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

HEALTH GRADES, INC.'S OPPOSITION TO MDx MEDICAL, INC.'S MOTION FOR SUMMARY JUDGMENT OF NO WILLFULNESS

HEALTH GRADES, INC.'S OPPOSITION TO MDx MEDICAL, INC.'S MOTION FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT

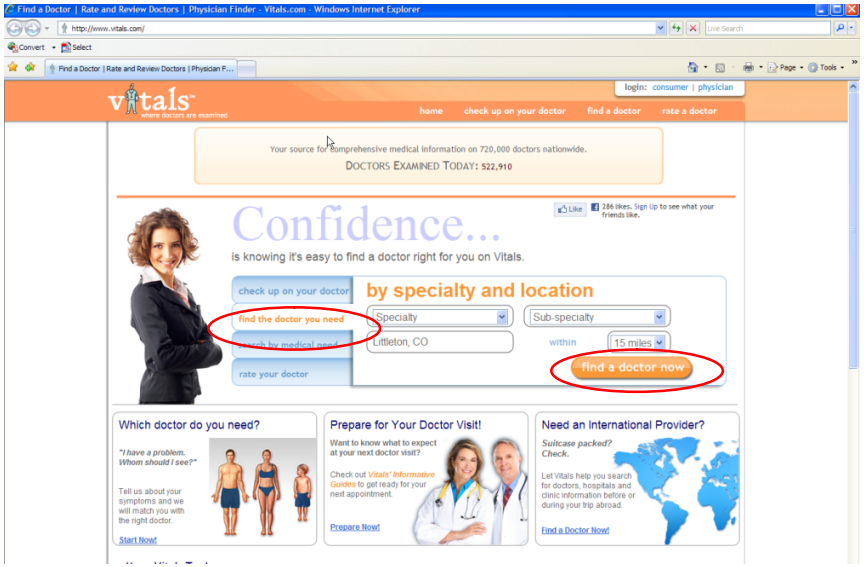
Exhibit 2

July 1, 2011 Infringement Contentions Claim Chart (current version)
(selected portions; highlighting added)

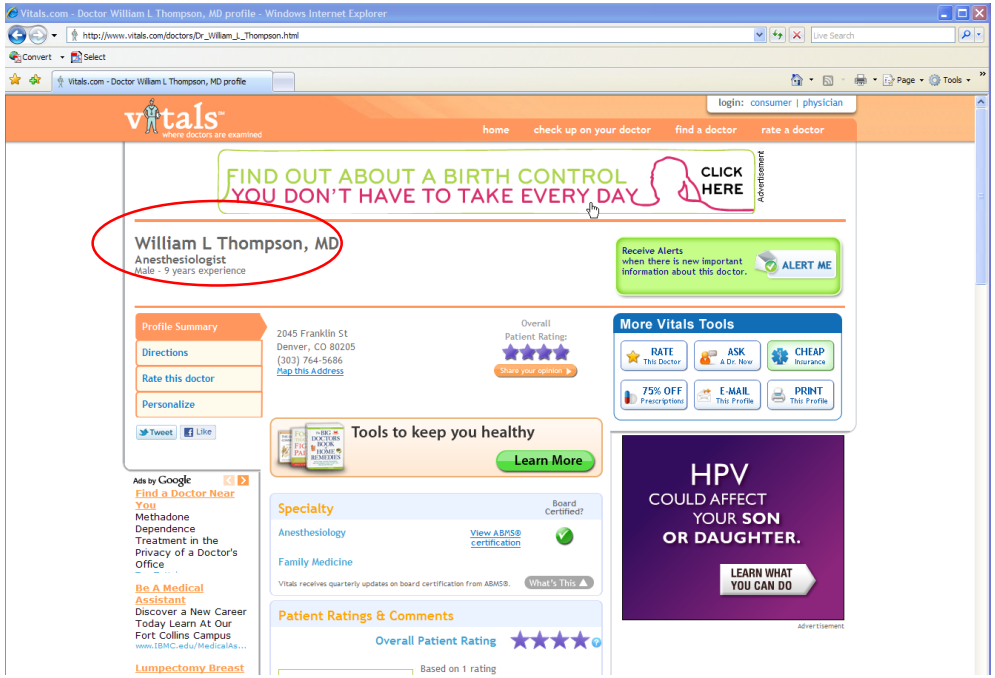
EXHIBIT A - Claim Chart
U.S. Patent No. 7,752,060 To MDx's Current Website

U.S. Patent No. 7,752,060	MDx's Current On-line Information System
1. A computer-implemented method of providing healthcare provider information to potential patients, said method comprising:	MDx Medical, Inc. ("MDx") directly infringes this claim by practicing a computer-implemented method of providing healthcare provider information to potential patients via its on-line information system, which includes its website (www.vitals.com), its healthcare provider database, and the software and hardware, that are associated therewith. MDx provides potential patients with access to MDx's database of information relating to healthcare providers, such as doctors, through its www.vitals.com website. Various screenshots taken from http://www.vitals.com/[1] are provided in this claim chart to illustrate the various features of the vitals.com website and how these features correspond to the features of claims 1, 4-9, 11, 14-16. For instance, Screenshot No. 1 (reproduced below and, in larger form, in Exhibit C) illustrates the homepage of the MDx website where a potential patient begins accessing MDx's information related to specific doctors.

