EXHIBIT 2

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a tab, that says, "HealthGrades Financials." Is that a tab from your file?
A Yes.
Q You created that tab?
A I believe so.
Q Okay. Did you create the contents of Deposition Exhibit LP9, Mr. LaPointe?
A When you say "create," do you mean did I gather or actually write it?
Q Well, let's just take both of those. I understand why you would ask that, though. Did you gather it?
A Yes.
Q Did you write it?
A No.
Q So, you didn't -- for example, on UCHC55, you did not write that in this information?
A I don't believe so.
Q Do you recall where you gathered it from?
A It appears Yahoo Finance.
Q Why did you gather this information?
A As part of our market research.
Q And why is this type of financial information important to the market research you

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were doing?
A The business needs to make money, and we needed to determine what competitors were -- how they were performing financially at the time.
Q This information, at least on UCAC55, was gathered in 2004; is that correct?
A It appears so, yes.
Q Do you recall actually going to Yahoo Finance and pulling this information, Mr. LaPointe?
A I don't recall the specific, you know, time or day of doing it, but I know this was from me.
Q From you?
A Yes.
Q Okay. And I know you say you don't recall the specific time or day, but it was a part of the 2004 research you were doing?
A Yes, it was.
Q Okay. Do you recall what you took from this information in terms of what impressions you had that were relevant to the research you were doing, if anything?
A Not specifically. An idea of cost structure of a company.
Q The idea of cost structure?

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A An idea of what the cost structure of a business like this might be.
(Whereupon, LaPointe Exhibit 10 was received and marked for Identification.)
BY MR. VAZQUEZ:
Q And, Mr. LaPointe, we've handed you what's been marked as Deposition Exhibit LP10. And I need to ask you some questions in which it would be good for you to have both LP10 and LP3 in front of you.
And what is Deposition Exhibit LP10, Mr. LaPointe?
A It appears to be a HealthGrades Physician Quality Report from September of 2004.
Q And do you recall if you were the person who pulled this report in September 2004?
A I don't believe I was.
Q And do you know who did?
A It was probably Mark.
Q Yet, the copy of this report ended up in your binder, right?
A Yes.
Q So, is it fair to assume that Mark Donnelly gave this to you?
A Yes.

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Q So, you, yourself, did not get onto the HealthGrades' website on September 15, 2004, which appears to be the date of this report; is that correct?
MR. MURRAY: Objection to form.
BY MR. VAZQUEZ:
Q Did you get on the website on September 15 and pull this report, September 15, 2004?
A I don't believe so.
Q So, can you look, then, at page 4 of LP3, and the second paragraph says, "Public use of www.healthgrades.com website (HG report prior art), dates of public use: 9/15/04 and 10/10/04, identity of person making the use: Jeff LaPointe."
You agree that that's what this says, right?
A Yes.
Q But I think you just testified that you weren't the one who actually pulled this report on September 15, 2004; is that correct?
A That is correct.
Q Why is it that you believe that you didn't -- you're not the person who pulled this on September 15, 2004?

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A Well, it's not my doctor, and I was broke at the time.
Q All right.
A And it wasn't free.
Q You were working for free?
A Yes.
Q So, are you familiar with this report?
A What do you mean by "familiar"?
Q Do you know the type of information that it contains, as you sit here today?
A More or less, roughly.
Q Is that as a consequence of preparing for your deposition?
A No.
Q So, how is it that you're more or less familiar with it?
A It's been my life for the last seven years.
Q So, have you looked at this document at different times over the last seven years?
A Yes. It was included in my binder.
Q So, when those materials were created in '04, are you saying that since then you go back to those materials and look at them often?
A Not lately.

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Q When do you think was the last time?
A I don't recall.
Q All right.
A I did more so at the inception of the company.
Q More so at the inception?
A Beginning, yes.
Q Sure. Okay.
Well, do you know if this report includes information that could be verified or edited by a physician?
A I would assume so.
Q You would assume so? Okay.
A From my experience, yes.
Q Okay. I'm not sure I understand that response.
Why is it that you assume that this report allows or includes information that is verified or edited by a physician, from your experience?
MR. MURRAY: I'll object to form. I don't believe that was your first question. But you can answer it.
THE WITNESS: Physicians get very upset from time to time if there's incorrect

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information. And if you do not have some way to edit or update information on a site, especially a massive site of this size, which is likely to have significant amounts of incorrect information or out-of-date information, you will get continual threats of lawsuits and very upset doctors, and they are constantly contacting to have their information updated.
BY MR. VAZQUEZ:
Q Okay. What within this report can you point out to me that allows your -- or supports your belief that it includes information that can be verified or edited by physicians?
MR. MURRAY: Objection to form. You can answer.
THE WITNESS: Just the fact that this type of information is available to the public domain.
BY MR. VAZQUEZ:
Q So, nothing specific within the report itself?
A No, just the type of information that it contains.
Q Do you know if this report includes

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medical philosophy?
MR. MURRAY: Objection to form.
THE WITNESS: I'm sorry, what do you mean by that?
BY MR. VAZQUEZ:
Q The physician's medical philosophy.
A To some degree, yes.
Q Please tell me where you see that in the report to some degree?
A The fact that he's an M.D. would indicate that he prefers a particular type of medicine as compared to a DO. They have different philosophical beliefs in medicine.
Q What is that difference? Can you explain what you mean by that?
A DOs are typically more of a natural or diagnostic -- diagnostician, tend to not use medicines as a first -- or medications as a first choice in how to treat something. DOs approach medicine from a very different approach than an M.D.
Q What does DO stand for?
A Doctor of osteopathic medicine.
Q Okay. So, if I hear you correctly, you're saying that MDs have a different philosophy from DOs?

