

Filed: August 10, 2026

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. IPR2026-00390
U.S. Patent No. 11,675,791

PATENT OWNER'S DISCRETIONARY DENIAL BRIEF

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EXHIBIT LIST

Exhibit No.	Description
2001	RESERVED.
2002	District Court's Order [Dkt. 43], <i>Data Health Partners, Inc. v. Teladoc Health, Inc.</i> , No. 1:23-cv-00160-JCG (D. Del.), dated December 3, 2024.
2003	District Court's Order Lifting Stay [Dkt. 57], <i>Data Health Partners, Inc. v. Teladoc Health, Inc.</i> , No. 1:23-cv-00160-JCG (D. Del.), dated February 10, 2026.
2004	Plaintiff Data Health Partners, Inc.'s Amended Complaint for Patent Infringement [Dkt. 58], <i>Data Health Partners, Inc. v. Teladoc Health, Inc.</i> , No. 1:23-cv-00160-JCG (D. Del.), dated February 11, 2026.
2005	District Court's Scheduling Order [Dkt. 66], <i>Data Health Partners, Inc. v. Teladoc Health, Inc.</i> , No. 1:23-cv-00160-JCG (D. Del.), dated March 4, 2026.
2006	District Court's Opinion and Order Denying Defendant Teledoc Health, Inc.'s Third Motion to Dismiss [Dkt. 91], <i>Data Health Partners, Inc. v. Teladoc Health, Inc.</i> , No. 1:23-cv-00160-JCG (D. Del.), dated July 23, 2026.
2007	Plaintiff Data Health Partners, Inc.'s Notice of Service of First Requests for Production of Documents and First Set of Interrogatories to Defendant Teladoc Health, Inc. [Dkt. 90], <i>Data Health Partners, Inc. v. Teladoc Health, Inc.</i> , No. 1:23-cv-00160-JCG (D. Del.), dated July 2, 2026.
2008	Plaintiff Data Health Partners, Inc.'s Original Complaint for Patent Infringement [Dkt. 1], <i>Data Health Partners, Inc. v. Teladoc Health, Inc.</i> , No. 1:23-cv-00160-JCG (D. Del.), dated December 13, 2023.
2009	District Court's Order [Dkt. 47], <i>Data Health Partners, Inc. v. Teladoc Health, Inc.</i> , No. 1:23-cv-00160-JCG (D. Del.), dated October 6, 2025.

I. INTRODUCTION

On June 5, 2026, Teladoc Health, Inc. (“Petitioner” or “Teladoc”) filed a Petition for *inter partes* review of U.S. Patent No. 11,675,791 (“the ’791 patent”), challenging claims 1–20 as allegedly obvious under 35 U.S.C. § 103. (Paper 1 (“Petition” or “Pet.”) at 4.) That same day, Petitioner filed a second petition challenging U.S. Patent No. 11,809,431 (“the ’431 patent”), a related family member. *See Teladoc Health, Inc. v. Data Health Partners, Inc.*, IPR2026-00391, Paper 1 (PTAB June 5, 2026). Pursuant to the Director’s March 26, 2025 Memorandum regarding *Interim Processes for PTAB Workload Management* (“PTAB Memo”), Patent Owner Data Health Partners, Inc. (“Patent Owner” or “Data Health”) requests that the Director exercise discretion and deny institution of the Petition filed by Petitioner.

This is not Petitioner’s first opportunity to test the patentability of the technology at issue. The ’791 patent is one of five members of a single patent family all directed to goal-tracking and alert technology that Data Health has asserted against Teladoc in a single, ongoing infringement action pending in the District of Delaware. Two other members of that family, U.S. Patent Nos. 11,144,554 (“the ’554 patent”) and 11,151,142 (“the ’142 patent”), were already the subject of full *inter partes* review proceedings (IPR2024-00616 and IPR2024-00617) that proceeded all the way to Final Written Decisions. The district court

obliged a request for Board review by staying the entire infringement action for more than a year while those proceedings ran their course. (Ex. 2002.)