[1] Screenshots taken between 6/1/11 and 6/29/2011.

U.S. Patent No. 7,752,060	MDx's Current On-line Information System
	Screenshot No. 1  For example, MDx provides a potential patients with information about a healthcare provider in response to the potential patient clicking on the "find the doctor you need" link or in response to the potential patient clicking on the "find a doctor now" link, both of which are circled in red on Screenshot No. 1 above.
receiving, by a Web server computer of a company providing a service for connecting	When the potential patient initiates a search for a healthcare provider on the MDx's website, MDx's web server receives a request for information regarding a healthcare provider via the internet. MDx's web server, as with any server, comprises at least one computer processor and memory.

Plaintiff Health Grades' Rule 3.1(c) Disclosure – Exhibit A – '060 Patent v. MDx's Current Website

U.S. Patent No. 7,752,060	MDx's Current On-line Information System
accessing healthcare provider-verified information about the first healthcare provider, wherein the healthcare provider-verified information is received from the first healthcare provider and comprises three or more from the group consisting of: specialty information, medical philosophy, gender, age, years in profession, years in practice, awards, honors, professional appointments, professional memberships, publications, languages, and hobbies;	At the initiation of the potential patient/user using MDx's website, MDx's web server accesses healthcare-provider-verified information. *See* Screenshot No. 4 (illustrating the result of accessing and displaying doctor supplied information). Highlighted in Screenshot No. 4, among other things, are the following pieces of healthcare provider-verified information: doctor's age, gender, specialty information and years in practice. Screenshot No. 4 

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U.S. Patent No. 7,752,060	MDx's Current On-line Information System
	MDx receives the healthcare provider-verified information from healthcare providers. MDx's website provides doctors with the ability to send information to MDx. For example, MDx's website provides many opportunities for doctors to edit their own profiles. *See, e.g.*, Screenshot No. 5. <u>Screenshot No. 5</u> 

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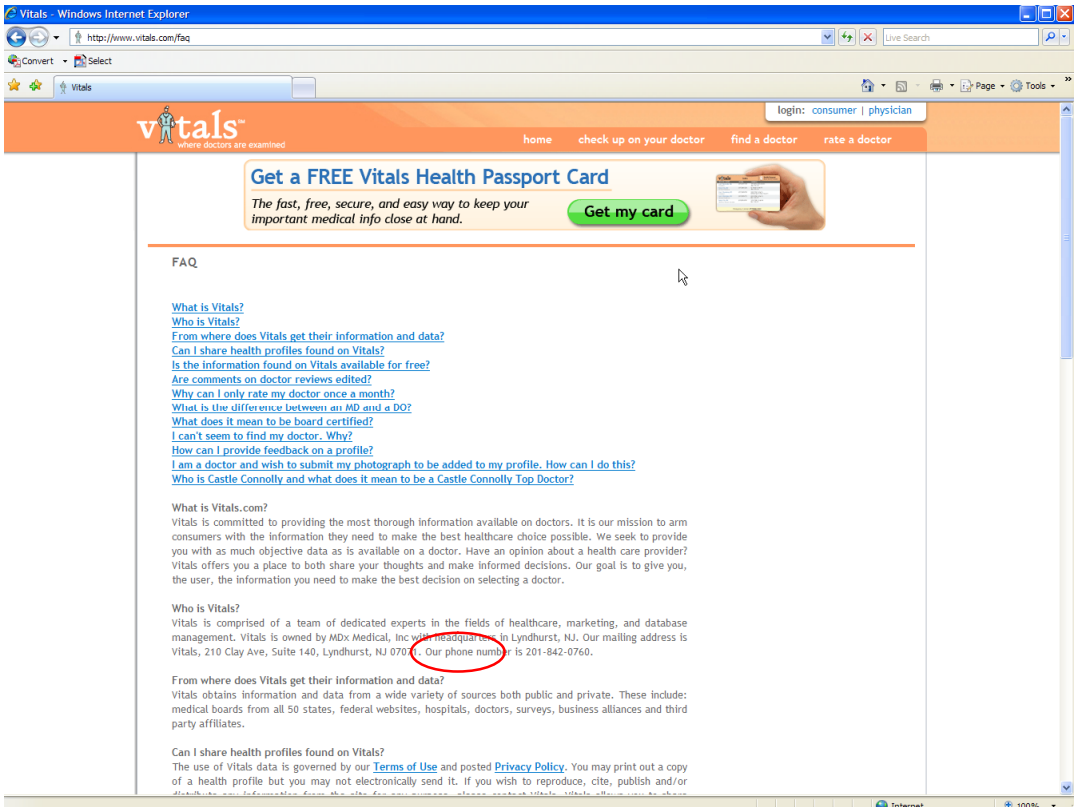
U.S. Patent No. 7,752,060	MDx's Current On-line Information System
	MDx states on its website that it receives, compiles, and posts doctor-supplied information. *See* Screenshot No. 6. <u>Screenshot No. 6</u> 