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five-minute break.
THE VIDEOGRAPHER: This will end tape 2 in the deposition of Jeff LaPointe. The time is 2:47 p.m. We're off the record.
(Whereupon, a short break was taken.)
THE VIDEOGRAPHER: This is the start of tape 3 in the deposition of Jeff LaPointe. The time is 3:11 p.m. We're on the record.
BY MR. VAZQUEZ:
Q Okay. Mr. LaPointe, continuing, just quickly, is there anything you wish to amend or supplement from your previous responses?
A I don't think so.
MR. VAZQUEZ: I need to go off the record real quick.
THE VIDEOGRAPHER: The time is 3:11 p.m. We're off the record.
(Whereupon, a discussion was held off the record.)
THE VIDEOGRAPHER: The time is 3:12 p.m. We're back on the record.
(Whereupon, LaPointe Exhibit 11 was received and marked for Identification.)
BY MR. VAZQUEZ:
Q Mr. LaPointe, I'm handing you what's

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been marked as Deposition Exhibit LP11. And this was within the binder that we received from you or through your counsel.
What is this?
A A printout of the HealthGrades' website home page from October 19th, 2004.
Q And were you the person who printed this out?
A Most likely, yes.
Q Do you know whether other people were on the HealthGrades' website on October 19, 2004?
A I would assume thousands.
MR. MURRAY: Objection to form.
BY MR. VAZQUEZ:
Q I'm sorry? That's smart, okay.
Well, what about any people within UCompare?
A I can't say for sure, but I would assume that it's a good possibility.
Q Well, do you recall your testimony earlier about LP10, where it appears that even though LP3 says that you were the person making the use of the website, you said that you didn't recall that you were the one doing that on September 15, 2004, right?

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MR. MURRAY: Objection to form.
THE WITNESS: I'm sorry, you're referring to the physician report?
BY MR. VAZQUEZ:
Q Yes, the Physician Quality Report dated September 15, 2004, that we were talking about earlier.
A I didn't purchase the report.
Q Right.
So, you were not the person making the use of the website on that date, is what I thought your testimony was. You didn't think it was you; that it was probably Mark Donnelly. Would that be accurate?
MR. MURRAY: Objection to form.
THE WITNESS: For that purpose, I did not purchase the report. I probably was on the site that day.
BY MR. VAZQUEZ:
Q Probably was? So, are you speculating or are you not sure or...
A Based upon the dates from the rest of this and the close timeframe and the amount of time I spent on it, on this project specifically, there's a good chance that I likely had visited their site

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on that day.
Q Is this -- don't tell me what you discussed, but did you guys talk about this during the last break?
A I'm sorry?
Q Did you just talk about this issue over the last break with your counsel? Don't tell me what you discussed; just tell me whether you discussed it.
A This issue that you're just talking about?
Q What you just said about September 15, 2004.
A No.
Q So, on October 19, 2004, you think you were the one who was on the website, right? "Probably," I think you said?
A Yes, I probably was on there.
Q Are there any other documents, other than this particular within here, UCAC79, that show use of the HealthGrades' website on October 19, 2004?
MR. MURRAY: Objection to form.
THE WITNESS: I don't know. It would have to -- well, I don't know. I don't know

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the dates on all the documents.
BY MR. VAZQUEZ:
Q If such documents existed, would they be within your binder?
A I can't say for sure.
Q If not, where would they be?
A I have no idea.
Q Okay.
(Whereupon, LaPointe Exhibit 12 was received and marked for Identification.)
BY MR. VAZQUEZ:
Q Mr. LaPointe, you've been handed what's been marked as Deposition Exhibit LP12. And what is this document?
A It appears a search results page from HealthGrades printed out on October 19th of 2004.
Q Were you the one who printed this out?
A I believe so.
Q And did you actually get this -- well, strike that.
You notice it says -- it refers to a Physician Comparison Report?
A Yes.
Q And you see that there's a link or button that says "Get Report" within the box in the

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middle of the document?
A Yes.
Q So, my question is, did you actually get the Physician Comparison Report?
A I don't believe so.
Q And why not?
A I was still broke.
Q All right. I'm going to come back to that issue about your financial status in a little bit, but I appreciate that.
Do you know, then, if this report would include ratings?
A I can't say. I didn't -- I didn't view the report.
Q So, then, since -- you're saying you did not view this report, right? Just to be sure.
A I'm sorry?
Q You're saying that -- you seem confident that you did not --
A I -- I believe not.
Q -- see this report?
Okay. So, you don't know if the report contains online -- an online experience survey?
MR. MURRAY: Objection to form. You

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can answer.
THE WITNESS: I don't know.
BY MR. VAZQUEZ:
Q And you don't know if the report contains comparison ratings?
MR. MURRAY: Objection to form.
THE WITNESS: I can't say for sure.
It compared some kind of comparisons.
BY MR. VAZQUEZ:
Q I'm not sure I understood that response.
A In contains some comparisons. I don't know that it specifically contains ratings.
Q Okay.
A Going back to what we had spoke about earlier --
Q Yes.
A -- this appears to indicate where a physician would be updating their information and confirming it.
Q And where do you see that?
A Where it says, "Are you a physician?"
Q And what else does it say other than "are you a physician"?
A "Retrieve your profile and get a

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complementary" something.
Q Report? Looks like "report" to me.
A Yes. Yes.
Q So, from there, you can't tell whether the physician can actually upgrade or revise the content, can you?
A All you can tell is that it's encouraging the physician to review their information.
Q That's right. That is all you can tell, I agree.
MR. MURRAY: Objection to form.
THE WITNESS: Oh.
BY MR. VAZQUEZ:
Q Yes?
A I don't remember the complete question, but you were asking about reviews and ratings?
Q Right.
A Regarding this document? I didn't see this on the right side of the page, where it says, "Each report offers an opportunity to complete a review of your doctor."
Q And where do you see that?
A Under View a Sample Report. On the

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right side.
Q Oh, yes.
Well, it says, "Each report offers an opportunity to complete a review of your doctor," correct?
A Yes.
Q Which is different from my question, which is whether the report itself contains ratings.
A Okay.
Q Right? Do you agree that those are two different questions?
A Sure. I said I didn't recall the exact question.
Q Right, okay.
And since you didn't see the report, you don't know if it includes ratings, I believe was your response to my question in the first instance?
A Correct.
Q Okay.
MR. VAZQUEZ: And this is LP -- going to be LP13.
(Whereupon, LaPointe Exhibit 13 was received and marked for Identification.)
BY MR. VAZQUEZ:
Q And, Mr. LaPointe, you have Deposition

