

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TELADOC HEALTH, INC.,
Petitioner,

v.

DATA HEALTH PARTNERS, INC.,
Patent Owner.

IPR2024-00617
Patent 11,151,142 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 1–7, 9–14, 16–18, and 20 (the “challenged claims”) of U.S. Patent No. 11,151,142 B2 (Ex. 1001, “the ’142 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 15 (“PO Resp.”). Petitioner filed an objection to evidence submitted with Patent Owner’s preliminary response (Paper 11)¹ and a reply (Paper 18, “Pet. Reply”). Patent Owner followed with a sur-reply (Paper 22, “PO Sur-Reply”). We held an oral hearing on June 11, 2025, a transcript of which is in the record. Paper 28 (“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 1–5, 9–14, 16–18, and 20 are unpatentable. We determine that Petitioner has not shown that claims 6 and 7 are 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 references in our decision and therefore Petitioner’s objection is moot.

Patent Owner identifies Data Health Partners, Inc. as the real party in interest. Paper 4 (Patent Owner’s Mandatory Notices), 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 4, 1.

Petitioner concurrently filed petitions for *inter partes* review challenging claims of related patents: U.S. Patent Nos. 11,144,554 B2 (IPR2024-00616, instituted September 17, 2024) and 10,061,812 B2 (IPR2024-00618, institution denied).

C. The ’142 Patent (Ex. 1001)

The ’142 patent relates to a method and system for “tracking goal progression.” Ex. 1001, 1:39–41. The ’142 patent states that “electronic systems, equipment, software, and processes for tracking, treating, and recording results, such as for individuals with special needs, have not improved as significantly” as have processes to assist such individuals. *Id.* at 1:27–30. As a result, according to the ’142 patent, “viewing, updating, managing, and sharing, relevant information may be more difficult than it should be.” *Id.* at 1:33–35. To address this identified problem, the ’142 patent describes “a system, method, server, controller, and computer readable medium for tracking goal progression” that includes establishing accounts for providers serving clients, assigning each client to one or more providers in response to selections from an administrator, establishing goals for each client, compiling data associated with each client, and communicating alerts if the compiled data varies from a threshold to become significant. *Id.* at 1:39–52.

D. Illustrative Claims

Petitioner challenges claims 1–7, 9–14, 16–18, and 20, of which claims 1, 11, and 16 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 establishing accounts for providers serving clients, wherein the clients are individuals receiving treatment or assistance, and wherein the accounts are stored in a server available through one or more networks;

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

[c] assigning each of the clients to one or more of the providers in response to selections from an administrator, wherein the one or more of the providers include at least individuals available to treat or assist the client;

[d] establishing desired outcomes for each of the clients based on treatment and assistance required to meet the desired outcomes, wherein one or more thresholds indicates whether the desired outcomes are met;

[e] compiling data associated with at least performance of the desired outcomes by each of the clients received from the providers utilizing computing or communications devices in communication with the server;

[f] automatically determining whether 1) the desired outcomes are being met in response to rules governing data analysis that are utilized based on the compiled data, and 2) the compiled data varies from one or more thresholds to become significant for one or more of the clients; and

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

[g] automatically communicating alerts in response to the compiled data varying from the one or more thresholds to become significant for the one or more of the clients.

Ex. 1001, 31:25–55.

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
Virginia	Va. Dept. of Educ., Autism Spectrum Disorders and the Transition to Adulthood (2010)	1022

F. Prior Art and 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, 3, 4, 6, 7, 10, 11, 14, 16, 17	103(a)	Douglas
1, 3, 4, 6, 7, 10, 11, 14, 16, 17	103(a)	Douglas, Wager
2, 20	103(a)	Douglas, Chitiveli
2, 20	103(a)	Douglas, Wager, Chitiveli

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 ’142 patent claims priority. *See* Ex. 1001, code (60). Petitioner applies this date as the relevant date. *See* Pet. 6. 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.

Claim(s) Challenged	35 U.S.C. § ³	Reference(s)/Basis
5, 12, 13, 18	103(a)	Douglas, Koh
5, 12, 13, 18	103(a)	Douglas, Wager, Koh
9	103(a)	Douglas, Virginia
9	103(a)	Douglas, Wager, Virginia

Petitioner supports its challenges with declarations from Bryan Bergeron, M.D. Ex. 1012; Ex. 1025. Patent Owner supports its 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. 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 experience with computer-based systems for recording, tracking, and analyzing patient health information.” Pet. 6 (citing Ex. 1012 ¶ 36). Petitioner’s description of the level of ordinary skill in the art is supported by the testimony of Petitioner’s declarant, Dr. Bryan Bergeron. 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 ’142 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

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

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 of the Challenged Claims require an explicit construction.” Pet. 7. In its Preliminary Response, Patent Owner agreed (Prelim. Resp. 10), and in the Institution Decision we applied the plain and ordinary meaning of the claim terms (Inst. Dec. 6).

After institution, Patent Owner’s Response expressly construed the term “wizard application,” as recited by claims 3, 4, and 14. PO Resp. 11–12. The parties disputed the claim construction in subsequent briefing. Pet. Reply 5–7; PO Sur-reply 4–5; Tr. 28–31. The parties also dispute the plain and ordinary meaning of “assigning . . . in response to selections.” PO Resp. 15–19; Pet. Reply 2–4; PO Sur-Reply 1–3; Tr. 12–15, 44–51. Finally, the parties dispute the plain and ordinary meaning of claim 6, specifically as to the antecedent basis of the “the data.” *See* PO Resp. 28–29; Pet. Reply 8–10.

Because “assigning . . . in response to selections” and “wizard application” relate to multiple claims, we address those constructions in this section. We construe claim 6 when addressing the individual claim below.

1. 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. 15–16 (citing Ex. 1001, 11:13–18; Ex. 2005 ¶¶ 66, 67). Patent Owner further argues that “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 16–17.

Petitioner replies that Patent Owner’s citation to the Specification does not “use the term ‘selection’ nor discuss any ‘deliberate and active choice.’” Pet. Reply 2. Instead, Petitioner argues that “selection” indicates “picking, using, or otherwise making inputs to user interface elements in its system.” *Id.* at 2–3 (citing Ex. 1001, 10:45–48, 12:19–22).

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, 10:45–48 (“the user interface . . . may display . . . selection or display components”), 12:19–22 (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 11:13–18 (reference numerals removed, emphasis added).

Taken together, we agree with Petitioner that assigning clients in response to selections of a user interface is consistent with the plain and ordinary meaning of the claims and the Specification. We decline to read Patent Owner’s additional limitations of “deliberate and active choice” into the claim, because these additional limitations lack 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).

2. “*Wizard Application*” and “*Projected Closure Date*”

We construe the term “wizard application” recited by claims 3 and 14 and the term “projected closure date” that is received by the wizard application recited by claims 4 and 14.

a) *Wizard Application*

Patent Owner asserts that Petitioner interprets “wizard application” as “[a]n interactive help utility within an application that guides the user through each step of a particular task.” PO Resp. 11. Patent Owner disagrees and argues instead that “a ‘wizard application’ cannot be an interactive help utility ‘within an application’; it must *be* the application.” *Id.* Patent Owner argues that its interpretation is consistent with the Specification that discloses a user utilizing “a goal wizard or management function to be able to enter headings as well as detailed descriptions or narratives associated with each heading in a hierarchical format.” *Id.* at 11–12 (citing Ex. 1001, 12:30–49; Ex. 2005 ¶¶ 51–56).

Petitioner replies that the claims and Specification do not require “a standalone wizard application.” Pet. Reply 6. Instead, Petitioner contends that the Specification “contemplates implementing various functionality using an application, not isolating functionalities into standalone applications.” *Id.* 6–7 (citing Ex. 1001, 23:5–11; Ex. 1025 ¶¶ 9–12).

Petitioner contrasts the claimed “wizard application” from the Specification’s disclosure of a “goal wizard” or “wizard,” arguing that the plain and ordinary meaning is more consistent with the dictionary definition for “wizard” meaning “[a]n interactive help utility within an application that

guides the user through each step of a particular task.” *Id.* at 7 (citing Ex. 1014, 573).

We do not read claim 3 as requiring a standalone application as argued by Patent Owner. The claims do not recite any other application that the wizard application must “stand alone” from. Likewise, the Specification does not require a standalone wizard application and instead refers to various embodiments including a “goal wizard or management function” or “a goal manager or wizard.” *See* Ex. 1001, 12:30–49, 23:5–11. Accordingly, we interpret the term wizard application to include both a standalone application and an application with wizard functionality. We give little weight to Petitioner’s dictionary definition, which is extrinsic evidence, in view of the plain language of the claims and the Specification.

b) Projected Closure Date

Patent Owner argues that the Specification expressly defines “projected closure date.” PO Sur-Reply 5. Patent Owner cites the Specification’s disclosure that “[a] projected closure date is the date at which the goal will end.” PO Resp. 26 (quoting Ex. 1001, 6:30–31). Patent Owner asserts that Petitioner relies on an intermediate date and not an end date to challenge this claim limitation. *See infra*.

Petitioner replies that “there is nothing in the claims or specification of the ’142 Patent that would limit ‘projected closure date’ to be the very ‘end’ or ‘final’ date.” Pet. Reply 8. Petitioner cites to the Specification’s disclosure that “[t]he projected closure date is utilized to keep users and clients focused on reaching a designated goal in a reasonable time period. . . . a projected closure date may be pre-determined (e.g., one year) or may be set by user or agent specification of timeline.” *Id.* (citing Ex. 1001, 6:31–37).

We agree with Patent Owner that the Specification defines “projected closure date” as the date at which a goal will end. However, we agree with Petitioner that this definition is not limited to final goals, and would include the end date of any goal, including intermediate goals. Accordingly, we interpret “projected closure date” as the date at which any goal will end. We apply that definition below.

3. No Other Construction Needed

To the extent we discuss additional claim construction issues in our analysis, we do so in the claim-specific discussions below. *See infra*, e.g., claim 6. We make no further express constructions here 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, 3, 4, 6, 7, 10, 11, 14, 16, and 17)

Petitioner argues that claims 1, 3, 4, 6, 7, 10, 11, 14, 16, and 17 would have been obvious over Douglas. Pet. 9–47.

1. Douglas (Ex. 1002)

Douglas relates to an electronic system and method for modifying therapeutic behavior, including compliance monitoring and feedback. Ex. 1002, code (57), 5:33–38.⁵ The system allows for a physician to assist an

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.

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.