U.S. Patent No. 7,752,060	MDx's Current On-line Information System
potential patients;	
compiling information regarding the first healthcare provider verified by an independent third-party source, wherein the information verified by the independent third-party source comprises three or more from the group consisting of: board certification, licensure, disciplinary action information, medical school, medical internship, medical residency, and medical fellowship information;	MDx compiles information regarding doctors verified by an independent third-party source. The verified information comprises, at least, medical school, licensure, board certification, medical fellowship and medical residency information. *See* Screenshot No. 8 (displaying a portion of the FAQ from the vitals.com website stating that the information comes from various third parties). Screenshot No. 8

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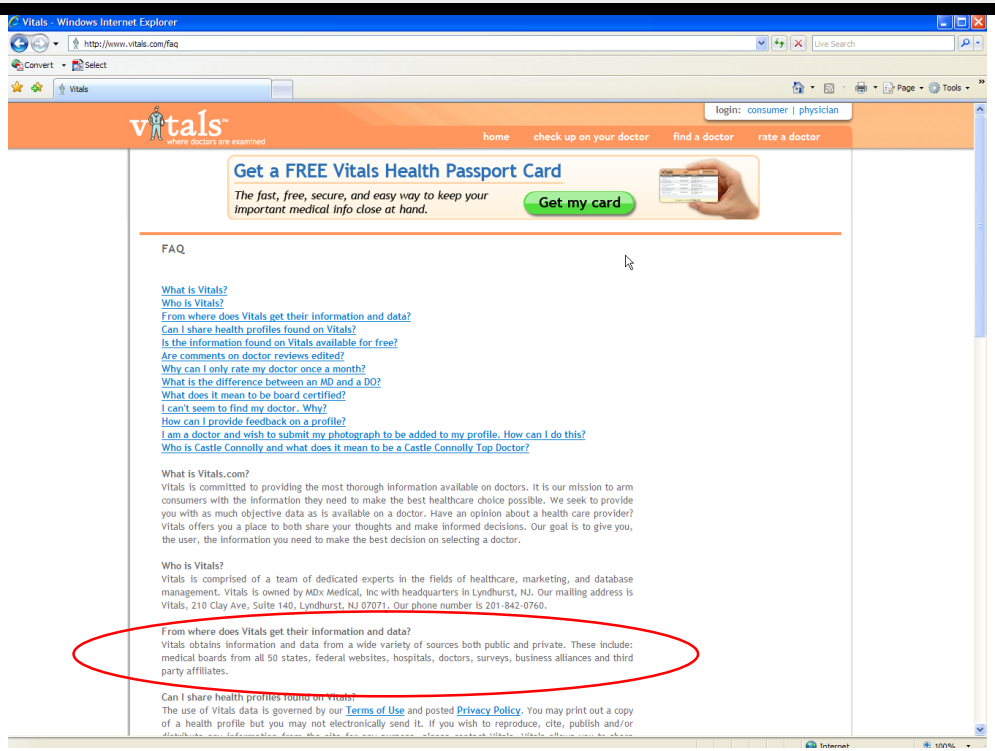
U.S. Patent No. 7,752,060	MDx's Current On-line Information System



As a specific example, MDx compiles medical school information on a given doctor from *U.S. News & World Report's* "America's Top Medical Schools." *See* Screenshot No. 9 ("What's this?" section describing that MDx compiles medical school information from *U.S. News & World Report*). MDx then provides potential patients with medical school information associated with a given physician's academic and fellowship history.

Screenshot No. 9

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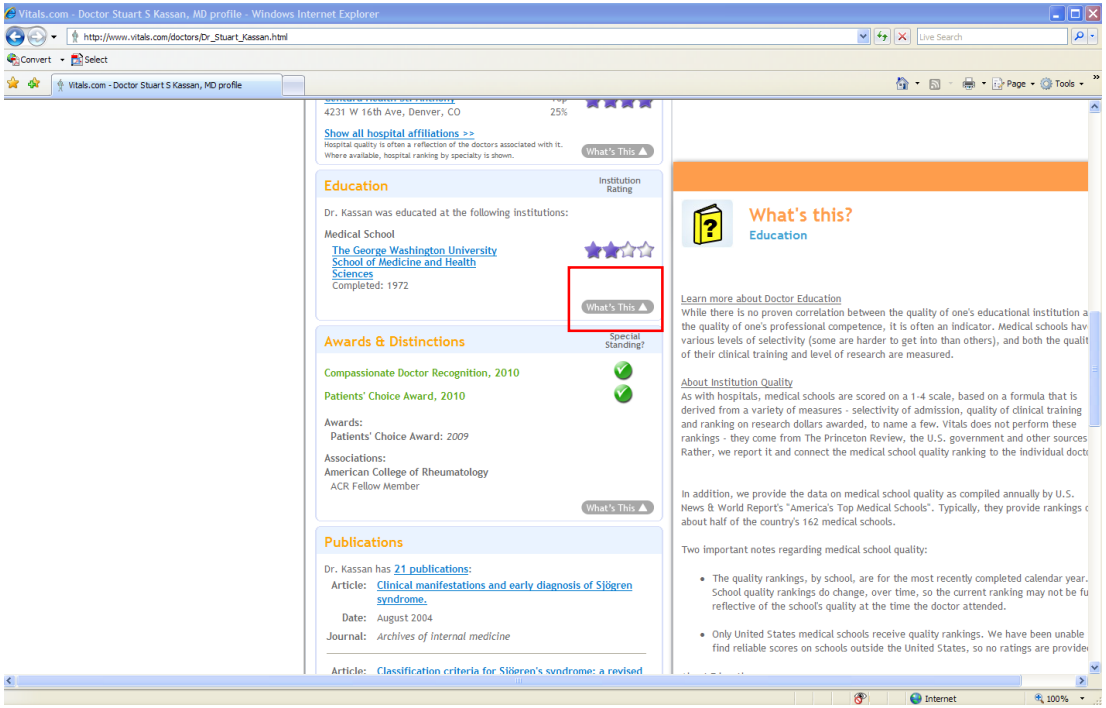

MDx compiles licensure information. Screenshot No. 10 evidences that MDx verifies each physician's license before adding the physician to the results list; to do this, MDx must compile the information in order to compare it to the entry field.

