EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

VOLUME I - Pages 1 to 187

HEALTH GRADES, INC.,

Plaintiff,

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

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

Defendant.
/

Deposition of SCOTT MONTROY, taken on behalf of the Defendant, pursuant to Amended Subpoena to Testify at a Deposition in a Civil Action in the above-entitled action, on Monday, January 16, 2012, at 7:03 a.m., at Crowne Plaza Jacksonville Riverfront, 1201 Riverplace Boulevard, Jacksonville, Florida, before Teresa S. DeCiancio, RDR, CRR, CCP, CBC, FPR, and Notary Public in and for the State of Florida at Large.

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Job No. NJ371358

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ASHLEY HOLT, Videographer

- - -

Q Checked for accuracy?
MR. VÁZQUEZ: Same objection.
A Yeah, checked for accuracy.
Q So if you'd go to the next paragraph, please -- actually, a little later in --
A And it's true.
Q Okay. Thank you.
A little later in the -- in that same paragraph, it refers to certain -- a group of information there, healthcare provider information, starting "specialty information, medical philosophy." Do you see that?
A Yeah.
Oh, wait. No.
Q It's right in the same paragraph.
A Okay. Yeah.
Q Okay. And that's all healthcare provider --
A Yeah.
Q -- healthcare-related information, right?
A Right.
Q So we know that this claim has a focus not just on any data, but it's talking about data relating to healthcare providers, right?
MR. VÁZQUEZ: Form.
A Appears to...

Q I'm sorry? I just can't hear.
A Go ahead. Yeah, I didn't understand your question.
Q Okay. That's okay.
And then the next paragraph talks about compiling. And if you could just follow along with me a bit, it says, "compiling, by at least one computer processor, patient-provided information regarding the first healthcare provider, wherein the patient-provided information comprises patient ratings" -- let's stop there for a second.
What are patient ratings?
MR. VÁZQUEZ: Object to form. Calls for a legal conclusion. He's not a patent expert.
A I interpret patient ratings to be the information that we gathered from the consumer surveys that we got out regarding patient experience. We had patient experience surveys.
Q Okay. Anything else?
MR. VÁZQUEZ: Same objections.
A I don't know.
Q Would that be like, for example, the star ratings that were in some reports? Those would be patient ratings?
MR. VÁZQUEZ: Object to form.

A We had a lot of patients to rate physicians. I can't remember, actually.
Q Do you remember --
A There were stars. It would be converted to stars.
Q Star ratings would be patient ratings, though, right?
MR. VÁZQUEZ: Object to form. Calls for a legal conclusion.
A Star ratings would be patient ratings?
Star ratings could be patient ratings?
I think so. I mean, I don't know. I'm not sure.
Q Do you remember any of the reports you talked about having star ratings?
A Yes.
Q Okay. And were those patient ratings?
MR. VÁZQUEZ: Object to form.
A Were they patient ratings? Yeah. I just can't remember if we -- it's been a while, but I think -- I'm pretty sure -- I'm not sure, though, that we allowed the patients to pick the rating or we converted it to a rating. I think we allowed them to pick a rating, but it's been a while. I can't remember exactly.
Q Either way, though, it's still the patients

doing the rating, right?

MR. VÁZQUEZ: Object to form.

A The patients providing the information.

Q Right.

And so whether you converted the patients' comments to stars or whether the patients actually told you how many stars --

A Right.

Q -- it's still patient ratings, right?

MR. VÁZQUEZ: Object to form.

A It would still be input from the patient.

Q So it would be patient ratings, right?

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

Q You can answer.

A It would still be -- it would be the patient's opinion of the physician --

Q Okay.

A -- or the provider.

Q As an inventor on this patent --

A Yeah.

Q -- that's what you meant by "patient ratings," right?

MR. VÁZQUEZ: Object to form. Misstates the patent language. Asked and answered.

A That the -- that the patient would provide the feedback and, yeah, I mean, rate the provider.

Q Okay. If you would look at the -- let's go to the last paragraph. Well, not the last one, but it says, "creating, by at least one computer processor." Are you with me?

A Yeah. "Compiling by" --

Q No. No, it actually says, "creating, by at least one." It's the paragraph about Line 58.

A Okay.

Q So if you'd just follow along with me, please.

It says, "creating, by at least one computer processor, a healthcare provider report on the first healthcare provider."

First of all, that's referring to the first healthcare provider that's up there on Line 27, right?

MR. VÁZQUEZ: Object to form.

A I --

MR. VÁZQUEZ: Asked -- object to form.

Scott, just give me a chance to make my objections.

THE WITNESS: Okay.

MR. VÁZQUEZ: Please let him finish his answer before you start asking the next question, Counsel.

Okay. So that last question, as I understood

Q Okay. That's just showing you who this report is on, right?
A Yeah.
Q And it says, "Report date: April 17, 2003"? Did I read that right?
A Uh-huh.
Q And it also gives you information on the -- when the report was updated last, which was March 5, 2003, right?
A Correct.
Q So this report is all about the specific healthcare provider Daniel Capen, right?
MR. VÁZQUEZ: Form.
A I mean, it appears to be a report on Daniel Capen.
Q Okay.
A Yeah.
Q And there's a -- in that box there, it talks about, "Specialty: Bone and joint surgery (orthopaedics)." Do you see that?
A Yeah.
Q At this time in 2003, how was Health Grades getting that information?
A I don't remember exactly. I don't remember exactly. Data -- Mike Wethington and Dave were doing

most of the data work, so I'm not really sure. I can't say. I can't remember exactly.

Q Dave Hicks?

A Yeah.

Q Did there come a time in the 2003/2004 time frame when that specialty information was obtained from healthcare providers?

A Can you repeat that again? I'm sorry.

Q Was there a time when Health Grades started getting that specialty information directly from healthcare providers?

MR. VÁZQUEZ: Form.

A I don't remember.

Q Do you remember if the POS -- that's the physician online services --

A Right.

