EXHIBIT F

(Redacted Version of Doc. # 375-2)

EXHIBIT C

CONFIDENTIAL - ATTORNEYS EYES ONLY
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 11-CV-00520-PAB-BNB

DEPOSITION OF DAVID HALL

October 4, 2012

HEALTH GRADES, INC.,

Plaintiff,

v.

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

Defendant.

Job No. NJ1339309

a substantial portion of the demand related to advertising revenue related to the patented features with respect to Panduit test 1.

Q Okay. You said that you determined from reviewing these documents and talking -- and reading the deposition testimony, a substantial portion of the websites were using the patent.

Is that what your testimony was?

A No. And I would add that also an important benchmark was the market, as far as visitors were going to the site. That prompted or that identified in their own internal documents the features related to the '060 Patent would also be a source I considered as well in the substantial market share that Health Grades and Vitals had as they, both on their website, if you click on a Google search or Yahoo search, or within their documents that both emphasize and feature that they have information from the sources I described earlier as well as comparison ratings.

Q So I don't think that was really quite my question, Mr. Hall. Let me see if I can make it clearer.

You talked about how you looked at all

this evidence and you think that the '060 Patent is important. But my question is a little bit different. My question is, do you have anything, Mr. Hall, to indicate what percentage of users of the Vitals website use the technology from the '060 Patent?

A I do not have a percentage, a fixed percentage based on a survey or a source of that sort, given the sensitivity of healthcare searches and the practicalities of that as far as privacy information and practicalities.

I do not have a percentage of visitors. I have not determined one that utilized the features of the '060 Patent.

But in lieu of that, I have, as I'd indicated earlier, looked at what the companies put forth to the market that they have and are their key features. And understood then how the market reacted to those explanations or benefits of their patented -- of the patented features related to their websites. And tracked over time the market's reaction to that, as well as what the deposition testimony yielded. And concluded with the increasing both visits and increasing ad revenue related to

those visits, that the patented features were a substantial part of the demand as it relates to the Panduit test.

MR. STIMPSON: Okay. So I have to move to strike everything starting with, but in lieu of that, as nonresponsive.

Why don't we take our break, okay?

(Recess taken from 9:47 a.m. to 10:02 a.m.)

Q (BY MR. STIMPSON) Okay. Mr. Hall, later in your report, you talk about various agreements between MDx and third parties and Health Grades and third parties. And a lot of them are about licensing out data.

Do you remember that?

A Yes.

Q Did you consider the Vitals database to be covered by the patent?

MR. VAZQUEZ: Objection. Calls for a legal conclusion.

A My understanding was that the database alone was not a violation of the patent.

Q (BY MR. STIMPSON) Okay. And did you also understand, Mr. Hall, that there are many uses for

the Vitals website that are not covered by the patent?

MR. VAZQUEZ: Same objection to the word covered. Calls for a legal conclusion.

A My understanding is that there could be or are uses other than using the information for a comparison ratings report. I'm also aware of what Vitals promotes as far as its data and comparison reports and reviews.

Q (BY MR. STIMPSON) Okay. And like, for example, you know, if someone gets on the Vitals website and just looks at the directories for doctors A to Z, that's not covered by the patent, right; you understand that?

MR. VAZQUEZ: Object to form.

A That's my understanding.

Q (BY MR. STIMPSON) And you understand, as you say here in the patent claim, that the patient ratings are part of this patent claim too, right?

MR. VAZQUEZ: Form.

A Are part of it, yes.

Q (BY MR. STIMPSON) And do you have an understanding of what percentage of the profiles on the Vitals website actually have patient ratings for

the doctors?

A I may have seen that information, but I don't know a percentage right now.

Q Do you remember if it's actually less than half of them?

MR. VAZQUEZ: Form.

A I don't.

Q (BY MR. STIMPSON) Okay. Why don't you turn to page 4 of your report and paragraph 17 there, sir. Now you're talking about the Health Grades website here, right?

A Yes.

Q Okay. And the first bullet refers to Health Grades having information on over 5500 hospitals; is that correct?

A Yes.

Q And so you understand that you can get on the Health Grades website and search for hospitals?

A Yes.

Q Okay. And then your last bullet point refers to over 15,000 nursing homes. Do you see that?

A I do.

Q And you also understand that you can get

on the Health Grades website and search for nursing homes, right?

A Yes.

Q And then the third way to search is you can search for doctors, right?

MR. VAZQUEZ: Form.

A My understanding is that, yes, you can search for doctors.

Q (BY MR. STIMPSON) So two of the three ways to search on the Health Grades website are for facilities like nursing homes or hospitals, right?

MR. VAZQUEZ: Form.

A Yes, those two are available.

Q (BY MR. STIMPSON) Okay. And so would you agree with me that, you know, those are substantial parts of the Health Grades website?

MR. VAZQUEZ: Object to form.

A They're certainly parts of the website that they identify, yes.

Q (BY MR. STIMPSON) Are those substantial parts of the website?

MR. VAZQUEZ: Form.

Q (BY MR. STIMPSON) Let me back up a sec. You've actually visited the Health Grades website,

right?

A Yes.

Q So would you agree with me that they're substantial parts of the Health Grades website, right?

MR. VAZQUEZ: Form.

A I would answer it this way. I believe all of the information there they would consider important and substantial.

Q (BY MR. STIMPSON) Okay. The searching for hospitals on the Health Grades website, was it your understanding that that was covered by the Health Grades patent?

MR. VAZQUEZ: Form.

A I don't have that understanding.

Q (BY MR. STIMPSON) Well, let me just make sure we're clear. Is it your understanding that the patent does not cover the searching for hospitals?

MR. VAZQUEZ: Form.

A Yes.

Q (BY MR. STIMPSON) Okay. And is it also your understanding that the patent does not cover searching for nursing homes?

A That's also my understanding.

CONFIDENTIAL - ATTORNEYS EYES ONLY

MR. VAZQUEZ: Form.

Q (BY MR. STIMPSON) So there's lots of uses of Health Grades' website that aren't covered by this Health Grades patent, even under Health Grades' analysis, right?

MR. VAZQUEZ: Form.

A There are features on both websites that from my understanding do not violate -- well, the Vitals site violates the patent and the Health Grades site uses all the elements of the patent.

Q (BY MR. STIMPSON) So you would agree with me, Mr. Hall, that the Health Grades website certainly is not coextensive with the patent claims, right?

MR. VAZQUEZ: Form.

A I'm not sure I understand that. One more time, please.

Q (BY MR. STIMPSON) Well, the Health Grades website is not coextensive with the scope of the patent, right?

MR. VAZQUEZ: Form.

Q (BY MR. STIMPSON) They don't have the same scope and the same --

A Oh, coextensive?

CONFIDENTIAL - ATTORNEYS EYES ONLY

Q Yeah.

A That's a term I'm -- my understanding is that the patented features that Health Grades has for the '060 Patent are important and promoted by Health Grades. I understand there's other features on their website.

MR. STIMPSON: Okay. Move to strike that. Nonresponsive.

Q (BY MR. STIMPSON) Sir, can you answer that? Maybe you can't answer the question, that's okay. But can you agree with me that the Health Grades website is not coextensive with the scope of the patent claim?

MR. VAZQUEZ: Object to form. Asked and answered.

A I think I would answer it the way I did before, without, you know, referencing the coextensive term.

Q (BY MR. STIMPSON) So you're not comfortable saying that the Health Grades website is not coextensive with the patent claim?

MR. VAZQUEZ: Object to form.

A It's not the term I would use. I would answer it as I did.

CONFIDENTIAL - ATTORNEYS EYES ONLY

Q (BY MR. STIMPSON) Okay. And I assume your answers would be the same for the Vitals website and whether that's coextensive with the patent claims?

MR. VAZQUEZ: Form.

A I would answer the question related to Vitals as, certainly early on in the period they just had -- they had physician searches and not other types of healthcare providers, REDACTED REDACTED But that certainly promotes the patented features of the '060 Patent at Vitals, but also has other features on their website.

Q (BY MR. STIMPSON) Okay. So, for example, you know from your view of the Health Grades website that they have things like articles and tips for consumers, right?

A I recall seeing such things.

Q And those, too, I mean, Health Grades puts that on there, you know. Those were added to try to generate more consumer interest in the site, right?

MR. VAZQUEZ: Form.

A Yes, I think that's accurate.

Q (BY MR. STIMPSON) And you've seen the

CONFIDENTIAL - ATTORNEYS EYES ONLY

Vitals website?

A Yes.

Q The same thing for the Vitals website, right? It has articles and tips and things like that that are also added for the purpose of generating interest in their website, right?

MR. VAZQUEZ: Same objection.

A Yes. Those aren't features promoted the way others were, that I saw from my searches and the documents.

MR. STIMPSON: Move to strike everything after yes. Nonresponsive.

Q (BY MR. STIMPSON) Could you please turn to paragraph 21 in your report.

A 21, was it?

Q Yes, please. And you state there, Vitals describes its core IP asset as being the master provided database.

Did I read that right?

A You did.

Q Do you agree, sir, that one of the core assets for Vitals is its database?

A I agree that's what Vitals described and one that's indicated in the background section. I

don't contest that, but I am citing it here.

Q Okay. If you would turn to your summary on page 6. So let me just make sure I understand this correctly. I understand these are only through May of 2012, so let's just talk about that for simplicity, okay?

A Yes.

Q So you calculate the total damages as $2,262,000, right?

A Yes, using lost profits and royalty damages.

Q Right. And so that's -- you know, if the trial were just through May, you would be asking the jury to award $2,262,000?

A Yes, I would. Based on the assumptions I indicate and the information contained in this report, yes.

Q Okay. And you also come up with a 12 percent reasonable royalty, right?

A Yes.

Q And in any of the three patent cases you have had in the last four years, have you proposed a royalty rate of 12 percent or higher?

A Yes.

CONFIDENTIAL - ATTORNEYS EYES ONLY

Q Okay. Are you aware of patent marking? Do you know what patent marking means?

A I do. But I don't have a legal understanding of it, but I'm familiar with the term.

Q Okay. Do you understand that if the patent plaintiff did not mark its product with a patent number, then you can't get damages until you either have actual notice of the claim?

MR. VAZQUEZ: Object to the form. Calls for a legal conclusion.

A I have a general understanding that the parties would contest that issue on when the marking happened, when you can start damages. I don't have case law understanding or legal understanding.

Q (BY MR. STIMPSON) That's okay. Did you do any analysis as to what the damages would be, depending on whether the Court finds that Health Grades properly marked their product with a patent number?

A I did not, other than to do it by the time periods I indicated, which within that information, there is the ability to parse out time periods.

Q Okay. And you also realize that there's two versions of the Vitals website here, right,

there's one before January 2011 and there's one -- and it was changed in January 2011, right?

A Yes, I had that understanding.

Q And you assume that both of them infringe, right?

A I have made that assumption, yes. And back to my answer, I don't have a firsthand knowledge of having clicked on the Vitals website. I know from the deposition testimony and the record in the case that there is an assertion that the website changed at that time.

Q Okay. So have you, since you were hired by Health Grades, have you gotten on the Vitals website?

A Yes.

Q Okay. How many times did you do that?

A Several is my recollection.

Q Okay. So let's go to paragraph 28, okay. This is where you start your discussion of demand, right?

A It is.

Q And we've talked about attachment 1 and the documents you have used there so I won't go over that again. In your second sentence there -- well,

actually, let me read the first two sentences.

Attachment 1 presents Health Grades' income statements for the years ended December 31, 2008 through December 31, 2011 and from the four-month period ending April 30, 2012. These income statements were compiled from the various departments that report the revenues and costs associated with the patented invention.

Let me just stop right there. First of all, did I read that correctly?

A Yes.

Q What do you mean, Mr. Hall, when you refer to departments that report revenues and costs associated with the patented invention?

A Exactly that. In cases such as this, I attempt to isolate the revenues and expenses and therefore profitability of the company's use of the patented features. In some cases, various products or it just depends on the company.

So this sentence refers to that effort.

Q So, I mean, but for this case, what criteria did you use to determine if revenue was associated with a patented invention?

A The criteria was the features of the

patent and how Health Grades used those and discussions with Andrea Pearson and Allen Dodge starting with, does all of Health Grades' business activity relate or use the patented features. The answer was no.

And from that I said, do they have financial information kept in the normal course of business that relates to a subset of their business activity that uses the patented features in some form. And the answer was yes.

And there were certain departments that did. And I wanted those departments identified and requested the financial information for those departments so I could have a metric of the revenues and expenses of how Health Grades uses the patented features.

Q So who was it, then, that made the determination of what parts, quote, uses the patent?

A In the discussions of the business activities of Health Grades, Allen Dodge and Andrea and myself and JP Anderson discussed which departments, what business activities were associated with the departments, and which, in Health Grades' view, utilized the '060 Patent to generate revenues,

or if there were expenses associated with the use of the '060 Patent, even if there weren't revenues in departments, to include those as well.

And that's what is referenced in these first two sentences you read.

Q So what business activities of Health Grades were identified as using the '060 Patent?

A Certainly, their advertising efforts as they drive, attempt to drive traffic up and drive up their advertising revenue.

They also use the patented features or have over the years to -- as part of their effort in other businesses such as consulting to physicians, as far as improving quality and ratings related to assisting providers and facilities in improving their ratings.

Q Anything else?

A Yes. There was, I understand from John Neal's deposition testimony and from discussions with Andrea and Allen, that he believes it's even more expansive as far as how they use the '060 Patent. That it goes to the core of all of their businesses as far as the unique experience website visitors will have that really drives all of their business

activity. I understand John Neal's view on that, but I wanted to limit it to what Health Grades' CFO and Andrea Pearson, as we discussed department by department, what was related to the '060 Patent.

Q So what I'm trying to do here, Mr. Hall, is I'm trying to figure out how you determined sort of what was associated with the patented invention. And you told me that there -- or you identified certain business activities by talking to Andrea Pearson and Mr. Dodge. But what I need is, I need a list of what those activities are.

I mean, is that in your report anywhere?