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’s goals are not being met 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, 31:25–26. 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. 9 (citing Ex. 1002, 2:36–3:2; Ex. 1012 ¶ 45).

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* Pet. 9; Ex. 1002, 2:36–3:2.

b) Limitation 1[a] (receiving input establishing accounts for providers serving clients)

Limitation 1[a] recites “receiving input establishing accounts for providers serving clients, wherein the clients are individuals receiving treatment or assistance, and wherein the accounts are stored in a server available through one or more networks.” Ex. 1001, 31:27–31.

Petitioner contends that Douglas teaches receiving input from administrators who subscribe physicians to its system, thereby establishing provider accounts for the physicians. Pet. 9–10 (citing Ex. 1002, 25:17–19, 19:27–30, 6:6–14; Ex. 1012 ¶ 46). According to Petitioner, the provider accounts are stored in Douglas’s network server 508. *Id.* at 10–11 (citing Ex. 1002, Fig. 59, 24:12–16, 24:28–37; Ex. 1012 ¶¶ 50, 51).

Petitioner further contends “Douglas’s system includes multiple subscribed physicians (the claimed providers), each serving multiple patients (the claimed clients), meaning the received input is for establishing accounts for providers serving clients.” *Id.* (citing Ex. 1002, 21:14–15, Fig. 57; Ex. 1012 ¶ 48).

Patent Owner does not specifically contest Petitioner’s arguments as to limitation 1[a]. We agree with Petitioner that Douglas teaches limitation 1[a]. *See* Pet. 9–11; Ex. 1002, 6:6–14, 19:27–30, 24:12–16, 24:28–37, 25:17–19, Fig. 59; Ex. 1012 ¶¶ 50, 51).

c) Limitation 1[b] (creating fields for compiling client data)

Limitation 1[b] recites “creating fields required for compiling data associated with the treatment or assistance of each of the clients from the providers.” Ex. 1001, 31:32–34.

Petitioner contends that Douglas teaches creating fields for compiling pertinent patient data associated with treatment or assistance from the

physician. Pet. 12–14 (citing Ex. 1002, 7:21–29, 11:26–28, Fig. 4; Ex. 1012 ¶¶ 53, 54).

Patent Owner does not specifically contest Petitioner’s arguments as to limitation 1[b]. We agree with Petitioner that Douglas teaches limitation 1[b]. *See* Pet. 12–14; Ex. 1002, 7:21–29, 11:26–28, Fig. 4; Ex. 1012 ¶¶ 53, 54.

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

Limitation 1[c] recites “assigning each of the clients to one or more of the providers in response to selections from an administrator, wherein the one or more of the providers include at least individuals available to treat or assist the client.” Ex. 1001, 31:35–38.

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 “each of the clients (i.e., patients) are assigned to one or more of the providers (i.e., physicians), who are individuals available to treat or assist their patients.” Pet. 18 (citing Ex. 1002, 15:8–9, 21:24–28, claims 11, 25, Figs. 2, 47; Ex. 1012 ¶ 64). 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.* (citing Ex. 1002, 11:6–12:2; Ex. 1012 ¶ 65). 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 20 (citing Ex. 1002, 6:33–7:20; Ex. 1012 ¶ 67).

Limitation 1[c] further requires assignment “*in response* to selections from the administrator.” Petitioner contends that “by entering the patient prescription form, the case administrator’s assignments of the patients to the physicians constitute the administrator’s selections of each of the patients and of the physician to be assigned to that patient.” *Id.* (citing Ex. 1012 ¶ 68).

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. 15 (citing Pet. 19–20; Ex. 1002, 6:33–7:13, Fig. 2). First, Patent Owner construes “selection” as “a deliberate and active choice by an administrator,” and argues that “Douglas discloses no such selection.” *Id.* at 15–16 (citing Ex. 1001, 11:13–18; Ex. 2005 ¶ 66). Instead, “Douglas’s administrator merely inputs pre-determined information from the prescription form” that the physician provided and thereby selected. *Id.* at 16 (citing Ex. 1002, 6:33–7:13, Fig. 2; Ex. 2005 ¶ 67). We find this argument not commensurate with the claim scope. As discussed above in claim construction, 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.1.

Second, Patent Owner argues that Douglas does not teach assigning “in response to” an administrator’s selection. PO Resp. 16–17. 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). 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.

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 17 (citing Ex. 2006, 32:1–6). Because we agree with Patent Owner that “assigning” and “selections” are separate limitations that must be separately taught by the art, we address 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” Pet. Reply 3–4 (citing Pet. 18–23). 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 . . .”).

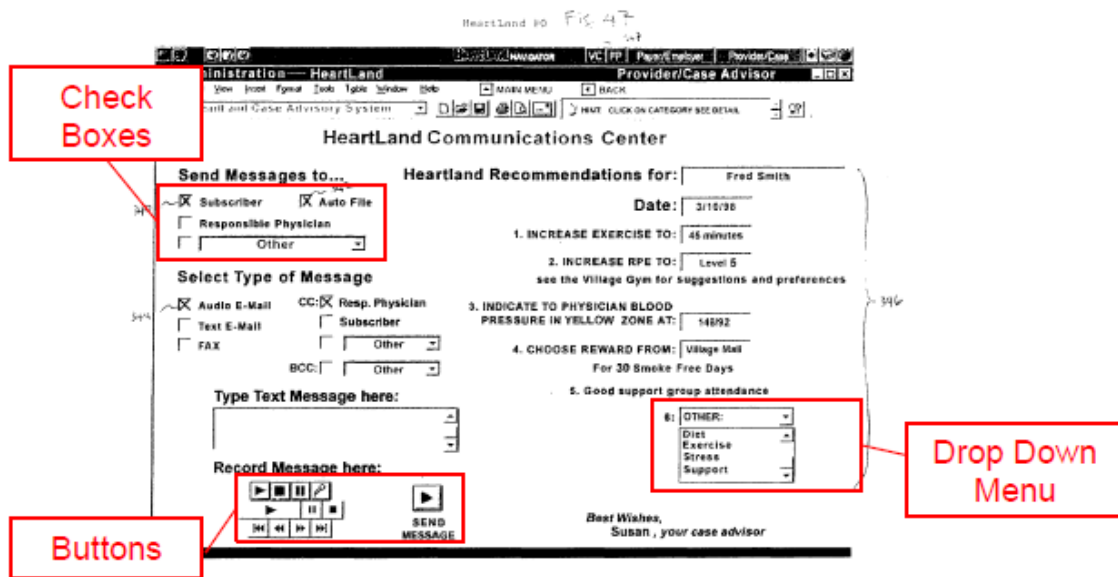
Patent Owner responds that the Petition maps both selection and assigning as entering information from Douglas’s patient prescription form, contrary to Petitioner’s Reply argument. PO Sur-Reply 2; Tr. 44–46. Patent Owner further distinguishes Douglas as “generally disclos[ing] that the case administrator ‘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 2–3 (citing Ex. 1002, Fig. 3, 7:11–16).

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 its 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 assignments by the administrator of the patients to their physicians through selections of graphical user interface (‘GUI’) components.” Pet. 20–21 (citing Ex. 1002, Figs. 5, 6, 38, 39, 47; Ex. 1012 ¶¶ 69–74). 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 21. 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. 21 (citing Ex. 1002, Fig. 47; Ex. 1012 ¶¶ 70, 71). 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 22 (citing Ex. 1012 ¶¶ 72–74). For example, “the checkboxes and drop-down menu 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 ¶ 73). 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 assignments in Douglas’s system 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 22 (citing Ex. 1002, 2:16–24, 3:24–5:20, Figs. 3–6, 8–58; Ex. 1012 ¶ 75).

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. 20. Patent Owner argues that

the selection in the GUI would also be the assignment. *Id.* at 20–21. 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.* at 21 (citing Ex. 2005 ¶ 77).

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. 20–23 (citing Ex. 1002, Fig. 47). 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 ¶¶ 72–75. Douglas’s suggestion of a GUI selection resulting in assigning a client to a provider would have been the same process described in the ’142 patent. *See* Ex. 1001, 11:11–18.

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 ’142 patent does not.” *See* Ex. 2005 ¶ 73. 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[c].

e) Limitation 1[d] (establishing desired outcomes)

Limitation 1[d] recites “establishing desired outcomes for each of the clients based on treatment and assistance required to meet the desired outcomes, wherein one or more thresholds indicates whether the desired outcomes are met.” Ex. 1001, 31:39–42.

Petitioner contends that Douglas teaches a physician or case advisor designs a program for a patient. Pet. 23 (citing Ex. 1002, 7:29–32, Fig. 4). Petitioner contends that Douglas teaches “‘the system . . . generates a set of goals 52’ as part of ‘a therapeutic program’ for the patient” based on input information. *Id.* at 24 (citing Ex. 1002, 8:1–9, Fig. 5; Ex. 1012 ¶ 77). Petitioner further 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 24–25 (citing Ex. 1002, 8:8–11, Fig. 6; Ex. 1012 ¶ 77). Douglas’s Figure 6 is excerpted below.

Based on your input, here is HeartLand's recommended program for: [Fred Smith]
Use the buttons to confirm or edit this program. 61

PATIENT STATUS & GOALS: DETAILS		Now 2/10/98	1 month Goal	GOALS
Name / D.O.B.	Fred Smith 2-5-49			
Starting Date	2/1/98			
Heartland I.D.	23-642			
Height / Sex	6'9" Male			
Weight	193	182	175	170
BMI	28.28	28.28	26.64	25.00
Smoke	.5 Packs/Day	.5	0	0
Physical Activity	0 / 0 / 0 minutes / x-week / RPE	20 / 3 / 3	25 / 6 / 4	4 / 6 / 8
Alcohol	2 Average Drinks per Day	2	1	1
Eating Habits	40 %Fiber/Complex Carb Intake	60	70	80
	40 %Fatty Food Intake	20	20	15
	40 %Fatty Dairy Intake	20	10	5
Calories	3,600	3,300	3,100	2,800
Fat Calories & %	45%	45%	20%	15%
Cholesterol - LDL	142	140 mg/dl	125 mg/dl	100 mg/dl
Cholesterol - HDL	35	37 mg/dl	39 mg/dl	45 mg/dl
Cholesterol	246 mg/dl	225	210	190
Resting Pulse Rate	68 Beats Per Minute	68	65	79
Stress	8.5 Scale of 1 to 10 (10 being high stress)	7.0	6.0	3.5
Depression	Scale of 1 to 10 (10 being greatest)	10	6	0
Blood Pressure	140/100 systolic/diastolic	140/100	130/90	130/90
Seatbelt Use	30 percent of time	50	75	100
Back Pain	Incidents per month	3	2	0
Pharmaceuticals				
- aspirin	325 mg	325 mg/day	325 mg/day	325 mg/day
- hydrochlorothiaz.	12.5 mg	12.5 mg/day	12.5 mg/day	0 mg/day
- Lovastatin	20 mg	20 mg/day	20 mg/day	0 mg/day

CONFIRM 63
EDIT 64
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 contends that "Douglas's goals 51, 61, 62 are each a desired outcome." Pet. 25 (citing Ex. 1012 ¶ 78). As to the thresholds, Petitioner asserts "Douglas's system assesses whether those desired outcomes are met by comparing data relating to the patient to respective thresholds of the desired outcomes, also shown in Douglas's FIG. 6, such as the patient's

blood pressure being below 130/90 and the patient's weight being below 175." *Id.* at 25–26 (citing Ex. 1002, Fig. 6, 11:18–28; Ex. 1012 ¶ 78).

