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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TELADOC HEALTH, INC.,
Petitioner,

v.

DATA HEALTH PARTNERS, INC.,
Patent Owner.

IPR2024-00616
Patent 11,144,554 B2

Before JO-ANNE M. KOKOSKI, NORMAN H. BEAMER, and ANDREAS BALTATZIS, *Administrative Patent Judges.*

BALTATZIS, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining Some Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

Teladoc Health, Inc. ("Petitioner") filed a petition requesting *inter partes* review of claims 1, 2, 4–17, 19, and 20 (the "challenged claims") of U.S. Patent No. 11,144,554 B2 (Ex. 1001, "the '554 patent"). Paper 1 ("Petition" or "Pet."). Data Health Partners, Inc. ("Patent Owner") filed a preliminary response. Paper 6 ("Prelim. Resp."). We instituted *inter partes* review under 35 U.S.C. § 314(a). Paper 9 ("Inst. Dec.").

Patent Owner filed a patent owner response. Paper 16 ("PO Resp."). Petitioner filed an objection to evidence submitted with Patent Owner's preliminary response (Paper 12)[1] and a reply (Paper 19, "Pet. Reply"). Patent Owner followed with a sur-reply. Paper 23 ("PO Sur-Reply"). We held an oral hearing on June 11, 2025, a transcript of which is in the record. Paper 29 ("Tr.").

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is entered pursuant to 35 U.S.C. § 318(a). Having reviewed the complete trial record, we determine that Petitioner has shown, by a preponderance of the evidence, that challenged claims 1, 2, 4–9, 11–17, 19, and 20 are unpatentable. We determine that Petitioner has not shown that claim 10 is unpatentable.

II. BACKGROUND

A. Real Parties in Interest

Petitioner identifies Teladoc Health, Inc. as the real party in interest. Pet. 1.

[1] Petitioner objects to Exhibits 2001–2004. We do not rely on these exhibits in our decision and therefore Petitioner's objection is moot.

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Patent Owner identifies Data Health Partners, Inc. as the real party in interest. Paper 5 (Patent Owner's Mandatory Notice), 1.

B. Related Matters

The parties list the following co-pending litigation as a related matter: *Data Health Partners, Inc. v. Teladoc Health, Inc.*, 1-23-cv-00160-JCG (D. Del. Feb. 13, 2023). Pet. 2; Paper 5, 1.

Petitioner concurrently filed petitions for *inter partes* review challenging claims of related patents: U.S. Patent Nos. 11,151,142 B2 (IPR2024-00617, instituted September 17, 2024) and 10,061,812 B2 (IPR2024-00618, institution denied).

C. The '554 Patent (Ex. 1001)

The '554 patent relates to a system and method for tracking goal progression for clients served by providers. Ex. 1001, 1:42–45. For example, the client may be receiving treatment or assistance from the provider. *Id.* at 1:45–46. An administrator assigns clients to one or more providers. *Id.* at 1:47–49. "Goals and a plan of action are established for the client in response to treatments and assistance required." *Id.* at 1:49–51. The system receives data associated with the client from providers and compiles the data to determine whether the clients are meeting thresholds associated with the goals. *Id.* at 1:51–54.

The Specification explains that "[t]he platform may assign specific healthcare or point of care service providers to users and may modify the course of action based on thresholds, which are overseen by an administrator who tracks and monitors the thresholds and progress of various outcome-based programs tied to user accounts." *Id*. at 30:35–40.

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D. Illustrative Claims

Petitioner challenges claims 1, 2, 4–17, 19, and 20, of which claims 1, 13, and 17 are independent. Claim 1 illustrates the claimed subject matter and is reproduced below.[2]

> 1. A method for tracking goal progression, the method comprising:
>
> [a] receiving input, by an administrator, for establishing an account for a client, wherein the client is an individual receiving treatment or assistance, and wherein the accounts are stored in a server available through one or more networks;
>
> [b] assigning the client to one or more of providers in response to selections from the administrator, wherein the one or more providers include at least individuals available to treat or assist the client;
>
> [c] 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;
>
> [d] periodically receiving updated data, from the one or more providers, about the status and/or well-being of the client;
>
> [e] compiling data associated with the client received from the one or more providers utilizing computing or communications devices in communication with the server, wherein the computing or communications devices represent devices communicating with the server from any of one or more networks, in order to determine progress of the client towards achieving the goals; and

[2] We reproduce and adopt the bracketed identifiers added by Petitioner.

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[f] determining whether the thresholds associated with the goals are being met based on the compiled data; and

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

Ex. 1001, 40:47–41:10.

E. Asserted References

Petitioner relies on the following references in its asserted grounds of unpatentability:

Name	Reference	Ex. No.
Wager	US 2006/0149589 A1 (July 6, 2006)	1003
Chitiveli	US 2013/0179450 A1 (July 11, 2013)	1004
Douglas	WO 1999/03045 A1 (Jan. 21, 1999)	1002
Koh	Hian Chye Koh & Gerald Tan, "Data Mining Applications in Healthcare," 19 J. Healthcare Information Management 64 (2005)	1009
Klotsche	J. Klotsche et al., "The DETECT adherence score—structure and psychometric exploration of a novel approach to measure adherence to drug and non-drug interventions in primary care," 20 Int. J. Methods Psychiatr. Res. 82 (2011)	1005

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F. Asserted Grounds

Petitioner asserts that the challenged claims are unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §[3]	Reference(s)/Basis
1, 2, 4, 5, 7, 9, 10, 13, 15, 17	103(a)	Douglas
1, 2, 4, 5, 7, 9, 10, 12, 13, 15, 17	103(a)	Douglas, Wager
6	103(a)	Douglas, Chitiveli
6	103(a)	Douglas, Chitiveli, Wager
11, 16, 19	103(a)	Douglas, Klotsche
11, 16, 19	103(a)	Douglas, Klotsche, Wager
8, 14, 20	103(a)	Douglas, Koh
8, 14, 20	103(a)	Douglas, Koh, Wager

Petitioner supports its challenges with declarations from Bryan Bergeron, M.D. Ex. 1012; Ex.1025. Patent Owner supports it arguments with a declaration from Hossein Ardehali, M.D., Ph.D. Ex. 2005.

III. ANALYSIS

A. Legal Standards

"In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable." *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed.

[3] The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) ("AIA"), included revisions to 35 U.S.C. §§ 102 and 103 that became effective on March 16, 2013, after the filing of the application to which the '554 patent claims priority. *See* Ex. 1001, code (60). Petitioner applies this date as the relevant date. *See* Pet. 7 & n.2. Therefore, we apply the pre-AIA versions of Sections 102 and 103. The differences between the AIA and pre-AIA versions of Sections 102 and 103 would not impact our decision.

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Cir. 2016) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify "with particularity . . . the evidence that supports the grounds for the challenge to each claim")). This burden never shifts to Patent Owner. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (citing *Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316, 1326–27 (Fed. Cir. 2008)) (discussing the burden of proof in *inter partes* review).

A claim is unpatentable under 35 U.S.C. § 103 if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious to a person having ordinary skill in the art to which said subject matter pertains. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) objective evidence of nonobviousness, i.e., secondary considerations.[4] *See Graham v. John Deere Co. of Kan. City*, 383 U.S. 1, 17–18 (1966).

B. Level of Ordinary Skill in the Art

Petitioner argues that one of ordinary skill in the art relevant to the challenged claims, as of the earliest claimed priority date, "would have had at least a bachelor's degree in a healthcare field as well as 1–2 years of experience with health information technology, including specific

[4] Neither party presents arguments or evidence relating to secondary considerations.

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experience with computer-based systems for recording, tracking, and analyzing patient health information." Pet. 7 (citing Ex. 1012 ¶ 36).

Patent Owner does not oppose Petitioner's definition of a person of ordinary skill in the art. *See generally* PO Resp.; Ex. 2005 ¶ 32.

On the full record, we determine Petitioner's proposed level of skill comports with the qualifications a person would have needed to understand and implement the teachings of the '554 patent and the prior art of record.

C. Claim Construction

We construe claim terms according to the standard set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–17 (Fed. Cir. 2005) (en banc), i.e., as construed in a civil action under 35 U.S.C. § 282(b). *See* 37 C.F.R. § 42.100(b). Under *Phillips*, claim terms are afforded "their ordinary and customary meaning." *Phillips*, 415 F.3d at 1312. "[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Id.* at 1313. "Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." *Id.*

In the Petition, Petitioner asserted that "[n]one of the claim terms . . . require an explicit construction." Pet. 8. In its Preliminary Response, Patent Owner agreed (Prelim. Resp. 9–10), and in the Institution Decision we applied the plain and ordinary meaning of the claim terms (Inst. Dec. 7–8).

After institution, Patent Owner's Response expressly construed "goals, a plan of action, and thresholds," recited by independent claims 1, 13, and 17. PO Resp. 11–13. The parties discussed the claim construction in

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subsequent briefing. Pet. Reply 4–9; PO Sur-reply 1–5; Tr. 8–12, 35–44. The parties also dispute the plain and ordinary meaning of "assigning . . . in response to selections." PO Resp. 22–28; Pet. Reply 9–12; PO Sur-Reply 10; Tr. 12–15, 44–51. We address the construction of these terms below.

1. Goals, a Plan of Action, and Thresholds

Patent Owner construes the claimed "recitation of establishing/to establish **'goals, a plan of action, and thresholds**' as requiring that the established goals, plan of action, and thresholds are separate and distinct components." PO Resp. 11–13 (citing Ex. 1001, 40:58–62, 42:5–9, 42:48–52; Ex. 2005 ¶¶ 55–56). Patent Owner argues that, because the claims separately list these components, there is a presumption that the components are distinct. *Id.* (citing *Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1254 (Fed. Cir. 2010)); *see* PO Sur-Reply 1–2 (citing *Regeneron Pharms., Inc. v. Mylan Pharms. Inc.*, 130 F.4th 1372, 1377 (Fed. Cir. 2025)). According to Patent Owner, applying the presumption means that "two separately listed elements cannot 'coexist as the same element'; these elements, instead, have distinct and identifiable boundaries." PO Sur-Reply 3 (citing *Willis Elec. Co., Ltd. v. Polygroup Macau Ltd. (BVI)*, 777 F. App'x 495, 498–99 (Fed. Cir. 2019)).

Patent Owner argues that the Specification supports construing the components as distinct. PO Resp. 12 (citing Ex. 1001, Abstr., 1:49–54 (Summary)). Specifically, Patent Owner asserts that "the '554 patent does not contain a single example of the goals, plan of action, and/or thresholds coexisting as a single element, and so the *Becton* presumption stands." PO Sur-Reply 4.

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Petitioner responds that "the claim language at issue and specification of the '554 Patent do not support PO's restrictive construction. Rather, the claim language is broad and unrestrictive." Pet. Reply 7; *see also Google LLC v. Ecofactor, Inc.*, 92 F.4th 1049, 1058 (Fed. Cir. 2024) (holding that the "'presumption' that separately listed claim limitations may indicate separate and distinct physical structure . . . may always be rebutted in the context of a particular patent"). As to the claim language itself, Petitioner highlights the recitations that "the thresholds represent certain points of progress towards the goals," and "'the plan of action' is modified 'in response to one or more thresholds not being met.'" Pet. Reply 7. Petitioner also argues that "there is nothing in the specification that states that these elements must be separate and distinct." *Id.* at 8 (citing Ex. 1001, 11:26–28; 11:60–67; 30:35–40; 32:52–58). Instead, Petitioner argues that "the claim elements are interrelated and overlap." *Id.* at 7.

We agree with Patent Owner that the separately listed "goals, a plan of action, and thresholds," should be considered distinct elements that cannot exist as the "same element" and therefore must be separately taught by the art. However, we agree with Petitioner that the claims and Specification describe the elements as interrelated whereby one may interact the other, even if they are separate elements. *See Google*, 92 F.4th at 1059 ("The proper construction of the term must allow for any of the five claimed inputs to potentially be used to calculate another claimed input.").

The claim language of the independent claims themselves recites various interactions between the goals, plan of action, and thresholds. For example, the claims recite "thresholds represent certain points of progress towards the goals"; "the thresholds associated with the goals"; and

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"modifying the plan of action . . . in response to one or more of the thresholds not being met." Ex. 1001, 40:58–62, 41:6–10. According to the plain meaning of the claims, the thresholds are associated with the goals and are used to determine whether to modify the plan of action.