A Yes, a reference is in my report.

Q And where are those referenced in your report?

A Attachment 1 lists all the revenue and expense categories that are in departments that have revenue or expenses associated with Health Grades' using the patented features.

Q Right. But they don't really identify all the activities, do they? Take a look at Exhibit 1. So maybe that will become clear.

MR. VAZQUEZ: Attachment 1?

Q (BY MR. STIMPSON) Yes, attachment 1.

CONFIDENTIAL - ATTORNEYS EYES ONLY

It's Exhibit 70 -- actually, what is the exhibit here?

(Discussion off the record.)

MR. STIMPSON: Let's mark as Exhibit 81 attachment 1 to Mr. Hall's report.

(Exhibit 81 marked.)

Q (BY MR. STIMPSON) So we're looking at attachment 1. I have no idea what my question was now.

Oh, I know. Mr. Hall, we were talking about, I'm trying to get a list of the business activities that you say fall under, as you say in your report, are associated with the patented invention. Can you tell me what those are? I need a complete list. If it's somewhere in attachment 1, that's easy too.

A Well, the revenue categories are listed there. Again, we went through those with Mr. Dodge and Ms. Pearson and also referencing Health Grades' 10-K, which describes those for 2009. And gained an understanding at the different time periods indicated how it is Health Grades utilizes the patented features to generate revenue and these associated expenses.

CONFIDENTIAL - ATTORNEYS EYES ONLY

With a note on page 8, footnote 21, I want to point out, that says, As noted elsewhere in this report, revenues reported by the various departments include more than that of the patented invention. However, Health Grades did not separately report the revenue expenses related to the patented invention. Therefore I included these entire departments in their entirety, versus taking a departmental P&L and parsing it out or doing an analysis.

As that note indicates, if these departments had any part of their revenue or expenses that related to their use, either generating revenue or expenses, for that matter, with the patented features, I included the departments in attachment 1.

Q So there may be a lot more in attachment 1 in terms of revenue or whatever else is in there than just the business activities revenue generated from business activities, associated with the patent?

A That is a fact. There is more, yes.

Q Okay. So how much more?

A The advertising network is the primary revenue source that I believe from my analysis and discussions that relates to the use of the patented features. It's not the entirety of the revenue as

they use the rating systems at different periods in time to help with other revenue-generating activities.

But the advertising revenue is what I limited and focused my analysis on as far as Health Grades' damages.

Q How much revenue from attachment 1 is included in attachment 1 but doesn't relate to these business activities regarding the '060 Patent?

MR. VAZQUEZ: Form.

A I have not made a calculation of that. The Health Grades cites the features and promotes the features of its '060 Patent in a variety of ways and has over the years and believes it to be a key part of their website for the unique experience they try to provide and believes that a substantial portion of their traffic over the years and ad revenue relates to the use.

I understand John Neal's view, as well as Mr. Dodge's and Ms. Pearson's, as well as what is yielded from the ones who have been deposed testimony. And also contemporaneous, pre-litigation documents that cite the patented features.

Q Can you tell me if $100 or more of the

revenue in attachment 1 is unrelated to the '060 Patent?

A I have not made that determination.

Q Can you tell me if 10 million or more in revenues of attachment 1 are unrelated to the '060 Patent?

A From my analysis, I think a substantial portion of their website traffic is generated based on the use of the patented features. As search engines pull up the rating systems, and the information they have available, it's their -- my analysis concluded they're really the key feature or their most prominent feature relates to the patent.

As far as the each and every visitor, other than as I identified in the report, the co-visitors, I have not made a mathematical determination of a split between the patented features revenue and non-patented features revenue.

Q Right. But my question, sir, was, can you tell me whether or not $10 million or more of the revenue of attachment 1 are unrelated to the '060 Patent?

MR. VAZQUEZ: Object. Asked and answered.

A I thought I'd answered that.

Q (BY MR. STIMPSON) What is the answer? Is it no? You can't tell me, right?

MR. VAZQUEZ: Object. Asked and answered. Argumentative.

Q (BY MR. STIMPSON) I'll rephrase it. Maybe it will be easier this way in another question.

Mr. Hall, you can't tell me -- let me rephrase it.

You don't know one way or another whether $10 million or more of the revenue in your attachment 1 is unrelated to the '060 Patent?

MR. VAZQUEZ: Form.

A I have not made a calculation. And therefore, would not say if it's $10 million or more. I have studied what they promote and understand what they believe they generate through ad revenue based on the patented features.

Q (BY MR. STIMPSON) What business activities -- we come back to this question again because I've really got to try to nail it down. You've talked about this attachment 1. But I'm trying to get a list of the business activities that you use in your attachment 1 that you say are associated with the patented invention.

CONFIDENTIAL - ATTORNEYS EYES ONLY

What are those business activities?

MR. VAZQUEZ: Form.

A It would start with the advertising revenue.

Q (BY MR. STIMPSON) Well, that's revenue. That's not an activity, right?

A It's related to the business activity of having a website and earning ad revenue from that website.

Q Okay. So your activities are -- so all the ad revenue you consider to be a business activity related to the '060 Patent?

A I would phrase it this way: That their use of the features of the '060 Patent on their website is certainly a business activity Health Grades pursues to earn revenue from advertisers.

Q Okay. What other activities did you include as being associated with the '060 Patent?

A For purposes of calculating revenues and expenses for departments that use the features of the '060 Patent or had over time, there is, prior to 2011, there is consumer reports and watchdog, halfway down through the revenue list in 2010, there's [redacted] million listed, just for 2010.

CONFIDENTIAL - ATTORNEYS EYES ONLY

Q Okay. So did you consider then consumer reports and watchdog all to be associated with the '060 Patent?

A No.

Q Did you consider part of it to be?

A For purposes of calculating profit from a subset of the entire company and excluding activities that have -- and departments that have no relation to the '060 Patent, I included it as the revenue base for 2010, with the understanding that Health Grades contends and I gained an understanding based on their description of it, that both the information covered in the patent and the comparison ratings were used to generate those reports through December of 2010.

So it's included on attachment 1 for that reason. And any of the revenue and expenses with the departments that covered that category would also be in that column, top to bottom, on attachment 1.

Q I'm still struggling with that as far as identifying these business activities associated with the '060 Patent. So far, for sure, advertisements.

Is there anything else?

MR. VAZQUEZ: Form.

Q (BY MR. STIMPSON) Maybe I missed

CONFIDENTIAL - ATTORNEYS EYES ONLY

something in that answer. It was a long answer.

A Selling reports that I just answered to.

Q (BY MR. STIMPSON) Selling reports, okay?

A Did you include that? That was part of my answer.

Q Well, it was a long answer. I didn't quite get it. So selling reports is another thing, right?

And what revenues on this is that --

A Excuse me.

MR. VAZQUEZ: Form.

A The year 2010; [redacted].

Q (BY MR. STIMPSON) You thought all that was within the '060 Patent, right?

A No.

Q Okay. What part did you think it was on there?

A I didn't make a determination as a portion of that. I included it because Health Grades used its patented features to generate some of the revenue for this report.

I didn't make a determination if it was all of it. I wanted on this schedule to reflect all of the departments that had any revenue or expenses

with activity associated with the '060 Patent. And that's why it was included in attachment 1.

Q You realize, though, that a lot of profiles on the Health Grades website don't have patient ratings?

A I do.

Q And that's in fact even true today, right?

A Yes.

Q Okay. So you don't have any idea what the percentage would be of those sales of reports that might fall in the '060 Patent, do you sir?

A I have not made a determination of that.

Q Okay. So I've got advertisements. I've got sales of reports. What other activities do you consider to be under the '060 Patent?

A There's some of these categories relate to SQI sales, SQP, that relate to their -- as described to me and as described on their 10-K, relate to some of their consulting efforts. Strategic Quality Partnership and others, Quality Assessment and Implementation in different time periods where they used comparison ratings and the information covered under the patent to perform consulting services to earn revenue that's indicated on attachment 1.

CONFIDENTIAL - ATTORNEYS EYES ONLY

So SQP, PSEA, these are all acronyms shown in their departmental statements as well as in their 2009 10-K. And I have a description of those and we -- I can read through those descriptions or describe the discussions we had related to those.

But there was all activities that Health Grades identified as related to their use of the patented features to generate revenue or incur expenses or both.

Q So you basically just relied on what Health Grades told you was related to the '060 Patent, right?

MR. VAZQUEZ: Object to form. Misstates testimony.

A A large part on the determination of a subset from their company as a whole of their revenue and expenses was Health Grades' knowledge of their use of the '060 Patent. I discussed and gained an understanding of that, and looked at the departmental statements and compiled them here, but that certainly was a part of my analysis, was their view of how they use the '060 Patent to generate revenue and incur expenses, yes.

Q (BY MR. STIMPSON) And you know the person

who is doing the infringement analysis for Health Grades is Dr. Greenspun, right?

A Yes, I'm aware of that.

Q And was he involved in any of this?

MR. VAZQUEZ: Form.

A Not directly with me. I did not rely on Dr. Greenspun for this.

Q (BY MR. STIMPSON) Well, do you know of any way that Dr. Greenspun, the guy who is hired by Health Grades to say what does and doesn't fall under the patent, do you know if he was involved in any way in determining what business activities related to the '060 Patent?

A Not beyond what I have read in his report. I've read his report or both reports.

Q Right. But you read his report after you did this analysis for your report, right?

A True.

Q Okay. So Dr. Greenspun had nothing to do with your conversations and work with the Health Grades people in determining what should we say falls under the '060 Patent, right?

MR. VAZQUEZ: Form.

A He did not. Though I don't think that was

the characterization, what should they say. They analyzed their departments and went through it, Mr. Dodge and Ms. Pearson, to discern what their activities that yielded revenue expenses related to the patent, versus what should they say.

Q (BY MR. STIMPSON) And so, as opposed to -- when you were having these conversations with Ms. Pearson and Mr. Dodge, and trying to figure out what activities related to the '060 Patent, did you have the patent out in front of you?

A We may have. Certainly, it was in the support binder that we generally used to perform the work. I don't recall it being out and reading it specifically.

Q So did anybody, in making this determination, say, Hey, look, we've got to get out the patent here and try and figure out what -- make sure the patent claims match up to what we're saying are activities related to this patent?

MR. VAZQUEZ: Form.

A I don't recall that specifically. But the knowledge of the patent certainly was in the room, as far as Mr. Dodge and Ms. Pearson and our review of the patent claims. And what Health Grades promoted

as its features.

Q (BY MR. STIMPSON) Okay. So you mentioned as your third business activity, SQI and this SQP, PSEA, and OPA -- OPEA sales as also being business activities that you determined with Health Grades' people were associated with the '060 Patent, right?

A Yes.

Q Okay. And why?

A That Health Grades' description of the use of the patented features to generate revenue from activities in these departments listed.

Q So you just rely on Health Grades telling you that, yeah, the patent relates to us generating revenues from these?

MR. VAZQUEZ: Object to form.

A After discussion and description of the business and the decision on my part not to try to parse out because I don't believe I had a basis for parsing from within a department P&L to -- a reasonable basis or would not be as reasonable as taking all of the departmental revenue and expenses to, after the fact parse out revenue expenses related to the patent.

My decision to use all of the departmental

revenue and expenses, if any part of the departmental revenue and expenses was related to the patented features.

Q (BY MR. STIMPSON) So let's just take SQI for example. Do you know what that means?

A Yes.

Q What does it mean?

A Strategic quality initiative.

Q Okay. And why specifically was that included as an activity related to the '060 Patent?

A Well, the -- I would look back at the work papers. But if SQI sales were involved in a department that had revenue, whether or not SQI specifically was involved, it would show up on attachment 1.

Q Right. But, I mean, was there any determination made to say, Hey, look, SQI is an activity related to the '060 Patent and this is why. Did anybody do that?

A Yes, we had that discussion.

Q Okay. So what was the reasons for including SQI as an activity related to the '060 Patent?

A Related to their ratings and their

assistance with -- on a consulting basis to assist in improving the ratings and part of the rating services of Health Grades.

Q So how do they get revenue from SQI?

A I believe fees paid by the hospitals.

Q And what are those fees paid for?

A Business development and marketing tools Health Grades provided to the hospitals.

Q So you included, in revenue related to the '060 Patent, revenue Health Grades receives by them providing marketing tools to hospitals?

A I included the departmental revenue that includes SQI revenue and expenses as part of a subset of Health Grades' overall financial statements, to attempt to exclude any departments that do not either have any revenue or expenses -- do not have revenue or expenses associated with the '060 Patent.

Q So maybe, you know, instead of going through all this, we can just kind of cut to the chase here, Mr. Hall.

I mean, would you agree with me that what portion of all these revenues are truly associated with the '060 Patent, a lot of that is since there are no records showing it, a lot of that is just pure

speculation, right?

MR. VAZQUEZ: Object to form.

A No.

Q (BY MR. STIMPSON) Okay. Well, why -- can you give me any certainty, then, as to what part of SQI is related to the '060 Patent?

A I could look at the work papers related to it, but the intent was to identify without what I would view as something that would go into speculation, as parsing a departmental P&L after the fact, based on what uses the patented features or not.

My decision was to obtain a subset from all of Health Grades' P&L, which is profit and loss statements, of any departmental revenue or expenses that was generated during the time periods indicated that related to the patented features, and exclude any that did not at all relate to it.

Q Okay. Well, actually, in your damages analysis, you actually use the full [redacted] number, right? You didn't exclude anything?

A I do not. I don't agree with that.

Q Okay. Well, let me just see if we can get to that. You know, let's just take it in order and

we'll get back there.

So what other business activities associated with the '060 Patent did you consider with regard to this paragraph 28?

A The Internet business group activity from '08 to '09.

Q So what were they doing to generate, like I see in '08, there is almost $7 million, right?

A Yes. And in '09, 4.5 million.

Q So what were they doing?

A After then after that, the activities in that group were captured in the advertising network, is my recollection of our discussion of that. But using the comparison ratings and the information sources to generate revenue.