Screenshot No. 10

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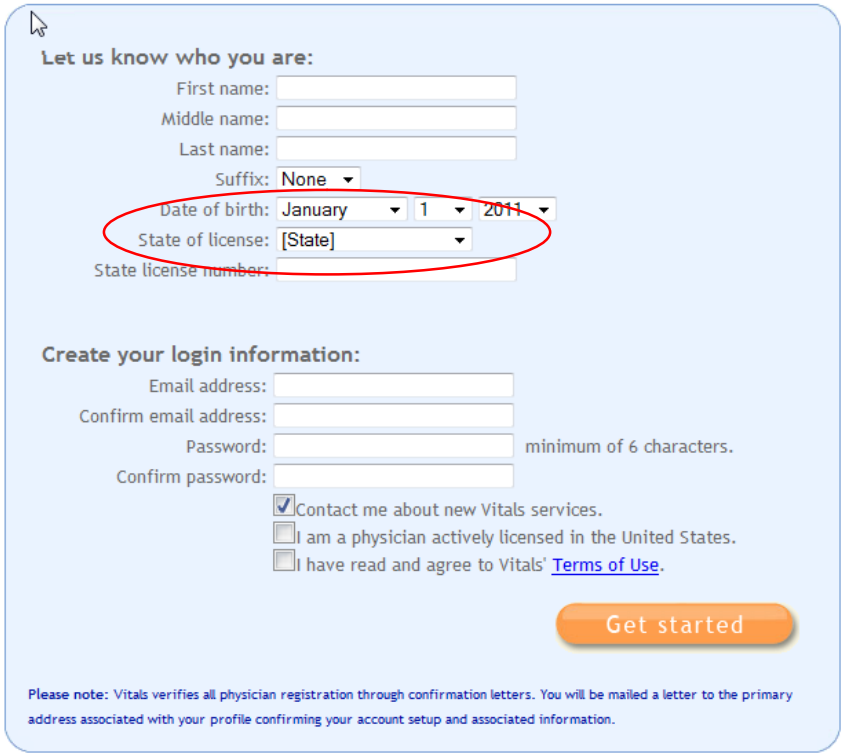

MDx admits that it compiles board certification information. *See* screenshot No. 11 below ("Vitals receives quarterly updates on board certification from ABMS", circled in orange). Further, the American Board of Medical Specialties is an independent source. *See* Screenshot No. 11, "About Board Certification" boxed in red below.)

Screenshot No. 11

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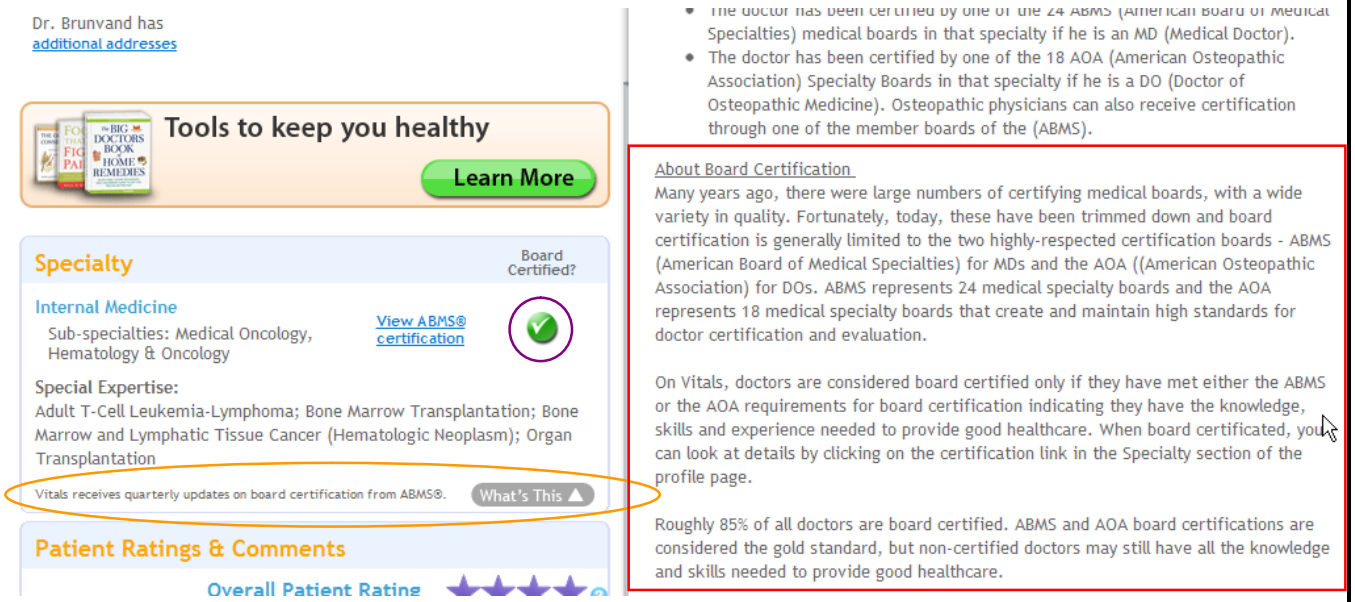