Q -- asked for specialty information from healthcare providers?

A I -- I think it did, but it's been a while since I've thought about that, so I don't know. I mean, I'm pretty sure it did, though.

Q And you see this -- below that, there's Board certification, medical school, graduation date, residency. Do you see those?

A Yeah.

Q Where did Health Grades obtain that information for this report?

A That was --

MR. VÁZQUEZ: Form.

A -- just in the database, so that would be more of Dave and Mike Wethington. I don't remember exactly. I did most of the publishing of it, so...

Q Did you have an understanding as to whether it came from third parties as opposed to healthcare providers?

A I can't remember if this one -- I think -- I'm not sure -- I'm not certain on this one whether it was third-party or not. I think it was, but I'm not certain.

Q How about foreign language and gender? Do you remember whether that was part of the POS?

A Was it part of the POS?

Q Yes, so you got the information from healthcare providers directly.

MR. VÁZQUEZ: Form.

A Could a physician come in and provide the language? Yeah. Did we have it in the -- I can't remember if we had it or if it was solely provided by them.

Q Did Health Grades ever have advertisements in

group of people, including yourself, February 4, 2004?
A Yeah.
Q And, again, this is an e-mail that was prepared and relied on in the ordinary course of business at Health Grades, right?
A Correct.
Q The subject -- first of all, the list of people there, everyone there at Health Grades at the time?
A Everyone employees? Is that what you're saying?
Q Yeah. Everyone there --
A I mean, I don't know if John Neal was employed at the time, but John Morrow was -- yeah.
Q So everybody else except for the possible --
A Yeah. I'm not sure whether John was -- if he was just in a contractor role at that point or what, a consulting role.
Q Okay. But everyone else you're comfortable was an employee of Health Grades at the time?
A Looks like it.
Q Okay.
A John Morrow -- yeah.
Q The subject says, "Additional Patient SAT Points." Do you know what that means?
A Additional patient satisfaction points, yeah.

Q Okay.
A Points that Dave's making.
Q So "SAT" refers to patient satisfaction?
A Yeah. That's how I would interpret it.
Q Okay. This would then be referring to patient satisfaction surveys?
A Correct.
Q Okay. And Point 1 is, "We have roughly 50,000 questions and answers since about 1999."
A Okay.
Q Do you -- did you understand that Health Grades had already had --
A Questions and answers? '99?
MR. VÁZQUEZ: Scott, just let him finish his question.
THE WITNESS: I'm sorry.
MR. VÁZQUEZ: That's all right.
MR. STIMPSON: No, my question is asked.
MR. VÁZQUEZ: What's the question? I'm sorry.
A '99. If it's referring -- if it's related to patient satisfaction data, that -- seems interesting.
Q Were you aware of questions and answers that were available as of February 2004 on patient satisfaction?
A I'm not, no. 2000? That -- no, not unless he

was referring to something else, questions and answers.

Q Okay. As of February 2004, however, Health Grades was already working on the patient satisfaction surveys?

A I'm sorry. What was that?

Q As of February 2004, Health Grades was already working on collecting patient-provided information, correct?

A Again, I don't know if that -- that was in production or not, but, you know, somewhere in that ballpark.

Q Okay. And Point Number 2 says, "Partners such as Discovery Health are currently using our survey instrument." What was your survey instrument as of February 4, 2004?

A That would have been probably the patient experience survey.

Q And so your partners were already using the patient experience survey?

A That would suggest that I -- yeah, that Discovery Health -- "Are you currently using the survey instrument?" So that would be we would be collecting patient experience feedback from sites such as Discovery Health that we created like these wrapper sites with.

Q So -- just to make sure I understand, so --

first of all, who's Discovery Health?

A They were -- well, it's a website, and they were -- we partnered -- or not partnered with -- they were a client and we provided a solution for them. I'm not going to -- I can't remember all the specifics, but it would probably be to the areas of, you know, physician information, hospital information, nursing home information, and we would wrap that around with their headers and footers so it looked like it was the Discovery Health website but it was kind of like powered by Health Grades inside the middle of it with our health information.

Q Okay. So Discovery Health at this point was giving these survey results on their -- through their website and getting results from patients?

A I don't know if they're getting results. It doesn't say if we're publishing it or currently using them. We could have been collecting them but not publishing yet.

Q Okay.

A Because there was like kind of a chicken and the egg thing where I think we had to get so much data before we could figure out how to publish it, and I can't remember the specifics on that, so...

Q And Discovery Health was another company,

rough cut of the fields and content we want to collect" on physicians from the physician online service; is that right?

A That's what it reads, yeah.

MR. STIMPSON: And let me just have marked as Exhibit 27 a one-page document bearing Bates Number HG0042048.

(Exhibit Number 27 was marked for identification.)

THE WITNESS: Okay.

BY MR. STIMPSON:

Q Exhibit 28 is an e-mail you sent on May 25, 2004?

A Okay.

Q And you sent it to Health Grades employees and John Neal?

A Okay.

Q And, again, this is -- well, it's an e-mail prepared and relied on in the ordinary course of business at Health Grades, right?

A Yeah.

Q And from this e-mail we know the physician online service was online as of late May 2004?

A That would be correct.

Q Pardon me?

A May 25th, 2004, correct.
Q Correct. Okay.
And so as of this date physicians could get online and edit information in their profiles, correct?
A That would -- yep, I would assume that to be true.
Q Okay. And the information they could edit would be as shown in Exhibit 27?
A In Exhibit 27?
Q Under --
A Exhibit 26, you mean?
I've got this as 26.
Q Oh, my. What's that one?
A 27.
Q Okay. I just got them wrong. I'm sorry.
MR. STIMPSON: So we haven't used 28 yet, right?
MR. VÁZQUEZ: (Shakes head.)
MR. STIMPSON: You've got 26, 27. Okay. Sorry.
BY MR. STIMPSON:
Q Yeah. I'm sorry. So the information they could edit would be as shown in Exhibit 26?
A That's not true, because at the bottom it says we are starting to begin work on phase II, right?