That is precisely the quick and cost-effective alternative to litigation that the AIA promises. Having already received the full benefit of that bargain, a complete round of Board review of the core technology in this patent family, followed by a district court stay of more than a year, Petitioner now asks the Board to do it all again. On February 10, 2026, the district court lifted the stay and granted Data Health leave to file an amended complaint. (Ex. 2003.) On February 11, 2026, Data Health filed that amended complaint, asserting the '554 and '142 patents together with two later-issued continuations from the same family, the '791 and '431 patents. (Ex. 2004 at ¶¶ 9–14, 32–55.) On March 4, 2026, the district court entered a scheduling order setting a claim construction hearing for March 11, 2027, and a jury trial for June 26, 2028. (Ex. 2005 at 15–16, 23.) And on July 23, 2026, the court denied Petitioner's motion to dismiss under Rule 12(b)(6), rejecting Petitioner's challenge to the sufficiency of Data Health's infringement allegations and clearing the case to proceed on the merits. (Ex. 2006.)

Rather than litigate the case the district court has now set on a firm track, Petitioner filed two new IPR petitions the same day (this one and its companion against the '431 patent) relying in substantial part on the same Douglas reference already at issue in the -00616 and -00617 IPRs. (Petition at 1 ("Douglas formed the

basis of two prior IPRs with final written decisions for patents that are in the same family as the '791 Patent and have claims similar to those at issue here.'").)

Petitioner already had its round of Board review of this family of patents, and the district court already accommodated it with a lengthy stay. At some point, the district court case must be allowed to proceed to the trial the court has now scheduled, without being repeatedly interrupted by successive rounds of Board review of the same patent family. That point has been reached.

As explained below, the *Fintiv* factors and the AIA's purpose of providing an efficient alternative to litigation (not a perpetual, patent-by-patent substitute for it) favor denial of institution.

II. FACTUAL BACKGROUND

A. The Parties and the Data Health Patent Family

Patent Owner Data Health is the owner by assignment of a family of patents directed to a patient-specific, iterative platform for goal creation, multimodal data collection, data analysis, and automated intervention, developed from the clinical experience of Grafton Integrated Health Network and commercialized as the REBOOT platform. (Ex. 2004 at ¶¶ 1, 20–23.) The family includes U.S. Patent No. 10,061,812 (“the '812 patent”), from which the '142 patent issued as a continuation; the '554 patent, a continuation-in-part of the '142 patent; the '791 patent, a continuation of the '142 patent; and the '431 patent, ultimately a

continuation of the '554 patent. Petitioner Teladoc is the defendant in the underlying infringement action and, since 2020, has owned and operated the accused Livongo diabetes-management platform. (Ex. 2004 at ¶¶ 24–31.)

B. Data Health Sues Teladoc and the District Court Stays the Case Pending a First Round of *Inter Partes* Reviews

On February 13, 2023, Data Health sued Teladoc in the District of Delaware, Case No. 1:23-cv-00160-JCG, asserting the '554 and '812 patents. (Ex. 2008 at ¶¶ 9–28.) Petitioner responded by filing three concurrent IPR petitions against the family: IPR2024-00616 (challenging the '554 patent), IPR2024-00617 (challenging the '142 patent), and IPR2024-00618 (challenging the '812 patent). The Board instituted the first two on September 16–17, 2024, but denied institution of the third. (IPR2024-00616, Paper 9; IPR2024-00617, Paper 9; IPR2024-00618, Paper 9.) On December 4, 2024, the district court stayed the entire infringement action pending the outcome of the instituted proceedings. (Ex. 2002.)

Those proceedings ran their full course to Final Written Decision on September 12, 2025, following an oral hearing on June 11, 2025. (IPR2024-00617, Paper 29.) In IPR2024-00616, the Board found claims 1, 2, 4–9, 11–17, 19, and 20 of the '554 patent unpatentable over the Douglas reference (Ex. 1002, WO 1999/03045 A1), alone or in combination with Wager, Chitiveli, Klotsche, or Koh, but found that Petitioner had not shown claim 10 unpatentable. (IPR2024-00616, Paper 30 at 64–65.) In IPR2024-00617, the Board found claims 1–5, 9–14, 16–18,

and 20 of the '142 patent unpatentable over Douglas, alone or in combination with Wager, Chitiveli, Koh, or Virginia, but found that Petitioner had not shown claims 6 and 7 unpatentable. (IPR2024-00617, Paper 29 at 72–73.) In short, the Board has already devoted two full trial proceedings — institution decisions, patent owner responses, expert discovery, an oral hearing, and Final Written Decisions — to substantially the same Douglas reference Petitioner relies on again here, and has already denied to institute once within this very family by declining to institute IPR2024-00618 in the first place. Petitioner’s own Petition acknowledges this history, stating that “Douglas formed the basis of two prior IPRs with final written decisions for patents that are in the same family as the ’791 Patent and have claims similar to those at issue here” and that “[t]he Board found that nearly all of the challenged claims in those family members were invalid based on Douglas alone or Douglas in combination with other prior art.” (Petition at 1.)