The Specification further supports the interrelated aspects of these elements. For example, the Specification describes "modify[ing] the course of action based on thresholds, which are overseen by an administrator who tracks and monitors the thresholds and progress of various outcome-based programs tied to user accounts." Ex. 1001, 30:35–40. In another embodiment, the Specification describes "determin[ing] modifications . . . required in response to passing a threshold. The threshold may be applicable to one or multiple factors, goals, parameters, or criteria. For example, when the total positive interactions have been reached and a specific threshold has been passed, a goal has been accomplished." *Id.* at 32:49–56. In both examples, the thresholds exist within the course (plan) of action as a measure of goals to be accomplished. Accordingly, we interpret "goals, a plan of action, and thresholds," to be separate, but interrelated, elements. We address below whether Petitioner has identified these separate elements in the cited art.

2. *Assigning the client to one or more of providers in response to selections from the administrator*

Patent Owner argues that "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." PO Resp. 25 (citing Ex. 1001, 11:54–60; Ex. 2005 ¶ 78). Patent Owner further argues that

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"assigning" and "selections" must be distinct elements because they are separately recited and one (assigning) must be done in response to the other (selection). *Id.* at 26–27.

Petitioner responds that Patent Owner's citation to the Specification does not "use the term 'selection' nor discuss any 'deliberate and active choice.'" Pet. Reply 10. Instead, Petitioner argues that "selection" indicates "picking, using, or otherwise making inputs to user interface elements in its system." *Id.* at 10–11 (citing Ex. 1001, 11:20–23, 12:61–64).

We agree with Petitioner that the Specification supports construing "selection" as including inputs to a user interface, thereby "assigning" a client to a provider within the system. For example, the Specification describes a user interface including selection components. Ex. 1001, 11:20–23 ("the user interface . . . may display . . . selection or display components"), 12:61–64 (authorized users may make selections by doubling tapping a touchscreen). The Specification further discloses that the "administrators may have complete access to the service providers and the clients *to assign the clients to individual service providers through the user interface*." *Id.* at 11:57–60 (reference numerals removed, emphasis added).

We agree with Petitioner that assigning clients in response to selections of the user interface is consistent with the plain and ordinary meaning of the claims and the Specification. In contrast, we decline to read Patent Owner's additional limitations of "deliberate and active choice" into the claim as lacking support both in the claim language and the Specification. We do agree with Patent Owner's argument that assigning and selection must be distinct elements, because they are separately listed, and assigning happens in response to selection(s).

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3. No Other Construction Needed

We make no further express constructions because no other constructions are necessary to resolve the controversy. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (stating that "we need only construe terms 'that are in controversy, and only to the extent necessary to resolve the controversy.'" (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

D. Asserted Obviousness over Douglas (Claims 1, 2, 4, 5, 7, 9, 10, 13, 15, and 17)

Petitioner argues that claims 1, 2, 4, 5, 7, 9, 10, 13, 15, and 17 would have been obvious over Douglas. Pet. 9–50.

1. Douglas (Ex. 1002)

Douglas relates to an electronic system and method for providing therapeutic behavior modification, including compliance monitoring and feedback. Ex. 1002, code (57), 5:33–38.[5] The system allows for a physician to assist an individual or patient to make desirable lifestyle and behavior changes. *Id.* at 6:1–5, 6:24–29. Douglas describes an exemplary scenario in which a physician may recommend a health care maintenance program for a patient. *Id.* The physician or a case administrator then enters the patient into the system, and 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." *Id.* at 7:17–20.

[5] Petitioner's exhibits include Bates Numbering, but both parties cite to the original pagination of the documents. For consistency with the parties' citations, we refer to the document page numbers.

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Once the goals are set, "the system accepts updated patient data directly from the patient and through data entered by the physician during office visits." *Id.* at 11:1–5. The system compares the patient's data to the patient's goals to provide patient progress reports to the physician. *Id.* at 11:6–10. The system will further notify the physician that the patient is not meeting the assigned goals and provide an alarm for immediate action if a health risk is present. *Id.* at 11:11–25.

2. Independent Claim 1

a) Preamble

The preamble of claim 1 recites "[a] method for tracking goal progression." Ex. 1001, 40:47–48. Petitioner contends that Douglas teaches a method for tracking goal progression by, in part, "correlating the patient's progress with previously established goals." *See* Pet. 11 (citing Ex. 1002, 2:36–3:2; Ex. 1012 ¶ 44).

Patent Owner does not specifically contest Petitioner's arguments as to the preamble. *See* PO Resp. We agree with Petitioner that Douglas discloses the preamble of claim 1; thus, we need not decide whether the preamble is limiting. *See* Ex. 1002, 2:36–3:2; Ex. 1012 ¶ 44.

b) Limitation 1[a] (receiving input for establishing a client account)

Limitation 1[a] recites "receiving input, by an administrator, for establishing an account for a client, wherein the client is an individual receiving treatment or assistance, and wherein the accounts are stored in a server available through one or more networks." Ex. 1001, 40:49–53.

Petitioner contends that Douglas teaches a "case administrator sets up a new patient" in a system "based on information contained in the patient

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prescription form." Pet. 11–12 (citing Ex. 1002, 6:36–7:20, Figs. 2, 60; Ex. 1012 ¶ 45). The patient prescription form may be completed by a physician who recommends a health care maintenance or recovery program to a patient. *See* Ex. 1002, 6:24–27, 6:36–7:4, Fig. 2. The prescription form may include patient identification, health information, and physician information. *See id*. Accordingly, Petitioner argues that Douglas teaches receiving input (patient information) by an administrator for establishing an account for a client. *See* Pet. 11–12 (citing Ex. 1002, 6:36–7:20, Figs. 2, 60; Ex. 1012 ¶ 45).

Petitioner further contends that Douglas teaches "[o]nce the patient is set up on the system," the patient can access his or her behavior modification program by logging into the system with a user ID and password. *Id.* at 12–15 (citing Ex. 1002, 8:28–31, 25:5–10, Fig. 36). The system further includes a network server with access to a database containing patient health information. Ex. 1002, 24:12–26, 24:28–37. Accordingly, Petitioner contends that Douglas teaches establishing an account for a patient (a client receiving treatment or assistance), wherein the account is stored in a server available through a network. *See* Pet. 12–15 (citing Ex. 1002, 8:28–31, 24:12–26, 24:28–37, 25:5–10, Fig. 36; Ex. 1012 ¶¶ 46–50).

Patent Owner does not specifically contest Petitioner's arguments as to limitation 1[a]. We agree with Petitioner that Douglas discloses limitation 1[a]. *See* Ex. 1002, 6:36–7:20, 8:28–31, 24:28–37, 25:5–10, Figs. 2, 60; Ex. 1012 ¶¶ 46–50.

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c) Limitation 1[b] (assigning the client to one or more providers)

Limitation 1[b] recites "assigning the client to one or more of providers in response to selections from the administrator, wherein the one or more providers include at least individuals available to treat or assist the client." Ex. 1001, 40:54–57.

Petitioner presents two arguments that Douglas teaches or suggests this limitation, which we address in turn below.

(1) Douglas's administrator enters prescription form information

Petitioner contends that Douglas discloses assigning a patient to "their physician, who provides treatment or assistance to the patient." Pet. 15 (citing Douglas 15:8–9, 21:24–28, claims 11, 25, Figs. 2, 47). Petitioner contends that Douglas's system requires "patient-to-physician assignment . . . 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." *Id.* at 15–16 (citing Ex. 1002, 11:6–12:2; Ex. 1012 ¶ 52). Additionally, Petitioner argues that it would have been obvious to one skilled in the art to assign the patient to the physician because Douglas teaches "that it is the administrator who 'sets up a new patient based on information contained in the prescription form' . . . and the prescription form identifies the patient's physician." *Id.* at 16–17 (citing Ex. 1002, 6:33–7:20; Ex. 1012 ¶ 54).

Limitation 1[b] further requires assignment "*in response* to selections from the administrator." Petitioner contends that "by entering the patient prescription form, the case administrator's assignment of the patient to the

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physician constitutes the administrator's selections of the patient and of the physician to be assigned to the patient." *Id.* at 17 (citing Ex. 1012 ¶ 55).

Patent Owner responds that "Petitioner does not identify any selection made by Douglas's administrator which may result in assignment of a provider." PO Resp. 24 (citing Pet. 19–20, Ex. 1002, 6:33–7:13, Fig. 2); *see also* Pet. 16–17. First, Patent Owner construes "selection" as "a deliberate and active choice by an administrator," and argues that "Douglas discloses no such selection." PO Resp. 25 (citing Ex. 1001, 11:54–60; Ex. 2005 ¶ 78). Instead, "Douglas's administrator merely inputs pre-determined information from the prescription form" that the physician provided and thereby selected. *Id.* at 25–26 (citing Ex. 1002, 6:33–7:13, Fig. 2; Ex. 2005 ¶¶ 79–80). We find this argument not commensurate with the claim scope. As discussed above, we decline to read Patent Owner's additional limitations of "deliberate and active choice" into the selection limitation as lacking support both in the claim language and the Specification. *Supra*, Section III.C.2.

Second, Patent Owner argues that Douglas does not teach assigning "in response to" an administrator's selection. PO Resp. 26. Instead, Patent Owner argues that Douglas's "information entered by the case advisor was *provided by the physician*." *Id.* (citing Ex. 1002, 6:33–7:16; Ex. 2005 ¶ 81). Again, we find this argument not commensurate with the claim scope, as the claim does not require a single assignment of client to provider. In other words, even if Douglas's prescription information qualifies as a first assignment of client to provider, Douglas teaches the administrator using the same information to assign the client to a provider within the system, thereby meeting the required claim limitation.

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Finally, Patent Owner argues that Petitioner points to Douglas's "administrator's entry of prescription information" as both "selection" and "assignment," thereby identifying the same teaching for two separate claim limitations. *See id.* at 26–27 (citing Ex. 2006, 32:1–6; Ex. 2005 ¶ 82). Because we agree with Patent Owner that "assigning" and "selections" are separate limitations that must be separately taught by the art, we focus our discussion on the parties' reply and sur-reply arguments on this issue.

Petitioner replies that it separately maps (1) "selections from an administrator" to Douglas's case administrator entering information from the patient prescription form, and (2) the "assignment resulting from such selections, which the Petition discusses enables the various reporting, alarm, and notification features of the system." Pet. Reply 11–12 (citing Pet. 15–17). Petitioner repeated those arguments in the oral hearing. *See* Tr. 12–13 (Petitioner's counsel contending: "So, the case administrator takes that Figure 2 prescription form of Douglas and enters that information into the Douglas system. That is the selection part. . . . [O]nce the case administrator enters that information from the Figure 2 prescription form, the system then will assign the patient to the physician . . . .").

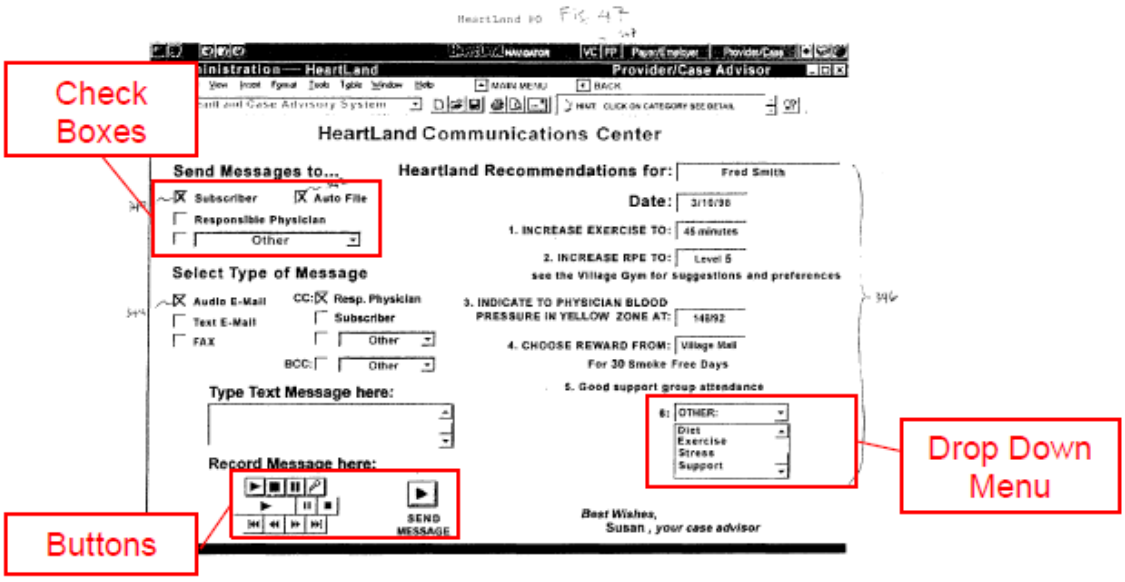
Patent Owner responds that the Petition maps both selection and assigning as entering information from Douglas's patient prescription form, contrary to Petitioner's Reply argument. PO Sur-Reply 8; Tr. 44–46. Patent Owner further distinguishes Douglas as "generally disclos[ing] that the case administrator 'sets up a new patient based on information' in the prescription form but does not describe that process or identify any fields allowing an administrator to make any 'selection' other than to generally show patient folders in Figure 3." PO Sur-Reply 9 (citing Ex. 1002, Fig. 3, 7:11–16).

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We agree with Patent Owner that the Petition does not clearly distinguish between assigning and selection as to entering prescription-form information, notwithstanding Petitioner's attempt to rephrase the argument in the Reply. *See* Pet. 16; Pet. Reply 11–12. Accordingly, we find that Petitioner does not meet its burden of persuasion, at least under its first argument based on entering prescription-form information.

(2) Obvious to use Douglas's graphical user interface to select providers

Petitioner presents a second argument, that "Douglas also renders obvious the assignment by the administrator of the patient to the physician through selections of graphical user interface ('GUI') components." Pet. 17–18 (citing Ex. 1002, Figs. 5, 6, 38, 39, 46, 47, 49–52, 58; Ex. 1012 ¶¶ 56–58). Douglas illustrates various GUI components in Figure 47, reproduced below.



Douglas's Figure 47, reproduced above, is annotated by Petitioner to label check boxes, buttons, and drop-down menus. *Id.* at 18. The GUI includes

check box selections to "send messages to . . ." the "subscriber" or "responsible physician" among other selection options. Ex. 1002, Fig. 47.

Petitioner contends that "[i]t would have been obvious to use Douglas's GUI components" by (1) "selecting a check box associated with a physician," and (2) "selecting the physician from a list of physicians in a drop-down menu" and then "selecting a button to assign the patient to the physician." Pet. 18 (citing Ex. 1002, Fig. 47; Ex. 1012 ¶¶ 57, 58). Petitioner contends that each of the options represents an obvious combination of familiar elements that would lead to the predictable result of the administrator assigning the chosen physician to the patient. *Id.* at 19 (citing Ex. 1012 ¶¶ 59–61). For example, "the check boxes and drop-down menu, respectively, would perform the same choosing-from-a-list function they do in Douglas's FIG. 47, but for a list of physicians." *Id.* (citing Ex. 1012 ¶ 60). According to Petitioner, "the button would act upon the choices . . . to create the patient-to-physician assignment." *Id.* Petitioner further asserts that "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." *Id.* at 19–20 (citing Ex. 1002, 2:16–24, 3:24–5:20, Figs. 3–6, 8–58).

Patent Owner responds "even if the case advisor's selection of the treating physician's name in the system (using GUI components or otherwise) could constitute 'assignment' to a 'provider' under a plain and ordinary meaning of that term, it would not be done 'in response' to any 'selection[] from the administrator.'" PO Resp. 30. Patent Owner argues that the selection in the GUI would also be the assignment. *Id.* (citing Ex. 2005

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¶ 88). Patent Owner adds that "Douglas's inclusion of well-known GUI components . . . does not establish the requisite motivation to fundamentally alter the operation of Douglas's system." *Id.* (citing Ex. 2005 ¶ 89).

We are persuaded by Petitioner's argument and evidence that it would have been obvious for Douglas's administrator to use a GUI interface to select a physician, thereby assigning the patient to the physician in the system in response to the selection. Pet. 17–20. Unlike Petitioner's argument relying solely on entering information from the prescription form, Petitioner provides a selection step using the GUI interface, separate from assigning. We further credit Dr. Bergeron's testimony explaining how it would have been obvious to one of ordinary skill in the art to use Douglas's GUI to select a provider, thereby assigning the provider in response to the selection. *See* Ex. 1012 ¶¶ 59–62. Douglas's suggestion of a GUI selection resulting in assigning a client to a provider would have been the same process described in the '554 patent. *See* Ex. 1001, 11:54–60.

We further do not agree with Patent Owner's contrary arguments that selecting a provider using the GUI would "fundamentally alter the operation" of Douglas. Dr. Ardehali testifies "that Douglas presumes a physician has already been assigned to the patient; the '554 patent does not." *See* Ex. 2005 ¶ 85. As discussed above, we do not agree that the claims exclude using a GUI to select a provider within the system thereby assigning the client to the provider in the system, even if the provider was previously assigned to the client outside of the system. *See supra*. Accordingly, we find that a preponderance of the evidence supports Petitioner's argument that Douglas teaches or suggests limitation 1[b].

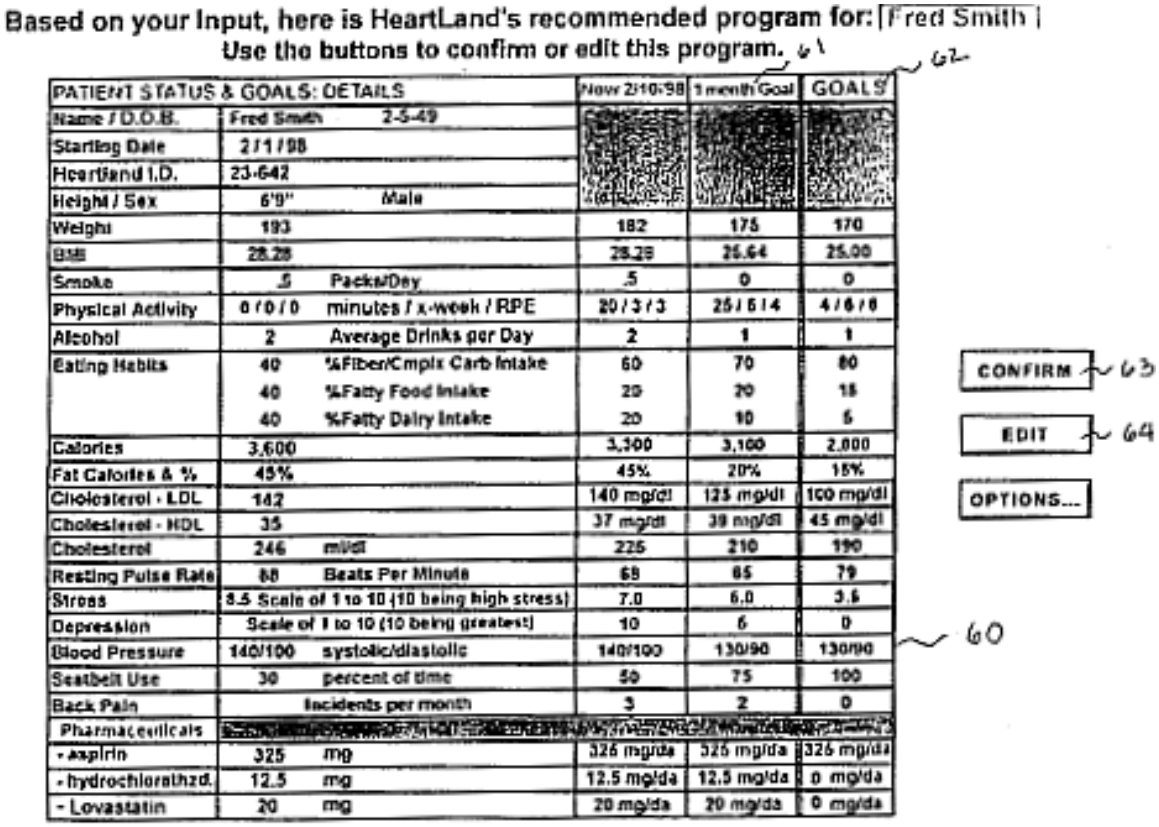
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d) Limitation 1[c] (establishing goals, plan of action, and thresholds)

Limitation 1[c] recites "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." Ex. 1001, 40:58–62.

Petitioner contends that Douglas teaches "'the system . . . generates a set of goals 52' for the patient as part of 'a therapeutic program' for the patient" based on input information. Pet. 21–22 (citing Ex. 1002, 8:1–9, Fig. 5). The input information may include "patient characteristics 'such as age, sex, [and] weight.'" *Id.* Petitioner contends that Douglas teaches "'[t]he physician or case advisor may view details as to how the suggested goals may be implemented by selecting the system's Program Detail option 54, which shows 'recommended one month goals 61 and final goals 62,' as shown in FIG. 6." *Id.* at 22 (citing Ex. 1002, 8:8–11, Fig. 6). Douglas's Figure 6 is excerpted below.

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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 / 5 / 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	mg/dl	225	210	190
Resting Pulse Rate	88	Beats Per Minute	68	65	70
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
- hydrochlorothzd.	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

61 62 63 64 60

CONFIRM

EDIT

OPTIONS...

Douglas's Figure 6 (excerpt) illustrates a recommended program for a patient.

Figure 6 illustrates the program as a table with first and second columns labeled "PATIENT STATUS & GOALS" followed by several rows of physical (e.g., height, sex, weight), health (e.g., body mass index, cholesterol, blood pressure), and lifestyle (e.g., smoker, alcohol, calories, seatbelt use) information. *See* Ex. 1002, Fig. 6. The program includes three additional columns labeled "Now," "1 month Goal" 61, and "GOALS" 62. *Id.* Petitioner argues that Douglas teaches the physician can use buttons to "confirm 63 or edit 64 the suggested program to modify the goals by making appropriate selections." Pet. 23 (citing Ex. 1002, 8:11–13; Ex. 1012 ¶ 64).

Petitioner contends that a physician confirming or editing the suggested program teaches determining treatment and assistance for the

client. *Id.* (citing Ex. 1002, 8:12–13; Ex. 1012 ¶ 65). Petitioner further asserts "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." *Id.* at 23–24 (citing Ex. 1002, 8:1–13, Figs. 5, 6; Ex. 1012 ¶ 65). Accordingly, Petitioner asserts that "Douglas's 'goals 52' and 'final goals 62' correspond to the claimed goals," "Douglas's 'one month goals 61' correspond to the claimed thresholds, representing certain points of progress toward the goals," and "Douglas's overall 'therapeutic program'" corresponds to the claimed plan of action. *Id.* at 25–26 (citing Ex. 1002, 6:24–27, 7:5–8:13, Figs. 5, 6; Ex. 1012 ¶ 70).

Patent Owner responds that "Petitioner fails to allege that Douglas discloses 'determining, by the one or more providers, treatment and assistance for the client, which is used for establishing' each of (1) goals, (2) a 'plan of action,' and (3) thresholds . . . as distinct elements." PO Resp. 14 (citing Pet. 46, 50). Specifically, Patent Owner argues that Petitioner relies on Douglas's overall therapeutic program to teach the claimed plan of action, but also states that Douglas's therapeutic program includes the claimed goals. *Id.* (citing Pet. 25–26; Ex. 1012 ¶ 70). Patent Owner contends that "the claimed goals cannot be '**included**' in the claimed plan of action," because the goals are separately claimed from the plan of action. *Id.* at 15. Patent Owner further explains that the Board misconstrued Petitioner's argument in the Institution Decision by referring to weight loss as an example of a plan of action disclosed by Douglas. *See* PO Resp. 15–20 (citing Dec. 16).

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Based on our review of the complete trial record, we determine that Petitioner establishes that Douglas teaches "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" as recited in limitation 1[c]. As discussed above, we interpret "goals, a plan of action, and thresholds," to be separate, but interrelated, elements. *See supra* Section III.C.1. We agree with Petitioner that Douglas teaches these separate but interrelated elements in the form of Douglas's goals 52 and final goals 62 that correspond to the claimed goals, Douglas's one-month goals 61 that correspond to the claimed thresholds, and Douglas's overall "therapeutic program" that corresponds to the claimed plan of action. Pet. 25–26 (citing Ex. 1002, 6:24–27, 7:5–8:13, Figs. 5, 6; Ex. 1012 ¶ 70). We further agree with Petitioner that Douglas teaches the thresholds represent certain points of progress towards the goals. *See* Ex. 1012 ¶¶ 69–70. For example, we refer to Douglas's Figure 6, showing that one-month goals 61 represent a point of progress from the initial measurements (Now) to the goals 62 for various health measurements. *See* Ex. 1002, Fig. 6.