Q This is -- you're referring to Exhibit 27?
A Yeah, Exhibit 27. "We are starting to begin work on phase II" -- right?
Q Okay.
A -- "that will allow physicians to provide expanded information." So assuming that this information -- this e-mail speaks to phase II, which it appears it does in the subject line -- right?
Q Okay. I see.
A -- I would conclude that -- if your question was was this stuff in here when we launched, the answer would be no.
Q Okay. I understand. But there was -- what was included at the time you launched, do you remember, that physicians could change?
A I don't know off the top of my head. Let me see.
It would be probably the -- whatever information is different between what's here and what we had.
Q What's here in 26?
A What's in 26 and what was -- whatever was on the website.
Q Okay.
A So it's hard to say, because this is all group

information about the physician, so I don't -- I mean, I don't know off top of my head what -- all the fields that were on that first release of POS and the ones they had come in and changed. I would -- again, I'd go back to the project development plan in the files and look at what we had in that launch.

MR. STIMPSON: Okay. Let me have marked as Exhibit 28 a one-page document bearing Bates Number HG0032226.

(Exhibit Number 28 was marked for identification.)

MR. STIMPSON: There you go.

THE VIDEOGRAPHER: Excuse me. Can I go off the record to change the tape?

MR. STIMPSON: Sure. Sure, go ahead.

THE VIDEOGRAPHER: Going off the record at 1:11. This is the end of Videotape Number 5.

(Off the record.)

THE VIDEOGRAPHER: Going back on record at 1:12. This is the beginning of Videotape Number 6.

BY MR. STIMPSON:

Q So Exhibit 28 is an e-mail from Janet Burkhard to Dave Hicks, copying you, correct?

A Yes.

Q Okay. Also prepared and kept in the ordinary

course of business at Health Grades?

A Yes.

Q And she's forwarding a message from Caitlin Magee?

A Yes.

Q Does she work at Health Grades?

A I believe she did, in the customer service area.

Q Okay. And from the e-mail Ms. Magee is sending to Janet Burkhard you can see that one of the physicians has looked at his file online and found it to be inaccurate, right?

A Yes.

Q Okay. And from the text of this e-mail you can tell that he's able to change languages he speaks, one of the things he can do from the POS, right?

A Well, he's speaking -- he's saying, "I don't speak Russian and Spanish."

Q Okay. I'm sorry. I was just trying to -- I was moving too fast.

On Caitlin's e-mail there, the text of what she wrote, the last line says, "He said he would correct it himself." Do you see that?

A Hang on a second.

Oh, up there. Okay. Hang on a second.

Well -- "he would correct it himself." Profile -- "said he would correct it himself." So -- okay. Yeah.

Q Okay. So Caitlin Magee offered to change his profile for him. He says he's just going to correct it himself, correct?

A Yeah, but "correct it." What's "it"? What does "it" refer to?

Q The information.

A Which? What, though?

Q The --

A The hospital affiliation? Is that what --

Q Well, she's repeating his e-mail below, right?

A Right.

Q And he's telling -- you can see in his e-mail that she's copied there he's telling you what information is incorrect, right?

A He's saying -- yeah. He's saying that -- the addresses, which he could correct the address.

Q Okay.

A "I don't speak Russian and my Spanish is minimal."

Q So he could correct languages, right?

A I believe that was available.

Q Okay. And then it continues, his affiliated

hospitals?

A I think -- I think that was available.

Q Okay. And then what else was available for them to correct at the time? How about like gender and --

A It would --

Q -- age?

A I think it would have been most of the general, basic information that we had on them.

Q Gender?

A I believe so.

Q And age?

A I believe so. Date of birth, was it?

Q So as of May 2004, the POS was online and physicians like Dr. Steinberg here in this e-mail could get online and enter information themselves?

A I believe so, yeah.

MR. STIMPSON: Okay. Let me have marked as Exhibit 29 -- am I right this time -- 29, a copy of a multipage document bearing Bates Number HG0043786 to 87.

(Exhibit Number 29 was marked for identification.)

THE WITNESS: Okay.

BY MR. STIMPSON:

Q This is an e-mail from Dave Hicks dated Monday, August 16, 2004, to Health Grades senior management, correct?

A Yep.

Q And you were copied on it along with Janet Burkhard, Tony Smith and John Neal?

A Correct.

Q Are all the people on this e-mail, copy holders and other people, Health Grades employees, with the possible exception of John Neal?

A From my understanding, yes.

Q And Dave Hicks had put together a timeline to develop and implement a new patient experience survey and the results; is that right?

A That's what it appears to be, yes.

Q And attached he has a patient experience timeline?

A Okay.

Q And according to this timeline, as of September 30, 2004, they were to build results display application and database.

A Okay.

Q Is that -- do you remember whether or not that deadline was met?

A I don't.

Q And then the last one was, "E-mail all report purchasers." Do you know what that means?

A Yeah. We were going to market that capability to all of the people who had purchased reports on us, so all of our past customers.

Q So there were e-mails to past customers telling them that now the Health Grades website had added patient survey results?

A Correct. And we were -- I think what they did, we tried to, you know, solicit them for input as well.

Q Do you know if those e-mails actually went?

A I can't remember for sure, but -- I can't remember for sure.

Q Okay.

A I think we did it, but...

Q Okay. Do you remember if it was before the end of 2004?

A I wouldn't -- I don't remember the date on that.

MR. STIMPSON: Okay. Jesús, again I'm asking for these, too. These e-mails should have been produced as part of prior art. So if you could please find those.

MR. VÁZQUEZ: Which e-mails?

MR. STIMPSON: The e-mails to the report

purchasers about the physician -- about the patient survey results.

MR. VÁZQUEZ: I'll -- like I said before, based on this request, I'll check to see if it's encompassed in a formal request.