MDx compiles additional information verified by an independent third-party source regarding a physician's medical school, internship, residency, and fellowship positions. *See* Screenshot No. 12 (noting that MDx obtains all educational information from independent third parties unless otherwise noted).

Screenshot No. 12

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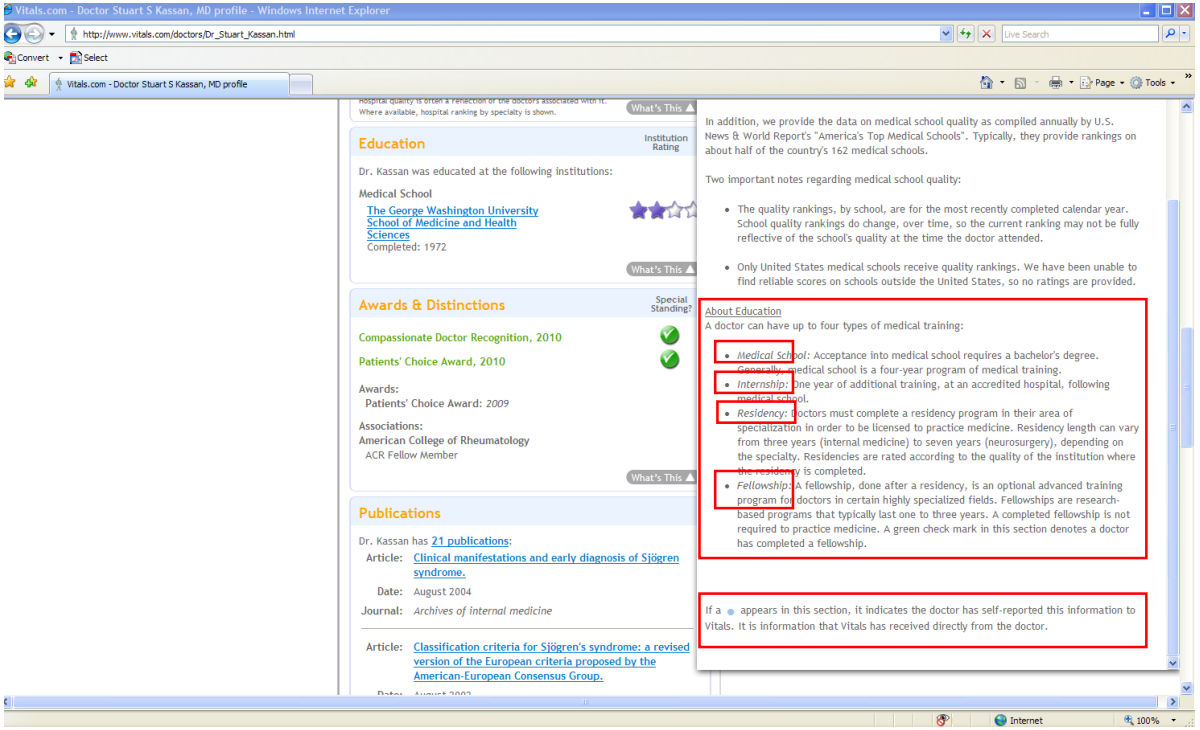

As a specific example, Screenshot 13 provides specific evidence that MDx compiles fellowship information on at least some it its doctors.

