IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 11-cv-00520-PAB-BNB

HEALTH GRADES, INC.,

Plaintiff,

v.

MDX MEDICAL, INC.,
doing business as Vitals.com,

Defendant.

ORDER

This matter is before the Court on the motion for partial summary judgment [Docket No. 9] filed by defendant MDx Medical, Inc. The motion is fully briefed and ripe for disposition.

Plaintiff is the assignee and owner of U.S. Patent No. 7,752,060 (the "'060 Patent") and contends that a website owned by defendant infringes the '060 Patent. The parties agree that the patent "describes an Internet system for connecting healthcare providers and patients by providing users with information and ratings of healthcare providers." Docket No. 9 at 3, ¶ 1; Docket No. 29 at 1, ¶ 1. In the present motion, defendant argues that the current version of its website does not infringe plaintiff's patent and that summary judgment should enter to that extent. In briefing the motion, the parties' positions turn on differing interpretations of specific claim language, i.e., "report on the first healthcare provider includes comparison ratings of healthcare providers." '060 Patent [Docket No. 9-2] col. 20 ll. 63-65. The parties, however, have

yet to complete briefing their claim construction positions. Moreover, a claim construction hearing pursuant to *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), is scheduled for January 19, 2012. *See* Docket No. 30 (Def.'s Reply Br.) at 4 ("The question . . . whether the meaning of the phrase 'comparison ratings of healthcare providers' is so broad that it is met by the separately-claimed 'patient ratings' on the first healthcare provider . . . is entirely a question of law that cannot preclude summary judgment.") (citing *Markman*, 517 U.S. at 388-90); *cf.* Docket No. 56-1 at 7. The Court, therefore, concludes that defendant's motion for partial summary judgment is premature.

For the foregoing reasons, it is

ORDERED that defendant's motion for partial summary judgment [Docket No. 9] is DENIED without prejudice to refiling after the Court construes the disputed claim language. It is further

ORDERED that defendant's motion to strike in part plaintiff's sur-reply [Docket No. 38] is DENIED as moot.

DATED December 7, 2011.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge