IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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

HEALTH GRADES, INC.,

Plaintiff,

v.

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

Defendant.

MDX MEDICAL, INC.'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION FOR LEAVE TO AMEND ITS INVALIDITY CONTENTIONS [DOC. # 293]

Defendant and Counterclaim Plaintiff MDx Medical, Inc. ("MDx"), by its undersigned counsel, submit its reply to Health Grades, Inc.'s ("Health Grades") response to MDx's Second Motion for Leave to Amend Invalidity Contentions [Doc. # 324].

Health Grades states no basis on which to oppose the MDx supplement to the invalidity contentions, but instead only files what it terms a "response" (not an "opposition"). Thus, Health Grades needlessly forced MDx to the expense of filing an opposed motion for which Health Grades has never had a basis to oppose. It is, of course, within the Court's discretion to award MDx its attorneys' fees associated with filing this needlessly contested motion.

Health Grades simply tries to use this "response" paper to try to convince the Court that it should force the parties to horse-trade. That is, Health Grades' only "argument" is that the Court should allow the MDx motion to amend and do the same for the Health Grades motion to amend its infringement contentions. While Health Grades tries to portray the proposed amendments as

the same because they both seek to add contentions found in their expert reports, they are in fact wildly different. The MDx expert report, and its request to amend, only add information MDx recently gained from depositions; while Health Grades' expert report and its corresponding attempt to amend its infringement contentions add entirely new infringement theories and arguments that have been available to Health Grades for many months but were never raised by Health Grades.

As Health Grades concedes, the MDx motion to amend to should granted.

Dated: October 29, 2012

Respectfully submitted,

s:/Scott D. Stimpson

Scott D. Stimpson
Scott B. Murray
David C. Lee
Sills Cummis & Gross P.C.
30 Rockefeller Plaza
New York, New York 10112
Tel: (212) 643-7000
Fax: (212) 643-6500
E-mail:sstimpson@sillscummis.com
E-mail:smurray@sillscummis.com
E-mail:dlee@sillscummis.com
and

Terence Ridley, Atty. No. 15212
Wheeler Trigg O'Donnell LLP
370 Seventeenth Street, Suite 4500
Denver, Colorado 80202
Tel: (303) 244-1800
Fax: (303) 244-1879
E-mail: ridley@wtotrial.com

Attorneys for Defendant
MDx Medical, Inc. d/b/a VITALS.COM

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2012, I electronically filed the foregoing MDX MEDICAL, INC.'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION FOR LEAVE TO AMEND ITS INVALIDITY CONTENTIONS [DKT. # 293] with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

- Jesus Manuel Vazquez , Jr.
  jvazquez@rothgerber.com, phenke@rothgerber.com
- Gregory B. Kanan
  gkanan@rothgerber.com, dgrooms@rothgerber.com
- Kris John Kostolansky
  kkosto@rothgerber.com, dgrooms@rothgerber.com
- Jeffrey David Phipps
  jphipps@rothgerber.com, kmeans@rothgerber.com
- Scott David Stimpson
  sstimpson@sillscummis.com, gcaceres@sillscummis.com
- Scott B. Murray
  smurray@sillscummis.com
- David Chunyi Lee
  dlee@sillscummis.com
- Terence M. Ridley
  ridley@wtotrial.com, norris@wtotrial.com

s:/David C. Lee