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Exhibit LP13 in front of you.
Can you tell me what this document is?
A It is a page from the HealthGrades' website from October 19th, 2004, from their hospital report section. It looks like some kind of search results, I would assume.
Q And do you recall, Mr. LaPointe, if you were the person who printed this report or this page?
A Not specifically, but I believe so.
Q And you notice at the top right-hand corner it says page 1 of 2?
A Yes.
Q Do you know where the second page is?
A I would assume it was either a blank page or not much contained on it, from the contents of this page.
Q So, it sounds, from what you're saying, that if it's not there, it was intentional, because it didn't have anything of any substance?
A Yeah, it appears the -- from the difference on the other page, the only thing that would have been on it was the -- possibly these two links from the prior exhibit.
Q What are the two links that you just

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referred to?
A User agreement and legal disclaimer.
Q Okay.
A Which is probably why I didn't include it. It wasn't really relevant to what I was looking for.
Q Okay. Sure.
(Whereupon, LaPointe Exhibit 14 was received and marked for Identification.)
BY MR. VAZQUEZ:
Q Mr. LaPointe, you've been handed Deposition Exhibit LP14.
What is this document?
A It looks like a sample Hospital Quality Report from October 19th, 2004, from HealthGrades.
Q And were you the person who printed this?
A I believe so.
Q Did you get it directly from the website, then?
A What do you mean?
Q Well, I asked you if you printed it.
A Yes.
Q And, so, I just want to make sure

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whether you printed it from HealthGrades' website or whether it was forwarded to you by somebody else. I'm just trying to make sure that you were the person on the website and obtained the report from the website and printed it?
A Yes. And, typically, the URL at the bottom of the page indicates the source of the document.
Q So, I can always look on there and just confirm that this came from -- directly from the website indicated?
A Yes, normally.
Q The only question would be whether you were the person who was actually on the website and printed the document?
A I believe I was.
Q Okay. I would like to ask you a few questions about this report.
Does this report include information that could be verified or edited by a healthcare provider?
MR. MURRAY: Objection to form.
MR. VAZQUEZ: Is that because it's compound?
MR. MURRAY: Again, it includes

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report -- it includes information. So, whether -- you haven't asked how it can be verified. I would assume any information can be verified in any way. So, that's my objection to the question. I'm not sure it's clear.

MR. VAZQUEZ: All right, thanks, Counsel. Let me try to break it up a little.

BY MR. VAZQUEZ:

Q Does this include information that could be edited by a healthcare provider?

MR. MURRAY: Same objection. You can answer.

THE WITNESS: Not directly, no.

BY MR. VAZQUEZ:

Q No?

A Not directly, no.

Q How does it include it indirectly, assuming that's what your answer means?

A It appears the information is from -- derived from hospital reported data.

Q Correct. So, it can't be directly edited by the healthcare provider?

A Probably not.

Q Does it include specialty information?

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A What do you mean by that?

Q Information regarding the specialty that the hospital may be known for, that the doctors that work at that hospital specialize in?

A Yes.

Q Yes?

A Yes.

Q Okay. Can you tell me where you see that?

A Well, where it breaks down the ratings into the different categories, it talks about things such as ICU specialist staffing.

Q Where are you on this?

A Page 83.

Q Okay. In the middle, in the bottom?

A I'm sorry, towards the bottom, on the left side.

Q Okay.

Okay. So, you're referring to the -- where it says, "ICU specialist staffing"?

A Yes, that would be one indication.

Q And what others -- what other specialty information do you see on this report?

A The information throughout the report regarding the types of procedures and the volumes

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that they perform.

Q Okay. Anything else?

A I don't believe so.

Q What about medical philosophy; does this report include medical philosophy?

MR. MURRAY: Same objection as before. You can answer.

THE WITNESS: I would say somewhat, yes.

BY MR. VAZQUEZ:

Q Okay. Can you please tell me where it is that you see that?

A Well, for one thing, it indicates that it's a teaching hospital.

Q And, so, how does that indicate medical philosophy?

A Just the fact that it's a teaching hospital can have an influence on the type of -- the way they go about practicing medicine and treating patients.

Q As opposed to what other kind of hospital?

A A nonteaching hospital.

Q All right. So, what's the differences between a nonteaching hospital and a teaching

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hospital, with respect to philosophy?

A Well, teaching hospitals often have interns and such treating patients, not, you know, regular full-fledged doctors.

Q Did this report contain -- I'm sorry, were you done?

A Well, I was just going to say the other indication of philosophy of medicine, I would think, is how much they've implemented the Leapfrog standards, for example.

Q What are those?

A Recommended patient safety practices.

Q What is this Leapfrog concept?

A It's a group that has researched about various ways of practicing medicine and how those philosophies or ways of treating patients can impact a patient's overall experience and safety and chances of having a successful healthcare experience or say in the hospital or with the healthcare provider.

Q Okay. What about gender, Mr. LaPointe; does this report include information about gender?

MR. MURRAY: I'm just going to object to form. This is a hospital report, so I'm not

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sure --
MR. VAZQUEZ: Exactly.
MR. MURRAY: -- what you mean. Gender of the medical staff?
MR. VAZQUEZ: That's exactly the point.
MR. MURRAY: Okay.
MR. VAZQUEZ: I think the answer is "no," but I would like the witness to -- since it's your witness.
MR. MURRAY: No, I just wanted to make sure I was clear.
THE WITNESS: Not that I can see.
BY MR. VAZQUEZ:
Q Okay. Mr. LaPointe, can you tell me whether this report, the Hospital Quality Report, includes information provided by a past or current patient about a healthcare provider?
MR. MURRAY: Objection to form.
THE WITNESS: Not that I see.
BY MR. VAZQUEZ:
Q Do you know or can you tell me if this report includes results from a patient survey?
MR. MURRAY: Objection to form.
THE WITNESS: Not that I can see.

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BY MR. VAZQUEZ:
Q And, Mr. LaPointe, do you know if this report includes information about a healthcare provider that was verified or received from a third party?
MR. MURRAY: Objection to form.
BY MR. VAZQUEZ:
Q Let me break that up, I'm sorry, before you answer that.
Does this report include information about a healthcare provider that was received from a third party?
A Yes.
Q Okay. Can you show me where that exists?
A Well, the first -- the patient safety ratings is based on data from the federal government MEDPAR file, M-E-D-P-A-R, from the Centers for Medicare and Medicaid. The second section is based on data supplied from the Leapfrog Group.
Q I'm sorry to interrupt, but where do you see the MEDPAR reference?
A In the bottom of the first section here. These patient safety ratings are derived from MEDPAR data. It's on the bottom of page 83, actually, sorry, towards the middle.