We disagree with Patent Owner's arguments that the claimed goals cannot be included within the claimed plan of action (corresponding to Douglas's "overall therapeutic program"). *See* PO Resp. 15. Unlike the cases cited by Patent Owner, Petitioner does not map two claimed elements to a single element taught by the art. *See e.g., Comcast Cable Commc'ns, LLC v. Promptu Sys. Corp.*, 838 F. App'x 551, 553 (Fed. Cir. 2021) (Petitioner "mapped the 'speech recognition system' and the 'wireline node' to a single element."); *see also HTC Corp. v. Cellular Commc'ns Equip., LLC*, 701 F.

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App'x 978, 980 (Fed. Cir. 2017) (Petitioner argued "the same structure could perform both the diverting and controlling functions."). Rather, Petitioner maps each separate claim element to separate components taught by Douglas. Accordingly, we find that a preponderance of the evidence supports Petitioner's argument that Douglas teaches or suggests limitation 1[c].

e) Limitation 1[d] (receiving updated data)

Limitation 1[d] recites "periodically receiving updated data, from the one or more providers, about the status and/or well-being of the client." Ex. 1001, 40:63–65.

Petitioner contends that Douglas teaches "the system accepts updated patient data . . . through data entered by the physician during office visits." Pet. 26 (citing Ex. 1002, 11:1–5). Petitioner further contends that 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." *Id.* (citing Ex. 1002, 11:6–12: Figs. 5, 6, 60; Ex. 1012 ¶ 72).

Patent Owner does not dispute Petitioner's arguments with respect to limitation 1[d]. *See generally* PO Resp. We are persuaded by Petitioner's argument and evidence that Douglas teaches periodically receiving updated data from the provider about the status of the client. *See* Ex. 1002, 11:1–12:2; Ex. 1012 ¶¶ 71–72.

f) Limitation 1[e] (compiling data)

Limitation 1[e] recites "compiling data associated with the client received from the one or more providers utilizing computing or communications devices in communication with the server, wherein the computing or communications devices represent devices communicating

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with the server from any of one or more networks, in order to determine progress of the client towards achieving the goals." Ex. 1001, 40:66–41:5.

Petitioner contends that Douglas teaches "[t]he system generat[es] reports on patient progress based on the data shown in FIGS. 40–45." Pet. 27 (citing Ex. 1002, 20:33–34). Specifically, Petitioner contends that Douglas's Figures 40–45 "depict various aspects of patient data collected over time, namely, blood pressure, smoking activity, physical activity, pulse, weight, stress level, medication intake, caloric intake, cholesterol level, and attitude toward change, charted against respective patient goals." *Id.* (citing Ex. 1002, 20:3–37, Figs. 40–45). Petitioner further contends that Douglas teaches the physician using a PC to provide information that is then uploaded to a network server via the Internet. *Id.* at 27–28 (citing Ex. 1002, 24:3–36, Ex. 1012 ¶ 74).

Patent Owner does not dispute Petitioner's arguments with respect to limitation 1[e]. *See generally* PO Resp. We are persuaded by Petitioner's argument and evidence that Douglas teaches compiling client data received from the provider utilizing communication devices communicating with the server to determine progress of the client towards achieving the goals. *See* Ex. 1002, 20:14–19, 24:3–36; Ex. 1012 ¶¶ 73–75.

g) Limitation 1[f] (determining whether thresholds are met)

Limitation 1[f] recites "determining whether the thresholds associated with the goals are being met based on the compiled data." Ex. 1001, 41:6–7.

Petitioner contends that Douglas teaches the "'system compares actual data about the patient with the goals and parameters residing in the system's database' and will 'notify the physician or case advisor [if] these goals are not being met.'" Pet. 28–29 (citing Ex. 1002, 11:18–12:2). According to

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Petitioner, Douglas further teaches that "the system periodically correlates the updated patient health information with the program goals to determine the patient's progress and compliance with the program." *Id.* (citing Ex. 1002, 11:6–12:2, Figs. 5, 6, 60; Ex. 1012 ¶ 76).

Patent Owner does not dispute Petitioner's arguments with respect to limitation 1[f]. *See generally* PO Resp. We are persuaded by Petitioner's argument and evidence that Douglas teaches determining whether the thresholds associated with the goals are being met based on the compiled data. *See* Ex. 1002, 11:6–12:2; Ex. 1012 ¶ 76.

h) Limitation 1[g] (modifying the plan of action)

Limitation 1[g] recites "modifying the plan of action, by the one or more providers, in response to one or more of the thresholds not being met." Ex. 1001, 41:8–10.

Petitioner contends that Douglas teaches "the physician or case advisor may recommend that the program be modified to suit the patient's condition," when "these goals are not being met." Pet. 29 (citing Ex. 1002, 11:18–25). For example, the physician may "modify the program by altering the goals or moving the patient into a different diagnostic category." *Id.* (citing Ex. 1002, 11:26–34).

Patent Owner does not dispute Petitioner's arguments with respect to limitation 1[g]. *See generally* PO Resp. We are persuaded by Petitioner's argument and evidence that Douglas teaches the provider (physician) modifying the plan of action (therapeutic program) in response to thresholds (intermediate goals) not being met. *See* Ex. 1002, 11:28–34; Ex. 1012 ¶ 77.

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i) Conclusion Regarding Claim 1

Based on our review of the complete trial record, we determine that Petitioner establishes by a preponderance of the evidence that independent claim 1 would have been obvious over Douglas.

3. Independent Claim 13

Independent claim 13 recites a system for tracking goal progression that performs the method of claim 1. *See* Ex. 1001, 41:57–42:21. Petitioner refers to its arguments and evidence previously presented as to claim 1. *See* Pet. 38–47. Apart from similar claim limitations recited in claim 1 and addressed above, Petitioner separately addresses limitations 13[a] and 13[h]. Patent Owner responds that Douglas does not teach limitations 13[a] and 13[h].

We are persuaded by Petitioner's arguments and evidence that Douglas teaches or suggests the preamble of claim 13 and limitations 13[b]–[g] (Pet. 44–46) for the reasons discussed above as to claim 1. We address limitations 13[a] and 13[h] below.

a) Limitation 13[a] (a server that executes a client management program)

Limitation 13[a] recites "a server communicates with communications devices through a transceiver utilizing one or more networks, the server includes a processor that executes a client management program." Ex. 1001, 41:59–62.

Petitioner contends that Douglas discloses a system that includes network server 508 electronically linked to PCs 500 via the Internet 518. Pet. 38–39 (citing Ex. 1002, Fig. 59, 24:12–34; Ex. 1012 ¶ 91). Petitioner argues that Douglas's "PCs are communications devices, as they

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communicate with the server." *Id.* at 39 (citing Ex. 1002, 24:22–34; Ex. 1012 ¶ 91). Petitioner further contends that Douglas teaches transceivers utilizing one or more networks, for example "high-speed modem 506 connected to the PC 500" or "transceivers for establishing a 'cellular connection [or] satellite link . . . [with the] network server.'" *Id.* at 39–40 (citing Ex. 1002, 24:22–24, 8:28–31; Ex. 1012 ¶ 92).

Petitioner also contends that Douglas's network server includes a processor that executes a client management program. Pet. 40–41 (citing Ex. 1012 ¶ 94). First, Petitioner contends that Douglas's client management program (system) is software executed by a processor. *Id.* (citing Ex. 1002, 25:22–26, 3:10–13, 2:25–27; Ex. 1012 ¶ 93). Second, Petitioner contends that Douglas teaches software executed by the server because the network server includes inner circle server 515 dedicated to handle sensitive data, such as medical records, and Douglas explains that "patients, physicians, case advisors, and health plan payors must log into the system to use or access it, further indicating its implementation on network server 508." *Id.* at 41–42 (citing Ex. 1002, 8:29–31, 19:27–30, 24:13–19, 25:5–11, Fig. 59; Ex. 1012 ¶¶ 95, 96). Third, Petitioner asserts that "it also would have been obvious for the processor implementing Douglas's system to reside in network server 508," to achieve Douglas's goal of protecting confidentiality by storing health data in databases 522 of network server 508. *Id.* at 42–43 (citing Ex. 1002, 25:14–16; 10:7–9, 19:29–30, 22:12–14, 24:18–19, 25:5–9; Ex. 1012 ¶ 98).

Patent Owner responds that Petitioner's position as to limitation 13[a] (server executes a client management program) contradicts Petitioner's position as to dependent claim 6 (provider devices execute a client

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management program). *See* PO Resp. 31. Patent Owner argues that, due to Petitioner's allegedly contradictory arguments, "both of Petitioner's challenges based on these contradictory allegations must fail." *Id.* at 32. (citing *ZTE (USA) Inc. v. Fundamental Innovation Sys. Int'l LLC*, IPR2018-00274, Paper 17 at 17 (PTAB Aug. 29, 2018)).

We disagree with Patent Owner that Petitioner presents contradictory arguments between claim 13 and claim 6. First, we agree with Petitioner that "claims 6 and 13 are not related by dependency" and thus may claim different embodiments for executing a client management program. *See* Pet. Reply 12–13. Second, Petitioner challenges claim 13 on different grounds from claim 6 (obvious over Douglas and Chitiveli, with or without Wager) thus allowing for different unpatentability arguments. *See* Pet. 58–61.

We further agree with Petitioner that Douglas teaches or suggests a server that includes a processor that executes a client management program. For example, Douglas teaches inputting parameters and goals for a therapeutic behavior modification program into a computer-implemented system. Ex. 1002, 2:25–27. Douglas further teaches that patients, administrators, and physicians can access the program by connecting to the network server. *Id.* at 8:29–31 (patients), 3:10–13 (administrators), 19:27–30 (physician/case advisor interface). Accordingly, we find that a preponderance of the evidence supports Petitioner's argument that Douglas teaches or suggests limitation 13[a].

b) Limitation 13[h] (a database in communication with the server)

Limitation 13[h] recites "a database in communication with the server configured to store the data, goals, plan of action, compiled data, and

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thresholds with the account associated with the client and the one or more providers." Ex. 1001, 42:18–21.

Petitioner contends that "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,'" and an account associated with the client and one or more providers. Pet. 47 (citing Ex. 1002, 24:28–37; Ex. 1012 ¶¶ 109, 110) (citation modified). Petitioner contends that Douglas's "health plan data" and "information needed by a user" include the claimed data, goals, plan of action, compiled data, and thresholds. *Id.* (citing Ex. 1002, 12:3–7, 8:11–13, 25:14–16, Fig. 59; Ex. 1012 ¶ 109).

Patent Owner responds that Petitioner "never alleges that network server 508's inclusion of relational database 522 requires that database 522 is '***in communication***' with server 508 as claim 13 recites." PO Resp. 33 (citing Pet. 47, 57; Ex. 1012 ¶ 109). More specifically, Patent Owner asserts that "the phrase 'in communication' never appears in the Petition's analysis of claim 13 outside of the section headings reciting the claim language." *Id.* (citing Pet. 38–47).

Petitioner replies that the Petition refers to Douglas page 24, lines 28–37, which teaches that "servers 510–516 ***have access to*** one or more relational databases 522." Pet. Reply 13. According to Petitioner, "have access to" means inner servers 510–516, part of server 508, "***must communicate with***, relational databases 522." *Id.* (citing Ex. 1025 ¶¶ 9–13).

Patent Owner responds that "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." PO Sur-Reply 15

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(citing Ex. 1002, 24:28–37). Patent Owner further argues that "Petitioner's attempt to provide this evidence on Reply is improper and should be stricken." *Id.* (citing *Wasica Fin. GmbH v. Cont'l Auto. Sys., Inc.*, 853 F.3d 1272, 1286 (Fed. Cir. 2017)).

We disagree with Patent Owner that Petitioner's Reply includes improper arguments and evidence as to claim 13. Our reviewing court explains that the petitioner's reply cannot present "an entirely new theory of *prima facie* obviousness absent from the petition." *Wasica*, 853 F.3d at 1286. In *Wasica*, the petitioner's reply directed the Board to a different passage in the cited art than that relied on in the Petition. *See id.* In contrast, Petitioner here cites the same Douglas citation that it did in the Petition in reply to arguments raised in the Patent Owner Response regarding the relevance of that citation. *See* Pet. Reply 13. Dr. Bergeron's Supplemental Declaration does the same, providing explanation of how one skilled in the art would have viewed the previously cited evidence. *See* Ex. 1025 ¶¶ 9–13. Accordingly, we next consider whether Petitioner met its burden to show Douglas teaches or suggests limitation 13[h] in view of the Petition and the Reply.