Patent Owner does not dispute limitation 1[d]. *See generally* PO Resp. We are persuaded by Petitioner's argument and evidence that Douglas teaches limitation 1[d]. *See* Pet. 23–27; Ex. 1002, 8:1–11, 11:18–28, Figs. 5, 6; Ex. 1012 ¶¶ 77, 78.

f) Limitation 1[e] (compiling data)

Limitation 1[e] recites "compiling data associated with at least performance of the desired outcomes by each of the clients received from the providers utilizing computing or communications devices in communication with the server." Ex. 1001, 31:43–46.

Petitioner contends that Douglas teaches receiving updated patient data entered by the physician during office visits. Pet. 28 (citing Ex. 1002, 11:1–5, Figs 60, 41; Ex. 1012 ¶ 83). According to Petitioner, the physician enters the data using PC 500 connected via the Internet to linked network server 508. *Id.* at 28–29 (citing Ex. 1002, 24:3–26, Fig. 59; Ex. 1012 ¶ 86). The server compiles the data used to generate reports on patient outcomes. *Id.* at 28–29 (citing Ex. 1002, 11:1–12:2, 20:3–37, Figs. 40–45; Ex. 1012 ¶¶ 84–86).

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 limitation 1[e]. *See* Pet. 28–29; Ex. 1002, 11:1–12:2, 20:3–37, 24:3–26, Figs. 40–45, 59; Ex. 1012 ¶¶ 84–86.

g) Limitations 1[f] and 1[g] (automatically determining whether outcomes are being met and automatically communicating alerts)

Limitation 1[f] recites “automatically determining whether 1) the desired outcomes are being met in response to rules governing data analysis that are utilized based on the compiled data, and 2) the compiled data varies from one or more thresholds to become significant for one or more of the clients.” Ex. 1001, 31:47–52. Limitation 1[g] recites “automatically communicating alerts in response to the compiled data varying from the one or more thresholds to become significant for the one or more of the clients.” *Id.* at 31:53–55.

Petitioner contends that “Douglas’s ‘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. 29 (citing Ex. 1002, 11:18–12:2; Ex. 1012 ¶ 88). Petitioner further contends that Douglas teaches “[t]he 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.” *Id.* at 30 (citing Ex. 1002, 11:11–15, Fig. 60; Ex. 1012 ¶ 90). According to Petitioner, when Douglas’s system identifies “a health risk is present for a patient based on the compiled data varying from the goals’ corresponding thresholds,” the system automatically communicates an alert via an alarm option. *Id.* at 31 (citing Ex. 11:11–17; Ex. 1012 ¶ 91).

Patent Owner does not dispute limitation 1[f] but argues that Douglas does not teach limitation 1[g]. PO Resp. 21–22. Specifically, Patent Owner argues that Douglas’s “alarm option” is not an automatic communication

because “the alarm must be enabled, activated, or configured by a user before it can be utilized.” *Id.* at 22 (citing Ex. 11:11–17; Ex. 2005 ¶ 80).

Petitioner replies that claim 1 “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 5. Petitioner further cites to the Specification for examples of optional alerts that “may be configured” to automatically send out information. *Id.* (citing Ex. 1001, 12:50–51, 13:19–21).

We agree with Petitioner that Douglas teaches automatically communicating alerts. *See* Ex. 1002, 11:11–15. As Petitioner argues, the plain language of claim 1 does not exclude an optional alert that, once configured, automatically notifies a provider if a health risk is present. The Specification confirms that plain and ordinary meaning, by providing an example of configuring an optional alarm. *See* Ex. 1001, 13:18–21 (“[c]ertain activities, *once configured*, automatically trigger the alerts) (emphasis added).

Accordingly, we find that a preponderance of the evidence supports Petitioner’s argument that Douglas teaches or suggests limitations 1[f] and 1[g].

h) 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 11

Independent claim 11 recites a system for tracking goal progression that performs the method of claim 1. *See* Ex. 1001, 32:11–67. Petitioner refers to its arguments and evidence previously presented as to claim 1. *See*

Pet. 37–44. Apart from similar claim limitations recited in claim 1 and addressed above, Petitioner separately addresses limitations 11[a] and 11[i]. Patent Owner responds that Douglas does not teach limitations 11[a] and 11[i]. *See* PO Resp. 36–38.

We are persuaded by Petitioner’s arguments and evidence that Douglas teaches or suggests the preamble of claim 11 and limitations 11[b]–[h] (Pet. 42–43) for the reasons discussed above as to claim 1. We address limitations 11[a] and 11[i] below.

a) Limitation 11[a] (a server that executes a client management program)

Limitation 11[a] recites “a server that 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, 32:32–35.

Petitioner contends that Douglas discloses a system that includes network server 508 electronically linked to PCs 500 via the Internet 518. Pet. 37–38 (citing Ex. 1002, Fig. 59, 24:12–34; Ex. 1012 ¶ 104). Petitioner contends that Douglas’s PCs “are communications devices, as they communicate with the server.” *Id.* at 38 (citing Ex. 1002, 24:3–6, 24:22–34; Ex. 1012 ¶ 104). 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 38–39 (citing Ex. 1002, 24:22–24, 8:28–31; Ex. 1012 ¶ 105).

Petitioner also contends that Douglas’s network server includes a processor that executes a client management program. *Id.* at 39–40 (citing Ex. 1012 ¶ 106). First, Petitioner contends that Douglas’s client management

program (system) is software executed by a processor. *Id.* at 39 (citing Ex. 1002, 25:22–26, 3:10–13, 2:25–27; Ex. 1012 ¶ 106). Second, Petitioner contends that Douglas teaches software executed by the server because the network server includes an 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 40 (citing Ex. 1002, 8:29–31, 19:27–30, 24:13–19, 25:5–11, Fig. 59; Ex. 1012 ¶¶ 108, 109). 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 40–41 (citing Ex. 1002, 10:7–9, 19:29–30, 22:12–14, 24:18–19, 25:5–9, 25:14–16; Ex. 1012 ¶ 110).

Patent Owner responds that Petitioner’s position as to limitation 11[a] (server executes a client management program) contradicts Petitioner’s position as to dependent claim 2 (provider devices execute a client management program). *See* PO Resp. 36–37. Patent Owner argues that, due to Petitioner’s allegedly contradictory arguments, “both of Petitioner’s challenges based on these contradictory allegations must fail.” *Id.* (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 11 and claim 2. First, we agree with Petitioner that “claims 2 and 11 are not related by dependency” and thus may claim different embodiments for executing a client management program. *See* Pet. Reply 13–14. Second, Petitioner challenges claim 11 on different grounds

from claim 2 (obvious over Douglas and Chitiveli, with or without Wager) thus allowing for different unpatentability arguments. *See* Pet. 20–21.

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 11[a].

b) Limitation 11[i] (a database in communication with the server)

Limitation 11[i] recites “a database in communication with the server configured to store the data and information associated with the clients and the providers.” Ex. 1001, 32:65–67.

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.’” Pet. 43 (citing Ex. 1002, 24:28–37; Ex. 1012 ¶ 119) (citation modified). Petitioner contends that Douglas’s databases also include “information associated with the clients and the providers,” such as patients’ goals and parameters, journal entries, physician recommendations, and physician accounts. *Id.* at 43–44 (citing Ex. 1002, 11:12–17, 10:31–36, 24:31–33, 21:25–28; Ex. 1012 ¶ 120).

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 11 recites.” PO Resp. 37 (citing Pet. 41; Ex. 1012 ¶ 110). More specifically, Patent Owner asserts that “the phrase ‘in communication’ never appears in the Petition’s analysis of claim 11 outside of the section headings reciting the claim language.” *Id.* (citing Pet. 37–44).

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 14. According to Petitioner, “have access to” means inner servers 510–516, part of server 508, “*must communicate with*, relational databases 522.” *Id.* at 15 (citing Ex. 1025 ¶¶ 30–34).

Patent Owner responds that “a server having access to a database does not mean it actually communicates with that database as claim 11 requires, and the Petition provided no evidence to the contrary.” PO Sur-Reply 16. Patent Owner further argues that “Petitioner’s attempt to provide this evidence on Reply is improper and should be stricken.” *Id.* at 16–17 (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 11. A 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.* Petitioner here, however, cites the same Douglas citation that it did in the Petition in reply to arguments raised in Patent Owner’s

Response regarding the relevance of that citation. *See* Pet. Reply 14. 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 ¶¶ 30–34. Accordingly, we next consider whether Petitioner met its burden to show Douglas teaches or suggests limitation 11[i] 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. 43 (citing Ex. 1012 ¶ 119). Petitioner argues that the server must communicate with the relational databases to access those databases. Pet. Reply 14; Ex. 1025 ¶¶ 30–34. We further credit Dr. 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 ¶ 32. 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 11[i].

c) Conclusion Regarding Claim 11

Based on our review of the complete trial record, we determine that Petitioner establishes by a preponderance of the evidence that independent claim 11 would have been obvious over Douglas.

4. *Independent Claim 16*

Independent claim 16 recites a controller that performs the method of claim 1. *See* Ex. 1001, 33:20. Petitioner refers to its arguments and evidence previously presented as to claims 1 and 11. *See* Pet. 44–47. Apart from similar claim limitations recited in claim 1 and addressed above, Petitioner addresses, *inter alia*, limitation 16[a], which Patent Owner disputes. We are persuaded by Petitioner’s arguments and evidence that Douglas teaches or suggests the other limitations of claim 16, and we address limitation 16[a] below.

a) *Limitation 16[a] (processor for executing a set of instructions)*

Limitation 16[a] recites “A controller comprising: a processor for executing a set of instructions.” Ex. 1001, 33:20–21.