MR. STIMPSON: I can promise you it's within our requests, all of these. This is prior art, okay?

MR. VÁZQUEZ: Well --

MR. STIMPSON: This is an e-mail to the public telling about patient survey results. I can promise you it's a request.

MR. VÁZQUEZ: Well --

MR. STIMPSON: It's the first request we ever sent to you, June.

MR. VÁZQUEZ: Well, as you know, we don't always agree on what prior art is, Counsel, so --

MR. STIMPSON: Yeah. If you want to try to make that argument to the judge, you can.

MR. VÁZQUEZ: We will. And we have, as you know.

BY MR. STIMPSON:

Q Again, Mr. Montroy, as far as what dates were met and what dates weren't, that would be in the project development plan?

A Yeah.
Q And it was generated at the request of a user?
MR. VÁZQUEZ: Form.
A Yeah.
Q And the user can get on -- can get on the website and enter a certain criteria for -- for the search?
MR. VÁZQUEZ: Form.
A Well, they could enter criteria to find their physician. And then this report -- and I believe this is the free -- one we gave away for free -- would -- would -- the consumer wouldn't pick these to compare against.
Q I'm sorry. The consumer what?
A The consumer wouldn't necessarily pick these. Their physician might be in this list, but we would show the physician report they purchased and -- against these -- this set of physicians on this report.
Q And this was based -- this set of physicians, though, was based on the criteria --
A Based on the criteria, yeah.
Q Based on the criteria that the user enters.
And here psychiatry, located in Lexington, Kentucky, within ten miles?
A Yeah.

Q Okay. Physicians free from disciplinary action -- these are criteria input by the consumer on the Health Grades website, right?

MR. VÁZQUEZ: Form.

A I'm trying to think.

I remember at some time we added some of that search criteria to the site. I can't remember when. Actually -- like you could try to find -- you could try to find physicians by using some of these filters. I -- it's been a while.

Q Okay. I understand.

So you can see, starting on the second page, 32063, there's information provided on medical school, and the next page on internship --

A Yeah.

Q -- residency, fellowship training, physician licensure --

A Yeah.

Q -- years since medical school, government disciplinary actions, and then on Page 32071 you see Board certification. You see that?

A I'm getting there.

Yeah.

Q Okay. And those were all information that was obtained from third parties?

MR. VÁZQUEZ: Form.
A That was information -- what are you saying -- obtained --
Q All those were information sets obtained by -- obtained from third parties, right?
MR. VÁZQUEZ: Form.
Q Not the healthcare provider.
A Say it again.
MR. VÁZQUEZ: Form.
A What?
Q These -- these sets of data I went through --
A It says right there information from the American Board of Medical Specialties.
Q Right. So it's obtained from a third party, right?
A Yeah, ABMS.
MR. VÁZQUEZ: Form.
Q Okay. Let me just show you your patent again. This is Exhibit 3. And I'll show you the claim. And I'll show you on the paragraph at Column 20 about Line 50 where it has "compiling," "compiling information regarding the first healthcare provider." You see that?
A Okay.
Q And you see there's a list -- a set of information that you have to get from the third parties

in that claim?

MR. VÁZQUEZ: Form.

Q Just read that paragraph to yourself, please.

A Okay.

Q Okay. And that list includes medical school, residency, internship, right?

A What list? This list?

Q The list in the claim.

A Yeah.

Q Can you just confirm for me, please, Mr. Montroy, that every single one -- every single piece in that set of information in Claim 1 is found in this physician quality comparison report of December 28, 2004?

A Right now?

Q Yeah.

A Can I confirm it?

Q Yeah.

A Three or more.

Q Yeah. But I mean every single one in that list is also found in this physician quality comparison report.

A Right.

Medical intern -- but these -- these were the ones that Health Grades -- we were verifying on behalf

of the consumer.

Q Okay. That's all right.

A So...

Q That's okay.

A Right?

MR. STIMPSON: I'm just asking you a different question. I have to motion -- move to strike that.

Q What I'm asking you, sir, is, that list in that paragraph, the claim, that starts with -- I've got to get my patent because I can't follow along.

Okay. Let me -- let me just -- we'll take this a different way, okay?

The "compiling" paragraph, starting at Line 50, or Column 20 of your patent --

A Okay.

Q -- has a set of groups of information at the ends of that paragraph. Do you see it? It starts with "Board certification"?

A Right.

Q Okay. Board certification is found in this physician quality comparison report of Exhibit 8, right?

A Okay.

Q Is that right?

A This is a Board certification report, right.

Q Okay. Licensure is also found in this

physician quality comparison report, correct?

A Correct. I believe. Let me double-check that. I think I saw it.

Q Page 32067.

A Yeah. Okay.

Q That's there, too, correct?

A Yeah.

Q The next one on the list, disciplinary action information, that's also found on Page 32068 of the physician quality comparisons report from December 28, 2004, correct?

A Yep.

Q Okay. Medical school, that's also found in the physician quality comparisons report of December 28, 2004? 32063.

A Yep.

Q Internship, the next one on the list, is also found in this physician quality comparison report from 2004, correct?

A Correct.

Q Medical residency, the next one on the list, is also found on this physician quality comparison report from 2004, correct?

32065.

A Yep.

Q And fellowship, the last one on this list, is also found in the 2004 physician quality comparison report, correct?

A Yep.

Q So every single one of the sets of information in that paragraph in your -- from your patent claim, Mr. Montroy, is found in this 2004 report, correct?

A The fields, yes, are.

Q Okay.

A Right.

Q Now, did you get that list from the physician quality comparison reports?

A Did I get what list?

Q The list that's in your patent claim right there.

A Did I get it from it?

Q Did you get that list of information from these 2004 physician quality comparison reports?

MR. VÁZQUEZ: Form.

A No. If anything, the physician quality report was -- was really the -- I'm sorry. Maybe I'm misunderstanding what you're saying.

Q Well, I'm just saying your patent application was filed in 2006.

A Right.