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Q Okay. Okay. I see the reference there.
A On the next page, where it says, "Data provided by the Leapfrog Group."
Q Anything else?
A The Accreditation for -- the Joint Commission on Accreditation of Healthcare Organizations would have come from a third party.
Q And on what page is that?
A Eighty-four.
Q Anything else?
A I believe the rest of it is covered by the sources that I already mentioned. Most of the majority of the rest of the report appears to be derived from Medicare data.
Q Okay.
(Whereupon, LaPointe Exhibit 15 was received and marked for Identification.)
BY MR. VAZQUEZ:
Q Mr. LaPointe, you've been handed what we have marked as Deposition Exhibit LP15.
And can you tell me what this is, please?
A It appears to be a few different -- a few different things. The first page is, in general, a summary of HealthGrades' information taken from Alexa.

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Q I'm sorry. From Alexa?
A Alexa.
Q Okay. We looked at that exhibit earlier that had Alexa information in it.
Do you know if these are the same three graphs?
A I believe the one that we were looking at previously was a different spin.
Q Timeframe?
A Yes, 2004 to 2005. This is earlier.
Q Yes, I see that now. You're right.
But still from Alexa, okay?
A Yes.
Q And what else?
A Page 92 and 93 are printouts of the HealthGrades section of the report produced in September of 2004 by the JCAHO, which, again, is the Joint Commission of Accreditation of Healthcare Organizations.
Q And how do you know that that was in 2004?
A If you go to page 93, and you can see

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down in the footnote.
Q September 2004?
A Yes.
Q Okay.
A This was part of an annual report that the JCAHO would put out.
The third page appears to be a HealthGrades report receipt.
Q The third page, you mean --
A I'm sorry, page 94.
Q Got you. Okay.
And, so, going to page 94 and just kind of going backwards, you just said it appears to be a receipt for a report received.
This appears to be received for the Physician Quality Report that is -- oh, no, I'm sorry, strike that.
It refers to a Physician Quality Report on page 94, right?
A Yes.
Q And, so, that was received by Mark Donnelly, right?
A Yes.
Q And apparently that was on September 15, 2004?

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A It appears so, yes.
Q So, did you receive a copy of that Physician Quality Report?
A Yes, I believe I did.
Q And if you did, it would be within those documents in your binder?
A Likely.
Q And, so, can you tell from this information here -- well, let me backtrack. I'm sorry, it's getting a little late.
You were the person who put this exhibit or the contents of Exhibit LP15 together, right?
A I guess it depends on what you mean by "put together."
Q Well, remember earlier you made the distinction about gathering information?
A Yes.
Q So, did you gather the information that's in this -- in these papers here that are in Exhibit LP15?
A Yes.
Q Okay. Was it sort of a cut-and-paste situation, at least as to page 91?
A Page 91, yes, was cut and paste from

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Alexa.
Q And I think earlier I asked you if you thought the -- strike that.
I think earlier I asked you whether the Hospital Quality Report that we talked about, which is LP14, included information provided by a past or current patient about a healthcare provider. Do you remember that?
A Yes.
Q I think you said "no"?
MR. MURRAY: Objection to form. But you can answer it.
MR. VAZQUEZ: You know, just strike that. Just strike that.
BY MR. VAZQUEZ:
Q If you go to page 92 of this exhibit, LP15, Mr. LaPointe, do you see on the bottom right-hand side it states -- it asks or provides, "Hospitals are able to provide commentary," colon, then it says "no"?
A Yes.
Q What does that mean?
A I can't say for sure. I didn't create this report.
Q Well, what is this report contained

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within the materials you put together, then?
A This is the JCAHO report, as page 93 indicates.
Q What is 92?
A Page 1 of the report.
Q Right.
A This is -- yes, this is a page from the same report.
(Whereupon, LaPointe Exhibit 16 was received and marked for Identification.)
BY MR. VAZQUEZ:
Q And, Mr. LaPointe, we have handed you what's been marked as Deposition Exhibit LP15 -- or 16, excuse me, 16. And on the very first page, CHC111, there appears to be another photocopy of a tab that says a Leapfrog Group.
This is the same group you were just testifying about a little bit ago, right?
A Yes.
Q This is a tab from your binder of documents?
A Yes.
Q So, can you tell me what this is in your own words?
A It actually appears to be a collection

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of information and research on the Leapfrog Group, and apparently has a few pages from HealthShare technology also included.

Q Okay. How does this information relate to HealthGrades, if at all?

A Well, I guess -- which, any of the information contained in here?

Q Yes.

A Well, some of the Leapfrog information is contained within the HealthGrades' website.

Q Can you show me? Specify where, please.

A Specify where what?

Q Where you see the --

A When we were earlier talking about some of the earlier documents, and we had discussed that some of the data in the hospital report was provided by the Leapfrog Group.

Q Right. So, but, within these specific documents, are there references to HealthGrades?

A I haven't read the whole documents. From skimming them, I don't see any specific reference to the HealthGrades name.

(Whereupon, LaPointe Exhibit 17 was received and marked for Identification.)

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BY MR. VAZQUEZ:

Q And, Mr. LaPointe, this has been marked as Deposition Exhibit LP17, and if you look on the very first page, there's a little word Ingenix, that appears to be there sideways. Is it fair to assume that's also a photocopy of a tab from your binder?

A I believe so, yes.

Q And if you could also just quickly refer to -- back to Exhibit LP3, the Supplemental Invalidity Contentions. And if you could go to page 4, please, and read the first sentence of the third paragraph into the record.

A "Public use of www.Ingenix.com website, including GeoAccess brochures (GeoAccess prior art) dates of public use: 11-7-2004, 11-14-2004, 11-15-2004 and 12-8-2004, the identity of the person making the use: Jeff LaPointe."

Q Okay. That's you, right?

A I believe so, yes.

Q And can you confirm whether you, in fact, made use of the Ingenix.com website, including the GeoAccess brochures, on those four dates that you just read?

A I believe so. It sounds correct, but

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I don't recall off the top of my head, and all these dates are not included in this specific document.

Q Do you know where those four dates listed at LP3 that you read into the record come from or came from?

A I didn't write this document.

Q So, you don't?

A No.

Q Okay. Is there anything within Exhibit LP17 that would confirm that you were the person making the use of the Ingenix.com website on any of those four dates?