Petitioner argues that “Douglas discloses or renders obvious a processor within network server 508 for executing a set of instructions, specifically those for implementing Douglas’s system” citing the arguments presented for limitation 11[a]. Pet. 45. In the discussion of limitation 11[a], Petitioner argues, *inter alia*, that “Douglas’s system is software and therefore a processor executes the system.” *Id.* at 39 (citing Ex. 1002, 25:22–26, 3:10–13, 2:25–27; Ex. 1012 ¶ 106).

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. 38. As to Petitioner’s reference to limitation 11[a], Patent Owner argues that the Petition’s analysis of claim 11 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 [16]–20.” *Id.* at 39 (citing Pet. 45; *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 15 (citing Pet. 45, 39). According to Petitioner, “the Petition sufficiently explains that Douglas discloses a processor executing a set of instructions, as its system is constructed using the C++ programming language, which is used to generate the set of instructions, as would be understood by a POSITA.” *Id.* (citing Ex. 1025 ¶¶ 35–40).

Patent Owner responds that Petitioner “asks the Board to credit a new argument not contained in the Petition.” PO Sur-Reply 17. Patent Owner further argues that Petitioner impermissibly submits new evidence “to support this knowledge of a POSA with a supplemental declaration.” *Id.* at 18 (citing Ex. 1025 ¶¶ 35–40). 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 19 (citing *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369 (Fed. Cir. 2016)).

We disagree with Patent Owner’s argument that Petitioner’s Reply includes improper arguments and evidence as to claim 16. 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 in reply to 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 16[a].

We agree with Petitioner that Douglas teaches or suggests a processor for executing a set of instructions. In the Petition, Petitioner addresses limitation 16[a] by referring to the discussion of limitation 11[a]. Pet. 45, 39. In discussing limitation 11[a], Petitioner contends that Douglas’s system is software executed by a processor. *Id.* at 39 (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 15. Accordingly, we find that a preponderance of the evidence supports Petitioner’s argument that Douglas teaches or suggests limitation 16[a].

b) Conclusion Regarding Claim 16

Based on our review of the complete trial record, we determine that Petitioner establishes by a preponderance of the evidence that independent claim 16 would have been obvious over Douglas.

5. Dependent Claim 3 (utilizing a wizard application)

Claim 3 depends from claim 1 and adds “establishing desired outcomes for the client associated with treatment or assistance utilizing a wizard application.” Ex. 1001, 31:61–64.

Petitioner contends that Douglas teaches a wizard application to establish desired outcomes in the form of goals for the client. Pet. 31 (citing Ex. 1012 ¶ 92). For example, Petitioner contends that Douglas describes a “Design Option 50,” through which a user can design a new program for a patient, and prompts the user to assign intensity levels for the program. *Id.* at 32 (citing Ex. 1002, 7:17–26, 7:29–37, Figs. 4, 5; Ex. 1012 ¶ 93). Petitioner further contends that Douglas “presents the user with a Program Detail

option 54, which allows the user to view details as to how the suggested goals may be implemented, by showing recommended one month goals 61 and final goals 62,” and then “allows the user to edit the suggested program.” *Id.* (citing Ex. 1002, 8:1–13, Fig. 6; Ex. 1012 ¶ 94) (internal quotations omitted).

Patent Owner responds that “Petitioner has not alleged or established that the ‘discrete steps’ it points to as disclosure of this claim limitation constitute any ‘application’ at all, nor do they constitute an ‘application’ under a plain and ordinary meaning of the word.” PO Resp. 23 (citing Pet. 31–32). As to Petitioner’s citations to Douglas, Patent Owner argues that “[t]he series of interfaces depicted in Douglas’s Figures 4–6 are not reflective of the kind of wizard application envisioned by the ’142 patent or the plain and ordinary meaning of the term.” *Id.* at 24 (citing Ex. 2005 ¶ 86). Specifically, Patent Owner argues that “[w]hat Douglas presents in Figures 4–6 is not a wizard application as a POSITA would understand the term, but ordinary data entry.” *Id.* at 25 (citing Ex. 2005 ¶ 88; Ex. 2006, 37:14–38:1).

Petitioner replies that Douglas discloses prompting “the physician or case advisor to assign intensity levels 51 corresponding to the patient’s diet, exercise, stress management, need for group support, anticipated compliance, and pharmaceutical requirements,” thus disclosing “active facilitating of input and includes sequential or hierarchical prompts.” Pet. Reply 7 (citing Ex. 1012 ¶¶ 13–14).

As discussed above, we interpret “wizard application” to include both a standalone application and an application with wizard functionality that assists the user to establish desired outcomes. *See supra* Section III.C.2. Applying this interpretation, we are persuaded by Petitioner’s argument that

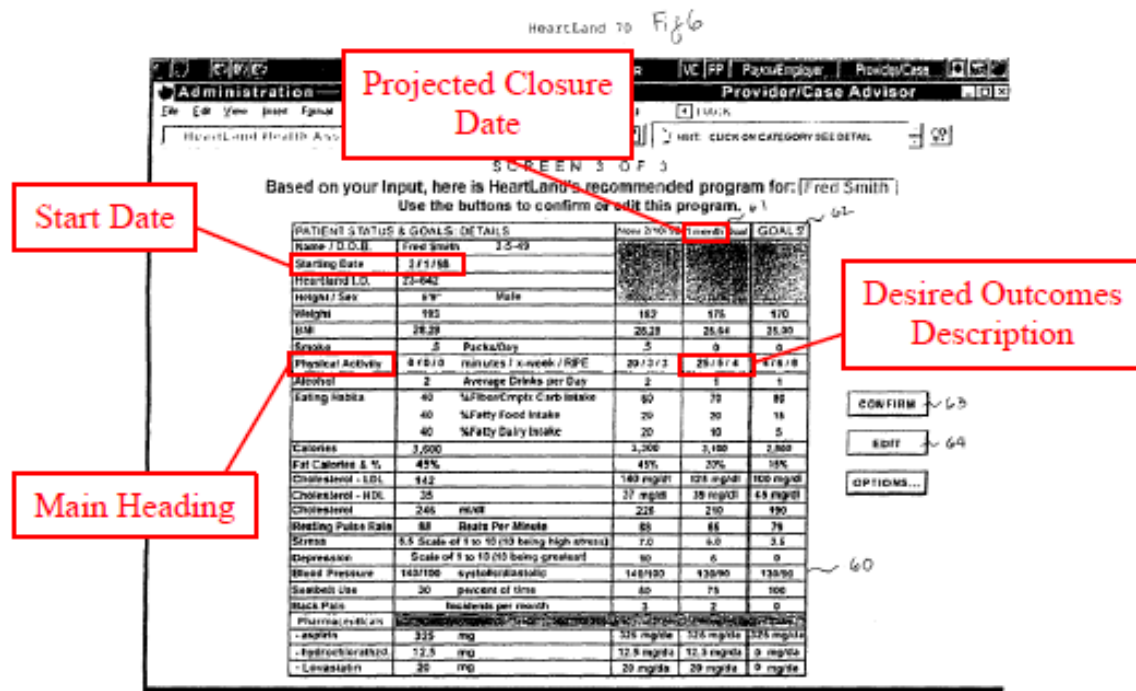
Douglas teaches establishing desired outcomes for a client utilizing a wizard application. Specifically, we find that Douglas’s Design Option 50 causes the system to *prompt* the physician to assign intensity levels, that are then used to generate a set of desired goals (outcomes) for the patient, which can be further modified by the physician. Ex. 1002, 7:33–8:13, Figs. 4–6, 60. We disagree with Patent Owner’s argument that Douglas merely discloses data entry, because Douglas expressly teaches prompting the physician to assign intensity levels and to modify the goals by making appropriate selections. *See id.*

Based on our review of the complete trial record, we determine that Petitioner establishes by a preponderance of the evidence that claim 3 would have been obvious over Douglas.

6. *Dependent Claims 4 and 14 (wizard application includes a projected closure date)*

Claim 4 depends from claim 3 and adds “wherein the wizard application receives at least a main heading, a start date, a projected closure date, and a desired outcome description.” Ex. 1001, 31:65–67. Claim 14 depends from claim 11 and adds “wherein the server further establishes the desired outcomes for the client utilizing a wizard application including at least a main heading, a start date, a projected closure date, and a desired outcomes description.” *Id.* at 33:9–13.

As discussed for claim 3 above, Petitioner contends that Douglas discloses a wizard application that establishes goals for a client as part of a suggested program. Pet. 32, 44. Petitioner contends Douglas’s Figure 6, reproduced below, depicts the suggested program. *Id.*



Douglas’s Figure 6 illustrates a recommended program for a patient. Petitioner annotates Figure 6 to argue that “[t]he suggested program’s goals include a main heading (e.g., ‘Physical Activity’), a start date (‘Starting Date 2/1/98’), a projected closure date (‘1 month’), and a desired outcome description (e.g., ‘25/6/4’ ‘minutes / x-week / RPE’ of exercise).” Pet. 33 (citing Ex. 1012 ¶¶ 95, 122).

Petitioner further contends that Douglas’s wizard application allows the physician to edit the suggested programs to modify the goals, and that “goal-modification would have at least obviously included the user’s ability to edit the goals’ main heading, start date, projected closure date, and desired outcome description.” *Id.* at 33–34 (citing Ex. 1012 ¶ 96).

Patent Owner responds that Douglas does not disclose a “projected closure date.” PO Resp. 25. Patent Owner argues that “the word ‘closure’ necessarily requires some kind of end or finality.” *Id.* at 25–26 (citing Ex. 2005 ¶ 92). Patent Owner supports this interpretation by citing to the Specification, which describes the “projected closure date is the date at

which the goal will end.” *Id.* at 26 (citing Ex. 1001, 6:30–37). Patent Owner argues that Petitioner relies on Douglas’s one-month goals 61, which are intermediate goals, and are not the date at which the goal will end. *See id.* at 26–27.

Petitioner replies that “there is nothing in the claims or specification of the ’142 Patent that would limit ‘projected closure date’ to be the very ‘end’ or ‘final’ date.” Pet. Reply 8. Petitioner cites to the Specification’s disclosure that “[t]he projected closure date is ‘utilized to keep users and clients focused on reaching a designated goal in a reasonable period of time.’ “utilized to keep users and clients focused on reaching a designated goal in a reasonable period of time” and that “the closure date may be pre-determined (e.g., one year).”” *Id.* (citing Ex. 1001, 6:30–37). Petitioner asserts that Douglas’s one-month goals meet the “projected closure date” criteria, “utilized to keep users and clients focused on reaching a designated goal in a reasonable period of time,” “as they are used to determine whether the patient is properly progressing according to the plan set forth in Douglas.” *Id.*

Patent Owner responds that “Petitioner tries to run from the specification’s express description of a ‘projected closure date’ as ‘the date at which the goal will end’ because Douglas’s one-month goals are indisputably not the dates at which the goals will end.” PO Sur-Reply 5.