Q Let's take 2008. $6,944,020, where did that revenue come from? How it was generated?

A I'll look back at the 10-K to refresh my recollection.

My recollection is as they were transitioning their business model to advertising network revenue, which is the top line, they were generating revenue from the Internet business group with advertising as well.

Q So is it your testimony that the Internet business group, all that money is all advertising?

A No, it's not.

Q Okay. What else is there, then?

A I would have to look at my work papers to recall 100 percent.

Q Okay. And those work papers were not produced, right, the ones we talked about earlier?

A I don't recall talking about this work paper that I'm referencing, earlier.

Q Okay. Maybe it's a different work paper. But anyway, was it produced?

A I don't know.

Q Okay. What other business activities did you consider to be associated with the '060 Patent?

A Again, with the preamble I've had before, that if any part of it was in a business, in a department, it was included in here, was the way I approached it, once I understood that they did not have contemporaneous or financial statements in the normal course. That was strictly limited to the patented features. With that caveat, advertising sponsorships from 2008.

Q Okay. Anything else?

A That was a category they had in a department prior to creating for 2009 forward the advertising network.

Q Okay. What else?

A Connecting Point, fourth down in 2009 and 2011.

Q And so what generated that revenue?

A Health Grades designed premium profiles for physicians that incorporated the source verified information covered in the patent, as well as rating services.

Q So it was just physicians paying Health Grades to design reports for them?

A Not just that, no. There was other components, including certain advertising revenue related to website traffic to the Connecting Point with the physician.

Q Okay. What else did you consider to be business activities associated with the '060 Patent?

A Patient Direct Connect.

Q Okay. And what's that?

A It's another -- it's focused on the patient versus the physician as far as Connecting Point related to that. And again, would generate

revenue based on advertisement placements, is my recollection.

Q So what advertisements? I'm not sure I understand. What is Patient Direct Connect?

A It's a local connection between online patients and providers initiative that they tried for the years indicated and earned revenue.

Q So it's basically just a way to hook up a patient with a doctor, right, they give them a way for the patient to connect to the doctor?

MR. VAZQUEZ: Form.

A As I recall from discussions and as is described in their 10-K, it's, you know, for a fee, clients were provided the opportunity to engage and assist patients searching for provider information, Physician Quality Reports and other information that related to ratings and the information sources that Health Grades uses on its website.

Q (BY MR. STIMPSON) What 10-K are you looking at there? And what are the Bates numbers?

A It's the 2009 form 10-K which is the last full year prior to the grant of the patent. It's HG 0001580 through 1649.

Q Okay. And -- but actually -- so you

identified Patient Direct Connect. How about -- what else did you consider to be business activities associated with the '060 Patent?

Is it basically all the stuff listed under revenue here, of attachment 1?

MR. VAZQUEZ: Form.

Q (BY MR. STIMPSON) To cut to the chase here a bit?

A All the revenue and expenses listed here were in departments listed above. All departments listed above that had, those departments had some amount of activity, revenue and expenses, or versus activity, revenue and expenses that Health Grades believes and describes as relates to the '060 Patent, the use of the '060 Patent features.

And so as I said earlier, rather than parsing out within any department after the fact of which I don't think is supportable or reasonable, I included all of the departments that had any relationship to the '060 patented features and created attachment 1 to measure the revenue and expenses for all of those departments.

Q (BY MR. STIMPSON) Okay. But attachment 1 does not give us an accurate picture of the revenue

associated with the '060 Patent because as we talked about earlier, there's a lot more that may be included there that is not related to the '060 Patent, right?

MR. VAZQUEZ: Form.

A Attachment 1 was not intended to identify all the revenue associated with the '060 Patent. There is more here than -- yes.

Q (BY MR. STIMPSON) In fact, we can't really know what revenue is associated with the '060 Patent, as you candidly state in your footnote 21. There just aren't documents to show that, right?

MR. VAZQUEZ: Form.

A That is accurate. And also my experience on other cases, that companies don't create P&Ls based on intellectual property, but rather departments and business activities.

Q (BY MR. STIMPSON) Okay.

MR. STIMPSON: How long have we been going? What time is it?

MR. VAZQUEZ: An hour.

MR. STIMPSON: Why don't we take a break.

(Recess taken from 10:55 a.m. to 11:12 a.m.)

CONFIDENTIAL - ATTORNEYS EYES ONLY

Q (BY MR. STIMPSON) Can we go to paragraph 29 of your report, please.

A Yes.

Q The first sentence of paragraph 29 says, One of the claims of the '060 Patent is that visitors to its website can access data on a first healthcare provider.

We talked about this just a little bit before, Mr. Hall. But you understand that that's not a claim of the patent, right? That's just an element of one claim.

MR. VAZQUEZ: Object to form.

A You know, I would defer to legal counsel on that. I cite the court order regarding claims construction and the quote from that.

Q (BY MR. STIMPSON) Right. But I'm just trying to figure out what you meant in your report here, where you said that one of the claims was that visitors to its website can access data on a first healthcare provider.

Would it be more accurate -- would you understand it to be more accurate, Mr. Hall, to say that one of the elements of the claims of the '060 Patent is that visitors to the website can access

who come to the website to research hospital information generate advertising revenue for Health Grades and Vitals?

A Yes.

Q Is it also true, sir, to say that visitors who come to the website to research nursing home information generate advertising revenue for Health Grades?

A Yes.

Q Is it also true that visitors who come to the website and seek directions to a doctor's office are generating revenue for the Health Grades website?

A Yes.

Q Is it also true to say that visitors who come to the website to make appointments with doctors are generating advertising revenue for Health Grades?

A Yes.

Q Is it also true to say that visitors who come to the website to read articles and tips provided by Health Grades or Vitals are generating advertising revenue for Health Grades and Vitals?

A Yes.

Q Is it also true to say that visitors who come to the website to do many other things that are

CONFIDENTIAL - ATTORNEYS EYES ONLY

on those websites are also generating advertising revenue, right?

MR. VAZQUEZ: Object to form. Vague and ambiguous.

A I would answer it as the visitors to the website for, my understanding is, any and all reasons would result in advertising revenue for these companies.

Q (BY MR. STIMPSON) Okay. Thank you.

Paragraph 30, you first refer to this $22 million figure for Health Grades from attachment 1 that we talked about, right?

A Yes.

REDACTED

Q (BY MR. STIMPSON) Okay. Now, your concluding sentence in that paragraph says, this

advertising revenue, combined with the website visits, demonstrates the demand from the claims embodied in the '060 Patent.

What's your basis for saying that, Mr. Hall?

A The basis is both the, as I mentioned earlier, the -- what both these companies promote in the information I received related to their business overview as their features they have for consumers to visit their websites, as well as the marketing information.

That includes two business overviews for Vitals, its financial information and the financial statements which indicates its business, if you will, mentioning the patented features, as well as the market of visitors gravitating to Health Grades and Vitals as indicated in the web visits.

I say in that statement, as well as the deposition testimony I read, and the Health Grades 10-K, as far as what it describes what its business is.

And that's a partial list. But it's really everything I looked at relates to what the two companies promote as their features.

CONFIDENTIAL - ATTORNEYS EYES ONLY

Also my searches on the web referenced earlier that pulls up in bold ratings and reviews for both companies.

It's the first thing a visitor to Google or Yahoo will see. And that has resulted in those two entities having half the market and growing over time during the infringement period.

Q Anything else?

A I guess two different Vitals or MDx financial statements, two of their business overviews. Health Grades' business overview I would include in that list.

Q Anything else?

A There may be, but that's what comes to mind as to demonstrate the demand for this product. The market's reaction is a strong component of it as far as what the two companies promote and then how the market has responded to that, as opposed to what other information sources online are available.

Q Okay. So all those things that you cited as supporting that statement, are any of them identified here as support for this paragraph 30?

A They're identified throughout my report.

Q Okay. Can you --

CONFIDENTIAL - ATTORNEYS EYES ONLY

A I cite a case here as far what -- what demonstrated, what my understanding of case law in demonstrating, the need for demonstrating demand for the product or of the patent features.

Q Okay. So I'm trying to get a handle on what your actual documentary support is for saying there is demand. And can you identify those documents for me, please?

A Yes.

Q And show me where they are in your report, please?

A The first document is Vitals' business overview, progress, strategy and plans.

Q What's the Bates number, please?

A MDx 0012688.

Q Okay.

A Through 12756.

Q Okay.

A In addition to being -- should I do all the sources and then show where they're at?

Q Yeah, let's do that. We'll do the sources first and then we'll go back and try and find them in the report.

A Okay. Another business overview, Vitals

CONFIDENTIAL - ATTORNEYS EYES ONLY

MDx 0012882 through 12934.

Q 12934, okay.

A Correct.

MDx's audited financial statements years ending December 31, 2011 and 2010. MDx 0104440 through 104466.

I have referenced before Health Grades' form 10-K, HG 0001580 through 1649.

MDx audited financial statements years ending May 31, 2009 and 2008.

Q Do you have a Bates number?

A Oh, sorry. MDx 0104632, 0104649.

Then Allen Dodge deposition testimony, pages in the 250s towards the end of his deposition, is my recollection.

Q Anything else?

A There's discussions I referenced earlier with Andrea Pearson and Allen Dodge. Then there's the Health Grades investor day presentation, HG 0001728 through 1800.

Q Anything else?

A Those are what come to mind right now.

Q So you have a section in your report headed demand, starting right before paragraph 28,

right?

A Yes.

Q Are any of those documents or deposition testimonies referenced in that section anywhere?

A Not with footnotes.

Q In any way?

A Elsewhere in the report and my attachments they're cited, especially when I do the website visits. And they're cited there as well, in the attachments, as well as in other places in my report.

Q But my question is, when I sat down to review this report to prepare for your deposition, how could I have possibly known that you were using any of these to support your demand analysis?

MR. VAZQUEZ: Form.

A Having read, for example, through page 5 as part of the background of the companies and discussions of the patent and the patented features. Footnote 10 is a snapshot of Vitals from business overview, progress strategy plan.

Q (BY MR. STIMPSON) Hold on just a second. And that's the second document you reference, right?

A Yes.

Q Okay. That's not cited in your section on

demand, is it?

A I didn't recite every source that I relied on. I wanted to -- it is not, is the answer, no.

Q Right. I mean, and in fact, the paragraph it's cited for just says that Vitals began operations in July 2006. Initially the company spent 18 months collecting data and building its website. About

REDACTED

A That's the cite.

Q And the word demand is not in that paragraph, right?

A No, compounded annual growth relates to a demonstration of demand as it promotes the patented features and then experiences growth from that.

Q Where does it say promotes patented features in this paragraph? In fact, the patent isn't even mentioned in paragraph 19, is it?

A It is not. I don't in every paragraph restate every point I'm making with respect to the patented features and then the demand.

Q Okay. So you found one footnote that is

CONFIDENTIAL - ATTORNEYS EYES ONLY

outside the demand section in your report that mentions one of these eight things you gave me.

Is there any other way I could know from reading your report that you were relying on any of these other things for your demand analysis?

MR. VAZQUEZ: Form.

A Yes.

Q (BY MR. STIMPSON) Okay. Can you tell me, please?

A The next sentence. Vitals describes its business as an online healthcare directory service provider in the audited financial statements it referenced earlier.

And in the organization section -- well, in the next sentence as well. And it's an Ibid. footnote below. And if you reference the next section, or sentence, it references one of the sources as far as online healthcare directory service allows users to compare and rate physicians on its primary website. It's the first sentence of the description of the organization and entity MDx.

Q What page are you referring to now? I mean, actually, this is one of the problems. And I'll just tell you bluntly. I don't have any of

these documents with me because I couldn't match this up. So I can't even really ask you about it.

But this document you're looking at is in your binder and it's a marked-up copy of something you have used, right? And which document is that you just read from?

A It is a referenced copy, is what I would say. It is MDx 0104440, MDx's audited financial statements.

Q Okay. And so read me the part again, please, that you think supports demand.

A MDx operates as an online healthcare directory service provider. MDx Medical allows users to compare and rate physicians on its primary website, Vitals.com, and its recently acquired websites.

Part of demonstrating demand is gaining an understanding of what the companies promote to try and attract business. And to the extent that compare and rating physicians is the lead-in sentence, as well as the other sources, is to me a demonstration of what Vitals is doing to attract demand for its website, which yields advertising revenue. So that's how it is related to the demand.

Q Okay. So it's your belief then, Mr. Hall, that by showing that these companies promoted certain features, that's enough to show demand for the patent invention?

MR. VAZQUEZ: Form.

A No, that's not my testimony.

Q (BY MR. STIMPSON) Okay. So is it your understanding that promoting a patented feature is enough by itself to show demand under federal circuit law?

MR. VAZQUEZ: Form. Calls for a legal conclusion.

A That's not my understanding.

Q (BY MR. STIMPSON) So -- I think we have too many negatives going on here.

So you in your view agree that it requires more than just Health Grades or Vitals saying, Hey, look, here is a cool feature on our website, to show demands for the patented product, right?

MR. VAZQUEZ: Form.

A That's certainly my view. I don't have a view related to, of course, the federal circuit. But it's part of an analysis I performed.

Q (BY MR. STIMPSON) And the rest of --

A And an important one as to what they're promoting to the market. And then how the market responds to that is an important part as well.

Q Okay. And what evidence do you have that the market responded to that statement you just read for me in the MDx document?

A Along with the other business overview and other sources I cited, demonstrates to me that Vitals identified and described themselves, as well as their website, promotes the ratings feature on search engines.

That, as well as Health Grades doing that as well, yielding the -- for most of the time the number one and number two visitors within their market and essentially dominating those two. Starting at 50 percent and growing in the years after the infringement shows me that those are features that the market was receptive to and visited their health sites related to.

It was the intent of the parties as they promoted those features to get the traffic, get website traffic. And that's what has happened in the market, reasonably demonstrates that there's a demand for those features.

CONFIDENTIAL - ATTORNEYS EYES ONLY

(Record read as requested.)

MR. VAZQUEZ: Same objections.