Q And in this claim you have a list of information that's exactly as we see it in the physician quality comparison reports.

A Right.

Q So my question to you, sir, is, did that list that's in your patent claim come from this -- these 2004 physician quality comparison reports?

A I don't know where it came from. I don't know what the source of that necessarily was. I didn't put this together. So -- you know, I didn't write this patent and I didn't put that together.

Q Okay. So you don't --

A I don't know what the source is.

Q You can't say yes or no to answer that question?

A In terms of what?

Q Whether or not that information was taken from this 2004 --

A I don't know if it was taken from this report or the physician quality report.

Q But it certainly looks like it's the same information that was already being used in Health Grades --

A Right.

Q -- in 2004?

A Well, in Health Grades, but, yeah, I don't know what time all those fields came into play. I would assume that -- yeah. That was mostly the general information, so I would say yes.

Q Okay. If you could look at the physician -- I'll take that back -- physician quality report, Page 32086.

Actually, I'm sorry, let me back up just a little bit. I've got a couple more questions about the physician quality comparison report. It's 32062.

At this time, December 2004, we know from our prior exhibits that physicians were able to get on and enter and change some of the information about gender and age and specialty, right?

A They were able to do it. I'm not sure of the exact time, but, yeah, they were able to do that, that capability.

Q Well, we know from our prior exhibits that they were able to do that in mid 2003, right?

MR. VÁZQUEZ: Form.

A I -- I'm not -- I really can't keep track of the timeline, but --

Q Let me just show you here.

I'm sorry. Let me make sure I've got the right one here.

this time, June 2005 and earlier, if we had the project development plans, right?

A That --

MR. VÁZQUEZ: Form.

A -- or the customer service. I mean, I'm sure people had concerns of the reports that were going out, and you'd think somebody would have had a customer service record of a report that...

Q Customer service record of a report?

A So -- yeah, somebody purchased a report and they had a complaint against it or something, they wanted a refund, or maybe they might have replied back or something and had a report.

MR. STIMPSON: Okay. Jesús, we're requesting customer service records as well, because as Mr. Montroy is telling us, that will also tell us what was available when.

MR. VÁZQUEZ: [Unintelligible] request. Thank you.

BY MR. STIMPSON:

Q Let me show you what's been marked --

MR. VÁZQUEZ: -- your request. Thank you.

BY MR. STIMPSON:

Q Let me show you what's been marked Exhibit 5, Mr. Montroy. And just look through that. Just a couple

questions.

I represent to you, Mr. Montroy, this is the provisional application on your patent that was filed in February 2006.

MR. VÁZQUEZ: What exhibit did you mark it?

MR. STIMPSON: It was 5.

MR. VÁZQUEZ: 5?

MR. STIMPSON: Yeah. It was already marked as 5.

BY MR. STIMPSON:

Q Have you seen this before, Mr. Montroy?

A No.

Q Let me --

A I don't recall this.

Q Let me show you what's been previously marked as Exhibit 4, bearing Bates Numbers MDX0013335 -- okay. This one had some Bates numbers cut off, I think. I can't tell where this ends.

MR. STIMPSON: Do you know if the complaint is part of the prosecution history? Did somebody submit that?

MR. VÁZQUEZ: I don't believe so.

MR. STIMPSON: Sometimes they have to.

No, I think the courts have to submit that.

MR. VÁZQUEZ: Although I saw it attached to the

back of one of your exhibits.

MR. STIMPSON: It may be because it has to be -- there has to be a notification.

I'm going to keep it in there. It's Exhibit 4. And if that's not part of the record, then I'll take it out -- we'll take it out later.

BY MR. STIMPSON:

Q Let me show you what's been marked as Exhibit 4, Mr. Montroy. I'll represent to you that that's a copy of the prosecution history of the 060 patent, which is a record of the back-and-forth between the patent office and your counsel.

A Okay.

Q There was an application filed in February of 2006. That's Exhibit 5. Then there was a longer application, bigger application, filed in August of 2006. That's what's --

A Okay.

Q It's shown in Exhibit 4.

Do you recall the differences between those applications?

A No.

Q Okay. Let me show you -- I've marked a page there on Exhibit 4. I'm going to take Exhibit 5 away from you, because it's just going to confuse things.

Let's try to keep these in order, if we can.

I'm going to turn you to Page MDX0013416 and ask if you can identify that for me, please.

A That's the declaration of power of attorney.

Q Okay. And you'll see two or three pages back that you signed that?

A Yes.

Q Did you read it when you signed it?

A Yeah.

Q If you could turn to the front page of it, please.

A To where?

Q The front page of the declaration of power of attorney.

A Okay.

Q The fourth paragraph down there says, "I do hereby state." Do you see that?

A Yes.

Q So you're stating by signing this document that you've reviewed and understand the contents of the specification, including the claims of the patent application, right?

A Yes.

Q And you did review the specification and claims of the patent application, right?

A I did review it, what -- the application that was -- that was put in front of me, what I remember, yeah.

Q Okay. If you could turn to the second page, please.

Under Section 1.56(a), it says, "A patent by its very nature is affected with a public interest. The public interest is best served and most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability." Do you see that?

A Yes.

Q You read that and understood it when you read this declaration?

A To my understanding.

Q It continues, "Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office" -- "with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section."

Did I read that correctly?

A You did.

Q And you read that and understood it when you signed your declaration, correct?

A And I -- I gave everything that I had when I worked over there to the team that was working on this.

Q Okay. Who was the team that was working on this?

A It was Brian Blackman that asked for that information, and I turned over and disclosed everything I had, to the best of my knowledge and information, what was being asked. And then from there I really -- I wasn't that involved in the patent application, because I really don't know how all this translates legally over to it, as I was just really -- I was the one that worked on the system, and I'm not -- I'm not a patent expert, I mean, so I complied and did everything the company asked me to do.

Q Okay. So Brian Blackman showed you this declaration, had you sign it, and --

A Yeah, I think it was Brian that brought it back to me.

