia is Analogous Prior Art

- [PO proposes narrow field of endeavor not supported by specification](#)

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.’”)

Reply, Paper 18 at 22

Virginia is Analogous Prior Art

- Virginia is also reasonably pertinent to the problem addressed by the '142 Patent 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.