Screenshot No. 13

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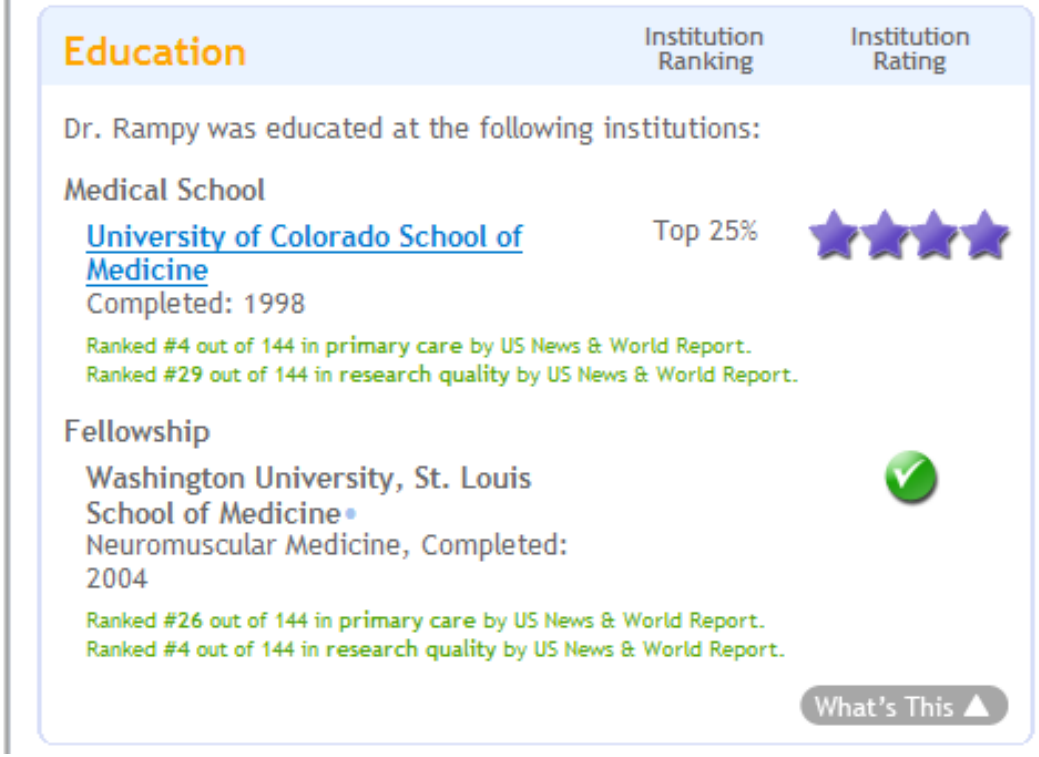
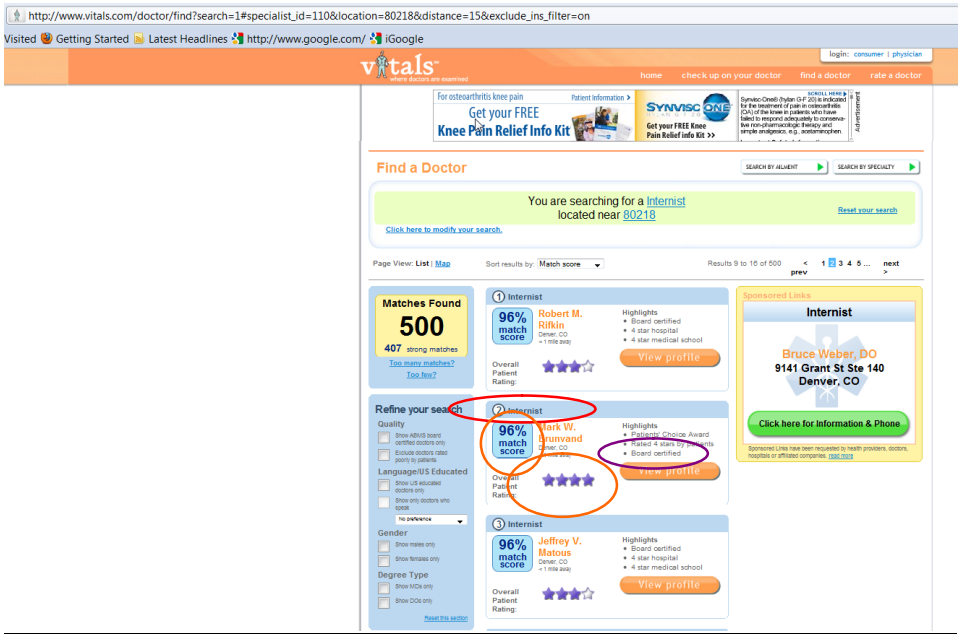
	
creating, by the at least one computer processor, a healthcare provider report on the first healthcare provider using the healthcare	After a patient/user enters search criteria for a doctor, MDx creates one or more healthcare provider reports using information from the MDx database, including using healthcare provider-verified information, patient-provided information, and information verified by the independent third-party source. Screenshot Nos. 14 & 16-18 show portions of a healthcare provider report for Dr. Mark Brunvand. This report uses at least the following information: (1) healthcare provider-verified information, circled in

U.S. Patent No. 7,752,060	MDx's Current On-line Information System
provider-verified information, the patient-provided information, and the information verified by the independent third-party source, wherein the healthcare provider report on the first healthcare provider includes comparison ratings of healthcare providers; and	red; (2) patient-provided information, circled in green; and (3) information verified by an independent third party circled in purple. The report also includes comparison ratings, circled in orange. Screenshot No. 14  The "match score" comparison rating provides the patient with information regarding how well physicians listed in the results list satisfy the patient's specified criteria, e.g. "specialty or location [state], and [city] [criteria]." The "match score" is determined based on four criteria, which may be changed by the patient by manipulating the slider bars shown in screenshot No. 15, below. Screenshot No. 15

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	 Additionally, the "overall patient rating," comprising 0-4 purple stars, comprises comparison ratings of healthcare providers. *See* Screenshot No. 16. Screenshot No. 16