We agree with Petitioner that Douglas teaches or suggests "a database in communication with the server." As cited by Petitioner, Douglas discloses servers having access to one or more relational databases containing health plan data. Ex. 1002, 24:28–34, Fig. 59. Petitioner argues in the Petition that the relational databases contain health plan data and information needed by users of the system. Pet. 47 (citing Ex. 1012 ¶ 109). Petitioner argues that the server must communicate with the relational databases to access those databases. Pet. Reply 13; Ex. 1025 ¶¶ 9–13. We further credit Dr.

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Bergeron's explanation that a skilled artisan would understand "having access to" as "reading data from the databases and/or by writing data to the database, which necessarily encompasses the databases 522 being in communication with the servers 510–516." Ex. 1025 ¶ 11. We agree that one skilled in the art would have understood a server having access to a database as being in communication with that database. Accordingly, we find that a preponderance of the evidence supports Petitioner's argument that Douglas teaches or suggests limitation 13[h].

c) Conclusion regarding claim 13

Based on our review of the complete trial record, we determine that Petitioner establishes by a preponderance of the evidence that independent claim 13 would have been obvious over Douglas.

4. Independent Claim 17

Independent claim 17 recites a server that performs the method of claim 1. *See* Ex. 1001, 42:35–65. Petitioner refers to its arguments and evidence previously presented as to claims 1 and 13. *See* Pet. 48–50. Apart from similar claim limitations recited in claims 1 and 13 and addressed above, Petitioner addresses, *inter alia*, limitation 17[a], which Patent Owner disputes. We are persuaded by Petitioner's arguments and evidence that Douglas teaches or suggests the other limitations of claim 17, and we address limitation 17[a] below.

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

Limitation 17[a] recites "A server comprising: a processor for executing a set of instructions." Ex. 1001, 42:35–36.

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Petitioner contends that "Douglas discloses or renders obvious a processor within network server 508 for executing a set of instructions for implementing Douglas's system" citing the arguments presented for limitation 13[a]. Pet. 48. In the discussion of limitation 13[a], Petitioner contends, *inter alia*, that "Douglas's system is software and therefore a processor executes the system." *Id.* at 41 (citing Ex. 1002, 25:22–26, 3:10–13, 2:25–27; Ex. 1012 ¶ 93).

Patent Owner responds that the Petition "merely repeats the claim language without citing to any evidence, [which] is insufficient to meet Petitioner's statutory burden of proving unpatentability." PO Resp. 34. As to Petitioner's reference to limitation 13[a], Patent Owner argues that the Petition's analysis of claim 13 does not contain "the word 'instructions,' much less any evidence demonstrating an 'understandable explanation of the element-by-element specifics' of why Douglas discloses the instructions recited in claims 17–20." *Id.* (citing Pet. 38–43; *Corephotonics, Ltd. v. Apple Inc.*, 84 F.4th 990, 1001 (Fed. Cir. 2023)).

Petitioner replies that the Petition refers to Douglas page 25, lines 22–26, "which makes clear that its 'system is constructed using the C++ programming language in conjunction with SQL 6.5, Cold Fusion . . . Visual Basic . . . and HTML.'" Pet. Reply 14 (citing Pet. 48, 41). According to Petitioner, "the Petition has sufficiently explained that Douglas discloses a processor executing a set of instructions, as its system is constructed using the C++ programming language, which is used to generate the set of instructions, as would be understood by a POSITA." *Id.* (citing Ex. 1025 ¶¶ 14–19).

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Patent Owner responds that Petitioner "asks the Board to credit a new argument not contained in the Petition." PO Sur-Reply 16. Patent Owner further argues that Petitioner impermissibly submits new evidence "to support this knowledge of a POSA with a supplemental declaration." *Id.* (citing Ex. 1025 ¶¶ 14–19). Patent Owner argues that "the Board should not consider this evidence and Patent Owner requests that it be stricken from the record and from the Reply." *Id.* at 17 (citing *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016)).

We disagree that Petitioner's Reply includes improper arguments and evidence as to claim 17. As discussed above, the reply brief may respond to arguments raised in the patent owner response, but may not raise new theories of invalidity. *See Intelligent Bio-Sys.*, 821 F.3d at 1369. Petitioner refers to the same previously cited material in Douglas and in reply to the argument in Patent Owner's Response that Douglas does not teach the required limitations. We do not agree that this is an improper reply. Accordingly, we next consider whether Petitioner met its burden to show Douglas teaches or suggests limitation 17[a].

We agree with Petitioner that Douglas teaches or suggests a processor for executing a set of instructions. In the Petition, Petitioner addresses limitation 17[a] by referring to the discussion of limitation 13[a]. Pet. 48, 41. In discussing limitation 13[a], Petitioner contends that Douglas's system is software executed by a processor. *Id.* at 41 (citing Ex. 1002, 25:22–26). In the Reply, Petitioner cites to the same teaching, with greater detail, arguing that Douglas teaches the system is constructed using a programming language, i.e., a set of instructions. Pet. Reply 14. Accordingly, we find that

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a preponderance of the evidence supports Petitioner's argument that Douglas teaches or suggests limitation 17[a].

b) Conclusion Regarding claim 17

Based on our review of the complete trial record, we determine that Petitioner establishes by a preponderance of the evidence that independent claim 17 would have been obvious over Douglas.

5. Dependent Claim 2 (automatically communicating alerts)

Claim 2 depends from claim 1 and adds the step of "automatically communicating alerts in response to the compiled data varying from one or more of the thresholds to become significant for the client." Ex. 1001, 41:11–14.

Petitioner contends Douglas teaches an "alarm option in which 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 if a health risk is present." Pet. 30 (citing Ex. 1002, 11:11–15, Fig. 60) (internal quotations and alterations omitted). Petitioner asserts that Douglas's one-month goals correspond to the claimed thresholds, so that "Douglas discloses automatically communicating alerts in response to the compiled data varying from one or more of the thresholds." *Id.* (citing Ex. 1012 ¶ 78).

Patent Owner responds that Douglas fails to show "automatically communicating." PO Resp. 46–47. Instead, Patent Owner asserts that Douglas discloses an optional alarm. *Id.* at 46 (citing Ex. 1002, 11:11–17; Fig. 60). Patent Owner asserts that "[i]f the alarm must be enabled, activated, *or configured* by a user before it can be utilized, it cannot

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reasonably be found to be 'automatic' and therefore does not satisfy the claims." *Id.* at 47 (citing Ex. 2005 ¶ 114) (emphasis added).

Petitioner replies that claim 2 "does not include any language that precludes the alerts from being set up and/or configured as an option before they are automatically communicated." Pet. Reply 17. Petitioner further cites to the Specification for examples of optional alerts that "may be configured" to automatically send out information. *Id.* at 17–18 (citing Ex. 1001, 13:25–26, 13:61–63).

We agree with Petitioner that Douglas teaches automatically communicating alerts. *See* Ex. 1002, 11:11–15. As Petitioner argues, the plain language of claim 2 does not exclude an optional alert that, once configured, automatically notifies a provider if a health risk is present. The Specification confirms the plain and ordinary meaning, by providing examples of configuring an optional alarm. *See* Ex. 1001, 13:61–63 ("[c]ertain activities, *once configured*, automatically trigger the alerts") (emphasis added).

Based on our review of the complete trial record, we determine that Petitioner establishes by a preponderance of the evidence that claim 2 would have been obvious over Douglas.

6. Dependent Claim 10 (sending an alert when there is missing data)

Claim 10 depends from claim 1 and adds the step of "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." Ex. 1001, 41:44–49.

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Petitioner contends that Douglas discloses sending an alert to a provider "should the client's data indicate a 'threatening' situation." Pet. 38 (citing Ex. 1002, 11:11–19; Ex. 1012 ¶ 89). Petitioner further contends that given a need to identify threatening situations, "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." *Id.* (citing Ex. 1012 ¶ 89). According to Dr. Bergeron, that alert "would have encouraged the provider to enter the missing data." *See* Ex. 1012 ¶ 89 (citing limitation 1[d]).

Patent Owner responds with two arguments: (1) Douglas does not teach receiving data from each of the providers, and (2) Petitioner relies on hindsight to meet the claimed limitation. *See* PO Resp. 47–51.

First, Patent Owner argues that Petitioner fails to address "determining whether the data required is received from each of the one or more providers" *Id.* at 48 (citing Ex. 2005 ¶ 117). Specifically, Patent Owner argues that Douglas teaches receiving "updated patient data *from the patient directly*," but not "*from each of the providers*." *Id.* (citing Pet. 38; Ex. 1002, 11:1–10; Ex. 2005 ¶ 118; Ex. 2006, 55:22–56:9). Patent Owner further argues that, at most, Douglas teaches receiving updated patient data from the physician "is permitted but not required." PO Sur-Reply 18–19 (citing Ex. 1002, 11:1–5).

We disagree with Patent Owner's first argument, which appears to rely on a claim construction that is more restrictive than the plain and ordinary meaning of the claim. Claim 1 requires "periodically receiving updated data, from the one or more providers" and compiling the data to determine client progress. Ex. 1001, 40:63–41:5 (limitations 1[d] and 1[e]).

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As discussed above, Petitioner shows that Douglas teaches receiving provider data and compiling that data to determine client progress. *See supra*, Section III.D.2.e–f. Claim 10, depending from 1, recites "determining whether the data required is received from each of the one or more providers." Ex. 1001, 41:45–46. The claim does not define "required data," but appears to refer to "updated data, from the one or more providers" in claim 1 that is compiled to determine client progress. We disagree that the claimed data, required from each of the *one* or more providers, distinguishes Douglas's teaching of data entered by a patient's physician during office visits and used to determine client progress. *See* Ex. 1002, 11:1–5.

Second, Patent Owner argues that Douglas does not teach or suggest "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." PO Resp. 49–51. Patent Owner argues that, instead, Petitioner relies on unsupported declaration testimony that "amounts to hindsight reconstruction, improperly using the claims of the '554 patent as a blueprint for identifying features absent from Douglas." *Id.* at 51.

Petitioner replies that Douglas "correlates the patient's input with the physician's to check for accuracy," "provides the physician with reports of patient progress," and "periodically correlates the updated patient health information with program goals." Pet. Reply 19 (citing Ex. 1002, 11:1–10, 11:26–28). Petitioner argues that "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." *Id.* Petitioner's Reply argument on correlating input

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for accuracy provides an entirely different rationale from that in the Petition (addressing a threatening situation). Likewise, Dr. Bergeron addresses this theory for the first time in his supplemental declaration. *See* Ex. 1025 ¶ 32. Accordingly, Petitioner presents a new theory of obviousness in the Reply that is necessary to make out a *prima facie* case of unpatentability. Petitioner forfeited this theory by not timely presenting it in the Petition, and we do not consider it here. *Intelligent Bio Sys.*, 821 F.3d at 1370.

We are not persuaded by Petitioner's arguments and evidence as to claim 10. Petitioner does not provide evidence to support its argument that it would have been obvious to modify Douglas's health risk alert to apply the same alert for missing provider data. Dr. Bergeron's declaration simply repeats the argument made in the Petition. *Compare* Pet. 38 *with* Ex. 1012 ¶ 89.

Based on our review of the complete trial record, we determine that Petitioner does not establish by a preponderance of the evidence that claim 10 would have been obvious over Douglas.

7. Dependent Claims 4, 5, 7, 9, and 15

Petitioner contends that Douglas teaches all the limitations of claims 4, 5, 7 and 9 that depend from claim 1, and claim 15 that depends from claim 13. Pet. 30–37, 48; Ex. 1012 ¶¶ 79–88, 111. Patent Owner does not dispute that Douglas teaches the limitations of these claims. *See* PO Resp. Having reviewed the parties' arguments and evidence, we are persuaded that Petitioner's discussion of Douglas's teachings and the explanations in the Petition and the Bergeron Declaration show that Douglas teaches all the limitations of dependent claims 4, 5, 7, 9, and 15.

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Accordingly, we determine that Petitioner establishes by a preponderance of the evidence that claims 4, 5, 7, 9, and 15 of the '554 patent would have been obvious over Douglas.

E. Asserted Obviousness over Douglas and Wager (Claims 1, 2, 4, 5, 7, 9, 10, 12, 13, 15, and 17)

Petitioner argues that claims 1, 2, 4, 5, 7, 9, 10, 12, 13, 15, and 17 would have been obvious over Douglas and Wager. Pet. 51–57.