A Is the question that Mr. Dodge was trying to help himself get money?

Q (BY MR. STIMPSON) Let me just rephrase this. You've been an expert for a long time, right?

A I've consulted 24 years, yes.

Q And I assume you've heard a lot of testimony from witnesses, right?

A Yes.

Q Okay. And you've seen testimony at trial from witnesses, right?

A Yes, I have.

Q And in your experience, Mr. Hall, do witnesses for parties try to help themselves and their own companies?

A My experience is really -- it spans the range. My main experience is witnesses try to answer truthfully what they're asked.

Q Okay. But the whole point, you understand the whole point -- well, let me rephrase that.

You understand that witnesses, if they can answer one way or another, they're going to try to answer in a way that helps their company, right?

CONFIDENTIAL - ATTORNEYS EYES ONLY

MR. VAZQUEZ: Form.

A If they can answer one way or another, meaning, depending on the question?

Q (BY MR. STIMPSON) Truthfully answer one way or another.

MR. VAZQUEZ: Form.

A I wouldn't want to make a generalization like that.

Q (BY MR. STIMPSON) Okay.

A I think most answer the way they understand the question to be.

Q All right.

A I have seen some witnesses impeached and then I have different opinions of those witnesses. But my experience is most witnesses try to answer the question asked.

Q Let me ask you a different question, then. Specifically what did you ask Mr. Dodge and Ms. Pearson or Health Grades' counsel or anybody about finding information on what Health Grades and Vitals promote other than these patient ratings?

MR. VAZQUEZ: Form. Compound.

A I don't recall asking -- perhaps Ms. Pearson, we discussed Vitals, but your question

included Vitals. So with Mr. Dodge and Ms. Pearson, I asked them broadly, after reviewing documents made available about Health Grades, how it is they attempt to make money, particularly with advertising revenue. Once I gained an understanding of the visitors and the connection between visitors and advertising revenue and how they attempted to do that, which included both a discussion about the patented features, but also non-patented features that Health Grades has that generates revenue.

Q (BY MR. STIMPSON) So what other things does Health Grades promote on their website besides the ratings?

A I could look at the printout I had of the website, but recalling that they promote on the search engine, the search engine tools. And on their documents, the main thing I saw them promote was the features of the '060 Patent.

On the website itself, it offers a variety of services that we talked to earlier, or searches related to information alone that may not be connected to a comparison or rating report. So it would be the factors we discussed earlier.

And there are searches and visitors, in my

view, that visit Health Grades that both are related to the '060 Patent and both are not.

Q So as we sit here today, can you identify any other specific things that Health Grades promotes besides these ratings that you identified?

MR. VAZQUEZ: Object to form.

A Yes. They promote the information that I discuss in my report and that we discussed earlier, on physicians or healthcare providers, nursing homes, hospitals, some of the other things I mentioned in my report in the background section.

Q (BY MR. STIMPSON) Okay. So we've got -- you know that Health Grades promotes, as you say, the comparison ratings, you cited me some documents. We also know that Health Grades promotes nursing homes. We also know that Health Grades promotes hospitals, right, the hospital searches, right?

A Promotes their information on those entities.

Q Right. So Health Grades is promoting searches for all those things on its website, right?

MR. VAZQUEZ: Form.

A It makes those available, yes.

Q (BY MR. STIMPSON) Right. So, and some of

those are promoting features that aren't covered by the '060 Patent, right?

A I agree.

Q So how do you know, Mr. Hall, that it's only the promotion of the '060 Patent features that leads to this, what you refer to as a success of the Health Grades website?

A The fact that it's the primary feature. When you search on web searches, it's the one in bold as far as their comparison ratings, and the one that shows up on search engines, as well as it's the documents I referred to earlier. Their business features the comparison ratings.

And what Mr. Neal described in his deposition is the unique experience that they want visitors to have, due to the combination of their information with comparison ratings of physicians.

That, combined with how Vitals describes its effort to be the trip advisor of the healthcare information, online healthcare information, which of course includes comparison ratings and star ratings, as well as what it shows, what it decided to bold and show on searches on the web and its internal documents pre-litigation about the features it

promotes in its hope for website traffic.

And ending with, and very importantly, how the market has responded to that. Whether it's the market as defined in my first report or Mr. Napper's report, the market reaction to the two entities that promote the patented features and the domination those two have, measured either way, leads me to reasonably believe that the patented features is a substantial sources of demand.

Q What percentage of the demand comes from the patented features?

A I have not calculated a percentage.

Q Is it more than 20 percent?

MR. VAZQUEZ: Object to form. Asked and answered.

Q (BY MR. STIMPSON) Actually, your counsel is right. You don't have any idea, do you, what percentage?

MR. VAZQUEZ: Object to form. Argumentative and inappropriate.

Q (BY MR. STIMPSON) You don't have -- my question, Mr. Hall, is this. You don't have any idea what percentage of the demand for the Health Grades website comes from the '060 patented features, right?

CONFIDENTIAL - ATTORNEYS EYES ONLY

A Based on my answer earlier, I believe it's a substantial part of the demand, but not all.

Q Okay. So you can't quantify that in any way, right?

MR. VAZQUEZ: Form.

A I have not -- I have not undergone a quantification, nor do I think it's needed to pass the Panduit test 1, as far as demand.

Q (BY MR. STIMPSON) So you say substantial. But I'm just trying to get a handle on what you mean. You can't -- all right. That's okay. You didn't try to quantify that, right? That wasn't a metric in your analysis, right?

MR. VAZQUEZ: Form.

A What metric are you referring to?

Q (BY MR. STIMPSON) Well, what we've been talking about. What percentage of the demand for the Health Grades website is generated by the '060 features?

A I haven't calculated a percentage.

Q Okay. Would you agree with me, Mr. Hall, that the database itself, the actual data is a critical part of both the Health Grades and the Vitals websites?

CONFIDENTIAL - ATTORNEYS EYES ONLY

A I would agree it's a very important part of both. And I stated in my report, I don't know if I used the word critical, but yes, the data is important for these entities.

Q And in your analysis, Mr. Hall, did you consider what Health Grades was doing before it added comparison ratings to its reports?

MR. VAZQUEZ: Form.

A Yes, I recall learning about that.

Q (BY MR. STIMPSON) Okay. And what did you learn?

A That Health Grades obtained the information, as far as from its different sources, and then ultimately began generating reports for sale, is the chronology I recall. But I recall understanding the history of Health Grades in the various time periods.

Q Well, you understand that for a damages analyses in patent cases, one of the factors you look at is, how did this invention differ from what was in the prior art, right?

MR. VAZQUEZ: Object to form. Calls for a legal conclusion.

A I'm familiar from my experience on issues

related to prior art and the parties taking positions on that.

Q (BY MR. STIMPSON) Right. The idea is you want to know what are the advantages of this patent compared to what was done before, right?

MR. VAZQUEZ: Same objections.

A I have that understanding, yes.

Q (BY MR. STIMPSON) And so did you ask Health Grades or their counsel or anybody to show you what was in the prior art?

MR. VAZQUEZ: Same objections.

A I did not ask that question specifically. I gained an understanding from my review of the record of Health Grades' history and then its patent application and its proposed use of the patent.

Q (BY MR. STIMPSON) Okay. So what's that understanding that you gained?

A How far back?

Q Well, let's take it, you know, before the filing date of the patent. Did you have the understanding that Health Grades in the prior art had reports on physicians that had ratings on those physicians?

A I did not have that understanding of that

prior to the patent application.

Q Okay. Let me show you what has been marked as Exhibit 13. Have you seen that document before?

A I may have as part of a deposition, but I can't say for sure right now.

Q So if you look at the front page at the bottom right-hand corner, what's the date you see there?

A June 4th, 2005.

Q And that's a long time before Health Grades filed its first patent application, right?

A That's my understanding, yes.

Q And you see from the URL down there that this is healthgrades.com?

A Yes.

Q And if you just follow along with me on the front page, sir, you can see that this report on Dr. Drucker shows his gender, right?

A Yes.

Q His age?

A (Indicating.)

Q You have to answer audibly.

A Yes.

CONFIDENTIAL - ATTORNEYS EYES ONLY

Q Okay. The languages he speaks?
A Yes.
Q Years in profession?
A I see that.
Q And it has his awards and his honors, right?
A Yes.
Q Okay. And it has his affiliations and memberships?
A It does.
Q Personal interests?
A Yes.
Q It's got his medical school?
A It does.
Q And it's got information on intern, where his internship, his residency and fellowship were all done, right?
A Yes.
Q And then if you look to the next page, under patient experience?
A Yes.
Q You can see that there are ratings for Dr. Drucker, right?
MR. VAZQUEZ: Form.

CONFIDENTIAL - ATTORNEYS EYES ONLY

A I see the patient experience listed by the bars, yes.

Q (BY MR. STIMPSON) And that's a patient experience rating, right?

MR. VAZQUEZ: Form.

A It's under the patient experience category. I don't see the footnote 2 as to how that's described. Maybe it's at the end. I see that.

Q (BY MR. STIMPSON) In any event you can see Patient Experience Survey data for Dr. Drucker in this prior art, right?

A I don't know that it's from a survey, from this page. I see what you're referencing, the patient experience section. Now I see six surveys, yes. I'm with you.

Q Okay. So, and if you look to the last page under affiliated hospitals.

A Yes.

Q You can see there are comparison ratings for hospitals right in this report, right?

MR. VAZQUEZ: Object to form. Misstates the document.

A I see affiliated hospitals, best, as

expected and poor.

Are you referring to something below that?

Q (BY MR. STIMPSON) Sure. Do you see where Staten Island University got three stars for total hits?

A Yes.

Q And then Overlook Hospital got one star?

A That's right.

Q Those are comparison ratings for hospitals, right?

MR. VAZQUEZ: Object to form.

A Yes, that's what it looks like.

Q (BY MR. STIMPSON) So here is my question, Mr. Hall. What did you do, sir, if anything, to determine how the '060 Patent supposedly improves upon this and how that improvement might drive sales or demand for the Health Grades website?

MR. VAZQUEZ: Object to form.

A I did not do a prior art analysis, nor was I asked to. I evaluated Health Grades' business and gained an understanding of its operations from the time periods in question for the damage period. But in years preceding it as well, to gain an understanding as to Health Grades and its entry into

the market in January 2008.

I did not undergo a prior art analysis.

Q (BY MR. STIMPSON) So assume with me please, Mr. Hall, that this is prior art to the Health Grades patent. And that the only difference between this prior art and what Health Grades is doing under the '060 Patent is they added comparison ratings for physicians, okay?

A Okay. This is a hypothetical?

Q Yes. Do you understand it?

A I do.

Q How -- do you have anything in your report or otherwise showing how the addition of those comparison ratings of physicians impacted the demand for the Health Grades website?

A I do. I've seen information related to that.

Q Okay. And what's that information?

A The Health Grades promotion of that feature, as well as the market's reaction to it, it increased website traffic.

Q So you know that the market reacted to that specific part about adding comparison ratings of physicians? Is that your testimony?

CONFIDENTIAL - ATTORNEYS EYES ONLY

A My testimony is, I think it's a reasonable inference, given the focus of the promotion of that ability or feature. And coupled with Vitals' promotion of the same, and those two entities being far and away the two biggest as far as traffic, visitors, website traffic or online visitors in the market.

Q And what documents -- are they the same documents you referred to earlier about supporting your conclusion there?

MR. VAZQUEZ: Form.

A It would be the same documents, but also the Comscore website traffic. And I don't know if I included that. Though you were asking questions about a sentence that I think referenced Comscore documents.

So it would also be the measurement of the market's reaction of these entities as they promoted patented features.

Q (BY MR. STIMPSON) Do you know of any documents where Health Grades or Vitals promoted only the comparison ratings feature? I mean, not in the context of, you know, come get reports from us, and we'll give you all this information. We'll give you

CONFIDENTIAL - ATTORNEYS EYES ONLY

A Departments 00, 24, 25 -- or 24, 25, 28, 29, 63, 64, 65 and InHealth, LLC. And to restate or be clear, any part of the '060 Patent, whether it's information or ratings, that visits that was the criteria in how these departments were selected.

And then once the department is selected because if it's either expense or revenues related to any part of the '060 Patent, I included all of the departmental financial information, to be complete.

Q Okay. So for example, if you had just one department that only worked on, like information that goes into a report, that information is referenced somewhere in the claims of the patent, you would include that department?

A Yes.

Q Okay. So all you were doing, is this right -- you reference the department numbers from the top of attachment 1, right?

A Yes.

Q And to find out what departments those are, I would have to go back into the documents that were attached as Exhibit C?

A Yes.

Q And identify them?

A Yes.

Q You also mentioned that you spoke with Mr. Dodge and Ms. Pearson.

A Yes.

Q Okay. What -- can you tell me what you discussed with each of them, please?

Let me back up. Can you remember what information you got from Ms. Pearson and what information you got from Mr. Dodge?

A I believe so. The information specific to the financials that we relied on Mr. Dodge for, related to attachment 1. And the departments that had revenues and expenses was just Mr. Dodge and not Ms. Pearson.

Q Okay.

A Discussed with both of them at a meeting at the same time the -- the nature of Health Grades' business and its operation over time. And also included in the discussion is the '060 Patent and how Health Grades utilized that or used the features in its businesses.

That was with both of them. So I received information from both of them on that.

Q Just let me stop you there for a second.

CONFIDENTIAL - ATTORNEYS EYES ONLY

Can you remember what parts you got from Mr. Dodge and what parts you got from Ms. Pearson or is that kind of all together?

A It's together in my mind. I don't recall any disagreements between them. They would both pitch in on answering questions I had.

Q I'm sorry. I stopped you in the middle of your answer.

A No problem. Then with respect to website traffic and visitors and how Health Grades attempts to maximize that, that was primarily Ms. Pearson's input, though Mr. Dodge had some views on that as well. And also read some of that from Mr. Dodge's testimony, but I think your question just relates to the meetings I had with him.

Q Okay. Anything else that you can remember?