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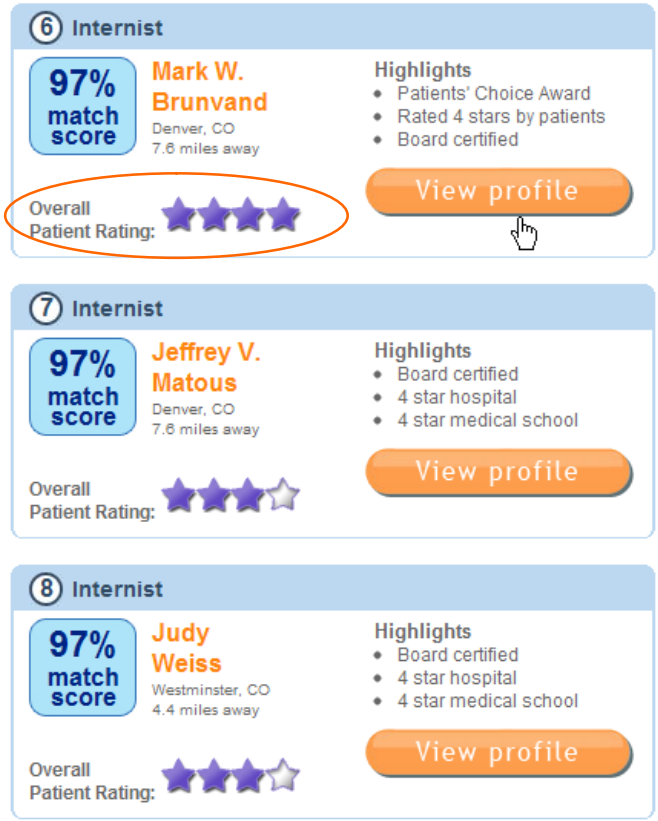

MDx includes another comparison rating of healthcare providers when it includes the "Patients' Choice" mark next to the physician's name. MDx gives this award to physicians when the physician has "received near perfect scores as rated by patients" compared to other physicians. *See* Screenshot No. 17.

Screenshot No. 17

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	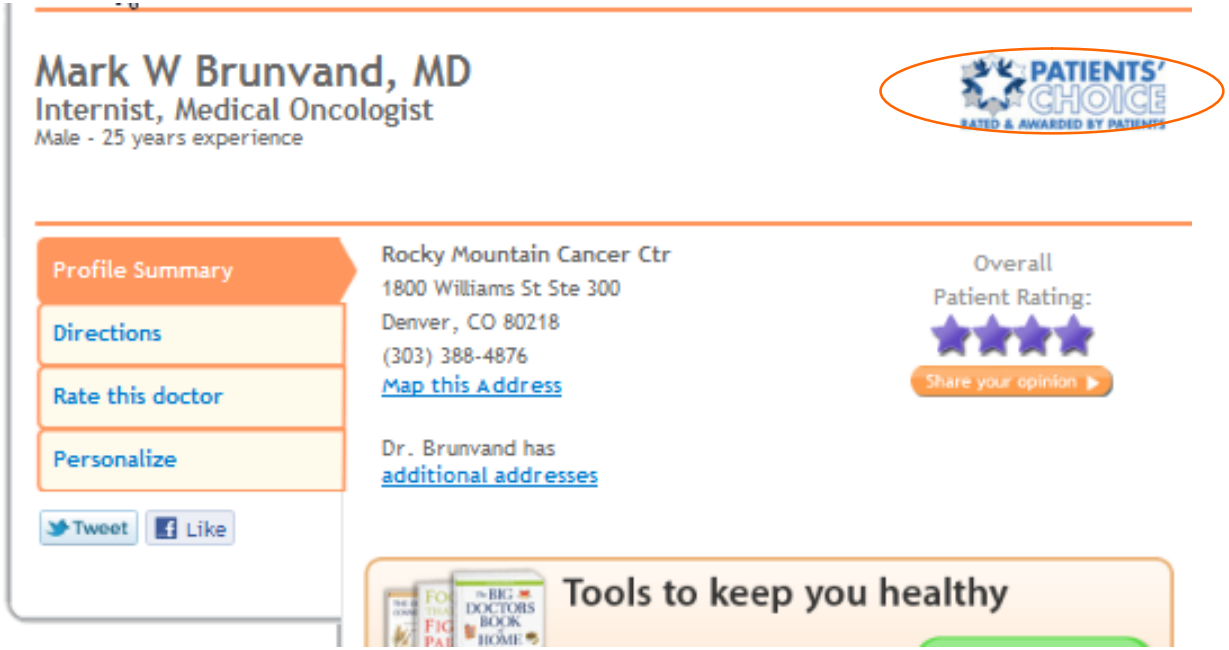 To the extent that MDx asserts that any of these three ratings do not literally satisfy the limitation of a healthcare provider report that includes comparison ratings, these ratings meet the claim limitations under the doctrine of equivalents because they have the same function, and operate in the same way to achieve the same result as comparison ratings in a healthcare provider report. *See* Screenshot No. 18.