We have considered Patent Owner’s arguments but find them unavailing. As discussed above, we agree that projected closure date means a goal end-date, but the closure date is not limited to final goals. Rather, we are persuaded by Petitioner’s argument that the closure date applies to the end of an intermediate goal as way to measure patient progress. Because

Douglas teaches a closure date for an intermediate goal, we find that Douglas teaches the claimed limitation. *See* Ex. 1002, Fig. 6.

Based on our review of the complete trial record, we determine that Petitioner establishes by a preponderance of the evidence that claims 4 and 14 would have been obvious over Douglas.

7. Dependent Claim 6 (intervention plans)

Claim 6 depends from claim 1 and adds “wherein *the data* includes at least intervention plans, desired outcomes and objectives, recorded activities, and general notes.” Ex. 1001, 32:7–9 (emphasis added).

Petitioner contends that Douglas’s data contains (1) “intervention plans, including positive interventions,” “exercise and stress management programs,” and unmet goal notifications. Pet. 34 (citing Ex. 1002, 16:15–25, 16:32–35, 11:11–12:2, 24:35–37; Ex. 1012 ¶ 97). Petitioner further contends Douglas’s data includes (2) “desired outcomes and objectives, in the form of Douglas’s goals,” (3) recorded activities such as packs of smoked cigarettes, physical activity, consumed food, and seatbelt use, and (4) general notes, such as physician notes. *Id.* at 35 (citing Ex. 1002, Fig. 4; Ex. 1012 ¶¶ 98, 99).

Patent Owner responds that the “data” of claim 6 refers to data “received from the providers” according to claim 1. PO Sur-Reply 6. Patent Owner argues that “[t]here is no indication in Douglas that any of those aspects of Douglas’s system—assuming they could be fairly interpreted as ‘intervention plans’—are received from providers utilizing computing/communication devices.” PO Resp. 29 (citing Ex. 2005 ¶ 100).

Petitioner replies that claim 1 refers to data in multiple locations. Pet. Reply 9. According to Petitioner, only “data associated with at least performance of the desired outcomes” must be received from the providers.

Id.; *see also* Tr. 31 (Petitioner’s counsel contending: “We’re pointing out that it’s only the data associated with at least performance of the desired outcome.”). Applying this interpretation, Petitioner contends that “the ‘intervention plans’ of claim 6 need not be ‘received from the providers utilizing computing or communications devices in communication with the server.’” Pet. Reply 9; *see also* Tr. 31–32 (Petitioner’s counsel contending: “We think that the data associated with the treatment or assistance of each of the clients is really what Claim 6 is talking about, because that’s when the intervention[] plans would come into play, it’s when you have a treatment and assistance, not the performance of desired outcomes necessarily.”).

Alternatively, Petitioner contends that “the Petition does state that the ‘intervention plan’ disclosed in Douglas is ‘received from the providers utilizing computing or communications devices in communication with the server.’” Pet. Reply 9. Petitioner cites to the Petition at pages 28–29, discussing limitation 1[e]. *Id.* But here the Petition refers to data entered by the physician during office visits, and not an intervention plan (modified program) as argued by Petitioner. *See* Pet. 28–29 (citing Ex. 1002, 11:1–5, Fig. 60). During the oral hearing, Petitioner confirmed that the Petition does not clearly support an argument that the claim was met under Patent Owner’s interpretation. *See* Tr. 32 (JUDGE WEINSCHENK: “Did you make an argument that even if we read it the way that Patent Owner does, that there’s an intervention plan received from the provider utilizing computing devices?” MR. SOLOMITA: “I don’t believe so. . . . I don’t believe we argued that intervention plans were provided by the communication devices.”).

Patent Owner responds that the first recitation of “data” in claim 1 refers to creating fields. PO Sur-Reply 6–8; Tr. 65. Patent Owner argues that

claim 1's second recitation of "compiled data" is the data relied on by claim 6 for antecedent basis. *Id.* at 65–67. Applying this interpretation, Patent Owner argues that Douglas's intervention plans are not received from the providers, and Douglas does not teach the limitations of claim 6. PO Sur-Reply 8.

We are persuaded by Patent Owner's argument. Claim 1's first reference to data is in the context of "creating fields required for compiling data." Ex. 1001, 31:32–34. However, that recitation refers to fields and not data itself. Instead, the only data provided in claim 1, from which claim 6 depends, is the "data associated with at least performance of the desired outcomes by each of the clients received from the providers utilizing computing or communications devices." *Id.* at 31:43–46. Patent Owner's interpretation is more consistent with the plain meaning of the claim, namely that the compiled data is received from the providers. The Petition does not show that Douglas teaches intervention plans received from the providers. Accordingly, we find that Petitioner has not met its burden to show that Douglas teaches claim 6.

Based on our review of the complete trial record, we determine that Petitioner does **not** establish by a preponderance of the evidence that claim 6 would have been obvious over Douglas.

8. *Dependent Claim 7 (missing data alert)*

Claim 7 depends from claim 1 and adds "determining whether the data required is received from each of the providers; and sending an alert to one or more providers in response to determining there is missing data for one or more clients associated with the one or more providers." Ex. 1001, 32:10–15.

Petitioner contends “that Douglas discloses sending an ‘alert’ to a client’s provider should the client’s data indicate a ‘threatening’ situation.” Pet. 36 (citing Ex. 1002, 11:1–19; Ex. 1012 ¶ 101). Petitioner contends that “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,” so that the provider would enter the missing data and the system could identify a threatening situation. *Id.* (citing Ex. 1012 ¶ 101).

Patent Owner responds “Petitioner concedes that Douglas does not actually disclose this limitation and argues that it would have been obvious to ‘send an alert to the provider associated with the client’ if client data was missing.” PO Resp. 31 (citing Pet. 36; Ex. 1002, 11:1–5; Ex. 2005 ¶ 107). According to Patent Owner, Petitioner instead relies on Dr. Bergeron’s declaration, which “is conclusory and merely parrots the Petition” and “amounts to hindsight reconstruction.” *Id.* at 32–33. Patent Owner further argues that “Petitioner does not identify a specific motivation or benefit to adding missing data alerts to Douglas’s system beyond an unsupported assertion that it would ‘have encouraged the provider to enter the missing data.’” *Id.* at 33.

We are persuaded by Patent Owner’s argument. Petitioner relies on Douglas’s teaching of sending an alert to a provider when there is a threatening situation, for example when a patient’s current blood pressure is potentially dangerous. *See* Pet. 36 (citing Ex. 1002, 11:1–19). Petitioner relies on Dr. Bergeron’s testimony to support its contention that it would have been obvious for Douglas’s system to send an alert to the provider for *missing data* that could indicate a threatening situation. *See* Pet. 36 (citing Ex. 1012 ¶ 101). But Dr. Bergeron’s testimony merely repeats the Petition and does not provide any additional rationale or evidence that one skilled in

the art would have made the modification. *See* Ex. 1012 ¶ 101. Absent additional explanation, we find Petitioner’s rationale insufficient.

For example, the missing information in claim 7 is received from the providers. We are not persuaded by Petitioner’s hindsight reasoning that the system would have sent an alert to a provider to enter missing data that would identify a threatening situation, where the provider would presumably already be aware of the threatening situation as they are the source of the missing data.

Based on our review of the complete trial record, we determine that Petitioner does **not** establish by a preponderance of the evidence that claim 7 would have been obvious over Douglas.

9. Dependent Claim 10 (prompting providers)

Claim 10 depends from claim 1 and adds “prompting the providers to provide data associated with assigned clients.” Ex. 1001, 32:27–29.

Petitioner contends “Douglas’s disclosed or obvious fields for entering patient data . . . prompt the providers to provide data associated with the clients by providing a space for entering data labeled with the type of data that is to be entered.” Pet. 37 (citing Ex. 1002, 7:21–29, 11:6–12:2, Figs. 4, 46; Ex. 1012 ¶ 102).

Patent Owner responds that “prompting” requires “guiding the user through completing fields via, e.g., a series of probes or questions.” PO Resp. 34–35 (citing Ex. 1001, 23:11–23; Ex. 2005 ¶ 114) (citation modified). Patent Owner further argues that if “‘prompting’ merely requires presentation of fields for compiling data, claims 1 and 10 are identical in scope.” *Id.* at 35.

Petitioner replies that “Douglas satisfies the plain and ordinary meaning of ‘prompting’ as it discloses getting a user to ‘provide data

associated with assigned clients.” Pet. Reply 12–13 (citing Pet. 27; Ex. 1025 ¶ 27). Petitioner further argues, under its interpretation, “Douglas’s fields must first be created (like in claim 1) before they can be displayed for prompting (in claim 10) the entering of patient data by providing a space for entering data labeled with the type of data that is to be entered.” *Id.* at 13 (citing Ex. 1025 ¶¶ 28–29) (citation modified).

We are persuaded by Petitioner’s argument. First, we agree that the scopes of claims 1 and 10 are distinct, even without Patent Owner’s narrowing construction, because the fields must be created before prompting the provider. We further agree that the plain and ordinary meaning of “prompting” includes providing a space for entering data-specific types of patient data, as taught by Douglas. *See* Ex. 1002, Figs. 4, 46. We credit Dr. Bergeron’s testimony because it explains Douglas’s teachings. *See* Ex. 1012 ¶ 102. We find Patent Owner’s argument unavailing because it relies on reading the Specification’s particular embodiments of types of prompting into the claims. *See* Ex. 1001, 23:11–23. We decline to read those embodiments into the claims.

Based on our review of the complete trial record, we determine that Petitioner establishes by a preponderance of the evidence that claim 10 would have been obvious over Douglas.

E. Asserted Obviousness over Douglas and Wager (Claims 1, 3, 4, 6, 7, 10, 11, 14, 16, and 17)

Petitioner argues that claims 1, 3, 4, 6, 7, 10, 11, 14, 16, and 17 would have been obvious over Douglas and Wager. Pet. 47–53.