C. The Stay is Lifted and Data Health Amends its Complaint and the District Court Sets the Date for Trial

On February 10, 2026, with the -00616 and -00617 IPRs concluded, the district court lifted the stay and granted Data Health leave to file an amended complaint. (Ex. 2003.) On February 11, 2026, Data Health filed its amended complaint, asserting the ’554 and ’142 patents together with two later-issued continuations in the same family — the ’791 patent (issued June 13, 2023) and the ’431 patent (issued November 7, 2023). (Ex. 2004 at ¶¶ 9–13, 32–55.) On March 4,

2026, the district court entered a scheduling order setting a claim construction hearing for March 11, 2027, and a jury trial for June 26, 2028. (Ex. 2005 at 15–16, 23.) On July 23, 2026, the court denied Petitioner’s motion to dismiss the amended complaint under Federal Rules of Civil Procedure 12(b)(6), rejecting Petitioner’s challenge and clearing the case for discovery and claim construction on all four asserted patents. (Ex. 2006.)

D. Petitioner Responds With a Second Round of IPR Petitions Against the Same Patent Family

Rather than proceed with the case the district court has now set on a firm schedule, Petitioner filed two new IPR petitions on June 5, 2026 — this Petition against the ’791 patent and a companion petition against the ’431 patent, IPR2026-00391. (IPR2026-00391, Paper 1.) The Board mailed a Notice of Filing Date Accorded in the companion ’431 proceeding on June 9, 2026, according Patent Owner two months from that date — through August 9, 2026 — to file a discretionary denial brief. Patent Owner is concurrently filing a discretionary denial brief in IPR2026-00391 raising materially the same grounds for denial as to the ’431 patent.

Both petitions target continuations of the same ’142 patent already subject to a Final Written Decision, and both rely in substantial part on the same Douglas reference at issue in the -00616 and -00617 IPRs, combined with additional secondary references (Virginia, Khanuja, Koh, and Chitiveli) to reach limitations

Petitioner contends were not already addressed. (Petition at 4 (Grounds 1–9).)

Petitioner does not dispute that it could have raised, or did raise, closely related invalidity theories against the family’s parent claims in the -00616 and -00617 IPRs; it does not identify any change in the law or any newly discovered evidence that was unavailable to it when it filed those petitions. (Petition, *passim*.) Both the ’791 and ’431 patents issued before the district court granted its stay in 2023.

III. THE DIRECTOR SHOULD DENY INSTITUTION UNDER 35 U.S.C. § 314(a)

The PTAB Memo and 35 U.S.C. § 314(a) gives the Director discretion to deny institution of an IPR. The PTAB Memo also includes a non-exhaustive list of factors that may be raised in discretionary briefing. (PTAB Memo at 2–3.) In evaluating these factors, the Director’s decision should be based on “a holistic review of the facts and circumstances.” *See* USPTO, *Interim Directory Discretionary Process*, <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process> (last visited August 3, 2026). The factors shown below favor denial of the Petition.

A. A Second Round of Serial IPR Petitions Against the Same Patent Family is Contrary to the AIA’s Purpose of Providing a Single, Efficient Alternative to Litigation

“The purpose of AIA reviews was, and is, to provide a quick and cost-effective *alternative* to district court patent litigation for resolving disputes over patent validity.” *Magnolia Med. Techs., Inc. v. Kurin, Inc.*, IPR2026-00097, Paper

17, at 2 (Dir. May 14, 2026) (precedential) (emphasis in original). Congress was explicit that AIA reviews should “not be used as [a] tool[] for harassment or a means to prevent market entry through repeated litigation and administrative attacks...” H.R. Rep. No. 112-98, at 48 (2011); *see also* S. Rep. No. 110-259, at 72 (2008). The Director has repeatedly reaffirmed that principle, explaining that “there also have been instances in which AIA reviews have been used for harassment, contrary to Congress’s intent,” including through the filing of “subsequent petitions for review” against a patent, or a patent family, that has already been tested before the Office. *Magnolia Med. Techs.*, IPR2026-00097, Paper 17 at 4.