A To the extent I've referenced them in my report or attachments, they would also relate to that. But the several discussions or a couple of discussions with both of them, more in-depth discussions with Mr. Dodge as it relates to the financials information we've discussed previously. And the accounting information available and how they

keep their books and records in the normal course.

Q Okay. So let's talk a little bit about how people go about using the Health Grades and Vitals websites. I mean, really, what motivates people to find a way to these websites is generally a desire to find information on, you know, either a physician or hospital or nursing homes, right?

MR. VAZQUEZ: Form.

A I think I would generally agree with that characterization.

Q (BY MR. STIMPSON) And so, for example, if I get on Google and I want to find out something about Dr. Smith in Denver, Colorado, I get on Google and I type in the search box, Dr. Smith, Denver, Colorado, and then up pops up a results list, right?

A Yes.

Q And you understand that a lot of people actually find their way to the Health Grades and Vitals websites by searches on Google or Bing or whatever, right?

A Yes.

Q And do you have any idea what percentage of users find their way to Health Grades or Vitals by searches through general search engines like Google

or Bing?

A I don't have a specific percentage in mind. I understand it's a majority.

Q Do you -- did you assume when you did your report that people who find their way to the Vitals or Health Grades websites through searches on Google or Bing, did you assume that those were also covered by the patent?

A Those referring to the individual visitor?

Q Well, let me just rephrase it because my question wasn't terribly clear. So if someone gets on Google and types in Dr. Smith, Denver, Colorado, and up comes a Google results list. And then one of them is the Health Grades website and they click on the Health Grades website and find the report on Dr. Smith that way.

Did you assume in your damages analysis that that way of finding, getting to the Health Grades website, was an infringement of the '060 Patent?

MR. VAZQUEZ: Objection. Calls for a legal conclusion.

A First, I have assumed there is both validity and infringement by Vitals. As to website

traffic, I did not make an assumption one way or another if they went direct to Vitals or through a Google or Bing.

Q (BY MR. STIMPSON) Don't you think that would be important to your analysis on whether -- since a majority of people who get onto the Health Grades website get there through a Google or a Bing search, don't you think it's important to your analysis to know whether or not that way of getting there would infringe the patent?

A I don't think that's necessary for my analysis, assuming validity and infringement and understanding the way the two companies have promoted features that relate to the '060 Patent.

Q So when you assumed infringement, though, I just want to make sure we're clear. Did you assume that getting to the Health Grades website through a Google or a Bing search was an infringement of the patent?

MR. VAZQUEZ: Object to form.

A That's not how I would state it, no.

Q (BY MR. STIMPSON) Well, how would you state it, then?

A I've assumed that Vitals is using the '060

Patent features in a way that a court will determine to be infringing, which means actively using it to attempt to get traffic the way its business overview and other documents indicate its business model works. That's the assumption on infringement I've taken.

Q So you didn't make any specific assumptions on whether going through Google or Bing to get to those websites would or would not infringe the patent?

A Not beyond the assumption I've stated as it relates to the content of Vitals and the '060 Patent infringement assumption.

Q Okay. Do you know what SEO is?

A Yes.

Q What is it?

A It's an acronym that stands for search engine optimization.

Q And when you were doing your damages analysis, did you assume that -- well, let me just back up.

Search engine optimization and how high up in the ranking you come when you do a search through, say, Google, that's really important to whether a

person is going to end up on the Health Grades website or the Vitals website or some other website, right?

MR. VAZQUEZ: Form.

A My answer to that is it's important to show up on the first page and the higher up a search, generally, the better.

Q (BY MR. STIMPSON) So that's one driver for how -- whether people end up on Health Grades or Vitals or some other website, right, how high they come up in the Google search results?

A It is a factor. And it's a factor that relates to the entity's content and quality and relevance of its content.

Q How do you know that? What makes you think that?

A In discussions with Andrea related to website traffic, she described the path to Health Grades. And when I first -- I believe that's when I first understood or learned that the majority get to Health Grades' website via search engine.

Q Andrea is Andrea Pearson?

A Correct.

Q So you relied on Ms. Pearson to tell you

that the content of the Health Grades website is what dictates how high up they come in Google search results or Bing search results?

MR. VAZQUEZ: Object to form.

A I don't think that's what I answered.

Q (BY MR. STIMPSON) Okay. Can you explain it to me a little better? Maybe you explained it perfectly, but it's in the afternoon and I'm losing focus.

So what did you rely on from Ms. Pearson to determine anything about how Health Grades comes up in the Google search results?

A First, the fact of -- the nature in which website traffic or visitors arrive at Health Grades. And we may have discussed it in terms of Vitals, too, or other online information sites, but certainly Health Grades. And then discussed the fact that most go through a search engine site. And the importance of Health Grades there, I think her observation also that Vitals is right there as well.

And those are the two market leaders and have the most relevant content was discussed.

I gained an understanding of search engine optimization on another matter, a consulting matter,

not specific to healthcare websites, but the discussion related to with Andrea, the content and the relevance in how Health Grades attempts to keep their content and relevance in such a way that they show up high.

I also notice that that's mentioned in Vitals' business overview and records as far as the things that drive traffic: content, quality, quality links to other companies and SEO. So those are the bases for my understanding.

Q So how does Health Grades optimize its website so that it comes up higher in the Google search results?

MR. VAZQUEZ: Object to form.

A Company efforts, including the features of this '060 Patent to have the most relevant, high quality data available for potential patients trying to obtain information on physicians, patient ratings, and the other information within the '060 Patent. And it's important to them and a factor because it's a window. It's a modern-day Yellow Pages or way to reach the market through those search engines.

Q (BY MR. STIMPSON) So Andrea Pearson told you all this?

A We discussed it. I don't know that she told me every one of those factors, but we discussed it.

Q Who told you -- I'm sorry, who told you that the '060 features were important in coming up high in the Google search results?

A I observed it when I did some searches after that meeting. I believe Mr. Dodge may have mentioned it as well as Andrea, but we discussed the -- really the pathway to web traffic for Health Grades that result in the Comscore hits and result in their ad revenue.

Q But my question wasn't quite that. Who told you, I think in your prior answer you said it was the '060 features that led to a higher listing in the Google search results.

Did I misunderstand that?

A It was part of it. They also have other features. And it's important to them to have as high quality information, as relevant information as possible, to drive web traffic to their site.

Q Right. But, I mean, who told you the '060 features were part of what determined how high you come up in Google website results?

CONFIDENTIAL - ATTORNEYS EYES ONLY

A I don't know that I stated that in an answer specifically. You may be --

Q I maybe misheard it, but I thought that you said in one of your answers that you thought the features of the '060 help dictate how high you come up in your Google search results?

A I don't think I directly stated it. I said in the context of a question you asked, but we can check, and maybe I did miscommunicate. I said that's part of their effort. As John Neal testified, and I cite in my report his testimony, how important it was for a patient to have a unique experience at their website and how the information they have, what information is available, what they can do with that information.

And that effort by Health Grades includes features of their '060 Patent, the information as I mentioned. And that was important to them as a factor in staying high on the search results.

Q Okay. So let me just see if I can ask this a little more directly, then.

Mr. Hall, do you have any evidence that the features of the '060 Patent influence how high Health Grades shows up in a Google search results?

CONFIDENTIAL - ATTORNEYS EYES ONLY

A I had an understanding at the time I wrote my report how content was important. And part of content, of course, is the '060 features and relevance. And in both parties, you know, citing, wanting to be able to do comparison ratings and an understanding of being a trip advisor in Vitals' instance, of healthcare information, I have that understanding.

Subsequent to my report, I read Dr. Cooper's and Mr. Greenspun's reports. I gained a further understanding in those two views of it, as well as, after seeing some quoted excerpts of deposition and Mr. Napper's report.

Had a follow-up conversation with Mr. Neal and Ms. Pearson about some of the statements in Napper's report. So that's both prior to my issuance of my report and after, the basis for my understanding.

Q Okay. So that's -- and you rattled off an awful lot of things there. But really, my question is, can you cite me to any evidence -- you said that content influences the SEO -- the search results in Google, right?

A Contents and relevance is a very important

part, yes.

Q Okay. But my question is a little more specific. What evidence do you have, what specific evidence do you have that the '060 features and coming under the '060 Patent has any influence on how high up you come in the Google search results?

A First, I was not asked to specifically provide an opinion on that. But that said, the evidence is in my answer prior, that part of the content, which I understand to be an important factor and where you come up, includes the '060 features.

Assuming infringement, that Vitals is using those as well. I believe the information I cited in the previous answer is a basis for an understanding.

I have not been asked to provide evidence in a technical sense.

I know Mr. Greenspun has an opinion on it as does Dr. Carter (sic). That's evidence in addition to what I have cited. But that's my answer.

Q Are you assuming that practicing the '060 Patent leads to a higher ranking in Google search results?

A I have not made that direct assumption.

CONFIDENTIAL - ATTORNEYS EYES ONLY

Q Okay. So since most people come to Health Grades' website and the Vitals website through Google, and you're not assuming that the patent has anything to do with how high up Vitals or Health Grades land on the Google search results, you can't really say that the '060 has anything to do with people coming to the Health Grades or Vitals websites when they do that through Google or Bing, right?

MR. VAZQUEZ: Object to form.

A I disagree with that statement and no to the question.

Q (BY MR. STIMPSON) Okay. See, that's what I'm having some difficulty with. I mean, you're saying that -- you answer that question no, so you're not willing to say that the '060 --

A I don't think it's reasonable to say the '060 features have nothing to do with the content and therefore where it shows up.

You had asked me did I make an assumption.

Q Okay. All right. So I'm still struggling with this, though, Mr. Hall. I mean, how much -- would you agree with me, sir, that how much these '060 features generate people coming to the website, that's an important factor in damages, right?

CONFIDENTIAL - ATTORNEYS EYES ONLY

A Yes, that the patented features drive demand for the website hits, which drive advertising revenue.

Q So we're talking about more than half of the demand for people getting on Health Grades and Vitals when we're talking about people going through Google or Bing, right?

A Yes, or all of them. Might be Yahoo, Google, Bing, but that group of --

Q Right.

A -- web search.

Q So what I'm trying to figure out is, then, isn't it really important to know whether or not the '060 features influence how high you come up on those search results?

MR. VAZQUEZ: Form.

A It's important to -- as to whether it does impact or is a factor, yes, absolutely.

Q (BY MR. STIMPSON) And what evidence do you have that you can tell me or the jury that this is how I know the '060 features influence how high you come up on those search results through Google or Bing?

MR. VAZQUEZ: Form.

CONFIDENTIAL - ATTORNEYS EYES ONLY

A I have not had that opinion in my report. It's part of my understanding of the demand. And I will provide the evidence I did in an earlier answer or provide the answer that all the information I have cited before about the content and what both companies promote as far as their content and the relevance and the importance of the information and the comparison ratings to the companies as they cite in their own documents, testimony related to that.

And my understanding, though I'm not providing an expert opinion the way Mr. Greenspun is, as far as his view of Dr. Cooper's view of the search engine optimization, I'm aware that he is going to be provided -- or an opinion is going to be provided. It is reasonable to conclude that the content of the Vitals and Health Grades website which includes the '060 patented features, which I have assumed Vitals is infringing, using it is infringing, is a factor, an important factor in where they surface on the searches on Google or Bing and relates to the demand for web traffic.

Q (BY MR. STIMPSON) So content is an important factor?

A Content and relevance, yes.

Q Okay. How about the '060 features, can you say those are important factors on where you come up on these search results through Google and Bing?

A That would be a part of the content that both companies have to offer.

Q Right. But my question is a little different. Would you say that the '060 features, that part of the content is important on how high up Health Grades and Vitals come up?

A I think it's reasonable to conclude that it is, yes.

Q Why?

A The answer I have just given would be my answer.

Q Do you know anything about the algorithms that Google or Bing used to figure out who comes up?

A A little bit.

Q And what do you know about those?

A That they're involved and that there's several factors at work, including links to other websites, quality links as they put it. I understand they're constantly or near constantly trying to improve the ability of their search engine optimizations to identify the best information for

what they think a searcher is looking for, given what they plug in, that there's engineers studying it. And that it's involved and it's very speedy, how quickly one can click on a request and get a variety of information, including related to healthcare providers.

MR. STIMPSON: I lost my Live Notes connection here.

(Discussion off the record.)

Q (BY MR. STIMPSON) So my last question, Mr. Hall, I asked you what you knew about the algorithms Google and Bing use to figure out who comes up first on their search results, right?

A Yes.

Q You testified that they're involved and there are several factors at work, including links to other websites, and they're constantly trying to change it.

A Yes. And the quality and contents reviewed. From my perspective, I'm not an expert on computer technology, but they're involved and complex. But having read Mr. Neal's deposition testimony and Mr. Dodge's, and subsequently seeing the reports of Cooper and Greenspun, gained further

understanding of the algorithms.

Q Do you have any way to quantify how, if at all, the '060 features impact on how high you come up on the Google or Bing search results?

A I don't know of a way that would exist to do that.

Q Okay.

A Other than assessing whether reasonably they do have an impact on the content and relevance, and I believe they do.

Q I've got to go back, then. I said, do you have any way to quantify how if at all the '060 features impact on how high you come up on the Google or Bing search results.

Your first answer is, I don't know of any other way you can do that. And then you continued your answer and said, Other than assessing they reasonably do have impact on the content and relevance, and I believe they do.

A I meant a threshold, not a percent out of a hundred. But I do know of a way to assess, is it reasonable that they have an impact and are a factor, and that's what I was answering.

In case your question was beyond do I have

a percentage answer or a mathematical answer.

Q Okay. So let's just get things clear, then. You do believe that the '060 features might have some impact on how high you come up on the Google or Bing search results, correct?

A Yes.

Q But you have no way to quantify that, correct?

A Quantify what? My conclusion that it is a factor?

Q No, let me rephrase it, then. You have no way to quantify what effect, how big a factor those '060 features are in how high you come up on the Google or Bing search results?

A I have not quantified that. Though I do note that the two that come up highest are also the two that are highest as far as market leaders on web traffic and are the ones that are practicing the '060 patented features.