A Well, the date of the Alexa information here is November 13, 2004, which means it was on or about the 14th or 15th that I was looking at this information.

Q Anything else confirming those dates?

MR. MURRAY: Objection to form.

BY MR. VAZQUEZ:

Q Meaning the four dates on the PL3?

MR. MURRAY: And within -- you're asking within LP17?

MR. VAZQUEZ: That's right.

THE WITNESS: Not that I can see within this specific exhibit.

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MR. VAZQUEZ: Okay.

(Whereupon, LaPointe Exhibit 18 was received and marked for Identification.)

BY MR. VAZQUEZ:

Q You have been handed what's been marked as LP18. And as the other exhibits, can you tell me what this is?

A It appears to be web pages printed from the Ingenix.com website on 11-7-2004 and 12-8-2004 and 11-14-2004.

Q Okay. And were you the person who went on the Ingenix website on those dates and printed these documents?

A I believe so, yes.

Q And, so, are these the only documents showing your use of the website on those days that you have?

A I can't say for sure.

Q If there are others, where would they be?

A I don't know.

Q Is it safe to say or accurate to say, Mr. LaPointe, that you attempted to provide all the documents relating to this subject in the binder that we looked at under LP4?

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A I'm sorry, can you repeat that again?
Q I asked you if these were the only documents that reflect your use of the Ingenix website on those dates that you gave in your previous response?
A I can't -- I can't say definitively.
Q Right. And I understand that --
A Yup.
Q -- so I'm trying to figure out why it is that you're unsure about that?
A Just due to the shear volume of printouts and research that I did.
Q But as you sit here, I guess, right now in this deposition, are you aware of any other specific documents that exist --
A Not -- sorry.
Q -- that exist, that are not already here within these documents that you provided in LP4?
A I don't know of any specific document, no.
Q Do you know if this or these reports from Ingenix include information that could be edited by a healthcare provider?
MR. MURRAY: Objection to form.

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THE WITNESS: I can't say specifically from these documents.
BY MR. VAZQUEZ:
Q Okay. What about, does it include information provided by past or current patient about a doctor?
MR. MURRAY: Objection to form.
THE WITNESS: I believe so, yes.
BY MR. VAZQUEZ:
Q All right. Can you show me where you see that?
A On page 287, under the title of "Integrated Solutions," where it's referring to their partnership with HealthGrades, it says in the last paragraph there, "GeoAccess and HealthGrades also offer nursing home, home health, physician sanction and physician satisfaction data as well's.
Q All right. Any other spots where that information or where this report -- where you think that this report includes information provided by a past or current patient about a doctor?
A Not that I can see, no.
Q Does this report include comparison ratings of doctors?
MR. MURRAY: Objection to form.

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THE WITNESS: I'm sorry, did you say quality ratings or comparison ratings?
BY MR. VAZQUEZ:
Q Comparison ratings.
A Not specifically. I don't see it specifically mentioned.
Q Okay. What about, does this report include a hyperlink to an affiliated hospital, medical center or other kind of treatment center for a doctor?
A I can't tell. I can't say for sure.
Q Okay. What about, does it -- does it include an advertisement for a doctor with a hyperlink to information about the doctor?
A I don't believe so.
Q Do you know if doctors have ever paid a fee to Ingenix for any services?
MR. MURRAY: Objection to form. If you know.
THE WITNESS: I wouldn't be privy to that information. I'm sorry, did you say if they ever paid a fee to Ingenix for any kind of service?
BY MR. VAZQUEZ:
Q Yes.

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A Yeah, I'm sorry. Judging by what this -- the services they're offering within this, I would say most likely, yes.
Q And can you just tell me why it is that you believe "most likely, yes"?
A It's the nature of the products that Ingenix supplies to -- is designed largely for healthcare providers, different services to help them with billing and other data-related products. So, likely, yes.
Q But nothing specifically in the report says that? You're just making an assumption based on the contents of the report?
A Based upon the contents of their product list here.
Q You're making an assumption based upon the contents of the products list?
A Yes, and prior experience or knowledge of their overall services.
Q Okay.
(Whereupon, LaPointe Exhibit 19 was received and marked for Identification.)
BY MR. VAZQUEZ:
Q Okay. Mr. LaPointe, I have handed you a one-page exhibit that's been marked Deposition

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Exhibit LP19. Can you please tell us what this is?
A A printout from the Ingenix website from 11-15-2004 of a page that appears to be a form to request literature.
Q And were you the person who was -- printed out this form on November 15, 2004?
A I believe so, yes.
Q Did you request any literature?
A I don't recall.
Q If you did, do you think it would be included within the documents that you provided in this case?
A It's possible.
(Whereupon, LaPointe Exhibit 20 was received and marked for Identification.)
BY MR. VAZQUEZ:
Q Mr. LaPointe, you've been handed what's been marked as Deposition Exhibit LP20. Can you tell me what this document is, please?
A Information from Ingenix regarding their quality rating suite and their provider lookup online.
Q And their provider...
A Lookup online, another product.
Q Sure.

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Were you the one who downloaded or printed this information?
A I believe so.
Q I cannot find a date on it. Do you know what date this was downloaded or printed or accessed by you?
A I would assume on or around the same dates that this prior information was printed.
Q Do you know if this report includes information that could be edited by a healthcare provider?
MR. MURRAY: Objection to form.
THE WITNESS: Not directly.
BY MR. VAZQUEZ:
Q What about, does the report include information that could be verified by a healthcare provider?
MR. MURRAY: Objection to form.
THE WITNESS: It's possible.
BY MR. VAZQUEZ:
Q So, what is it within this exhibit that makes you believe that it's possible?
A Some of the data is supplied by state licensure boards, which is provider-submitted data, which they update and submit on a -- usually, I

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believe, on an annual basis.
Q I'm sorry, let me try to understand what you just said.
Some of the information is provided by a what?
A State license boards.
Q Well, a state license board is not edited -- is not a healthcare provider, right?
A No. The healthcare -- the healthcare provider provides the information.
Q To the state license board?
A Yes.
Q And then the state license board provides the information -- some of the information to the report?
A That's what it appears.
Q And, so, you're saying your response that, you know, essentially maybe -- I'm not going to recall the exact word you used, but "maybe" or "indirectly," is based on an assumption that the people who provide the information to the state license board would then be able to edit the information after it gets into this report?
MR. MURRAY: Objection to form. You can answer.