Q And asked you to turn over what you had?

A Uh-huh.

Q Did you --

A I don't know -- I don't remember the timing of it all.

THE VIDEOGRAPHER: Excuse me.

A Like I believe he asked me to turn it over first, and then at a later date all the paperwork came back and I was asked to sign it.

THE VIDEOGRAPHER: Excuse me. Take that paper off your microphone.

THE WITNESS: Yeah.

BY MR. STIMPSON:

Q Did you give any materials to anybody besides Brian Blackman?

A I don't remember.

Q Did you give Brian Blackman a copy -- well, did you give Brian Blackman any information concerning the physician quality reports, 2004 and earlier?

A No, because I -- I think it was almost -- it was like understood. He had asked for like any kind of maybe architecture, technical documents or any other things I might have had on that.

Q So you didn't give him anything?

A I gave him some documents, but I don't remember the nature of them all.

Q You gave -- so -- so in connection with this patent application, you gave Brian Blackman information on the physician quality reports from 2004 and --

A It would have been -- I don't remember exactly

what I gave him, but I gave him information.
Q Okay. So do you remember whether you gave him information on the physician quality reports?
A I don't.
Q Okay.
A No, I don't.
Q Do you have any records of what you gave to Mr. Blackman?
A I don't.
Q Did you give him any information on the physician -- I'm sorry. Let me just -- did you give Mr. Blackman any information on the physician quality comparison reports from 2004 and earlier?
A I don't remember if I included that or not.
Q Okay. Did you give Mr. Blackman any information on the physician quality guide?
A I don't remember.
Q Did you give Mr. Blackman any information on any of the nursing home reports we've looked at?
A I don't remember.
Q Do you remember if you gave Mr. Blackman information on anything --
A I gave him --
Q -- on any of the reports --
A I don't know if it was the report or --

MR. VÁZQUEZ: Object to form.
Q Just let me finish.
A -- or the -- I don't remember specifically what I gave him, but it was -- I don't.
Q Let me rephrase the question.
Did you -- to your recollection, did you give Mr. Blackman any information about any of the reports that Health Grades was showing to consumers on the website from 2004 and earlier?
A I don't remember what I -- I don't remember.
Q Did you discuss them with Mr. Blackman?
A No.
Q Did you discuss them with Mr. Neal?
A No.
Q Did you discuss them --
A I don't remember.
Q Did you discuss them with Mr. Hicks, David Hicks?
A I don't remember. They might -- I don't remember. They might have asked me for a question or two occasionally, but I don't remember specifically, no.
Q Why didn't you ensure yourself, Mr. Montroy, that the physician quality reports and the physician comparison reports and other reports from 2004 and earlier were disclosed to the United States Patent and

Trademark Office in connection with your application?

MR. VÁZQUEZ: Object to form.

A I wasn't filing an application, so I really -- I wasn't involved in it much, so I -- I assumed that, you know, it was an application and that Dave was doing it because, I mean, this really -- I mean, I wasn't pushing it. This was something that the company was pushing, and I was -- as an employee, was just trying to do my part and support it.

Q You understood, though, from the declaration that you signed that you personally had a duty of candor to the United States Patent and Trademark Office, right?

A Based on that form. That's what it says, yeah.

Q And you did not personally ensure that the Patent and Trademark Office was aware of any of these reports from 2004 and earlier, right?

A I wasn't aware that, you know, that, I guess, needed to be included or what should be included. Again, I just turned over what -- whatever I had. I mean, the reports -- I don't know. I would assume that if -- if Dave was putting that together, he would have worked with the attorney and had all the pieces together for whatever was needed for -- to file a patent application, because I had no idea what were the requirements for that or -- you know, Dave said I was

part of it, so I had to sign -- put my name on it and sign off on it, so I complied with the -- I was an employee of the company and I had to, for the most part.

Q You had no reason to believe -- nobody ever showed you any evidence that any of those 2004 and earlier reports were disclosed to the Patent and Trademark Office, right?

MR. VÁZQUEZ: Object to form.

A Say that again?

Q Did you have any information or evidence that anyone else associated with your 060 patent application had disclosed any of those 2004 reports to the Patent and Trademark Office?

MR. VÁZQUEZ: Form.

A I'm not -- I'm not sure -- I don't know what you mean.

Q Well, did you have any information that Mr. Neal or Mr. Hicks or Mr. Blackman or anybody had disclosed to the United States Patent and Trademark Office those 2004 reports, any of those 2004 reports?

MR. VÁZQUEZ: Object to form.

A I didn't have the application, so I don't know what was disclosed to them.

Q Okay. And did you ask to find out?

A No. I assumed maybe it was just good faith

that they were -- they were doing it right.

Q Do you have any other reason -- I'm sorry. Is there any other reasons why you did not --

A I just assumed that, you know, they had all the information to file the application, so I gave them what I thought was all the information that I had and, you know -- I don't know. I thought I did the best that I gave them in terms of giving them what they needed. So, I mean, I don't know all the points that were needed to file the application or to submit with it or...

Q Are there any other reasons why you didn't satisfy yourself that the Patent and Trademark Office knew about these earlier 2004 reports?

A No.

Q There were substantial similarities between some of the 2004 reports and the invention claimed in your 060 patent, right?

MR. VÁZQUEZ: Object to form.

A I don't understand.

Q Well, there were substantial similarities, right? I mean, both the 2004 reports and your claimed invention, the 060 patent, were directed to giving healthcare provider information to potential patients, right?

MR. VÁZQUEZ: Object to form. Calls for legal

conclusions.

Q Do you want the question read back?

A Yeah.

MR. STIMPSON: Okay. Can you read the question back, please?

(The following partial question was read by the court reporter: "There were" --)

MR. STIMPSON: Well, actually, let me just rephrase it. I'll --

THE COURT REPORTER: You sure?

MR. STIMPSON: Yeah. Yes.