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, 11, 16: Assigning the Client to One or More Providers

Petitioner cites Wager as an additional teaching for limitations 1[c], 11[d], and 16[e]. *See* Pet. 52–53; Ex. 1012 ¶ 143. 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 interface “through which the administrator assigned the patient to the physician.” *Id.* at 50 (citing Ex. 1003 ¶ 3; Ex. 1012 ¶ 139).

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. 40–50. 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. 48 (citing Ex. 1003 ¶ 11; Ex. 1012 ¶ 136). 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.* at 48–49 (citing Ex. 1003 ¶¶ 12, 14; Ex. 1012 ¶ 136). Petitioner further contends that Wager discloses 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 49–50 (citing Ex. 1003 ¶ 21; Ex. 1012 ¶ 137).

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. 40. Patent Owner argues that Wager’s “selecting/highlighting” instead refers to assigning, citing to the arguments previously presented as to Douglas alone. *See id.* at 40–41 (citing Ex. 2005 ¶ 125).

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. 49; Ex. 1012 ¶ 137. 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 ’142 patent Specification describes the same process of using a GUI selection to assign clients to providers. *See supra*; Ex. 1001, 11:12–17. 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. 51–52 (citing Ex. 1002, 6:6–14, 6:36–7:4, Figs. 51, 57; Ex. 1012 ¶ 140). 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 51 (citing Ex. 1003 ¶¶ 5–7; Ex. 1012 ¶ 140). Petitioner further argues that the combination “would have also helped ensure that the assigned physician 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 51–52 (citing Ex. 1003 ¶¶ 6, 8, 20; Ex. 1012 ¶ 141).

Patent Owner makes six different arguments that one of ordinary skill would not have been motivated to combine Douglas with Wager. PO Resp. 41–50. As discussed below, we find that 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. 41–42 (citing Pet. 51; Ex. 1012 ¶ 57; Ex. 2006, 63:14–64:11; Ex. 2005 ¶ 130). 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 43 (citing Ex. 2005 ¶ 130). Petitioner and Dr. Bergeron, however, do not rely solely on Figure 57. *See* Pet. 51–52 (citing Ex. 1002, 6:6–14, 6:36–7:4, Figs. 51, 57; Ex. 1012 ¶ 140). 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 ¶¶ 140, 141). 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.

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. 44 (citing Ex. 1002, 6:28–35; Ex. 2005 ¶ 131). 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. 44–47. 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 ¶¶ 132–135; 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”; [i]nstead, a POSITA operating the combined Douglas-Wager system would not have used it in this way.” Pet. Reply 17–18 (citing Ex. 1012 ¶¶ 48–49).

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 ¶¶ 140–141; *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. 47–49 (citing Ex. 1003 ¶¶ 4, 5, 11, 13; Ex. 2005 ¶ 137; 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 ¶ 137; 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 the proposed Douglas-Wager system to reassign the patient to a new physician.” *Id.* at 49.

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 Regarding Claims 1, 11, and 16

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, 11, and 16. 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, 11, and 16 of the ’142 patent would have been obvious over Douglas and Wager.

3. Claims 3, 4, 6, 7, 10, 14, and 17

Petitioner presents evidence that the combination of Douglas and Wager teaches the limitations of claims 3, 4, 6, 7, 10, 14, and 17. Pet. 52–53. Patent Owner does not separately present any argument as to these claims under this combination . On the complete record, we determine that Petitioner shows by a preponderance of the evidence that claims 3, 4, 10, 14, and 17 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 claims 6 and 7, discussed above as to Douglas alone. Accordingly, Petitioner does **not** show that claims 6 and 7 would have been obvious over the combination of Douglas and Wager.

F. Asserted Obviousness over Douglas and Chitiveli, or Douglas, Wager, and Chitiveli (Claims 2 and 20)

Petitioner argues that claims 2 and 20 would have been obvious over Douglas and Chitiveli or Douglas, Wager, and Chitiveli. Pet. 53–61.

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.

Chitiveli's Figure 1 is reproduced below.

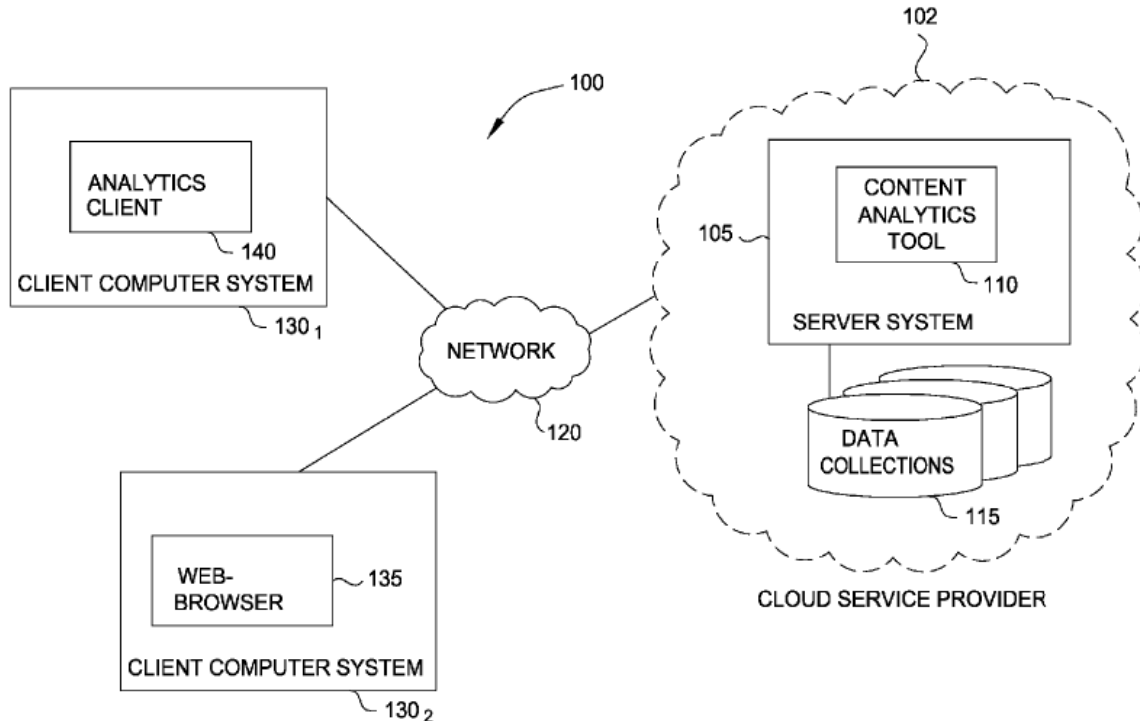


FIG. 1

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 130₁₋₂. *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.*

“[E]mbodiments of the invention may be adapted for use with other

computing devices. For example, web-browser applications are available for mobile telephone devices.” *Id.*

2. *Claim 2*

Claim 2 depends from claim 1 and adds “wherein the server is accessed through a cloud network, and wherein a client management program is executed by the computing or communications devices is utilized to receive the data and track progress of the desired outcomes.” Ex. 1001, 31:56–60.

As to the claimed 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. 56 (citing Ex. 1004 ¶¶ 35–37, Fig. 1; Ex. 1012 ¶ 151). 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 56–57 (citing Ex. 1004 ¶ 31; Ex. 1018, 1; Ex. 1002, 25:5–9; Ex. 1012 ¶¶ 152, 153).

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 58 (citing Ex. 1012 ¶ 158). 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.* (citing Ex. 1012 ¶ 15); *see* Tr. 15–17.

Patent Owner responds that Petitioner’s position as to dependent claim 2 (client management program executed by a computing device) contradicts Petitioner’s position as to independent claim 11 (client

management program executed by a server), and the allegedly contradictory arguments “must fail.” PO Resp. 36–37. As discussed above, we disagree with Patent Owner’s position that Petitioner presents contradictory arguments between claim 11 and claim 2. *See supra*, Section III.D.3. Rather, claim 2 recites a different embodiment than claim 11, that Petitioner 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 11. PO Resp. 36–37; PO Sur-Reply 13–15. 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 13 (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 13–14; *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

⁶ Patent Owner also contends that Chitiveli is not a printed publication under 35 U.S.C. § 311(b). PO Resp. 50. 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 19; *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.”).

executed by a computer device. Claim 2 requires a client management program that can receive “the data” and track progress of the goals.

Ex. 1001, 3156–60. “The data” refers to the “compiled” data of claim 1. *See id.* at 31:43–46. As Petitioner contends, the Douglas-Chitiveli combination teaches a client application on a client device used to upload (and therefore receive) 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. 57 (citing Ex. 1004 ¶¶ 36–37; Ex. 1012 ¶ 154).

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 and Chitiveli.

3. Claim 20

Claim 20 depends from claim 16 and adds: “wherein the controller is accessible by a plurality of mobile devices, a plurality of computing devices, and a web interface.” Ex. 1001, 34:31–33.

Petitioner contends that “[i]t would have been obvious to modify Douglas such that network server 508 was accessible by” Douglas’s computing devices (PCs 500) and Chitiveli’s mobile devices and web interface. Pet. 58–61 (citing Ex. 1002, 24:3–13, Fig. 59; Ex. 1004 ¶ 36; Ex. 1012 ¶ 159). Petitioner contends that one skilled in the art would have been motivated to combine Douglas’s server with Chitiveli’s mobile devices to improve physician mobility when treating patients. *Id.* at 59 (citing Ex. 1020, 792; Ex. 1012 ¶¶ 160, 161; Ex. 1002, 11:1–5). Petitioner further contends that one skilled in the art would have been motivated to combine Douglas’s server with Chitiveli’s web interface to enhance accessibility and reduce “the need for updates to or management of a client application on the

devices used to access the server.” *Id.* at 59–60 (citing Ex. 1004 ¶ 46; Ex. 1021, 1; Ex. 1012 ¶ 162).

Patent Owner does not separately argue claim 20 against the combination of Douglas and Chitiveli. *See generally* PO Resp.

On the complete record, Petitioner shows by a preponderance of the evidence that claim 20 would have been obvious over the combination of Douglas and Chitiveli.

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

Patent Owner argues that the Petition insufficiently discloses Ground 4. PO Resp. 63–64 (citing Pet. 61; Ex. 2005 ¶ 168). 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 63 (citing Ex. 2005 ¶ 168). 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 63–64 (citing Pet. 54; Ex. 1004 ¶ 36; Ex. 2005 ¶ 168).

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 23 (citing Ex. 1025 ¶¶ 57–62). 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.*

Patent Owner responds that Petitioner “provides descriptions of its proposed combinations that appear nowhere in the Petition and cites only to a supplemental declaration from its expert, not the Petition itself.” PO Sur-Reply 26. Patent Owner argues “Petitioner’s improper, belated discussions of its combinations . . . are still deficient.” *Id.*

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, 53; Pet. Reply 23; *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. 63–64. 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. 56–60; Pet. Reply 23.