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THE WITNESS: There's indications throughout this document that they are constantly updating their data. One would assume, if it was updated with the state license board, they would update it and reflect it in their database.
BY MR. VAZQUEZ:
Q Okay. But there's nothing direct here, and you are, in fact, making some assumptions in your response, correct?
A Yes.
Q Okay.
(Whereupon, LaPointe Exhibit 21 was received and marked for Identification.)
MR. MURRAY: After this exhibit I'll need just a five-minute break.
MR. VAZQUEZ: Do you want to go now?
MR. MURRAY: No, no. It's fine.
BY MR. VAZQUEZ:
Q And, Mr. LaPointe, you've been handed Deposition Exhibit LP21. Can you tell us what this document is, please?
A It appears to be a press release and financial reports from Ingenix and United Healthcare.

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Q Were you the person who printed this?
A I believe so.
Q And I didn't find a date. Do you know the date when you printed this?
A Likely around the same date that these other documents were printed, based upon the dates contained within here.
MR. VAZQUEZ: Let's take that break right now.
THE VIDEOGRAPHER: The time is 4:29 p.m. We're off the record.
(Whereupon, a short break was taken.)
THE VIDEOGRAPHER: The time is 4:58 p.m. We're on the record.
BY MR. VAZQUEZ:
Q Okay, Mr. LaPointe, I'm sorry, I did have a few follow-up questions to ask on the previous exhibit, which is LP20.
So, can you tell me -- I asked you about whether the report included various things earlier. I still need to ask you whether this report includes information provided by a past or current patient about a doctor?
MR. MURRAY: Objection to form.
THE WITNESS: Can you repeat that one

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more time?
BY MR. VAZQUEZ:
Q Yes, sure. Whether Exhibit LP20, related to Ingenix, is reflected on the very first page, contains information provided by a past or current patient about a doctor?
MR. MURRAY: Objection to form, still.
THE WITNESS: I would say yes.
BY MR. VAZQUEZ:
Q Can you tell me why you believe that the answer to that question is "yes"?
A On page 293, the sentence at the bottom of the page refers to physician satisfaction data.
Q All right. Any other information within this report that would lead you to believe that it includes information provided by a past or current patient about a doctor?
MR. MURRAY: Objection to form.
THE WITNESS: Not that I can see.
BY MR. VAZQUEZ:
Q Okay. Do you see that it includes a hyperlink to an affiliated hospital medical center or other kind of treatment center?
MR. MURRAY: Objection to form.

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THE WITNESS: I can't tell from the printout, the clarity of the printouts.
BY MR. VAZQUEZ:
Q And what about HealthGrades physician report, does it include those?
MR. MURRAY: Objection to form.
THE WITNESS: I'm sorry, I don't understand the question.
BY MR. VAZQUEZ:
Q Does it include any reference or -- to or a link to HealthGrades physician reports.
MR. MURRAY: Objection to form.
THE WITNESS: I don't see it specifically mentioning HealthGrades physician reports.
BY MR. VAZQUEZ:
Q Okay, thank you.
Let's go to LP21, which we already marked. And I apologize if I asked this because we took a break in between, but can you tell me what this is?
A It is a printout of a press release and financial reporting information for United Health Group and Ingenix.
Q And were you the person who printed

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this out?
A I believe so, yes.
Q Do you know if this press release includes information that could be verified or edited by a healthcare provider?
MR. MURRAY: Objection to form.
THE WITNESS: I don't think a healthcare provider could specifically edit this press release.
BY MR. VAZQUEZ:
Q Okay. And what about, do you know if this press release includes information provided by a past or current patient about a doctor?
MR. MURRAY: Objection to form.
THE WITNESS: Not that I can see.
BY MR. VAZQUEZ:
Q Does this report include comparison ratings of doctors?
MR. MURRAY: Objection to form.
THE WITNESS: Not from what I see.
BY MR. VAZQUEZ:
Q Okay. Do you see whether the report includes a hyperlink to an affiliated hospital, medical center or other kind of treatment center for a doctor?

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MR. MURRAY: Object to form.
THE WITNESS: Not that I see.
BY MR. VAZQUEZ:
Q And what about an advertisement for a doctor that would have a hyperlink to information about the doctor?
MR. MURRAY: Object to form.
THE WITNESS: Not that I see.
(Whereupon, LaPointe Exhibit 22 was received and marked for Identification.)
BY MR. VAZQUEZ:
Q All right. Mr. LaPointe, you've been handed what we've marked as Deposition Exhibit LP22. Can you tell me what this document is?
A Printouts of the Subimo.com website from October 19th, 2004.
MR. MURRAY: And just for the record, before the next question, I just want to -- the exhibit handed to me is UCHC142, and this one run backwards also, to 131.
MR. VAZQUEZ: Thank you. I appreciate that.
BY MR. VAZQUEZ:
Q Is it in the right order, Mr. LaPointe? In other words, were they simply

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misnumbered when the Bates numbering was done, or is it actually backwards?
A It appears --
Q If you just flip it around and we start with 131, is that really the right order?
A It may be. It might be.
Q Why don't we start looking at 131, then. It seems to me that that's the right order, and appreciate counsel pointing that out.
Were you the person who was on the Subimo website on October 19, 2004?
A I believe so.
Q And, so, were you the person who printed out this information?
A I believe so.
Q Parts of this is not very legible. I don't know if maybe the original copies exist, but I just want to know for the record, we can't read some of this stuff, so if we could maybe get a -- if they are available, legible copies.
MR. MURRAY: I'll either check for the originals or see if I can get you a better copy.
MR. VAZQUEZ: I appreciate that.
BY MR. VAZQUEZ:

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Q Do you know if this information from the Subimo website -- or whether this report, excuse me, includes information that could be verified or edited by a healthcare provider?
MR. MURRAY: Objection to form.
BY MR. VAZQUEZ:
Q It's a little difficult, because you can't read it, right?
A Not that I can tell. I can't be sure.
Q Okay. Can you tell if it includes information provided by a past or current patient about a doctor?
MR. MURRAY: Objection to form.
THE WITNESS: Not that I can tell.
BY MR. VAZQUEZ:
Q All right. Can you tell if it includes information about a doctor that was verified or received from a third party?
MR. MURRAY: Objection to form.
THE WITNESS: Yes.
BY MR. VAZQUEZ:
Q Could you tell me where you see that?
A It looks like every page refers to the Leapfrog Group.
Q Are you speaking about the reference