This case presents that circumstance, with an added wrinkle: Petitioner does not merely seek a second bite at a single patent it already lost on — it seeks successive rounds of Board review of an entire patent family, one continuation patent at a time, each time relying on largely the same core prior art. Petitioner already obtained a complete round of inter partes review of the ’554 and ’142 patents, all the way to Final Written Decision, and the Board already denied once within this family by declining to institute review of the ’812 patent in the first place. (IPR2024-00616, Paper 9; IPR2024-00617, Paper 9; IPR2024-00618, Paper 9.)

The district court, for its part, accommodated the instituted proceedings by staying the entire infringement action, including claims not even subject to those IPRs, for more than a year. (Ex. 2009; Ex. 2003.) Having received that benefit, and having achieved the substantive result the Board process was designed to deliver, Petitioner should not be permitted to relitigate the same underlying technology against the family's later-issued continuations while asking the district court to pause a second time. The '791 patent issued on June 13, 2023 (before the district court granted a stay) and in the same timeframe as the first round of IPRs; nothing prevented Petitioner from challenging the claims years ago. If the Board grants that request now, there is no principled reason it would not be entitled to do so again against future continuations that might cover the accused products, in a cycle of Board proceedings and district court stays with no natural endpoint. Nothing in the AIA authorizes that result, and the Director's guidance forecloses it.

The district court, for its part, has already signaled that the time for further delay has passed. After affording Petitioner the benefit of a stay through two full IPR proceedings, the court lifted that stay, permitted Data Health to add the '791 and '431 patents to a single consolidated action, denied Petitioner's motion to dismiss, and set a firm schedule culminating in a June 26, 2028 trial. (Ex. 2009; Ex. 2005 at 23; Ex. 2006.) Instituting a second round of IPR proceedings now — particularly proceedings resting on much of the same prior art already presented to,

and substantially adopted by, the Board — would not serve as an efficient alternative to that litigation. It would simply delay it, for the second time, on essentially the same underlying dispute.

B. The *Fintiv* Factors Favor Denial

On whole, the *Fintiv* factors favor denying institution. *See Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020).

1. Factor 1: Whether the Court Granted a Stay or Evidence Exists that One May Be Granted

No motion to stay is currently pending in the district court, and this factor should not be read to favor institution simply because the district court has not yet been asked to grant a second stay. To the contrary, the court’s own conduct is the best evidence of how it would view a renewed request: it already granted one lengthy stay for IPR purposes, waited for that process to run its course, and then affirmatively moved the case forward — permitting amendment, denying dismissal, and entering a trial-ready schedule. (Ex. 2003; Ex. 2005 at 23; Ex. 2006.) Nothing in the record suggests the court would welcome a second interruption of the same case for a second round of Board review of the same patent family. This factor is, at most, neutral, and the surrounding circumstances counsel against assuming a further stay would issue.

2. Factors 2 and 3: Proximity of the Trial Date and the Parties' and Court's Investment

The scheduled trial date of June 26, 2028, is not itself dispositive, but Factors 2 and 3 must be assessed together with the reality that this is a second round of proceedings, not a first. By the time a Final Written Decision would issue in this proceeding, the district court will already have conducted a claim construction hearing (scheduled for March 11, 2027), completed substantial fact and expert discovery, and be proceeding toward a trial the parties and the court have been preparing for since the case resumed in February 2026 — on top of the three years of litigation, and the full IPR proceedings on the '554 and '142 patents, that preceded it. (Ex. 2004; Ex. 2005 at 15.) The parties and the court have already invested, and will continue to invest, substantial resources in the district court case regardless of the outcome of this Petition, since the '554 and '142 patents — already adjudicated once before the Board — remain in the case and will proceed to trial in any event. Instituting review of the '791 patent on top of that schedule does not conserve resources; it risks running a second Board proceeding in parallel with district court proceedings that are, by design, addressing overlapping technology and overlapping prior art. (*See* Ex. 2007, notice of service concerning discovery requests.)