Based on our review of the complete trial record, we determine that Petitioner establishes by a preponderance of the evidence that claims 2 and 20 would have been obvious over Douglas, Wager, and Chitiveli.

G. Asserted Obviousness over Douglas and Koh, or Douglas, Wager, and Koh (Claims 5, 12, 13, and 18)

Petitioner argues that claims 5, 12, 13, and 18 would have been obvious over Douglas and Koh or Douglas, Wager, and Koh. Pet. 61–67.

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 5, 12, and 13

Claim 5 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 providers in response to the best practices being associated with a client assigned to the providers.” Ex. 1001, 32:1–6. Claim 12 depends from claim 11 and adds the limitation “wherein the database is a relational database management system performing data mining to analyze the data from the providers to associate best practices with each of the clients.” *Id.* at 33:1–4. Claim 13 depends from claim 12 and adds the limitation “wherein the server is configured to recommend one or more best

practices to the plurality of providers in response to the data of the clients being associated with the best practices.” *Id.* at 33:5–8.

Petitioner contends that Douglas discloses recommending patient goals based on patient information and health conditions. Pet. 62 (citing Ex. 1002, 7:17–20, 8:1–13, 21:9–12; Ex. 1012 ¶ 169). Petitioner further 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.* (citing Ex. 1002, Fig. 50, 6:6–14; Ex. 1012 ¶ 170). 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 63–64 (citing Ex. 1002, 8:1–9; Ex. 1012 ¶ 172).

Petitioner also argues that one skilled in the art would have combined Douglas and Koh to identify effective treatments and best practices. *Id.* at 64 (citing Ex. 1009, 65). For example, one skilled in the art would have identified beneficial and cost-effective treatments for high-risk patients using Douglas’s compiled data. *See id.* at 64–65 (citing Ex. 1002, Fig. 55; Ex. 1009, 66; Ex. 1012 ¶ 172).

As to claims 5 and 13, Petitioner contends that the “Douglas-Koh System . . . would have included data mining the compiled data to determine best practices, as Douglas’s compiled data for his numerous patients would have been data mined to determine best practices for a specific patient, particularly, a therapeutic program or a modification to the therapeutic program for that specific patient.” *Id.* at 65, 66 (citing Ex. 1012 ¶ 176).

Petitioner contends that the best practices determined through data mining would then be applied to Douglas’s recommended therapeutic program. *Id.* (citing Ex. 1002, 2:36–3:3, 7:17–20, 21:7–13; Ex. 1012 ¶¶ 177, 178).

As to claim 12, 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 clients.” *Id.* at 66 (citing Ex. 1002, 24:28–30, 22:6–7; Ex. 1012 ¶ 181).

Patent Owner responds that one skilled in the art would not have been motivated to combine Douglas and Koh (PO Resp. 52–55) and that the combination does not teach the limitations of claims 5, 12, and 13 (PO Resp. 55–56). 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. 52 (citing Ex. 1009, 66). 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 53 (citing Ex. 2005 ¶ 142).

Second, Patent Owner argues that “Petitioner also cannot establish that Douglas and Koh would be interoperable,” because Douglas centers on

user-specific tracking but Koh centers on broad data aggregation. *Id.* (citing Ex. 1002, 6:1–14; Ex. 1009, 66; Ex. 2005 ¶¶ 143, 144). 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 53–54 (citing Ex. 2005 ¶ 145; *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 19–20 (citing Pet. 61–62; 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 20.

We find 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 ¶ 173.

“[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.” *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 ¶ 145. 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 5, 12, and 13

Patent Owner emphasizes claim 5’s recitation of “‘data mining the compiled data to determine best practices’ and ‘recommending the best practices to providers in response to the best practices being associated with a client assigned to the providers.’” PO Resp. 55. 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 55–56 (citing Ex. 1002, 6:1–14; Ex. 1009, 66; Ex. 2005 ¶¶ 149–151). Similarly, Patent Owner asserts that “[b]ecause there is no showing that Koh and Douglas can be combined to disclose

‘associat[ing] best practices’ with any particular client, this failure also extends to claims 12 and 13, which require such association.” *Id.* at 56.

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 20 (citing Pet. 63–64; Ex. 1012 ¶ 172; 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 5, 12, and 13. 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 ¶ 172.

c) Conclusion as to claims 5, 12, and 13

Based on our review of the complete record, we determine that Petitioner establishes by a preponderance of the evidence that claims 5, 12, and 13 would have been obvious over the combined teachings of Douglas and Koh.

3. *Claim 18*

Claim 18 depends from claim 16 and adds “wherein the set of instructions are further executed to: recommend best practices to the providers in response to historic success with the clients.” Ex. 1001, 34:21–24.

Petitioner contends “[i]n the Douglas-Koh System, it would have been obvious for the processor executing Douglas’s system, which is in network server 508 alongside Douglas’s databases 522, to also execute data mining of that compiled data to protect the confidentiality of the compiled data.” Pet. 67 (citing Ex. 1012 ¶ 187). Petitioner adds “in the Douglas-Koh System, that therapeutic program and modifications to the same reflected best practices determined to be historically successful through data mining.” *Id.* (citing Ex. 1012 ¶ 187).

Patent Owner responds that “Petitioner does not identify [a set of] instructions with any specificity, or why it would have been obvious for a POSITA to rely on Koh’s discussion of data mining applications (which lacks any processor-level specifics) to alter any purported instructions executed by Douglas’s processor.” PO Resp. 57 (citing Ex. 2005 ¶ 155).

As discussed above as to claim 16, we agree with Petitioner that Douglas teaches a processor that executes instructions in the form of software written in a programming language. As discussed above as to claims 5, 12, and 13, we agree with Petitioner that the combination of Douglas and Koh teaches using data mining to recommend best practices, i.e., practices that are historically successful. Accordingly, we are persuaded by Petitioner’s arguments that the combination of Douglas and Koh teaches the limitations of claim 18.

4. *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. 64 (citing Pet. 61–65; Ex. 2005 ¶ 170). Again, Patent Owner argues that Petitioner failed to meet its statutory requirement to make its arguments in the Petition. PO Sur-Reply 26.

Petitioner replies that it “is simply taking the Douglas-Wager System of Ground 2 and adding Koh for Ground 6” and there is “no need to repeat the descriptions for the Douglas-Koh System of Ground 5 for Ground 6.” Pet. Reply 24 (citing Ex. 1025 ¶¶ 63–66).

We understand Petitioner’s Ground 6 as adding Koh’s data mining for best practices to the Douglas-Wager combination. *See* Pet. 4, 61; Pet. Reply 23–24. We have considered Patent Owner’s arguments against the combination and find them unavailing. PO Resp. 64–65. 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. 61–67; Pet. Reply 23–24.

Accordingly, we determine that Petitioner establishes by a preponderance of the evidence that claims 5, 12, 13, and 18 would have been obvious over the combined teachings of Douglas, Wager, and Koh.

H. *Asserted Obviousness over Douglas and Virginia, or Douglas, Wager, and Virginia (Claim 9)*

Petitioner argues that claim 9 would have been obvious over Douglas and Virginia or Douglas, Wager, and Virginia. Pet. 67–73.

1. Virginia (Ex. 1022)

Virginia relates to assessing students with autism spectrum disorder who are transitioning to adulthood. Ex. 1022, 5, 13. The assessment includes identified measurable goals for the student. *Id.* at 24. Teachers collect data to evaluate their instructional strategy as compared to the goals. *Id.* at 27. That evaluation may be graphed as shown in Figure 4, reproduced below.

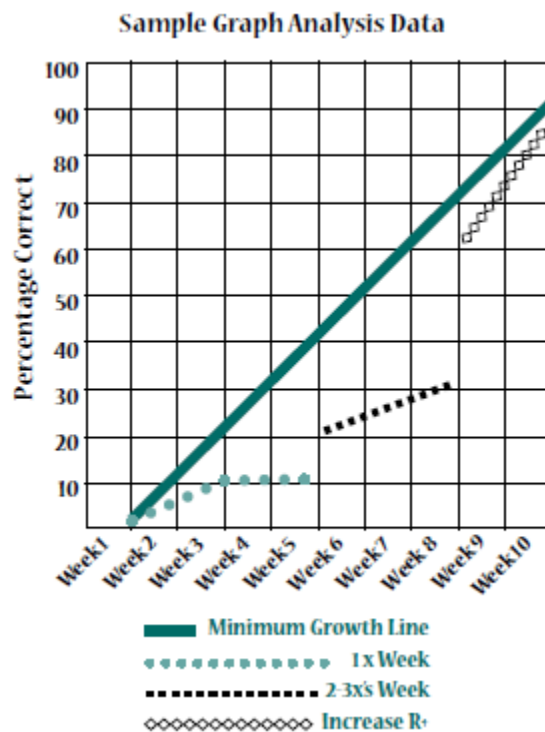


Figure 4 is a sample graph depicting ongoing data collection (“percentage correct”) over time (weeks 1–10). *Id.*

The sample graph includes a minimum growth line extending diagonally across the entire graph. *Id.* Teacher-inputted data is plotted on the graph below the minimum growth line. *See id.* The minimum growth line allows the teacher to “track whether or not a student’s learning rate is sufficient to master the given goal” by the end of the teaching period. *Id.*

2. *Claim 9*

Claim 9 depends from claim 1 and adds: “tracking a time and occurrence of number of client actions in response to input from the providers; and indicating progress based on rules toward desired outcomes for the clients, wherein the rules compare data against a minimum growth line.” Ex. 1001, 32:21–26.

Petitioner contends that Virginia is analogous art to the ’142 patent because “Virginia is in the same field of endeavor of the ’142 Patent, which is directed to tracking goal progression,” and “[i]t is also reasonably related to a problem faced by the inventors of the ’142 Patent: how to assess an individual’s progress toward a goal.” Pet. 69 (citing Ex. 1022, 5, 27–28; Ex. 1001, code (57), 1:12–26, 1:27–35, 1:39–41, 4:20–24, 4:34–36, 4:56–69; Ex. 1012 ¶ 190).

As to the claim limitations, Petitioner contends that Douglas discloses tracking a time and occurrence of client actions in response to provider input in the form of accepting updated patient data. Pet. 72 (citing Ex. 1002, 7:20–29, 8:10–11, 11:3–5, 11:26–28, Figs. 4, 6; Ex. 1012 ¶ 197). Petitioner further contends that it would have been obvious to apply Virginia’s minimum growth line to Douglas’s generated reports on patient progress to better evaluate that progress. *Id.* at 70–73 (citing Ex. 1002, 20:33–34, 11:26–12:2; Ex. 1022, 27–28; Ex. 1012 ¶ 198).