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in the lower left side? It says, "We are approved by the Leapfrog Group as an evidence-based hospital selection tool."
A Yes. Yes, I believe the Leapfrog data is part of the data that's included.
Q And, so, are you assuming that the data from the Leapfrog Group is verified?
MR. MURRAY: Object to form.
THE WITNESS: I don't -- I would assume in some way it's verified before they provide it to these other companies. I don't know what their process is.
BY MR. VAZQUEZ:
Q Right. So, it's an assumption? That was my question.
A Yes.
Q Okay. Does this report include comparison ratings of doctors?
MR. MURRAY: Object to form.
THE WITNESS: It appears to have comparisons of physicians. I can't tell specifically about the ratings.
BY MR. VAZQUEZ:
Q All right. Do you see a hyperlink to an affiliated hospital, medical center or other kind

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of treatment center for a doctor?
MR. MURRAY: Objection to form.
THE WITNESS: There appears to be links to hospitals within -- on page 134. I can't say from the document exactly where that link goes.
BY MR. VAZQUEZ:
Q Where are the links that you said appear to exist on 134?
A The circled --
Q Yup.
A -- the circled one. It says "New York Methodist Hospital," with the --
Q With the arrow on it?
A Arrow.
Q Okay.
A Some kind of link.
Q Okay. Do you see an advertisement for a doctor, with a hyperlink to information on the doctor?
MR. MURRAY: Objection to form.
THE WITNESS: I can't specifically see advertisements from this.
BY MR. VAZQUEZ:
Q Do you know if doctors ever pay a fee

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to Subimo for any services?
MR. MURRAY: Object to form.
THE WITNESS: I can't see within these documents whether they received money or services.
Just to clarify an earlier thing -- where is it now? I'm sorry, I lost my place now. Just give me one second.
BY MR. VAZQUEZ:
Q Sure.
A Did you ask a question regarding patient information -- or patient-generated information? I don't recall if we had gotten to that one yet.
Q Why don't you just make the statement, whatever -- assume -- I'm not sure what it is you're getting to, but if you feel you need to clarify or supplement something you said before, please do so.
A There's something in here, on page 136, referring to patient supplied information.
Q What is that again? What page -- where on page 136?
A There's just a reference to users can post questions, get answers, join the community.
Q Where on page 136 is that?

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A Under "Ask Others."
Q Okay. All right. Is that it, Mr. LaPointe?
A I believe so.
Q All right.
MR. VAZQUEZ: Please mark this one.
(Whereupon, LaPointe Exhibit 23 was received and marked for Identification.)
BY MR. VAZQUEZ:
Q All right, Mr. LaPointe, we have handed you Deposition Exhibit LP23. This is what appears to be in the right order.
Can you tell me what this is, please?
A On the first page is a printout from the Subimo website from October 19th, 2004; a page of Pharma Advisor product demo; page 144, looks like a printout of information gathered from probably mostly Alexa.
Q All right.
A Possibly some other sources. The next page, 145, is traffic data provided by Alexa. Page 146 and 147 are printouts from the JCAHO report from 2004.
Q Okay. And, Mr. LaPointe, were you the person who was on the Subimo website on

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October 19, 2004, and printed these materials?
A I believe so.
(Whereupon, LaPointe Exhibit 24 was received and marked for Identification.)
BY MR. VAZQUEZ:
Q All right. Mr. LaPointe, this document that's been handed to you has been marked as Deposition Exhibit LP24. Can you please tell us what this is?
A It's printouts from the HealthScope.org website, from October 19th, 2004.
Q You were pretty busy on October 19th, weren't you?
A Yes.
Q Are you the person that was on this HealthScope website and printed these materials?
A Yes, I believe so.
Q Do you know if this website includes information that could be verified or edited by a healthcare provider?
MR. MURRAY: Objection to form.
THE WITNESS: I can't say specifically.
BY MR. VAZQUEZ:
Q Can you tell me if this website

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includes information by a past or current patient about a doctor?
MR. MURRAY: Object to form.
THE WITNESS: Yes.
BY MR. VAZQUEZ:
Q Can you show me where you see that?
A On the first page, it says, "Medical Group Ratings. There's over 120 physician groups rated by patients getting treatment and specialty care, doctor communication, and providing timely care and service."
Q Do you see -- can you tell us whether this website includes information about a doctor that was verified or received from a third party?
MR. MURRAY: Object to form.
THE WITNESS: It's possible.
BY MR. VAZQUEZ:
Q Based on what?
A On page 205 and 206, it refers to -- starting at the bottom of the page, specifically physician ID number used by plan, refers to the health plan, so I'm assuming they somehow obtained that from the health plan.
Q And, so, the information that you think this report may include about a doctor that

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was verified or received from a third party is the physician ID?
A It's the health plan's physician ID.
Q Okay. So, help me understand how you feel this relates to information about a doctor that was verified or received from a third party.
A Because it's a third-party ID. It's not a HealthScope ID. It's the physician plan ID, so...
MR. VAZQUEZ: Okay. All right. Well, the videographer has indicated a few minutes ago that there are five minutes left, so let's stop here and change the tape. And we probably have just a few minutes left anyway, but just to be sure, let's get a new tape.
THE VIDEOGRAPHER: This ends tape 3 in the deposition of Jeff LaPointe. The time is 5:33 p.m. We're off the record.
(Whereupon, a short break was taken.)
THE VIDEOGRAPHER: This is the start of tape 4 in the deposition of Jeff LaPointe. The time is 5:35 p.m. We're back on the record.
BY MR. VAZQUEZ:
Q Okay. Mr. LaPointe, earlier on in the

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day you mentioned -- you made some references to your financial status. You recall, right?
A Yes.
Q All right. I just need to ask you some questions relating to the acquisition of UCompare by MDX. I think you said that happened in March? Of this year?
A Yeah, March of this year.
Q All right. Did you make any money after that acquisition or as a result of that acquisition?
MR. MURRAY: Object to the form. You can answer.
THE WITNESS: I'm currently employed by MDX.
BY MR. VAZQUEZ:
REDACTED

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REDACTED
Q Switching gears here, Mr. LaPointe, do you understand the obviousness standard for proving a patent invalid?
MR. MURRAY: I'm going to object to form, just back to the continuing objection that this is not an expert witness. He's here as a fact witness. But to the extent he can answer it as a fact witness, he may.
THE WITNESS: I'm not familiar with it.
BY MR. VAZQUEZ:
Q Okay. I think I know the answer to the next question, but I still have to ask it, then. Do you intend to offer any opinion at trial regarding whether any claims of the '060 patent being invalid for obviousness?