1. Wager (Ex. 1003)

Wager relates to a management interface for assigning patients to care providers. Ex. 1003 ¶ 3. A staff manager for a clinical care facility may operate the workforce management interface to assign patients to providers, for example, "nurses, therapists, technicians, physicians, interns, or other clinical . . . personnel." *Id.* ¶ 11. The workforce management system may provide a patient list with patient information to be matched to a provider list with provider information. *Id.* ¶¶ 12, 14. Wager further describes a graphical user interface ("GUI") that the staff manager may use to "highlight, grab, click or otherwise activate a provider name in provider list 126, and drag and drop that identifier onto assignment bar 120 for [a] patient, or otherwise associate the provider with the patient." *Id.* ¶ 15, Fig. 2.

2. Claims 1, 13, and 17: Assigning the Client to One or More Providers

Petitioner cites Wager as an additional teaching for limitations 1[b], 13[c], and 17[d]. *See* Pet. 55–57; Ex. 1012 ¶ 130. Specifically, Petitioner asserts that "[s]hould it be found that Douglas does not disclose or render obvious the case administrator's assignment of the patient to a physician based on the administrator's selections it would have been obvious to modify Douglas's system to include an interface like Wager's" to provide an

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interface "through which the administrator assigned the patient to the physician." Pet. 53–54 (citing Ex. 1003 ¶ 3; Ex. 1012 ¶ 127).

Patent Owner presents two arguments against obviousness in view of Douglas and Wager, first as to Wager's teachings, and second as to the reason to combine the references. PO Resp. 35–46. We address these arguments in turn below.

a) Whether Wager teaches assigning the client in response to selections from the administrator

Petitioner contends that Wager teaches a workforce management interface in which a staff manager may assign a care provider to a patient. Pet. 52 (citing Ex. 1003 ¶ 11; Ex. 1012 ¶ 124). The workforce management interface may include a patient list with patient ratings and a provider list detailing "a given provider's experience level, specialized training, [and] patient continuity." *Id.* (citing Ex. 1003 ¶¶ 12, 14; Ex. 1012 ¶ 124). Petitioner further contends that Wager teaches the staff manager may use the interface to assign providers to patients by "selecting or highlighting a nurse, therapist, technician or other from provider list 126 and dragging that name or other object on top of a patient name in the patient list 114." *Id.* at 56 (citing Ex. 1003 ¶ 21; Ex. 1012 ¶ 132).

Patent Owner responds that "Petitioner does not identify with any specificity what particular selections would have been made by an administrator in the Douglas-Wager modified system to which a provider would have been assigned in response." PO Resp. 36. Patent Owner argues that Wager's "selecting/highlighting" instead refers to assigning, citing to the arguments previously presented as to Douglas alone. *See id.* (citing Ex. 2005 ¶¶ 98–99).

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We are persuaded by Petitioner's argument that Wager teaches assigning a client to a provider in response to a selection by an administrator. Pet. 56; Ex. 1012 ¶ 132. Wager teaches that an administrator uses a GUI to select a physician for a patient. Ex. 1003 ¶ 21. That selection causes the "assignment of a care provider to one or more patient requiring a care assignment." *Id.* As discussed above in the claim construction section and with respect to Douglas alone, the '554 patent Specification describes the same process of using a GUI selection to assign clients to providers. *See supra*; Ex. 1001, 11:54–60. Accordingly, we are not persuaded by Patent Owner's contrary arguments about Wager's teachings. We next address whether Petitioner provides some articulated reasoning to combine Douglas and Wager, with some rational underpinning to support the legal conclusion of obviousness.

b) Whether one skilled in the art would have combined Douglas and Wager

Petitioner asserts one skilled in the art would have had reason to modify Douglas with Wager to "ensure that the assigned physician had the capacity to effectively treat the patient," given the number and variety of patients in Douglas's system. Pet. 54–55 (citing Ex. 1002, 6:6–14, 6:36–7:4, Figs. 51, 57; Ex. 1012 ¶ 129). Petitioner asserts that Wager addresses this problem by presenting the staff manager "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." *Id.* at 54 (citing Ex. 1003 ¶¶ 6–7; Ex. 1012 ¶ 128). Petitioner further argues that the combination "would have also helped ensure that the assigned physician

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had the capacity to effectively treat the patient" because Wager's interface effectively manages capacity issues against fluctuating clinical demands, thereby increasing quality of care for the patient. *Id.* at 55 (citing Ex. 1003 ¶¶ 6, 8, 20; Ex. 1012 ¶ 129).

Patent Owner makes six different arguments that one of ordinary skill would not have been motivated to combine Douglas with Wager. PO Resp. 36–46. As discussed below, Patent Owner's arguments do not persuasively rebut Petitioner's articulated reasons to combine the references, because Patent Owner's arguments are inconsistent with *KSR*'s "expansive and flexible approach" to obviousness. *See* 550 U.S. at 415.

First, Patent Owner argues Douglas's Figure 57 does not address physician caseload, as relied on by Petitioner, and instead "merely lists the number of year-to-date coronary artery disease cases (whether open or closed) each physician had treated." PO Resp. 38–39 (citing Pet. 55; Ex. 1012 ¶ 57; Ex. 2006, 63:14–64:11; Ex. 2005 ¶ 25). Patent Owner argues that without Figure 57, "Petitioner has provided no evidence that a POSITA would have seen a need in Douglas for balancing patient ratios among physicians." *Id.* at 39 (citing Ex. 2005 ¶ 102). Petitioner and Dr. Bergeron, however, do not rely solely on Figure 57. *See* Pet. 54–55 (citing Ex. 1002, 6:6–14, 6:36–7:4, Figs. 51, 57; Ex. 1012 ¶ 129). For example, Douglas discloses a wide range of individuals having a variety of ailments that would have benefited from Wager's system for matching physician skill sets to service the patient population. *See* Ex. 1002, 6:6–14, Fig. 51; Ex. 1003 ¶ 20; Ex. 1012 ¶¶ 128, 129. Accordingly, even if we agree with Patent Owner's arguments regarding the relevance of Douglas's Figure 57, a preponderance of the evidence supports Petitioner's reason to combine the references.

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Second, 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." PO Resp. 40 (citing Ex. 1002, 6:28–35; Ex. 2005 ¶ 103). However, Patent Owner's argument about redundancy ignores Wager's additional improvements to a computerized clinical management interface. *See* Ex. 1003 ¶ 6 ("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"); *see also KSR*, 550 U.S. at 417 ("[W]hen the question is whether a patent claiming the combination of elements of prior art is obvious," the answer depends on "whether the improvement is more than the predictable use of prior art elements according to their established functions."). Accordingly, we are not persuaded that the combination would be redundant.

Patent Owner's next three arguments generally assert that combining Douglas and Wager would harm patients. *See* PO Resp. 40–43. Specifically, Patent Owner argues that the combination would: (1) negatively impact continuity of care, (2) deter patients from enrolling for fear of reassignment to a different physician, and (3) negatively impact Douglas's surgery patients. *Id.* (citing Ex. 2003, 11–12; Ex. 2005 ¶¶ 104–107; Ex. 2006, 65:21–66:1; Ex. 2007, 10–11; Ex. 1002, 1:29–31, 9:21–10:32). Petitioner replies that "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

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Douglas-Wager system would not have used it in this way." Pet. Reply 16 (citing Ex. 1012 ¶¶ 29–30).

We have considered Patent Owner's arguments regarding patient harm and find them unavailing. First, they contradict the plain teachings of Douglas and Wager regarding improving patient health, and further imply that the person of ordinary skill in the art would have ignored patient care in making patient-physician assignments. *See KSR*, U.S. 550 at 421 ("A person of ordinary skill is also a person of ordinary creativity, not an automaton."). For example, Wager expressly contemplates "patient continuity" as part of its provider capacity ratings. *See* Ex. 1003 ¶ 14. Second, even if the combination would have resulted in some disadvantages, those disadvantages would have been balanced by Wager's teachings of matching skill sets and managing fluctuating clinical demands. *See, e.g.*, Ex. 1003 ¶¶ 6, 20; Ex. 1012 ¶¶ 128–129; *see Intel Corp. v. Qualcomm Inc.*, 21 F.4th 784, 795 (Fed. Cir. 2021) (holding that "simultaneous advantages and disadvantages do not necessarily obviate motivation to combine") (alterations omitted).

Finally, Patent Owner argues that "Douglas teaches against accomplishing its goals in an in-person setting like the one to which Wager is directed." PO Resp. 43–45 (citing Ex. 1003 ¶¶ 4, 5, 11, 13; Ex. 2005 ¶ 108; Ex. 2006, 66:6–19). Patent Owner argues that Douglas's system remotely monitors patients to avoid the costs and inconvenience of in-person programs. *Id.* (citing Ex. 1002, 1:29–35, 2:5–7; Ex. 2005 ¶ 109; Ex. 2006, 67:16–68:2). Patent Owner adds that Douglas's teaching of office visits does not contradict the "remote only" argument, but instead, reinforces the patient's desire to remain with their original physician, "instead of utilizing

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the proposed Douglas-Wager system to reassign the patient to a new physician." *Id.* at 45.

We are not persuaded by Patent Owner's argument that Douglas teaches away from the combination with Wager. Douglas's preference for remote medicine does not criticize or discourage office visits or the combination with Wager's in-person setting. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004) ("The prior art's mere disclosure of more than one alternative does not constitute a teaching away from . . . alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed."). Accordingly, there is no teaching away from the combination with Wager's computerized system for assigning patients to physicians.

c) Conclusion as to Douglas and Wager

In sum, we are persuaded that Petitioner shows that the combination of Douglas and Wager teaches the "assigning the client to one or more of providers in response to selections from the administrator" limitation of claims 1, 13 and 17. We also find that a preponderance of the evidence supports Petitioner's articulated reasoning with rational underpinning to combine Douglas's and Wager's teachings with a reasonable expectation of success. *See KSR*, 550 U.S. at 418.

Accordingly, we determine that Petitioner establishes by a preponderance of the evidence that claims 1, 13, and 17 of the '554 patent would have been obvious over Douglas and Wager.

3. Claims 2, 4, 5, 7, 9, 10, 12, and 15

Petitioner presents evidence that the combination of Douglas and Wager teaches the limitations of claims 2, 4, 5, 7, 9, 10, 12, and 15. Pet. 55–

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57. Patent Owner does not separately present any arguments as to these claims under this combination. On the complete record, Petitioner shows by a preponderance of the evidence that claims 2, 4, 5, 7, 9, 12, and 15 would have been obvious over the combination of Douglas and Wager. However, Petitioner's combination of Douglas and Wager does not address the missing limitations of claim 10 that are discussed above with respect to Petitioner's contentions based on Douglas alone. Accordingly, Petitioner does **not** show that claim 10 would have been obvious over the combination of Douglas and Wager.

F. Asserted Obviousness over Douglas and Chitiveli, or Douglas, Wager, and Chitiveli (Claim 6)

Petitioner argues that claim 6 would have been obvious over Douglas and Chitiveli, or Douglas, Wager, and Chitiveli. Pet. 58–62.

1. Chitiveli (Ex. 1004)

Chitiveli relates to "techniques for a software as a service (SaaS) provider to host a content analytics tool used to evaluate data collections for multiple customers." Ex. 1004 ¶ 14. The data collections may relate to medical services. *Id.* ¶ 34. Therefore, the provider may include a doctor who views customer (patient) data using an analytics tool. *Id.* ¶¶ 19, 20.

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Chitiveli's Figure 1 is reproduced below.

