IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

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

HEALTH GRADES, INC.,

Plaintiff,

vs.

MDX MEDICAL, INC. d/b/a VITALS.COM,

Defendant.

PLAINTIFF HEALTH GRADES, INC.'S *UNOPPOSED* MOTION FOR LEAVE TO RE-FILE ITS MOTION TO EXCLUDE EXPERT TESTIMONY OF DR. RICHARD G. COOPER [DKT. 334] AND TO EXCEED PAGE LIMITATIONS FOR SAME

Plaintiff Health Grades, Inc. ("Health Grades"), by its undersigned counsel, respectfully submits its Unopposed Motion for Leave to Re-File its Motion to Exclude Expert Testimony of Dr. Richard G. Cooper [Dkt. 334] and to Exceed the Page Limitations for the Same by 3-pages, and states in support:

1. On October 17, 2012, Health Grades timely filed its Motion to Partially Exclude Expert Testimony of Dr. Richard G. Cooper Pursuant to Fed. R. Evid. 403 and 702, and *Daubert v. Merril Dow Pharms., Inc.*, 509 U.S. 579 (1993) (the "Motion") [Dkt. 334]. Including the cover page, one-page table of contents and one-page signature block, the Motion exceeded the Court's fifteen-page limit by three pages. On October 19, 2012, the Court struck the Motion for failure to comply with the page limitations set forth in its Practice Standards, Section III(A). [Dkt. 336].

2. Health Grades respectfully requests leave to re-file the Motion [Dkt. 334] because good cause exists for Health Grades to exceed the page limits set forth in this Court's Practice

Standards, Health Grades timely filed the Motion, and MDx does not oppose Health Grades' motion for leave to re-file and does not oppose the motion to exceed the page limits. The Motion (and associated exhibits) are being concurrently filed herewith.

3. Good cause exists for allowing the Motion to exceed the limitations by three pages:

a. The Motion addresses six different opinions by Dr. Cooper, which relate to three different substantive areas of patent law: invalidity, infringement, and lost profits damages.

b. The three additional pages are necessary due to the number of issues raised by these six opinions, as well as the related case law that needs to be cited and discussed in the Motion.

c. All of discussion of the issues and case law, and all argument, are contained within fifteen pages in the Motion. The three additional pages comprised: 1) case caption and introductory sentence; 2) table of contents to assist this Court in reviewing the Motion; and 3) a signature block.

4. MDx does not oppose Health Grades' motion to re-file its Motion to Exclude and MDx does not oppose Health Grades' request to exceed the 15-page limit by 3-pages.

CERTIFICATE OF COMPLIANCE WITH D.C.COLO.LCivR 7.1A

Undersigned counsel for Health Grades conferred with counsel for MDx. MDx does not oppose the relief requested herein.

WHEREFORE, Health Grades respectfully requests the Court grant its Motion to Re-File its Motion to Exclude Expert Testimony [Dkt. 334] and for Leave to Exceed Page Limitations, and accept Health Grades' Motion filed concurrently herewith.

Respectfully submitted this 22nd day of October, 2012.

ROTHGERBER JOHNSON & LYONS LLP

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2012, I electronically filed the foregoing **PLAINTIFF HEALTH GRADES, INC.'S *UNOPPOSED* MOTION FOR LEAVE TO RE-FILE ITS MOTION TO EXCLUDE EXPERT TESTIMONY OF DR. RICHARD G. COOPER [DKT. 334] AND TO EXCEED PAGE LIMITATIONS FOR SAME** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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