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MR. MURRAY: Same objection.
THE WITNESS: I haven't thought about trial in any way.
BY MR. VAZQUEZ:
Q I understand you haven't thought about trial, but obviously we've been here all day because counsel for MDX and UCompare have listed you as a witness in support of the contention that the patent is invalid.
So, it's important for us, in order to prepare for trial, to know whether you intend to give even a lay opinion, not an expert opinion, which is what your counsel's objections relate to, but just, do you intend to offer a lay opinion about any of the claims in the patent being invalid?
And we can short-circuit this if counsel wants to say on the record whether he's going to offer those types of opinions or not.
MR. MURRAY: I'm going to object to the form of the question. I think, you know, when the time comes for us to list who the witnesses will be at trial, we will do so. And I think the question has already been answered in an interrogatory or so regarding lay opinions, so we'll assume we've already given

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our answer to that.
BY MR. VAZQUEZ:
Q I don't know that it has, so, I guess, given that your counsel isn't going to tell us right now yes or no, I guess I'm asking you, do you intend to give a lay opinion about any claims being invalid because of the legal obviousness standard?
A I'm not familiar with the legal obviousness standard.
Q So, you're not going to say that it would have been obvious to combine one website with another to invalidate the patent, are you?
MR. MURRAY: Object to form. You can answer.
THE WITNESS: Can't say. I haven't really thought about it previously in that context.
(Whereupon, LaPointe Exhibit 25 was received and marked for Identification.)
BY MR. VAZQUEZ:
Q So, Mr. LaPointe, I've just handed you exhibit LP25, and I need to ask you just another question before we get to that exhibit, and that is about RateMDs.
A Sure.

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Q If you turn to Deposition Exhibit LP3, please, page 5 of that one, you see the last paragraph of that one references public use of the RateMDs.com website. And it has two specific dates there that are referenced: November 22nd, 2004 and December 22nd, 2004. Do you see that?
A Yes.
Q And do you see that it says the identity of the persons making the use or uses, and it says, "Identities unknown." Do you see that?
A Yes.
Q I just want to confirm that you were not on that website on either of those two dates?
MR. MURRAY: Object to form. If you can answer.
THE WITNESS: I can't confirm that.
BY MR. VAZQUEZ:
Q Well, if you had been, wouldn't your name be here?
A I didn't write this document.
MR. MURRAY: Object to form.
THE WITNESS: I didn't write this document, so...
BY MR. VAZQUEZ:
Q Okay. So, is there any reason -- you

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know, anything you can tell me that might tend to prove or confirm whether or not you were on that website on those two dates?
MR. MURRAY: Object to form. You can answer.
THE WITNESS: Off the top of my head, without seeing a document, I can't say for sure, but it doesn't seem out of the realm of possibilities.
BY MR. VAZQUEZ:
Q Well, it doesn't appear to be any documents within the binder at LP3, and so I guess I would assume that if you had been, you would have printed out information such as some of the other information we discussed today. But I don't see anything relating to RateMDs. So, I'm just trying to figure out if there is any information that you're aware of that you have produced related to being on RateMDs?
MR. MURRAY: Object to form. You can answer.
THE WITNESS: I don't recall specifically where that would come from.
BY MR. VAZQUEZ:
Q Where what would come from, the

references to the two dates?
A Yes. I mean, yeah, I don't remember all of the information specifically contained within all of this documentation.
Q Okay. Well, clearly, it says "Identities unknown." I would just ask, you know, and this goes both to you and counsel, if there is any information that exists that you may be one of the unknown identities, that they be provided to us.
Then let's just talk about LP25 very quickly.
And I'm talking about on those dates.
A Sure.
Q I think there is a reference back in '06 to RateMDs somewhere. I'm not talking about just the 2004 time period.
A Okay.
Q Okay, thank you.
Now, LP25 is an e-mail from Mitch Rothschild to Erika Boyer and Larry West.
Were you blind-copied on this e-mail?
A No.
Q Is this the first time you've seen this e-mail?
A Yes.

MR. VAZQUEZ: That's all I have, Mr. LaPointe. Thank you so much for your time. We appreciate it.
THE WITNESS: Thank you.
MR. MURRAY: Why don't we take a five-minute break. We'll just figure out if we have any questions and we'll wrap this up.
THE VIDEOGRAPHER: The time is 5:46 p.m. We're off the record.
(Whereupon, a short break was taken.)
THE VIDEOGRAPHER: The time is 5:54 p.m. We're back on the record.
MR. MURRAY: We have no questions for the witness. So I think we can end the deposition.
THE VIDEOGRAPHER: This ends tape 4 in the deposition of Jeff LaPointe. The time is 5:54 p.m. We're off the record.
(Whereupon, the deposition concluded at 5:54 p.m.)

CERTIFICATE

STATE OF_____:
COUNTY/CITY OF_____:

Before me, this day, personally appeared JEFF LaPOINTE, who, being duly sworn, states that the foregoing transcript of his/her Deposition, taken in the matter, on the date, and at the time and place set out on the title page hereof, constitutes a true and accurate transcript of said deposition.

_____
JEFF LaPOINTE

SUBSCRIBED and SWORN to before me this_____ day of_____, 2012, in the jurisdiction aforesaid.

_____ _____
My Commission Expires Notary Public

CERTIFICATE

I, Jamie I. Moskowitz, a Shorthand (Stenotype) Reporter and Notary Public of the State of New Jersey, do hereby certify that the foregoing Deposition, of the witness, JEFF LaPOINTE, taken at the time and place aforesaid, is a true and correct transcription of my shorthand notes.
I further certify that I am neither counsel for nor related to any party to said action, nor in any way interested in the result or outcome thereof.
IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of December 2011.

_____
Jamie Ilyse Moskowitz
License No. XI01658