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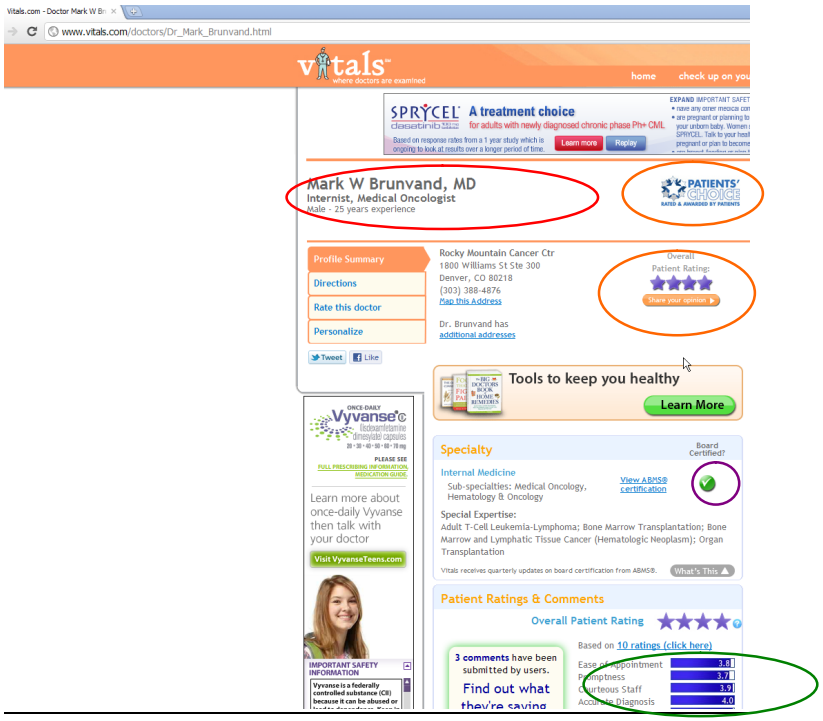
Screenshot No. 18



The report on Dr. Brunvand uses the following doctor-verified information: (1) specialty information, gender, years in practice, shown in Screenshot No. 19, and; (2) professional memberships shown in Screenshot No. 20 below:

Screenshot No. 19

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Screenshot No. 20



The report on Dr. Brunvand uses the following patient provided information: patient ratings compiled from a www.vitals.com on-line patient-experience survey (circled in green in Screenshot No. 18 below):

Screenshot No. 18

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	 Additionally, the report on Dr. Brunvand uses information verified by the independent third-party sources, namely, board certifications and medical school information as shown in Screenshot Nos. 21-22 below. MDx also uses compiled licensure information to ensure that only licensed physicians, including Brunvand, are displayed in the search results.

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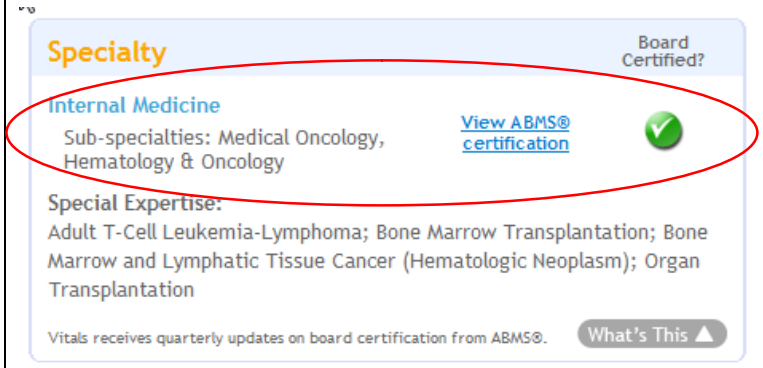
	Screenshot 21  Screenshot 22 
providing access to the healthcare provider report on the first	MDx provides access to the doctors' healthcare provider reports over a computer network. *See* Screenshot No. 23 (highlighting that this information was accessed over a computer network, e.g., the Internet, and that the profile can be sent by email or printed).

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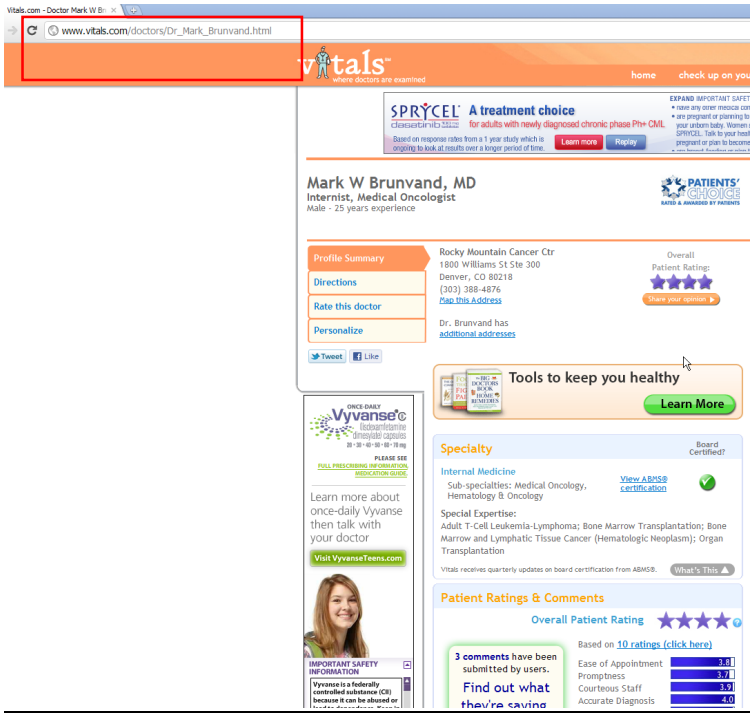
healthcare provider over a computer network.	Screenshot No. 23 
4. The method as defined in claim 1, wherein the healthcare	MDx provides a link to affiliated hospitals in the healthcare provider report. *See* Screenshot Screenshot No. 24 (displaying affiliated hospital hyperlink, circled in red).