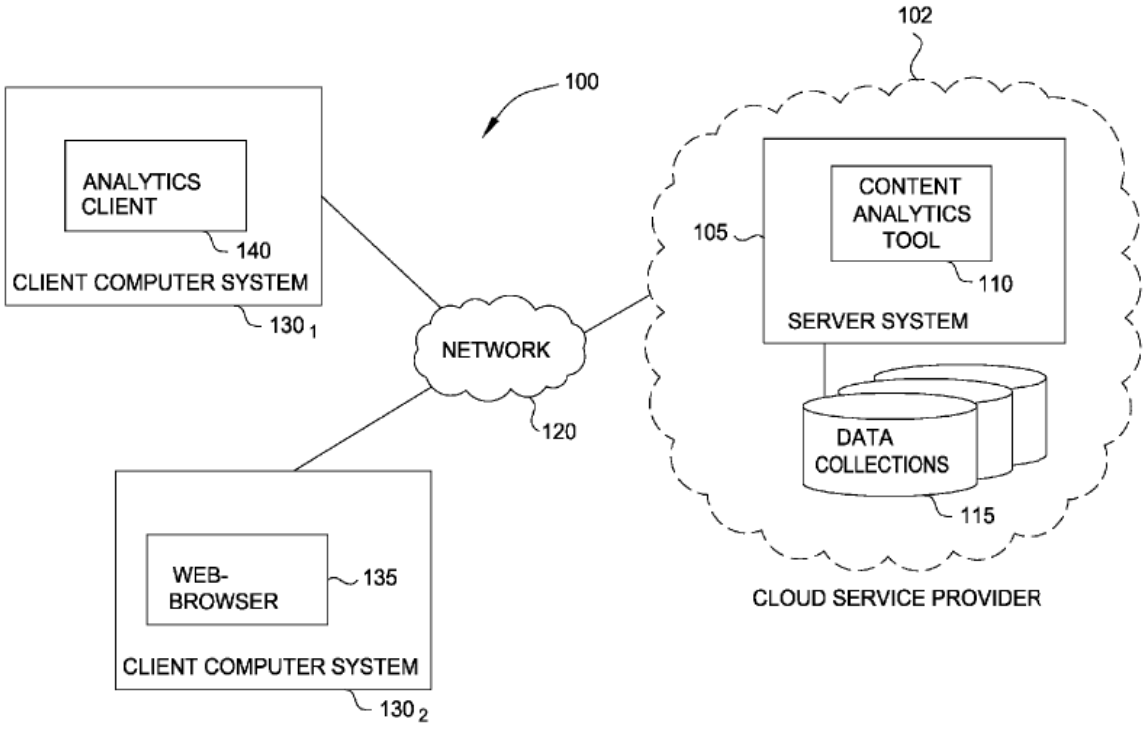


FIG. 1

Figure 1 illustrates computing infrastructure 100 used to host a content analytics service for multiple customers. *Id.* ¶ 35. Computing infrastructure 100 includes cloud-based service provider 102, hosting server system 105, connected by communications network 120 to client computer systems $130_{1–2}$. *Id.* Client computer systems 130 represent a "variety of desktop or laptop computer systems." *Id.* ¶ 36. Client computer systems 130 include analytics client 140 or web-browser 135 that "may be used to upload enterprise data associated with a given tenant as well as access the resulting data collections 115 hosted by the service provider 102." *Id.*

2. Claim 6

Claim 6 depends from claim 1 and adds "wherein the server is accessed through a cloud network, and wherein a client management

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program is executed by the computing or communications devices is utilized to receive the data and track progress of the goals." Ex. 1001, 41:24–28.

As to the recited cloud network, Petitioner contends that "[i]t would have been obvious to implement Douglas's system using a SaaS provider like Chitiveli discloses for his content analytics tool." Pet. 60 (citing Ex. 1004 ¶¶ 35–37, Fig. 1; Ex. 1012 ¶ 140). Petitioner further contends that one skilled in the art would have been motivated to use Chitiveli's cloud network to reduce overhead, increase availability, increase security, and save costs on implementing Douglas's system. *Id.* at 60–61 (citing Ex. 1004 ¶ 31; Ex. 1018, 1; Ex. 1002, 25:5–9; Ex. 1012 ¶¶ 141, 142).

As to the client management program, Petitioner contends that the combination discloses a client management program executed by computing devices utilized to receive data and track progress with Douglas's PCs 500 using Chitiveli's analytics client application 140. *Id.* at 62 (citing Ex. 1012 ¶ 146). Petitioner asserts, "[s]uch 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." *Id.*; *see* Tr. 15–17.

Patent Owner responds that Petitioner's position as to dependent claim 6 (client management program executed by a computing device) contradicts Petitioner's position as to independent claim 13 (client management program executed by a server), and the allegedly contradictory arguments "must fail." PO Resp. 31–32. As discussed above, we disagree with Patent Owner's position that Petitioner presents contradictory arguments between claim 13 and claim 6. *See supra*, Section III.D.3. Rather, claim 6 recites a different embodiment than claim 13, which Petitioner

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challenges on different grounds. We therefore address Patent Owner's substantive argument.[6]

Patent Owner argues that the Douglas-Chitiveli combination does not teach a client management program executed by the computing or communications device as opposed to executed by the server recited in claim 13. PO Resp. 31–32; PO Sur-Reply 10–11. Specifically, Patent Owner argues that Chitiveli discloses server system 105 including content analytics tool 110 that performs program functions including "analytical processing, generating of reports on the analyzed data to monitor progress on issues, and dynamically generating reports." PO Sur-Reply 11–12 (citing Ex. 1004 ¶¶ 35–37, 43). In other words, Patent Owner argues that Chitiveli's version of a client management program is executed by server system 105, not client computer system 130. *Id.* at 12–13; *see* Tr. 58–60.

We are persuaded by Petitioner's argument and evidence that the combination of Douglas and Chitiveli teaches a client management program executed by a computer device. Claim 6 requires a client management program that can receive "the data" and track progress of the goals. Ex. 1001, 41:25–28. "The data" refers to the "updated" and "compiled" data of claim 1. *See id.* at 40:63–66. As Petitioner contends, the Douglas-Chitiveli combination teaches a client application on a client device used to

[6] Patent Owner also contends that Chitiveli is not a printed publication under 35 U.S.C. § 311(b). PO Resp. 52. We agree with Petitioner that Patent Owner's argument is foreclosed by our reviewing court's decision in *Lynk Labs, Inc. v. Samsung Elecs. Co.*, 125 F.4th 1120 (Fed. Cir. 2025). Pet. Reply 20; *see Lynk Labs* at 1132 ("[W]e conclude that §§ 311(b) and 102(e)(1) permit IPR challenges based upon published patent applications, and such published patent applications can be deemed prior art in IPRs as of their filing date.").

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upload provider data and receive periodic updates of analyzed data, thereby performing the same functions of receiving data and tracking progress of the goals as the claimed client management program. Pet. 61 (citing Ex. 1004 ¶¶ 36–37; Ex. 1012 ¶ 143).

Based on our review of the complete trial record, we determine that Petitioner establishes by a preponderance of the evidence that claim 6 would have been obvious over Douglas and Chitiveli.

3. Combination of Douglas, Wager, and Chitiveli (Ground 4)

Patent Owner argues that the Petition insufficiently discloses Ground 4. PO Resp. 54 (citing Pet. 58; Ex. 2005 ¶¶ 124, 127). Specifically, Patent Owner argues "Petitioner never discloses any purported Douglas-Wager-Chitiveli combination [and] does not specify what aspects of Wager, if any, are to be incorporated into this combination." *Id.* at 55 (citing Pet. 58–60). Patent Owner further argues that "[e]ven if Petitioner had made such an assertion," "it is unclear how Petitioner contends Wager's visual interface would have been incorporated into a combination of Douglas with Chitiveli," given Chitiveli's own client/web browser. *Id.* at 55–56 (citing Pet. 58–59; Ex. 1004 ¶ 36; Ex. 2005 ¶¶ 126–127).

Petitioner replies that "the Douglas-Chitiveli System is sufficiently disclosed for Ground 3 regarding the implementation of Douglas using a cloud and client architecture of Chitiveli. And Ground 4 simply takes the Douglas-Wager System of Ground 2 and adds Chitiveli to Douglas in the same way recited for Ground 3." Pet. Reply 21 (citing Ex. 1025 ¶¶ 37–43). Accordingly, Petitioner argues that "[t]he Douglas-Wager System of Ground 2 remains unchanged in Ground 4, and, thus, there is no need to repeat the discussion of the Douglas-Wager System for Ground 4." *Id.*

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Patent Owner responds that Petitioner failed to meet its statutory requirement to make its arguments in the Petition. PO Sur-Reply 20–21 (citing *Intelligent Bio-Sys.*, 821 F.3d at 1369). Patent Owner argues that "Petitioner's citations to a supplemental declaration from its expert, rather than to the Petition—as evidence of its proposed combination—proves PO's point." *Id.* at 21.

We find that the Petition provides "an understandable explanation of the element-by-element specifics of the [Ground 4], including the identification of particular portions of prior art on which the petitioner is relying." *Corephotonics*, 84 F.4th at 1001. Specifically, we understand Petitioner's Ground 4 as adding Chitiveli's cloud and client architecture to the Douglas-Wager combination. *See* Pet. 4, 58; Pet. Reply 21; *Corephotonics*, 84 F.4th at 1002 ("It is for the Board to determine what grounds are being articulated in a petition and what arguments and evidence are being referred to in the responses and any replies.").

We consider Patent Owner's arguments against the combination and find them unavailing. PO Resp. 55–56. Specifically, Patent Owner argues against the bodily incorporation of Douglas, Wager, and Chitiveli. However, "[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference," *In re Keller,* 642 F.2d 413, 425 (CCPA 1981). Rather, we are persuaded by Petitioner's argument that one skilled in the art would have implemented Chitiveli's cloud network and client applications with Douglas and Wager. Pet. 59–60; Pet. Reply 21.

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Based on our review of the complete trial record, we determine that Petitioner establishes by a preponderance of the evidence that claim 6 would have been obvious over Douglas, Wager, and Chitiveli.

G. Asserted Obviousness over Douglas and Klotsche, or Douglas, Wager, and Klotsche (Claims 11, 16, and 19)

Petitioner argues that claims 11, 16, and 19 would have been obvious over Douglas and Klotsche, or Douglas, Wager, and Klotsche. Pet. 63–68.

1. Douglas and Klotsche

Petitioner contends that claim 11, which depends from claim 2, claim 16, which depends from claim 13, and claim 19, which depends from claim 17, would have been obvious over the combined teachings of Douglas and Klotsche. Pet. 63–68; Ex. 1012 ¶¶ 147–163. Apart from its arguments against Douglas applied to all the grounds, Patent Owner does not otherwise dispute that the combination of Douglas and Klotsche teaches the limitations of claims 11, 16, and 19. *See generally* PO Resp.

We already determined that Petitioner establishes that claims 2, 13, and 17 would have been obvious over Douglas alone. *See supra* Sections III.D.3, 4, 5. We have reviewed Petitioner's explanations and supporting evidence as to how the combination of Douglas and Klotsche teaches the other limitations of claims 11, 16, and 19, and we agree with, and adopt as our own, Petitioner's analysis. Pet. 63–68; Ex. 1012 ¶¶ 147–163. We are also persuaded that the skilled artisan would have been motivated to combine the teachings of Douglas and Klotsche as proposed with a reasonable expectation of success. Pet. 65–67; Ex. 1012 ¶¶ 151–154.

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Accordingly, we determine that Petitioner establishes by a preponderance of the evidence that claims 11, 16, and 19 would have been obvious over the combined teachings of Douglas and Klotsche.

2. Douglas, Wager, and Klotsche

Patent Owner argues that Petitioner's proposed combination of Douglas, Wager, and Klotsche "fails to mention Wager or articulate how Wager's visual interface would interact with Klotsche's 'adherence score' in the context of Douglas's compliance monitoring system." PO Resp. 56 (citing Pet. 63–68; Ex. 2005 ¶¶ 128–129). Again, Patent Owner argues that Petitioner failed to meet its statutory requirement to make its arguments in the Petition. PO Sur-Reply 20–21 (citing *Intelligent Bio-Sys.*, 821 F.3d at 1369).

Petitioner replies that it "is simply taking the Douglas-Wager System of Ground 2 and adding Klotsche for Ground 6" and there is "no need to repeat the descriptions for the Douglas-Klotsche System of Ground 5 for Ground 6." Pet. Reply 21 (citing Ex. 1025 ¶¶ 44–47).

We understand Petitioner's Ground 6 as adding Klotsche's adherence score to the Douglas-Wager combination. *See* Pet. 4, 63; Pet. Reply 21. We have considered Patent Owner's arguments against the combination and find them unavailing. PO Resp. 56–57. Rather, we are persuaded by Petitioner's argument that one skilled in the art would have implemented Klotsche's score with Douglas and Wager. Pet. 63–68; Pet. Reply 21.

Accordingly, we determine that Petitioner establishes by a preponderance of the evidence that claims 11, 16, and 19 would have been obvious over the combined teachings of Douglas, Wager, and Klotsche.

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H. Asserted Obviousness over Douglas and Koh, or Douglas, Wager, and Koh (Claims 8, 14, and 20)

Petitioner argues that claims 8, 14, and 20 would have been obvious over Douglas and Koh, or Douglas, Wager, and Koh. Pet. 68–74.