Patent Owner argues that Virginia is not analogous art to the ’142 patent because Virginia is neither in the same field of endeavor nor reasonably related to the ’142 patent. PO Resp. 57–62. We address these issues below.

a) *Whether Virginia is in the same field of endeavor as the '142 patent*

We determine the field of endeavor of the '142 patent “by reference to explanations of the invention’s subject matter in the patent application, including the embodiments, function, and structure of the claimed invention.” *Netflix, Inc. v. DivX, LLC*, 80 F.4th 1352, 1359 (Fed. Cir. 2023). “The field of endeavor is ‘not limited to the specific point of novelty, the narrowest possible conception of the field, or the particular focus within a given field.’” *Id.* (quoting *Unwired Planet, LLC v. Google Inc.*, 841 F.3d 995, 1001 (Fed. Cir. 2016)).

Petitioner contends “the '142 Patent is directed to ‘tracking goal progression’ for ‘organizations and institutions that help individuals with disabilities and significant emotional or behavioral challenges,’ such as ‘individuals with . . . autism, . . . mental disorders, behavioral problems,’ and can be used for ‘educational instruction.’” Pet. Reply 21 (citing Pet. 69; Ex. 1001, code (57), 1:12–26, 4:26–32; PO Resp. 5–6; Ex. 1024, 183:3–186:5). Petitioner elaborates that “[t]he '142 Patent also discloses data tracking and graphing using a ‘minimum growth line [as] a reference point against which ongoing data ratings are compared to assess status and level of progress.’” *Id.* (citing Ex. 1001, 6:48–50).

Patent Owner responds that “[t]he '142 patent squarely addresses the field of technology-driven systems for optimizing behavioral goal progression” using “a sophisticated software platform designed to systematically collect, analyze, and monitor goal-related data, complete with automated alerts and visual reporting tools.” PO Resp. 59 (citing Ex. 1001, 1:12–3:39, Fig. 5; Ex. 2005 ¶ 159). Patent Owner elaborates that “the field of endeavor of the '142 patent is not merely goal tracking in the abstract; the

computer-implemented goal tracking disclosed in the '142 patent is done through a specific structure—i.e., data compilation via computing devices, data assessment, and automated alerts and notifications.” PO Sur-Reply 24 (citing Ex. 1001, code (57), 5:8–15).

Based on the embodiments, function, and structure of the claimed invention, we find that the field of endeavor relates to computer-implemented goal tracking for individuals needing treatment or assistance. For example, the '142 patent seeks to improve goal tracking for individuals with special needs from known paper-based methods or single computing systems. *See* Ex. 1001, 1:27–35, 31:25–55. The '142 patent describes various embodiments for tracking goal achievement and outcome-specific data using a computerized system. *See* Ex. 1001, 2:5–6, 2:20–21, 4:26–32, 5:8–15. We do not agree with Patent Owner that the field of endeavor requires a sophisticated software platform, including, e.g., automated alerts and visual report tools, as the field of endeavor is not limited to the specific point of novelty or the narrowest possible conception of the field.

We find that Virginia is within the field of endeavor of the '142 patent. Specifically, Virginia describes collecting data to track goals and outcomes of individuals with special needs. *See* Ex. 1022, 27 (“All evidence-based strategies involve data collection to verify the success of the instructional method.”); Ex. 1025 ¶ 54. The tracked goals are plotted against a minimum growth line for assessing outcomes and updating an instructional program to meet individual needs, and are therefore applied in a computing system. Ex. 1022, 27–28 (“data collection is the bedrock practice that will allow teachers to plan and adjust their plans resulting in increased student progress”); Ex. 1025 ¶ 55. Although Virginia lacks the “technological systems, software algorithms, or mechanisms for automated data tracking”

disclosed in various embodiments of the '142 patent (Ex. 2005 ¶ 160), we find that the references share a general field of endeavor, and, thus, Virginia is analogous art. *See Netflix*, 80 F.4th at 1359.

b) Whether Virginia is reasonably pertinent to problem

For completeness, we further consider whether Virginia is reasonably pertinent to the problem to be solved by the '142 patent. “A prior art reference is reasonably pertinent only if ‘a person of ordinary skill would reasonably have consulted those references and applied their teachings in seeking a solution to the problem that the inventor was attempting to solve.’” *Netflix*, 80 F.4th at 1361–62 (quoting *In re GPAC Inc.*, 57 F.3d 1573, 1578 (Fed. Cir. 1995)). “If a reference disclosure and the claimed invention have a same purpose, the reference relates to the same problem, which supports an obviousness rejection.” *Unwired Planet*, 841 F.3d at 1001.

Petitioner contends Virginia is “reasonably related to a problem faced by the inventors of the '142 Patent: how to assess an individual’s progress toward a goal.” Pet. 69 (citing Ex. 1001, code (57), 1:12–16, 1:27–35, 4:56–69; Ex. 1012 ¶ 190). Petitioner elaborates that “[t]his problem is not exclusive to technology, as PO argues, but a problem fundamental to goal tracking.” Pet. Reply 23. Petitioner concludes that “since the inventors of the '142 Patent were concerned with solving problems related to tracking goal progression in behavioral health settings, such as for individuals with autism, they would have logically looked to Virginia regarding tracking goal progression for individuals with autism.” *Id.* (citing Ex. 1025 ¶ 56).

Patent Owner responds that “[t]he '142 patent addresses a highly specific technological problem: how to efficiently track, analyze, and manage goal progression to improve outcomes for clients in behavioral health settings.” PO Resp. 60 (citing Ex. 1001, 1:12–3:39, Fig. 5; Ex. 2005

¶ 162). In contrast, Patent Owner argues that Virginia “concerns a fundamentally different issue: how to guide educational programs for transitioning students with [autism spectrum disorder].” *Id.* at 60–61 (citing Ex. 1022, 6, 28–32). Patent Owner argues that “[t]he Virginia reference, centered on educational frameworks and legal requirements for transition planning, would not ‘logically’ have drawn the attention of an inventor tasked with solving the technical challenges addressed by the ’142 patent.” *Id.* at 62 (citing Ex. 2005 ¶ 164); PO Sur-Reply 25–26.

We find that Virginia is reasonably pertinent to a problem to be solved by the ’142 patent. The ’142 patent addresses many different problems including computerizing previously manual methods for tracking goal progression for individuals, such as those disclosed in Virginia. *See* Ex. 1001, 1:27–35. However, Virginia discloses at least one solution to the problem of goal tracking and assessing progress, i.e., applying collected data against a minimum growth line. Ex. 1022, 27–28. The ’142 patent applies the same solution to solve the same problem for the same individuals. *See* Ex. 1001, 6:48–54 (“The minimum growth line is a reference point against which ongoing data ratings are compared to assess status and level of progress. . . . Assessing status is determined as data are graphed and compared with the minimum growth line.”). Accordingly, we agree with Petitioner that Virginia is reasonably pertinent to the problem to be solved by the ’142 patent and that one skilled in the art would have logically looked to Virginia for teachings about tracking goal progression for individuals requiring assistance. Ex. 1015 ¶ 56.

c) Conclusion Regarding Claim 9

Based on our review of the complete record, we determine that Petitioner establishes by a preponderance of the evidence that claim 9 would have been obvious over the combined teachings of Douglas and Virginia.

3. Douglas, Wager, and Virginia

Patent Owner argues that Petitioner’s proposed combination of Douglas, Wager, and Virginia, “provides no specific explanation of how Virginia’s disclosures regarding autism treatment frameworks would integrate with Wager’s interface.” PO Resp. 64 (citing Pet. 69; Ex. 2005 ¶ 172). Again, Patent Owner argues that Petitioner failed to meet its statutory requirement to make its arguments in the Petition. PO Sur-Reply 26.

Petitioner replies that it “is simply taking the Douglas-Wager System of Ground 2 . . . and adding Virginia for Ground 8.” Pet. Reply 24. Petitioner adds that “the Wager assignment interface and the Virginia autism treatment frameworks do not interact” and there is “no need to repeat the descriptions for the Douglas-Virginia System of Ground 7 for Ground 8.” Pet. Reply 24 (citing Ex. 1025 ¶¶ 63–66).

We understand Petitioner’s Ground 8 as adding Virginia’s minimum growth line to the Douglas-Wager combination. *See* Pet. 4, 67; Pet. Reply 23–24. We have considered Patent Owner’s arguments against the combination and find them unavailing. PO Resp. 64–65. Rather, we are persuaded by Petitioner’s argument that one skilled in the art would have implemented Virginia’s minimum growth line for assessing goal progression with Douglas and Wager. Pet. 67–73; Pet. Reply 23–24.

Accordingly, we determine that Petitioner establishes by a preponderance of the evidence that claim 9 would have been obvious over the combined teachings of Douglas, Wager, and Virginia.

IV. CONCLUSION⁷

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 1–5, 9–14, 16–18, and 20 are unpatentable. We determine that Petitioner has not shown that claims 6 and 7 are unpatentable.

In summary:

Claim(s)	35 U.S.C. §	Reference(s)/Basis	Claim(s) Shown Unpatentable	Claim(s) Not Shown Unpatentable
1, 3, 4, 6, 7, 10, 11, 14, 16, 17	103	Douglas	1, 3, 4, 10, 11, 14, 16, 17	6, 7
1, 3, 4, 6, 7, 10, 11, 14, 16, 17	103	Douglas, Wager	1, 3, 4, 10, 11, 14, 16, 17	6, 7
2, 20	103	Douglas, Chitiveli	2, 20	
2, 20	103	Douglas, Wager, Chitiveli	2, 20	
5, 12, 13,	103	Douglas, Koh	5, 12, 13, 18	

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).

Claim(s)	35 U.S.C. §	Reference(s)/Basis	Claim(s) Shown Unpatentable	Claim(s) Not Shown Unpatentable
18				
5, 12, 13, 18	103	Douglas, Wager, Koh	5, 12, 13, 18	
9	103	Douglas, Virginia	9	
9	103	Douglas, Wager, Virginia	9	
Overall Outcome			1–5, 9–14, 16–18, 20	6, 7

V. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 1–5, 9–14, 16–18, and 20 of the '142 patent are shown unpatentable;

FURTHER ORDERED that claims 6 and 7 of the '142 patent are 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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Patent 11,151,142 B2

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