Q Well, how does that help you quantify the '060 features and how they impact?

A I don't think that I testified that it did help you quantify it.

Q Okay.

A I was answering as to they reasonably have an impact.

Q Would you agree with me, Mr. Hall, that -- forgive me if I've asked this before, I may have, but would you agree with me that how much the '060 features are used in the Vitals website has an impact on the amount of damages?

A I don't know that that was asked before. Are you asking if you asked it before or just asking it in your question?

Q No. I'm just asking a question.

A Sure.

Q Let me just ask you the question and then I'll rephrase it.

How much the '060 Patent features are used in the Vitals website has an impact on the damages that should be assessed, correct?

MR. VAZQUEZ: Object to form.

A The way I would answer that is I think it's more important -- the most important assessment is whether the existence, the website's existence or use of the '060 patented features drive demand to that website because when web traffic goes there, that drives advertising revenue.

infringer's market share, spread it throughout the market and the patent holder would get a share of that, but for the infringement analysis. And that would be an acceptable way to calculate lost profits.

Q Would you agree with me, Mr. Hall, that which companies you include in your definition of the market is very important to a Mar-Flo analysis?

A It's a factor. Certainly, the biggest factor is the percent of the market that a patent holder and the patent infringer have and the size of the market.

I think it's good to know who the other entities are, so an assessment can be beyond just a damage expert's, as to the non-infringing acceptable alternative or not.

Q Right. Well you can't do the Mar-Flo analysis properly without knowing all the entities that are in the hypothetical market, right?

A You may be able to, mathematically. I have done it with an identification of competitors in the market. And then I also did one with a different set of competitors that Mr. Napper asserts are part of the market.

Q Okay. In this Exhibit 3a we have, this is

where you tell us where you think the market would be -- this is where you show us what you think are the competitors in the market for your Mar-Flo analysis, right?

MR. VAZQUEZ: Attachment 3a, right?

Q (BY MR. STIMPSON) Attachment 3a. Is that correct?

A Yes, it is.

Q Why didn't you include WebMD in there?

A Well, WebMD is an online provider of healthcare information. It was not identified in my first point of reference, which is who Vitals viewed in mid 2010 as its competitors. And then, further, in discussions with Health Grades, with Allen Dodge and Andrea Pearson, while it was mentioned as a player, quote, in a broader market of healthcare information, it was also not viewed by them as a direct competitor for the advertising revenue in particular and web hits that are indicated on attachment 3a.

Q So the bottom line is, you just didn't think, from your discussions with the Health Grades folks, you just didn't think WebMD was close enough to the Health Grades website to justify including it

in this analysis?

MR. VAZQUEZ: Object to form. Misstates the testimony.

A No, that's not how I would state it.

Q (BY MR. STIMPSON) Okay. Well, I need a little bit more clarification, then, because I don't understand why you didn't include it.

Could you please tell me?

A Yes. A starting point for my analysis was who Vitals believed -- and its two business overviews -- who their competitors were.

Q So why did you start with who Vitals believed their competitors were, rather than who Health Grades believed who their competitors were?

A Well, it's really a parallel analysis, but since I had access to Health Grades's personnel and documents for Vitals, I started with Vitals' documents.

Q Okay.

A And it's important to assess both. And under their business overview progress strategy plans at Bates MDx 0012724, for a document that is at about the time of the hypothetical negotiation or would have been the hypothetical negotiation, it's a

CONFIDENTIAL - ATTORNEYS EYES ONLY

Q Right. Close as you can come. And you chose WebMD for one of those analyses, right?

A I did not have the financial information for these other competitors. WebMD is publicly traded and did have that information, so I used the best information I had available to me.

Q Okay. So WebMD is not in your market share analysis for Mar-Flo, right?

A It is not.

Q And if WebMD was in that analysis, that would tend to reduce, if you just added WebMD to the companies you have here, that would tend to reduce the market share of Health Grades in the Mar-Flo analysis, right?

A I believe it would. I haven't looked at the Comscore for WebMD to know for certain.

Q Well, the only thing it could do is reduce Health Grades's percentage, right? That's the only thing it could do; it couldn't increase it?

A You're asking if you just add it and all the others stay the same?

Q Sure.

A Yes, you're right. Mathematically, it could only reduce it. I don't know to what extent.

CONFIDENTIAL - ATTORNEYS EYES ONLY

I haven't looked at their Comscore.

Q How about RevolutionHealth, you didn't put RevolutionHealth in your market analysis either, did you?

A I did not.

Q Okay. Look at Mr. Neal's transcript again, same page, page 85.

A Okay.

Q You read this transcript, right?

A Yes.

Q Okay. Page 85, line 18: How about RevolutionHealth?

Mr. Neal's answer as a 30(b)(6) witness: Yeah, they're a competitor.

Did I read that correctly?

A Yes.

Q So Mr. Neal thinks that RevolutionHealth is a competitor, correct?

A He does, as he was asked these questions, correct.

Q And it's not in your market share analysis, right?

A Correct.

Q If we added RevolutionHealth to your

market share analysis, again, that could only lead to the conclusion that Health Grades' market share is less than you come up with in your report, correct?

A It would have that impact, yes.

Q Did you consider wellness.com, Mr. Hall, and including that in your market share analysis?

A I recall looking at Wellness, as well as others.

Q Why didn't you include wellness.com?

A The market share. I thought the strongest indications of the market for the specific business model related to advertising, based on Vitals' assessment of it and discussions with Ms. Pearson and Mr. Dodge, were the entities listed here, that do not include wellness.com.

Q Did you talk with Mr. Dodge or Ms. Pearson about, hey, what about wellness.com? Why don't we include that? Or did they just not mention it?

A No, we went through the Comscore report with them, in particular Mr. Dodge. And I think we covered most of them that were either brought up by Vitals as we represented -- as I represented to them or that were listed on the Comscore.

Q Okay. And you decided with the Health

Grades people that you would not include wellness.com in your analysis of Mar-Flo, right?

MR. VAZQUEZ: Form.

A I concluded based on all the information I saw from Vitals and Health Grades to have these entities in the market share analysis.

Q (BY MR. STIMPSON) And you have in there -- did you consider adding MD Ratings as a competitor in your analysis?

A I believe I did consider that. If they're in the referenced underlying documents, either in the Comscore reports or in Vitals' business overview, I did consider.

Q And why didn't you include MD Ratings as a competitor in your analysis?

A Same answer. I thought based on the Vitals identification of who they believed their competitors were, beyond the assertion they thought they had one true competitor, I thought the entities listed here most reasonably represented the market share that Vitals and Health Grades were competing for, advertising revenue based on web visits.

Q And did you consider Mr. Neal's testimony with regard to MD Ratings?

A I did.

Q And do you remember what Mr. Neal said about whether MD Ratings is a competitor?

A I don't.

Q Page 86.

A I recall reading his --

Q Line 12. Page 86, line 12.

A Yes, I recall reading this.

Q Okay. So Mr. Neal testified that MD Ratings was a competitor, correct?

A Yes.

Q And despite that you still did not include MD Ratings in your analysis, right?

A That's correct.

Q And again, had you included MD Ratings that could only have the effect of reducing Health Grades' market share, right?

A If you kept in all the others, yes.

Q How about DoctorsScore; did you consider that?

A Yes.

Q And why didn't you include that?

A Same answer as earlier. Based on all the information I received and reviewed in discussions

with Health Grades and the Vitals information on who they understood to be their competitors.

Q All right. So let me identify some competitors just so we can get through this more quickly. I'll identify a bunch of them, okay, DoctorsScore, Yelp, LocateADoc, Xoova, that's X-O-O-V-A, PharmaStats, RightHealth, myuhc.com, SteadyHealth, qualitycheck, RemarkableDocs, AARP, Health Market Science, Consumer Health Ratings.

For all those, did you consider adding all those and just chose not to?

A I considered all of them. I also had discussions with Health Grades' personnel about how widely Mr. Neal was viewing competitors, whether it was for the advertising revenue or more broadly on his view of what the patent -- the infringement of the patent more broadly damaged Health Grades, and the discussion that he may have a wider view of competitors beyond for the advertising revenue. And I factored that in as well.

Q So you and Mr. Dodge and Ms. Pearson all sat down and decided that Mr. Neal had too broad an analysis of competitors?

A No.

CONFIDENTIAL - ATTORNEYS EYES ONLY

Q Okay. Then who did you decide that with?

A I said it was discussed. I decided -- I ultimately decided and Mr. Dodge agreed with my view of the competitors, based on who Vitals identified as the market and who Health Grades, Mr. Dodge and Ms. Pearson, viewed as the market as well.

Q So when you were meeting with Mr. Dodge and Ms. Pearson, where were you?

A We met at these offices at one point and we had telephone conversations.

Q Did you consider calling Mr. Neal and asking him about his testimony?

A I don't recall considering that.

Q You had two exhibits you gave me on substitutes earlier today. Let's see if we can find them. 79 is one of them, right?

A Yes.

Q There was one on --

MR. VAZQUEZ: 77, 78 and 79.

MR. STIMPSON: I'm sorry?

MR. VAZQUEZ: 76, 77, 78 and 79.

MR. STIMPSON: That may be right.

Q (BY MR. STIMPSON) Oh, 77, is that the other one on the market share analysis, or is that

something else?

A It is one of them -- both of them. I'm sorry.

Q 76 and 77?

A Correct.

Q Okay. All right. Let me take a look at those for just a second? Okay. Actually, I may have to come back to those. I'll come back to the substitutes later.

A Okay.

Q Would you look at paragraph 44 of your report, please.

A Yes.

Q And this is the section where you calculate Health Grades' lost revenues in your report, right?

A Yes.

Q And paragraph 44, about the middle, says, I began with identifying Vitals' infringing advertising revenue.

Did I read that right?

A That's the second half of the second sentence, yes.

Q Right. So am I correct that you did begin

CONFIDENTIAL - ATTORNEYS EYES ONLY

Q Okay.

A Based on the assumption of infringement and how they earned advertising revenue in their business model.

Q So did you make any effort to apportion the advertising revenue to identify the parts of that revenue that are relevant to the patent claims?

MR. VAZQUEZ: Form.

A Yes.

Q (BY MR. STIMPSON) Okay. How did you do that?

A I did that by apportioning -- well, first, adjusting that ad revenue for the co-visitors to represent but-for causation, a reasonable and accurate representation of what Health Grades would have potentially achieved.

And then I apportioned the revenue amongst all the competitors, with the understanding that those competitors were not all practicing, to my knowledge, the '060 patented features. And so the reasonable step of apportioning would account for features unrelated to the patent as it spread the website visits which drive ad revenue to the market.

Q Okay. So I'm not sure that -- maybe we

have a little disconnect there. But my question was very specific. Before you took out a portion because you have co-visitors and before you took that advertising revenue and applied a percentage for Mar-Flo, before you even get to those steps, my question is, did you do anything to apportion those advertising revenues? You started with all of the advertising revenues.

My question is, did you do anything to apportion those advertising revenues and say, Hey, look, of all these Vitals advertising revenues, this is the part that was generated because of the '060 features?

A I did not and don't believe that is reasonably required, given the subsequent steps I took to reduce the ad revenue to reasonably approximate what Health Grades would have achieved by applying acceptable methodology of taking the infringer out of the market.

Q Okay. So let me just see. So anywhere in this analysis where you're trying to figure out the lost revenues from Health Grades, did you ever take into consideration how much of the Vitals website was using the '060 features?

CONFIDENTIAL - ATTORNEYS EYES ONLY

MR. VAZQUEZ: Form.

A Again, starting with the assumption of validity infringement, that's an assumption that they're utilizing the patented features in the market.

So with that assumption, and how they promoted those features and how they earned revenue, I did take into account their use of the '060 patented features.

Q (BY MR. STIMPSON) And where is that shown in your report?

A Throughout. It's described as far as --

Q Is there anywhere you can point me to in your report that says, Oh, look, and this is how I adjusted because of the amount of use I think that MDx is making of the '060 features?

A Adjusted what?

Q The advertising revenue that you're starting -- as your starting point for calculating damages.

A I don't believe my answer earlier had the word adjusted in it.

Q Okay.

A But I do adjust the revenues further down,

as I answered earlier.

Q All right. So let me just back up a bit because maybe my question wasn't as clear as I can perhaps make it.

In this analysis, this entire analysis you do here, do you ever discount anything due to how much Vitals is using or not using the '060 patented features?

MR. VAZQUEZ: Form.

A This analysis, yes.

Q (BY MR. STIMPSON) Okay. And where do you do that?

A I do that in the apportionment and also using what I actually know happened. And that's the advertising revenue Vitals earned with the assumption of infringement.

I don't have a data point as to the revenue they would have earned without infringement. If Mr. Napper had presented that, I would have read that with interest. So I have not speculated as to a portion of their ad revenue they may have earned without infringing.

So followed well-accepted methodologies, by removing them from the market and apportioning

with the assumption of infringement, and apportioning their web visits, which drive ad revenue to the rest of the market.

Q Well, you did know, though, when you drafted this report, sir, that not the entire MDx Vitals website was using the '060 features, right?

MR. VAZQUEZ: Form.

A Yes.

Q (BY MR. STIMPSON) Right. And you knew, for example, that not -- you know, less than half of the profiles on the Vitals website actually use patient ratings, right?

MR. VAZQUEZ: Form.

A No, I don't have that understanding. I've seen that asserted, but I have not seen specific data on it that supports that.

Q (BY MR. STIMPSON) So when you wrote this report, nobody told you about how many profiles in the Vitals website used patient ratings?

A The topic was discussed. I have not seen a specific figure.

Q But you know it's not all of them, right?

A That's my understanding.

Q All right. Okay. So let's just see if we

can kind of summarize what happened here, then.

In your Mar-Flo analysis, to determine what the profits are that Health Grades should have had, had Vitals not infringed, you started with all the advertising revenue from Vitals, right, as your starting point?

A For the infringement period, yes.

Q Okay.

A The data point we know and have and the assumption of infringement, it's a reasonable start point.