1. Koh (Ex. 1009)

Koh relates to data mining applications in health care. Ex. 1009, 64. Koh discloses that 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 for humans to detect." *Id.* at 65. Koh explains that "[d]ata mining applications . . . can benefit healthcare providers, such as hospitals, clinics and physicians, and patients, for example, by identifying effective treatments and best practices." *Id.* For example, "[d]ata mining applications can be developed to evaluate the effectiveness of medical treatments. By comparing and contrasting causes, symptoms, and courses of treatments, data mining can deliver an analysis of which courses of action prove effective." *Id.* at 66.

2. Claims 8, 14, and 20

Claim 8 depends from claim 1 and adds the limitations of "data mining the compiled data to determine best practices; and recommending the best practices to the one or more providers in response to the best practices being associated with a client assigned to the one or more providers." Ex. 1001, 41:34–40. Claims 14 and 20, depending from claims 13 and 17, respectively, recite similar subject matter. *See id.* at 42:22–26, 43:8–12.

Petitioner contends that Douglas discloses recommending patient goals based on patient information and health conditions. Pet. 69 (citing Ex. 1002, 7:17–20, 8:1–13, 21:9–12; Ex. 1012 ¶ 166). Petitioner further

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contends that "Douglas's system contains a copious amount of patient health data; for instance, his FIG. 50 shows a total of 12,978 patients across numerous diagnostic categories on Douglas's system." *Id.* at 69–70 (citing Ex. 1002, Fig. 50, 6:6–14; Ex. 1012 ¶ 167). Petitioner contends that it would have been obvious to apply Koh's data mining to Douglas's compiled data to identify "a therapeutic plan for a patient based on therapeutic plans for similarly situated patients that were correlated with improvement in compiled data" and "a trend in the patient's compiled data that, for similarly situated patients, was correlated with deterioration in compiled data." *Id.* at 70–71 (citing Ex. 1002, 8:1–9; Ex. 1012 ¶ 169).

Petitioner further contends that one skilled in the art would have combined Douglas and Koh to identify effective treatments and best practices. *Id.* at 71 (citing Ex. 1009, 65). For example, one skilled in the art would have identified beneficial and cost-effect treatments for high-risk patients using Douglas's compiled data. *See id.* at 71–72 (citing Ex. 1002, Fig. 50; Ex. 1009, 66; Ex. 1012 ¶¶ 170–173).

As to claim 14 specifically, Petitioner contends that the "Douglas-Koh System discloses that the database is a relational database management system, . . . that, in the Douglas-Koh System, [is] used to perform data mining to analyze the data to determine best practices, wherein the best practices are recommended for the client if relevant." Pet. 73 (citing Ex. 1002, 24:28–30, 22:6–7; Ex. 1012 ¶ 176). And as to claim 20 specifically, Petitioner contends that "[i]n the Douglas-Koh System, it would have been obvious for the processor executing Douglas's compliance monitoring and feedback system, which is in network server 508 alongside Douglas's databases 522, to also execute data mining of that compiled data

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to protect the confidentiality of the compiled data." *Id.* at 74 (citing Ex. 1012 ¶ 179).

Patent Owner responds that one skilled in the art would not have been motivated to combine Douglas and Koh (PO Resp. 57–60), and that the combination does not teach the limitations of claims 8, 14, and 20 (PO Resp. 60–63). We address each of these arguments in turn.

a) Whether one skilled in the art would have combined Douglas and Koh

First, Patent Owner argues that "Douglas addresses individualized compliance tracking with user-specific interactions, while Koh's focus on applications for aggregated organizational data lacks any disclosed capability for individualized feedback or integration into a compliance system." PO Resp. 58 (citing Ex. 1009, 66; Ex. 2005 ¶ 133). Specifically, Patent Owner argues that Douglas's and Koh's "distinct objectives address entirely different problems—patient engagement versus applications for organizational data analysis. There is no logical nexus between these two systems to suggest that a POSITA would combine their teachings." *Id.* at 59 (citing Ex. 2005 ¶ 134).

Second, Patent Owner argues that "Petitioner also cannot establish that Douglas and Koh would be interoperable," because Douglas centers on user-specific tracking whereas Koh centers on broad data aggregation. *Id.* (citing Ex. 1002, 6:1–14; Ex. 1009, 66; Ex. 2005 ¶¶ 135, 136). Patent Owner further argues that "[i]ntegrating these systems would require substantial technical modifications to align their functionalities," would require undue experimentation, and would not improve upon the prior art. *Id.* at 59–60

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(citing *Pers. Web Techs., LLC v. Apple, Inc.*, 848 F.3d 987, 994 (Fed. Cir. 2017)).

Petitioner replies that the motivation to combine the references is based on applying Koh's data mining technique to Douglas's copious amounts of patient health data, thereby identifying effective treatments and best practices to recommend to Douglas's health care providers. Pet. Reply 22–23 (citing Pet. 68–72; Ex. 1009, 65; Ex. 1024, 147:14–150:5). As to interoperability, Petitioner contends that using Koh's data-mined best-practices "in the proposed Douglas-Koh System provides a default set of therapeutic programs and goals, which can then be customized as discussed in Douglas." *Id.* at 23.

We determine that Petitioner provides articulated reasoning supported with some rational underpinning to support the legal conclusion of obviousness. *See KSR*, 550 U.S. at 418. Specifically, Koh teaches mining healthcare data to benefit healthcare providers by identifying effective treatments and best practices. Ex. 1009, 65. Even if Koh's data mining has broad applications, Koh teaches "[b]y comparing and contrasting causes, symptoms, and courses of treatments, data mining can deliver an analysis of which courses of action prove effective." *Id.* at 66. We are persuaded by Petitioner's argument that one skilled in the art would have been motivated to apply Koh's data mining to determine effective treatments and best practices when recommending a therapeutic program to Douglas's health care providers. *See* Ex. 1012 ¶ 169. "[W]hen the question is whether a patent claiming the combination of elements of prior art is obvious," the answer depends on "whether the improvement is more than the predictable use of

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prior art elements according to their established functions." *KSR*, 550 U.S. at 417.

Contrary to Patent Owner's argument, Petitioner does provide an improvement upon the prior art, that is, considering effective treatments and best practices when recommending an individualized therapeutic program. We further disagree that combining the teachings would require undue experimentation or substantial technical modifications. Patent Owner's declarant testimony to this effect is conclusory and unsupported by evidence. *See* Ex. 2005 ¶ 137. And, as discussed above, obviousness does not require the bodily incorporation of the second reference into the structure of the primary reference. *Keller*, 642 F.2d at 425. In conclusion, we are persuaded by Petitioner's argument that one of ordinary skilled in the art would have had a reason to combine Douglas and Koh, and a reasonable expectation of success in doing so.

b) Whether the Douglas and Koh combination teaches claims 8, 14, and 20

Patent Owner emphasizes claim 8's recitation of "'data mining the compiled data to determine best practices' and 'recommending the best practices to the . . . providers in response to the best practices being associated with a client assigned to the . . . providers." PO Resp. 60–61. Patent Owner argues that the combination of Douglas and Koh does not teach associating any best practice with a client, or recommending best practices to the providers in response to the association. *Id.* at 61–62 (citing Ex. 1002, 6:1–14; Ex. 1009, 66; Ex. 2005 ¶¶ 140–142). Similarly, Patent Owner asserts that "[b]ecause Petitioner has failed to even allege, much less provide evidence showing that Koh and Douglas can be combined to

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disclose 'associat[ing] best practices' with any particular client, this failure also extends to claim 20, which also recites such an association." *Id.* at 62. Finally, as to claim 14, Patent Owner asserts that "Petitioner generally alleges that Koh's analysis of data mining would have motivated a POSITA to implement data mining practices into Douglas's system, but Petitioner does not allege that, in doing so, any 'best practice' would be 'recommended for the client if relevant.'" *Id.* at 63 (citing Pet. 73).

Petitioner replies that Petitioner and Dr. Bergeron explain how "[i]n the Douglas-Koh System, data mining would be used to identify . . . ***a therapeutic plan for a patient*** based on therapeutic plans for similarly situated patients that were correlated with improvement in compiled data or other positive outcomes." Pet. Reply 23 (citing Pet. 70–71; Ex. 1012 ¶ 169; Ex. 1024, 153:16–155:25). Petitioner asserts "[t]hat plan, associated with that patient, would accordingly be 'recommended' to that provider." *Id.*

We are persuaded by Petitioner's argument that the combination of Douglas and Koh teaches the limitations of claims 8, 14, and 20. As discussed above, Douglas teaches recommending a patient-specific therapeutic program to a physician, who can then adjust the program as needed. *See* Ex. 1002, 7:17–20, 8:1–13, 21:9–12. Koh uses data mining to determine best practices based on similarly situated patient groups. *See* Ex. 1009, 65–66. We are persuaded by Petitioner that, by combining the two references, one skilled in the art would have recommended Koh's best practices to the provider by associating those best practices with specific patients when creating a patient-specific therapeutic program. *See* Ex. 1012 ¶ 169.

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Accordingly, we determine that Petitioner establishes by a preponderance of the evidence that claims 8, 14, and 20 would have been obvious over the combined teachings of Douglas and Koh.

3. Douglas, Wager, and Koh

Patent Owner argues that Petitioner's proposed combination of Douglas, Wager, and Koh, "fails to mention Wager or articulate how Wager's visual interface would interact with Koh's data mining methods in the context of Douglas's compliance monitoring system." PO Resp. 56 (citing Pet. 68–74; Ex. 2005 ¶¶ 130–131). Again, Patent Owner argues that Petitioner failed to meet its statutory requirement to make its arguments in the Petition. PO Sur-Reply 20–21 (citing *Intelligent Bio-Sys.*, 821 F.3d at 1369).

Petitioner replies that it "is simply taking the Douglas-Wager System of Ground 2 and adding . . . Koh for Ground 8" and there is "no need to repeat the descriptions for the Douglas-Koh System of Ground 7 for Ground 8." Pet. Reply 21–22 (citing Ex. 1025 ¶¶ 44–47).

We understand Petitioner's Ground 8 as adding Koh's data mining for best practices to the Douglas-Wager combination. *See* Pet. 4, 68; Pet. Reply 21–22. We have considered Patent Owner's arguments against the combination and find them unavailing. PO Resp. 56–57. Rather, we are persuaded by Petitioner's argument that one skilled in the art would have implemented Koh's data mining for best practices with Douglas and Wager. Pet. 68–74; Pet. Reply 21–22.

Accordingly, we determine that Petitioner establishes by a preponderance of the evidence that claims 8, 14, and 20 would have been obvious over the combined teachings of Douglas, Wager, and Koh.

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IV. CONCLUSION[7]

After reviewing the record and weighing the evidence offered by both parties, we determine that Petitioner shows by a preponderance of the evidence that claims 1, 2, 4–9, 11–17, 19, and 20 are unpatentable. We determine that Petitioner has not shown that claim 10 is unpatentable.

In summary:

Claim(s)	35 U.S.C. §	Reference(s)/Basis	Claim(s) Shown Unpatentable	Claim(s) Not Shown Unpatentable
1, 2, 4, 5, 7, 9, 10, 13, 15, 17	103(a)	Douglas	1, 2, 4, 5, 7, 9, 13, 15, 17	10
1, 2, 4, 5, 7, 9, 10, 12, 13, 15, 17	103(a)	Douglas, Wager	1, 2, 4, 5, 7, 9, 12, 13, 15, 17	10
6	103(a)	Douglas, Chitiveli	6	
6	103(a)	Douglas, Chitiveli, Wager	6	
11, 16, 19	103(a)	Douglas, Klotsche	11, 16, 19	
11, 16, 19	103(a)	Douglas, Klotsche, Wager	11, 16, 19	

[7] Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner's attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding. See* 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. *See* 37 C.F.R. § 42.8(a)(3), (b)(2).

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Claim(s)	35 U.S.C. §	Reference(s)/Basis	Claim(s) Shown Unpatentable	Claim(s) Not Shown Unpatentable
8, 14, 20	103(a)	Douglas, Koh	8, 14, 20	
8, 14, 20	103(a)	Douglas, Koh, Wager	8, 14, 20	
Overall Outcome			1–9, 11–20	10

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 1, 2, 4–9, 11–17, 19, and 20 of the ’554 patent are shown unpatentable;

FURTHER ORDERED that that claim 10 of the ’554 patent is not shown unpatentable; and

FURTHER ORDERED that, because this is a Final Written Decision, parties to the proceeding seeking judicial review of the Decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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