BY MR. STIMPSON:

Q Let me put this Exhibit 3 back in front of you. And it's Claim 1 we're going to refer to.

So if you look at Claim 1 there, Mr. -- actually, let's go along there a bit.

Now, first of all, if you could turn to the front page of the patent, sir. And there's -- down the left-hand column, there's a number 60, "Provisional Application." Do you see that?

A Yeah.

Q And that's filed on February 8, 2006?

A Yeah.

Q Okay. And you knew that that was more than a year after Health Grades was already disclosing to the

public these physician quality reports and physician comparison reports and nursing reports, right?

A Yeah, I'm sure we had those in place before 2006.

Q In fact, they were in place -- as we've seen earlier today, they were in place and out there in 2004, right?

MR. VÁZQUEZ: Object to form.

A Somewhere in there. I just don't know the actual dates.

Q So if you look now to Claim 1 on Column 20 --

A Okay.

Q -- it says, "A computer-implemented method of providing healthcare provider information to potential patients."

The Health Grades system from 2004, where -- the physician quality reports and physician comparison reports --

A Right.

Q -- and nursing home reports, those were all computer-implemented methods of providing healthcare provider information to potential patients, right?

A Our whole website was.

MR. VÁZQUEZ: Form.

Q Your whole website was?

A The website. I mean, we provided -- it's --
Q Okay. Back in 2004?
MR. VÁZQUEZ: Form.
A Providing healthcare information to potential -- I mean, from the beginning of Health Grades, I mean, we -- that was a general assumption.
Q Right.
And then, continuing, "said method comprising receiving, by a web server computer of a company providing a service for connecting healthcare providers with potential patients, a request for information regarding a first healthcare provider, wherein the web server computer comprises at least one computer processor and memory."
And, again, back in 2004 Health Grades was receiving requests over its own website for information on healthcare providers --
MR. VÁZQUEZ: Object to form.
Q -- right?
MR. VÁZQUEZ: Object to form.
A Health Grades was receiving -- was publishing information on healthcare providers.
Q Right. And the reason -- and it was giving reports in response to requests from consumers for reports on specific healthcare providers, right?

A Yeah. They could buy the reports through the site.
Q Right.
MR. VÁZQUEZ: Form.
Q And, again, that was back in at least 2004?
A Somewhere in there.
Q Next paragraph, "Accessing healthcare-provider-verified information about the first healthcare provider, wherein the first healthcare-provider-verified information is received from first healthcare provider."
Now, let's stop there for a minute. We saw earlier today that at least as early as May 2003 healthcare providers were giving information for inclusion in the Health Grades website, right?
MR. VÁZQUEZ: Object to form. Misstates the evidence.
A The physicians, the POS system was available --
Q Right.
A -- so, you know, we received -- we received data from physicians. They could update to their profile.
Q Right. And that was at least as early as 2003?
MR. VÁZQUEZ: Form.
A I don't remember the date, but healthcare-provider-verified information, you know, I -- I still

interpret that as, you know, the Health Grades verification side of that.

Q Okay. And Health Grades was doing that in 2003 and 2004, right?

MR. VÁZQUEZ: Form.

A Yeah. I don't know the actual date, sir.

Q And then it continues, "where the healthcare-provider-verified information is received from the first healthcare provider and comprises three or more from the group consisting of," and then it's got that list of --

A Right.

Q -- healthcare information, right?

A Right.

Q And you know that from the POS in 2003/2004 healthcare providers were providing information for the reports, right?

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

A Again, I -- the dates I'm uncertain of, but, you know, these fields -- you know, some of these fields would indicate both Phase I and Phase II POS.

Q Okay. Right. We talked about some of these fields earlier, right? Age --

A Right.

Q -- gender? And you told me that you did think

that those were basic fields that the provider could --
A Yeah.
Q -- give information?
MR. VÁZQUEZ: Object to form.
Q And then the next paragraph, "Compiling by at least one computer processor patient-provided information regarding the first healthcare provider, wherein the patient-provided information comprises patient ratings from one or more past or current patients on the first healthcare provider."
Did I read that correctly?
A Yeah. Let me -- can I -- hang on a second.
Past or current patients. Okay. Yeah.
Q And we knew from the documents we saw today that well prior to February of 2006 when this application was filed, that Health Grades already had patient-provided information out there in the reports it was giving to its members, right?
MR. VÁZQUEZ: Object to form. Misstates the testimony, misstates the evidence.
A I'm unclear.
Q Huh?
A I'm unclear on what you mean. I'm unclear on how to answer.
Q Well --

A Can you restate it or --

Q -- remember we saw that press release from August 2005?

A Yeah.

Q Okay. And remember we saw the Drucker report, June 2005?

A Right.

Q They all talked about patient-provided information going into the reports of Health Grades, right?

A Right.

Q And that was 2005, well prior to the February 2006 filing of this application?

MR. VÁZQUEZ: Object to form.

A Prior to this application?

Q Right.

MR. VÁZQUEZ: Object to form.

A Hang on a second.

Yeah.

Q Okay. Then the claim continues, "and wherein the patient ratings are received from an online patient experience survey completed on a company website by the one or more past or current patients of the first healthcare provider."

Now, again, patient-provided information we

were talking about from 2005, that was all collected from the Health Grades website, right?

MR. VÁZQUEZ: Object to form. Misstates testimony.

A The patient information would have been collected from the website.

Q Right.

"And wherein the company website is managed by the company providing the service for connecting healthcare providers with potential patients."

And in 2005 and 2004 Health Grades was managing its own website, right?

MR. VÁZQUEZ: Form.

A Yeah.

Q Okay. Next paragraph, "Compiling information regarding the first healthcare provider verified by an independent third-party source" -- now, we also knew in 2003, 2004, 2005 Health Grades was getting information from its reports -- for its reports from third parties, right?

MR. VÁZQUEZ: Object to form. Misstates the testimony and the evidence.