Q Right. And you started with that entire advertising revenue, even though, as we've talked about today, you knew that not every part of the Vitals website was using the features of the '060 Patent, right?

A That's correct. I also don't know what they would have earned by way of advertising revenue with just those features, without the '060 infringing features.

Q Right. You just don't know that. And nobody knows that right now, right? I mean, we just don't know?

A That's right, because Vitals did not do

business that way. They did it with the features and the assumption of infringement. REDACTED

Q Right, but this isn't your first damages case, right? You know how things are done in other cases, right? You go out and get a surveyor. You can do a survey to figure out what percentage of this website generated advertisements, right? There were options, right?

MR. VAZQUEZ: Form.

A I don't agree that a survey is feasible or reasonable in this case.

Q (BY MR. STIMPSON) Okay. So, anyway, knowing that the entire -- not the entire MDx/Vitals website uses the '060 patented features, nevertheless, you started your analysis with all the advertising revenue during the period of alleged infringement from Vitals, right?

A From their actual records, yes.

Q Right.

A It's a reasonable start point.

Q All right. And then from there, you cut that back by acknowledging the fact that you have a

lot of users who use both -- go to both Health Grades and Vitals on the same Internet session, right?

A Yes, co-visitors.

Q Right.

A Approximately half.

Q And then what you did is, you did the Mar-Flo analysis. So from your determination of the competitors in the market, you figured out what the percentages you thought Health Grades would have in the market and applied that percentage to your now, the number -- the advertising revenue that you get from cutting it back for the co-visitors, right?

MR. VAZQUEZ: Form.

A I think you described that correctly.

Q (BY MR. STIMPSON) And so that's the number that you're proposing for the lost profits number, right?

REDACTED

Q Okay. Good.

Did you consider in any of your analyses, Mr. Hall, how difficult or easy it would be for Vitals to design around the '060 Patent?

A Yes.

CONFIDENTIAL - ATTORNEYS EYES ONLY

Q Okay. And what was your understanding about whether it would be easy or hard to design around this patent?

A I don't have a technical understanding. My understanding is that's often an issue, maybe more than often an issue in patent disputes. And so I considered it from that perspective, did not have data on it or how Vitals pursued or whether Vitals pursued that.

So as I have done in other cases, did not speculate as to that but would read with interest any subsequent analysis related to that and assess it at that time.

Q Did you ask Dr. Greenspun how difficult or easy it would be to design around the '060 Patent?

A I did not. And I think the issue is not just ease or difficulty, but also whether Vitals would achieve the same amount of traffic with that workaround. So I think those two concepts should be linked.

Q Right. Well, let's just look back in your report here on page 3, okay?

A Yes.

Q You have this paragraph 11. Your

CONFIDENTIAL - ATTORNEYS EYES ONLY

Vitals and certainly would be taken into consideration in the negotiation.

Q (BY MR. STIMPSON) Okay.

MR. STIMPSON: How long have we been going?

MR. VAZQUEZ: About an hour.

MR. STIMPSON: Boy, time flies when you're having fun. Why don't we take a little break, okay?

(Recess taken from 3:13 p.m. to 3:24 p.m.)

Q (BY MR. STIMPSON) So paragraph 64 of your report, you start talking about licenses, right?

A Yes.

Q Okay. And you say, many of the Health Grades licenses were fixed fees or tiered fees.

Did you consider a fixed fee arrangement here?

A Yes, based on the review of the licenses.

Q So why are you proposing a royalty rate?

A I believe that the way that the two parties have exploited the patented features or used the patented features has been to drive advertising revenue. And to the extent that that varies, based on the usage of the patented features of the license, I think it's a reasonable basis for the parties to

have had an agreement.

And also noted that while Health Grades had done a fixed fee license, they had also done a percent of revenue, ad revenue license agreement as well. And those were, while not directly analogous or comparable to a '060 license, in at least one case one was closer, then, in my view, than others and that happened to be a percentage of ad revenue.

Q Which one was that?

A DrTango, Inc., the translation into Spanish language. But it's still data and it's not the '060 Patent so it has that large caveat or large basis for not making it directly comparable.

Q All right. Well, let's see. You first refer to the best quality license. So let's look at that one first.

MR. STIMPSON: Let's have marked as Exhibit 84 a multipage document bearing Bates numbers HGLA 0041 to 50.

(Exhibit 84 marked.)

Q (BY MR. STIMPSON) And this is the Best Quality Healthcare report you refer to?

A License agreement, yes.

Q License agreement?

And you think this is a good indication of what Health Grades would have started to request?

MR. VAZQUEZ: Form.

A I have not provided that testimony or written that in my report.

Q (BY MR. STIMPSON) Well, do you think that?

MR. VAZQUEZ: Form.

A I think it would have been a reference point for Health Grades. The date of it is after the hypothetical negotiation, but -- and it's not for the '060 Patent. And I understand from Andrea Pearson that it's with a doctor who they believed was a thought leader in the field. And I understand not any or much activity has happened on this license.

So there are a number of limiting factors as far as comparability, but wanted to include it in my attachment 6a of all the agreements I have received and note that it has a percent of ad revenue or revenue including ad revenue, royalty rate with an option for a fixed amount.

Q (BY MR. STIMPSON) So part of your testimony regarding this agreement is based on your conversations with, who was it, Andrea Pearson?

A Yes.

Q And so how much has Best Quality Healthcare paid under this agreement?

A I don't believe anything, since there isn't any activities happened under this agreement.

Q So they haven't paid a penny under this?

A I don't believe they have.

Q Okay. Why not?

A I don't recall the reason.

Q Okay. So -- and you got that information from Andrea Pearson?

A Yes, I also spoke about the agreements with Allen Dodge, but I recall this piece of information from Andrea Pearson.

Q And so under section 7 of this agreement, which is on page 42, Bates number 42, as you point out, there is an option for an annual fixed fee of $172,000, right?

A Yes.

Q And so our damages period that you're discussing here is, you know, roughly two years, right?

A So far, yes.

Q Okay. So if --

CONFIDENTIAL - ATTORNEYS EYES ONLY

A Maybe three years by the time of trial, but through my report two years.

Q So through your report, two years. So if Vitals had paid this $172,000 per year, then their total they were to pay would be less than $350,000, right?

A 170 times two years is a little less than 350, correct.

Q And your damages analysis, however, comes up with a number of 2.6 million, right, 2.26 million?

A Combining lost profits and royalty, the correct comparison -- yes, comparing 350,000 for a data only, non '060 Patent is implied in your question.

And the royalty only damages is a little over 900,000. My royalty and lost profits damages is the figure you cited.

Q Is Best Quality Healthcare still in existence?

A I don't know.

Q You don't think that this includes at least an implicit agreement that the '060 Patent is not going to be as asserted against Best Quality Healthcare?

commissions or other direct costs associated with such revenue received by licensee for delivering any third-party advertisements in the frame surrounding the Health Grades data displayed on the licensee's websites.

What does that mean?

A My understanding is as it reads.

Q Well, can you tell me, then, what does it mean when it says they're paying for advertising revenue received by licensee for delivering any third-party advertisements in the frame surrounding the Health Grades data displayed on the licensee's websites?

A They're referencing a specific location, from my read of this, on the DrTango site.

Q Did you ask Ms. Pearson or anybody else what that meant?

A I don't recall specifically when we discussed this license asking about that sentence.

Q So your report, which says that they pay 40 percent of all gross ad revenue isn't quite accurate, is it?

MR. VAZQUEZ: Object to form.

A I believe it is. It says 8, Health Grades

shall receive 40 percent of all gross advertising revenue.

Q (BY MR. STIMPSON) But you haven't finished the sentence there, have you, Mr. Hall? There's more to it. There's a limitation on which ad revenue they're going to pay on, right?

A Yes.

Q And that limitation has to be, and as you say, in a specific part of the website, a specific frame, right?

A Yes.

Q So DrTango has complete control over this, right? He can just put the advertisement in some other part of the website and not pay a penny?

A I'm not aware that he's able to do that, but I don't know.

Q Well, I mean, do you have any reason to believe that he is restricted in where he puts advertisements on his website?

A I don't know.

Q And so you don't know whether DrTango would be required to pay 40 percent on all ad revenues or if he put all the ads outside the frame, whether he would have to pay on any revenues, right?

CONFIDENTIAL - ATTORNEYS EYES ONLY

MR. VAZQUEZ: Object to form.

A I have an understanding from the agreement and Ms. Pearson's description of it that he would have an obligation to pay licensing fees based on ad revenue as subject per the agreement as it's worded.

Q (BY MR. STIMPSON) So Ms. Pearson told you, regardless of what this says, Ms. Pearson told you that he was going to have to pay 40 percent on all ad revenue, right?

A No.

Q Okay. What did she tell you, then?

A She described it as we went over the agreement, as the agreement states.

Q And you didn't have a discussion with her about what it means, this qualification that says he's only going to have to pay on ad revenue if it's in this specific frame?

MR. VAZQUEZ: Object to form.

A I don't recall that we discussed that directly.

Q (BY MR. STIMPSON) Okay. So really, as we sit here, we don't know, do we, Mr. Hall, whether or not he's paying on all ad revenues or just some part of it, right?

CONFIDENTIAL - ATTORNEYS EYES ONLY

MR. VAZQUEZ: Form.

A JP Anderson may know the amount he's paid to date. I don't know as I sit here.

Q (BY MR. STIMPSON) Right. And so it's not mentioned in your report anywhere, right?

A It's not, no. The terms of the license are referenced as are the Bates numbers for this agreement.

Q Did you look at any royalty reports from DrTango?

A No.

Q But they exist, don't they? You can see in the second paragraph there under section 8, he was supposed to get royalty reports. Do you know if those have been produced to us?

A I don't know.

Q And you haven't seen any royalty reports?

A I have not.

Q Health Grades didn't and their counsel didn't volunteer to give you those, right?

MR. VAZQUEZ: Object to form.

A I don't recall anybody volunteering or discussing those royalty reports. I recall reading them in the agreement.

high because Vitals knew they were using the features of the '060 Patent?

A I have not stated that in my report. My view of the projections specifically as you stated, my view of the projections is it's a good -- it's an important assessment for how Vitals planned to go forward at the time of the hypothetical negotiation, with the assumption of validity infringement and its desire to use the features of the '060 Patent, which primarily, to my knowledge, impacts the advertising revenue line item at the top of each of these projections.

Q But again -- I'm sorry, go ahead.

A I was going to say, an important assessment for Vitals to assess the reasonable royalty for Vitals' plan for going forward with a license for the '060 Patent.

Q But you have -- as we talked about earlier today, advertising revenue can be for a variety of reasons, right? And it doesn't -- not all advertising revenue is tied to features of the '060 Patent, right?

A Yes. To the extent the websites attract visitors for other reasons, and I have not concluded

that the only reason one would go to either Health Grades or Vitals is the features of the '060 Patent. There are other features that would drive traffic, but that the '060 Patent features are ones they promoted and certainly a part of, an important part of the reason the two companies cite.

Q So did you do anything, any kind of allocation to try to figure out what part of this revenue would have been attributable to use of the '060 features, as opposed to all the unpatented features on the website?

A I did not make that assessment or speculate as to that.

Q Right. That would be speculation, wouldn't it?

A I would want to see the basis for anybody doing that and certainly would have looked with interest if Mr. Napper had done that. But I did not see a basis or way to do it that, in my mind, would be reasonable. So I wasn't asked, nor did I undertake that analysis.

Q And so you have no way to tell us today what part of these projected revenue streams were projected because of the features of the '060 Patent,

as opposed to anything else, right?

A I would answer it this way. The use of the '060 patented features would result in revenue for the advertising line for Vitals. And that's why they would sit down with Health Grades at a hypothetical negotiation, assuming infringement, and negotiate for a license so that they could earn all the revenue that they possibly could using those features, understanding that they would earn advertising revenue based on other features as well.

MR. STIMPSON: Move to strike as nonresponsive.

Q (BY MR. STIMPSON) Let me give you the question back one more time, Mr. Hall. You have no way to tell us today what part of these projected revenue streams were projected because of the features of the '060 Patent as opposed to anything else, right?

A When you're saying revenue streams, are you meaning these six areas? And I was trying to say they reasonably would know that it would relate to their advertising revenue. So are you -- is your question, is the revenue stream data leasing, sponsored listings, or are you limiting your question

whether you had any way -- hold on a second.

Okay. So I asked you about this first projections in 7a. And the question was, do you have any way to quantify for us what percentages of these projections of revenue would be attributable to the '060 feature, as opposed to what part of the projections were attributed to other non-patented features of the website. And your answer was, I have not seen data that would allow for that type of calculation.

And my question for you, Mr. Hall, trying to cut this a little shorter is, you also rely on the projections for 7b and 7c. Would your answer be the same? That is, that you haven't seen data that allow the calculation of a quantification for what portions of projections of revenue would be attributable to the '060 feature, as opposed to the part of the projections that were attributed to other non-patented features. And your answer would be the same for those, too?

MR. VAZQUEZ: Form.

A One minute.

Q (BY MR. STIMPSON) Okay.

A Yes.

Q So let's go back then to -- back to the -- to your report here, the analytical approach, all right?

A Yes.

Q Now, you say for the analytical approach here that you weren't able to find a close comparable invention, right?

A Which paragraph are you referring to?

Q Paragraph 79 in the last couple lines.

A I was unable to find profit information for a group of the Health Grades and Vitals competitors, correct.

Q So this isn't your first patent case, right? You've done damages analyses for other patent cases?

A Yes.

Q So do you understand, Mr. Hall, that if you want to get the profit information for other more comparable companies, you can just subpoena them?

MR. VAZQUEZ: Object to form.

A I've heard of that being done, but I don't know that that's available in all options.

Q (BY MR. STIMPSON) All right. Well, you came on to this in the summer of 2011, right, is when

you were hired?

A Yes.

Q Okay. And did you ever talk to your counsel, I mean, counsel for Health Grades, say, Hey, look, we better be getting profit information for these other companies so I can do a damages analysis?