3. Factor 4: Overlap Between the Issues Raised in the Petition and the Parallel Proceeding

This factor strongly favors denial. The Petition's challenge to the '791 patent rests principally on Douglas (Ex. 1002, WO 1999/003045 A1) — the very reference the Board already considered, and substantially relied upon, in finding the overwhelming majority of the challenged claims of the '554 and '142 patents unpatentable in the -00616 and -00617 IPRs — combined with Virginia, Khanuja, Koh, and Chitiveli. (Petition at 4; IPR2024-00616, Paper 30 at 64–65; IPR2024-00617, Paper 29 at 72–73.) The '791 patent's claims, like those of its family members, are directed to the same core goal-tracking, threshold, and alert architecture. That significant overlap means this proceeding would require the Board to re-examine much of the same technology, informed by much of the same prior art, that it has already analyzed twice. It also overlaps with Petitioner's companion petition against the '431 patent, filed the same day and directed to the same family, raising a genuine risk that the Board, and potentially the district court, could reach inconsistent conclusions about closely related claims covering a single accused product line in a single lawsuit.

As of the date of this brief, Patent Owner is not aware of any *Sotera*-type stipulation by Petitioner narrowing the invalidity grounds it will pursue in the district court; Patent Owner has confirmed with litigation counsel that no such stipulation has been filed, but will promptly notify the Board if that changes.

Absent such a stipulation, institution here would not meaningfully streamline the district court case in any event, since Petitioner remains free to pursue Douglas-based invalidity theories against the '791 patent in both forums simultaneously.

4. Factor 5: Whether the Petitioner and the Defendant Are the Same Party

This factor favors denial. Petitioner Teladoc is the sole defendant in the parallel district court litigation and is fully capable of, and in fact is, litigating invalidity of the '791 patent in that forum. (Ex. 2004.)

5. Factor 6: Other Circumstances, Including Petitioner's Serial Pursuit of Board Review Against a Single Patent Family, Favor Denial

Factor 6 favors denial for the reasons developed above in Section III.A. Petitioner has already had a full and fair opportunity to test the patentability of the core technology underlying the Data Health patent family, obtained Final Written Decisions in its favor on the '554 and '142 patents, and received the benefit of a district court stay lasting more than a year while that process unfolded. (Ex. 2002; IPR2024-00616, Paper 30; IPR2024-00617, Paper 29.) It now seeks to repeat that process against the family's later-issued continuations, using much of the same prior art, while the district court case — already delayed once for this purpose — is finally proceeding toward trial. The Director has cautioned against exactly this pattern of using AIA review as “a means to prevent” the efficient resolution of a dispute “through repeated litigation and administrative attacks,” *Magnolia Med.*

Techs., IPR2026-00097, Paper 17 at 2, and has recognized that repeated Board proceedings against a family of related patents raise the same harassment and efficiency concerns as repeated proceedings against a single patent, *see id.* at 4. Denying institution here does not leave Petitioner without a forum: it remains free to present — and, in fact, is already litigating — its invalidity theories regarding the ’791 patent to the district court, in the same case in which the ’554 and ’142 patents (subject to the Board’s prior decisions) and the ’431 patent will already be tried.

C. On Balance, the *Fintiv* Factors and the AIA’s Purpose Favor Denial

Factor 1 is neutral, and Factors 4, 5, and 6 favor denial. Even crediting Petitioner’s position on Factors 2 and 3 in isolation, those factors do not outweigh the overriding reality that Petitioner has already received one complete round of Board review of this patent family and one corresponding district court stay, and that the district court has now made clear — through its scheduling order and its denial of Petitioner’s motion to dismiss — that the case is to proceed. The Director should exercise discretion to deny institution.

IV. CONCLUSION

For the reasons stated above, Patent Owner respectfully requests discretionary denial of the Petition.

Dated: August 10, 2026

Respectfully submitted,

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CERTIFICATE UNDER 37 C.F.R. § 42.24

Under the provisions of 37 C.F.R. § 42.24, the undersigned hereby certifies that the foregoing **PATENT OWNER'S DISCRETIONARY DENIAL BRIEF** complies with the 20-page limit requirement allowed under the Interim Director Discretionary Process for discretionary denial briefs filed after September 1, 2025. *See* Interim Director Discretionary Process (II)(C)(iii) (<https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>).

Dated: August 10, 2026

/Alexander E. Gasser/
Alexander E. Gasser (Reg. No. 48,760)
Counsel for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I hereby certify that on August 10, 2026, a true and correct copy of the foregoing was served via electronic mail upon the attorneys of record for Petitioner at the following addresses:

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