EXHIBIT B

(Redacted Version of Doc. # 368-2)

EXHIBIT D

HIGHLY CONFIDENTIAL / ATTORNEYS' EYES ONLY

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.

DEFENDANT MDX MEDICAL, INC.'S SECOND SUPPLEMENTAL OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendant MDx Medical, Inc. ("MDx") hereby provides its second supplement to its response to Health Grades, Inc.'s ("Health Grades") First Set of Interrogatories to Defendant ("Interrogatories").

The Preliminary Statements and General Objections from the earlier responses are incorporated by reference.

RESPONSES TO INTERROGATORIES

Interrogatory No. 2.

With respect to any of version of MDX's Accused Products, using a claim chart, state in detail MDX's bases for any assertions of non-infringement of the patent in suit on a claim-by-claim, element-by element basis. Your answer should include a statement of MDX's interpretation of each claim element, a statement whether MDX's Accused Products provide(s) such an element or an equivalent and, if not, an explanation how MDX's Accused Products operate or function differently than the claim element and a particularized statement why a component, feature or function of Accused Products is not a substantial equivalent of the pertinent claim element.

Response:

MDx objects to this Interrogatory as a premature contention interrogatory that seeks claim constructions not yet due to be disclosed under the Scheduling Order. MDx also objects to this Interrogatory on the grounds that it is unreasonably broad, unduly burdensome, seeks information that is not relevant to this lawsuit, and is not reasonably calculated to lead to the discovery of admissible evidence. MDx also objects to the request for a claim chart, which is unnecessary and burdensome for showing the elements that are not met. MDx also objects to this Interrogatory to the extent it calls for documents and information protected by the attorney-client privilege and/or the work product doctrine.

Subject to and without waiving these and the General Objections, and based on the Health Grades Infringement Contentions, Supplemental Infringement Contentions and accompanying documents, MDx responds as follows with regard to the independent claims.

Responses with regard to the dependent claims incorporate these responses, and will be supplemented with regard to their specific claim elements provided after consultation.

A. ***Healthcare provider-verified information.***

- No Literal Infringement: For most of the MDx data, the information required by this portion of the claims is not verified by the healthcare provider.

The following supplemental response is hereby designated HIGHLY CONFIDENTIAL / ATTORNEY'S EYES ONLY.

The following information has been entered and/or modified by one or more physicians: specialty information, gender, awards/honors, professional appointments, professional membership, and languages.

REDACTED

Additionally, the MDx data does not include the following data fields: medical philosophy and hobbies.

REDACTED

- Equivalents: There can be no infringement of this element by equivalents, for numerous reasons. For example, having third parties provide information that the claims expressly require be provided by providers is vastly different from the claimed requirements. It is an entirely different approach and thus the function/way/result are not similar (for example, some sources are more accurate and trustworthy than others), and in fact are expressly distinguished in the patent itself. Moreover, any such equivalents argument would vitiate the claim term entirely, and the concept of obtaining information from other sources is disclosed by not claimed in the patent specification. Furthermore, verification from the provider is an entirely different approach than either obtaining no verification or verification from other sources and thus the function/way/result test would not be met; attempting to read this limitation on the MDx

Website would vitiate this claim term entirely; and the concept of verifying information from other sources was disclosed but not claimed and thus precludes application of the doctrine of equivalents.

B. ***Received from the first healthcare provider***.

- No Literal Infringement: For most of the data, this information required by this portion of the claims is not received from the provider itself.

The following supplemental response is hereby designated HIGHLY CONFIDENTIAL / ATTORNEY'S EYES ONLY.

The following information has been entered and/or modified by one or more physicians: specialty information, gender, awards/honors, professional appointments, professional membership, and languages.

REDACTED

Additionally, the MDx data does not include the following data fields: medical philosophy and hobbies.

REDACTED

- No Equivalents: There can be no equivalents where this data is not obtained from the provider, as the MDx approach of obtaining this data elsewhere is entirely different from the claimed approach; attempting to capture this data under the doctrine of equivalents would entirely vitiate this claim language; and there is also prosecution history estoppel precluding equivalents on this element (*e.g.*, amendment on 4/26/10).