A I may have had that discussion -- I certain -- I did not recommend a subpoena of a competitor or a request of a competitor for their -- for what they would use, very proprietary information on the margins they make on their advertising revenue.

Q All right. It's because there was no subpoena served that we're now looking at your report and you're doing the profit and your analytical approach with WebMD in paragraph 79, right?

MR. VAZQUEZ: Object to form. Misstates the evidence.

A I've done an analysis based on WebMD as well as Health Grades overall.

Q (BY MR. STIMPSON) Right. So you used WebMD. Let's talk about that first. That's not even close to the '060 Patent, is it?

MR. VAZQUEZ: Form.

CONFIDENTIAL - ATTORNEYS EYES ONLY

A It's not. And that makes it a, in part, makes it a good comparison.

Q (BY MR. STIMPSON) Oh, really?

A Because it's an online advertising business model, but without the '060 patented feature.

Q Well, I mean, let me just -- I though we went over this today. But let me just ask you again. The idea behind the analytical approach, Mr. Hall, is to get something as close to the patent as you possibly can without using the patent and compare those profits to what the profit margins are when you do use the patent, right?

Because that way you can compare and say, okay, this additional profit, this is because you're using the patent, right?

MR. VAZQUEZ: Form.

A When you said not close with the '060 Patent, you don't want it to be practicing or being infringing or using the '060 patented features.

Q (BY MR. STIMPSON) Of course not.

A Which is what I was answering to.

Q Oh.

A As far as then finding an entity like

WebMD that uses an advertising revenue model and is cited by Vitals as a public comparable company, I think is a reasonable basis, particularly if you have other bases to try to determine through an excess profits or analytical method, incremental profit one could earn from the '060 patented features.

Q Does WebMD have patient ratings?

A Let me see. I don't see that indicated under description of their services.

Q Do you know where WebMD gets their data? Whether they get any from the healthcare providers or third parties or whether they're verified? Do you know anything about how or where they get their data?

A Not beyond what they disclose in their website and their 10-K that I reviewed.

Q Well, do they give anything in there about where they're getting their data for their providers?

A I recall seeing it on their 10-K. I don't have that here.

Q Well, you don't even count WebMD as being in the same market as Health Grades, right?

A Not the specific market for accessing online physician information that Vitals both viewed and Health Grades viewed as their direct competitors

for that, that's correct.

Q Okay. We've got some other problems with this approach of using WebMD, right, too?

MR. VAZQUEZ: Form.

Q (BY MR. STIMPSON) One of them is you don't know -- first of all, you're using WebMD's overall profit margin, right?

A Yes, which is 85 to 90 percent advertising revenue based.

Q But you don't know what factors are driving that advertising revenue, right?

A I have a general understanding of the factors that drive that. They're online content and online visits.

Q Well, what's the basis for that understanding?

A A review of their information provided online, as well as their 10-K.

Q So is there anything in their 10-K saying this is what makes our advertising revenue go up and down?

A Not worded like that. There's information related to their business model in their 10-K. And there was also some information in Vitals about

WebMD.

Q My point is this, Mr. Hall. You really don't know what is driving WebMD's profit margin, do you?

A I have a general idea from review of the documents about them, yes. Revenue obviously is a big part of what drives their profit margin and obviously the costs they incur to earn that revenue as they report it.

Q Do you know how they get their advertising revenue? I mean, is it paid on a hits per million or is it paid by monthly access fees? How do they get their revenue for advertising?

A I would have to look at the source. I don't recall as I sit here.

Q And you know that they have a lot of stuff on their website that's totally unrelated to looking for physicians, right?

A They do. That's one of the reasons neither I, or Vitals or Mr. Napper included them as direct competitors for them.

Q My question is, with the evidence we have, Mr. Hall, thus far, how am I going to test this theory? I mean, you compare these two profit

margins. And, you know, without knowing specifically what's driving the WebMD profit margins and what portions of their website are more profitable than others, there's no way for us to really test with any accuracy your analytical approach using WebMD, right?

MR. VAZQUEZ: Form.

A I don't agree. It's a publicly traded company. I've disclosed how I've used that and the sources for it. There's information about the aspects you just listed, so I don't agree with that.

Q (BY MR. STIMPSON) So what portion of the WebMD revenue is generated by parts of their website other than searching for doctors?

MR. VAZQUEZ: Form.

A I don't have that specific figure today.

Q (BY MR. STIMPSON) Do you have any idea?

MR. VAZQUEZ: Same.

A I would look back at the information I reviewed before and see if there is an answer to that. I don't, as I sit here.

Q (BY MR. STIMPSON) And what part of their profitability is attributed to parts of their website other than searching for physicians?

MR. VAZQUEZ: Form.

A As far as related to their advertising revenue and profitability?

Q (BY MR. STIMPSON) Right.

MR. VAZQUEZ: Same.

A I don't recall. I would have to look back at the information we had for them.

Q (BY MR. STIMPSON) There's nothing in your report indicating what that is, right?

A No, there's not.

Q And what part of their overall costs are attributed to parts of their website other than looking for physicians?

A I would have to look at the 10-K to answer that specifically. I see the summary of the capital IQ report here, but I don't have the detailed information in front of me to answer that.

Q There is nothing in your report indicating that, right?

A Correct.

Q Okay. Do you have Exhibit 13 there? Where did that go?

A Attachment 13?

Q No, Exhibit 13 was the Drucker report. Where are all these exhibits?

CONFIDENTIAL - ATTORNEYS EYES ONLY

(Discussion off the record.)

Q (BY MR. STIMPSON) Now, paragraph 78 of your report says you weren't able to find a close comparable product, right?

A Paragraph 79. I was unable to find profit information for a group of Health Grades' and Vitals' competitors to make such a comparison.

Q Right. It's really not a comparison of competitors, is it, Mr. Hall? It's really just a comparison of products?

A Competitors --

MR. VAZQUEZ: Form.

A -- certainly are ones I would start first with because of their efforts in the market with the products, I think referenced in your question to earn advertising revenue.

Q (BY MR. STIMPSON) Oh, but it's much better to actually use the product of the company that owns the patent, right? I mean, because if you have a product, that company has a product that's out in the marketplace and then they make a change to make it fall into the patent, you've got them right there, right, in the same place?

You've got the one before the patent was

used and one afterward and you can say, Hey, look, now I can see what the difference in profit margin is, right?

MR. VAZQUEZ: Form.

Q (BY MR. STIMPSON) I mean, that's a great comparison, isn't it?

MR. VAZQUEZ: Form.

A I'm not sure I understand the beginning part of that question, but I think the final part of that question was, if you had an entity that had a similar business model but without the patent?

Q (BY MR. STIMPSON) Right. So let's just look at this situation, okay? You've got before you Exhibit 13. This is what Health Grades was selling before they started to use the patent invention. Okay?

MR. VAZQUEZ: Form.

Q (BY MR. STIMPSON) June 2005.

A You're not saying this is all. This is part of what they were --

Q Sure.

A Yes.

Q I'm telling you in June of 2005, you could get on the Health Grades website. You could ask for

a report on Dr. Drucker, and you could get this.

MR. VAZQUEZ: Form. Assumes facts not in evidence.

Q (BY MR. STIMPSON) Okay? You can assume that?

A Okay, I'll make that assumption.

Q Okay. So --

A I don't know that to be the case from this document, but --

Q That's okay. So you could determine what Health Grades' profit margin was on this by just asking Health Grades, right?

MR. VAZQUEZ: Form.

A I could look at Health Grades' financial information, can discern their profit at different time periods, yes.

Q (BY MR. STIMPSON) Right. And then you could also find out from Health Grades how their profit margin changed when they added comparison ratings, right?

A Yes.

MR. VAZQUEZ: Wait. Sorry. I just meant to make an objection. I should have made it before to the extent it calls for a legal conclusion to the

meaning of the phrase comparison ratings.

Q (BY MR. STIMPSON) And if you had done that, Mr. Hall, that would tell you how the Health Grades profit margin changed when it went from no comparison ratings to comparison ratings, right?

MR. VAZQUEZ: Same.

A That could be a metric, certainly. And I've also compared their portion of the business that utilizes the patented features with its overall business because that's reasonably something a company like Health Grades in a hypothetical negotiation would discern or want to know as it sat down for a hypothetical negotiation.

MR. STIMPSON: So move to strike everything starting with and I've also compared as nonresponsive.

Q (BY MR. STIMPSON) So you didn't ask Health Grades to show you what they were doing before they added comparison ratings, did you?

MR. VAZQUEZ: Same objections.

A I did not. I asked for financial records back through 2008.

Q (BY MR. STIMPSON) And you didn't ask them -- okay. Never mind. I have that answer.

CONFIDENTIAL - ATTORNEYS EYES ONLY

So let's talk about this other one here you're referring to. You did this second analysis where -- general paragraph it says now. I don't know what paragraph, paragraph 80, maybe?

A Yes.

Q And that's where you do a comparison of the overall Health Grades profits with the profits associated with what you refer to, I guess, as the what you think are the profits associated with the '060 Patent, right?

MR. VAZQUEZ: Form.

A That's not how I would describe it.

Q (BY MR. STIMPSON) Well, how do you describe it, sir?

A Health Grades' overall company profit margin, which would include and therefore has the benefit of profitability from the '060 Patent with a subset of the company of the departments that it any way have used and generated revenue incurred expenses related to the patented features of the '060 Patent.

Q So really, you took the overall Health Grades profit margin and compared that to what you have in attachment 1, right; is that right?

A Yes, that's right.

Q Okay. And we've talked about that attachment 1 before. I'm not going to go over that again.

But you can confirm for me, though, sir, that Health Grades does not separately report the revenues and expenses related to the patented technology, right?

A They, like most companies, certainly do not do P&Ls on patented technologies, that I'm aware of, that I've experienced.

Q And as we talked about earlier today, revenue reports by the various Health Grades departments include more than just the patented technology, right?

A Yes. But it would also include, the patented features, that they earned revenue and incurred expenses.

Q Right. We talked about that before. The problem though, is -- the problem with this analysis is there is no isolation in this analysis of the profit margins that are just from the patented features, right?

MR. VAZQUEZ: Form.

A I believe it's a reasonable attempt with the data as it was available, without speculating or parsing data kept in the normal course of their P&L statements to ascertain the profit increment they're able to earn on departments that utilize the patented feature.

Q (BY MR. STIMPSON) All right. But just so we're clear, then. In this analysis you do against the whole Health Grades profit margin, there is no isolation anywhere of the profit margins that are only attributable to the '060 features. And that may be because there is no documents on it, but there is no isolation of it, right?

A There is an attempt, reasonable attempt by me with the data limitations and the data available as there are with all companies that have patents and do not keep track of profits and losses on patent by patent, which is common.

There is one other data point of reference and that's the incremental profit that Health Grades earns on its added advertising revenue, which is quite high. But that is a point of reference, but also is the ad revenue -- I'm sorry, the incremental profit they would earn on ad revenue, both with --

CONFIDENTIAL - ATTORNEYS EYES ONLY

information on physicians?

MR. VAZQUEZ: Form.

A Yellow Page sites. I don't believe I've seen government sites.

Q Did you read Mr. Montroy's testimony?

A Yes, after seeing it referenced in Mr. Napper's report.

Q So would you agree with me that there are government sites that also provide information on physicians?

A I would not. A number of the deposition cites -- I would not, based on Mr. Napper's reference to them alone, based on some of the cites -- references I saw.

Q Would you agree with me that a number of websites that provide information on physicians generate a portion of their revenue from advertisements?

A Yes, as we discussed earlier.

Q And the revenues on these -- from these advertisements are generally recognized by a cost per thousand impressions, right?

A I can't speak for all of them. But I think, yes, that's a general standard, that web

advertising revenue policy.

Q Would you agree with me that Health Grades' website includes information on directions, e-mail links, information on why a doctor's hospital matters and tips for better health and profiles?

MR. VAZQUEZ: Form.

A I recall seeing that information.

Q (BY MR. STIMPSON) Health Grades also offers physicians and hospitals the opportunity to license its ratings and trademarks, provides marketing assistance to hospitals and consults with hospitals on quality improvement, right?

A Yes, that's my understanding.

Q Would you agree that the Vitals website provides users with doctor evaluations, assistance in scheduling appointments, preparation for doctor visits, among other things?

MR. VAZQUEZ: Form.

A I don't know that I recall all of that, those offered on its website. Some of those sound familiar, but I don't have the website in front of me right now.

Q (BY MR. STIMPSON) Well, do you recall if Vitals also provides assistance with scheduling

appointments?

A I believe so.

Q And Vitals also gives information on preparation for doctor visits, right?

A I would want to look specifically. I don't recall that specific one, but I'm not contesting it.

Q That's okay. Would you agree that people generally don't go into a search bar and type in vitals.com or healthgrades.com?

MR. VAZQUEZ: Form.

A I think, yes. As measured on the overall web traffic that goes to those sites, I would agree that that would not be the predominant way a visitor would get there.

Q (BY MR. STIMPSON) So would you agree that what drives consumers to web properties like Vitals and Health Grades on physician searches is at least in part how well the company's search engine is optimized?

A Yes, and that relates to content and relevance.

Q Would you agree with me that SEO is the biggest factor on whether consumers search for

physician information on healthgrades.com or vitals.com or both?

A No, not without the explanation beyond that of why the search engine has selected the two that make available the content that includes the '060 patented features, and why those two are the dominant website visits within their market.

Q And my question, though, is just a little bit different. I mean, regardless of why SEO may be the biggest factor, the fact is that SEO is the biggest factor in whether consumers searching for physician information end up on healthgrades.com or vitals.com or both, right?

MR. VAZQUEZ: Asked and answered. Form.

A No, I would give that same answer because it's the root cause and the root content and relevance and link to other quality websites is such a big part of that, that that's my answer.

Q (BY MR. STIMPSON) Okay. Would you agree with me that Health Grades in response to searches on places like Google and Bing usually is listed first?

A Yes, I think that's fair, depending on the search term.

Q Right. And would you also agree with me