A Some of these --

MR. STIMPSON: Jesús, just "form" is good enough, okay? You don't need to tell the witness

how to answer, okay?

MR. VÁZQUEZ: No, I'm not telling the witness what to answer.

MR. STIMPSON: Yes, you are.

MR. VÁZQUEZ: I'm telling you what you're doing wrong.

MR. STIMPSON: Yes, you are. "Form" is good enough. That will preserve your objection.

MR. VÁZQUEZ: I'll make my objections as I see fit, Counsel.

MR. STIMPSON: Yeah. Well, you're also going to get sanctioned for it someday.

BY MR. STIMPSON:

Q Okay. "Compiling information regarding the first healthcare provider verified by an independent third-party source." We also knew from 2003, 2004, 2005 Health Grades was collecting information for its various reports from third parties, right?

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

A So, if I'm reading this right, compiling information regarding the first healthcare providers verified information by independent third-party source. So the third-party source was verified information. So like ABMS data, that would have been characterized as --

at least that's how I characterize it -- as verified information.

Q Right. And then Health Grades was doing that in 2003, 2004 and 2005 in its prior reports, right?

MR. VÁZQUEZ: Object to form. Same objections.

A I'm not -- I don't -- I'm not sure on the date of the ABMS data, but I -- I don't know the actual timeline of all those fields and data points. But we did -- this is -- this is -- we did do this, so...

Q Right. And it says, "wherein the information verified by the independent third-party source comprises three or more from the group consisting of" -- and then it has that list of --

A Reports, yeah.

Q -- sets of information, right?

A Right.

MR. VÁZQUEZ: Form.

Q And we know that not only did three or more of that list -- not only were three or more of that list found in the 2004 reports, but all of that list was found in those 2004 reports, right?

MR. VÁZQUEZ: Form.

A At some point they were in the reports.

Q Right. And that's from that 2004 report that you and I went over and we compared to the claim, right?

A Are you talking about the concept report or the actual report that was in production?

Q The report from 2004 that we looked at earlier, sir. Remember how we compared the claim to this -- to the report itself?

A Right.

MR. VÁZQUEZ: Form.

Q And you confirmed for me that every single one --

A Right.

Q -- on this list was found in that 2004 report, right?

A Right.

MR. VÁZQUEZ: Form.

Q Next one, "Creating, by at least one computer processor, a healthcare provider report on the first healthcare provider."

And, again, 2003, 2004, 2005 Health Grades was creating reports for consumers on healthcare providers that they were requesting reports about, right?

A Somewhere in that range --

MR. VÁZQUEZ: Form.

A -- yeah. I mean...

Q Well, no. We've seen them earlier today. You know in 2003, 2004 and 2005 Health Grades was doing

that, right?

MR. VÁZQUEZ: Form.

A Yeah, but -- it was doing that, but what -- with what data points, I guess, is --

Q Right. But let's just look at this claim language for now, and we'll talk about the other claim language as we get to it. It says, "Creating, by at least one computer processor, a healthcare provider report on the first healthcare provider."

A Right.

Q And we've seen multiple healthcare provider reports --

A Right.

Q -- that Health Grades was giving --

A Right.

Q -- in 2004 and 2005, right?

A Right.

MR. VÁZQUEZ: Form.

Q And it says, "using healthcare-provider-verified information, the patient-provided information, and the information verified by the independent third-party source" -- okay. We've already talked about those datas --

A Right.

Q -- a little earlier -- "wherein the healthcare

provider report on the first healthcare provider includes comparison ratings of healthcare providers," right?

A (Nods head.)

MR. VÁZQUEZ: Form.

Q And remember we saw the -- at least the nursing home report --

A Right.

Q -- earlier which had those various star ratings, comparison star ratings --

A Right.

Q -- right?

MR. VÁZQUEZ: Form.

Q And that was back in 2004, right?

A The nursing report had quality ratings.

Q Right. Had com- --

A I'm not sure what year we put that in production either, but, you know -- but, yeah, the ratings were in there. So --

Q And it was comparison ratings for various nursing homes, right?

A That report that you showed me, yeah, was comparing the ratings of nursing homes.

Q Right.

And then --

A And those were Health Grades' quality ratings, I believe.

Q Right.

Well, they were -- there were comparison ratings.

A But they were quality ratings --

Q Okay.

A -- that was Health Grades'.

Q Okay. And then "providing access to the healthcare provider report on the first healthcare provider over a computer network."

And, again, those reports we saw today, all of them were provided --

A Yeah.

Q -- to consumers all over the Health Grades website, right?

A Right.

MR. VÁZQUEZ: Form.

Q And none of those reports were disclosed to the United States Patent and Trademark Office, correct?

MR. VÁZQUEZ: Form.

A That I don't know.

Q But you did not assure that any of them were disclosed to the Patent and Trademark Office, despite your signed duty of candor, right?

MR. VÁZQUEZ: Form.

A I -- I don't know if they were.

Q Okay.

A I didn't -- I didn't submit the application.

Q Did you see any of the prior art that was cited before the Patent and Trademark Office?

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

A Which one are you referring to, this stuff here?

Q Well, like, for example, there was one piece of prior art that was used at the Patent and Trademark Office called Henley.

MR. VÁZQUEZ: Same objection.

A What is it?

Q Henley, H-e-n-l-e-y.

I'll show you -- this is marked as Exhibit 6. And if you could please tell me if you've seen that before.

A I don't recall this at all.

Q Do you want to just flip through the figures just maybe in case something like that jogs your memory?

A I'm sorry. Your question was what?

Q Do you recall seeing this?

A No.

MR. STIMPSON: All right. I have no further questions.

MR. VÁZQUEZ: Okay. We need to just confer a little and then we will have some questions.

MR. STIMPSON: Okay.

THE VIDEOGRAPHER: Going off the record at 2:55.

MR. VÁZQUEZ: Ten minutes?

MR. STIMPSON: Sure.

MR. VÁZQUEZ: Thank you.

(Break taken.)

THE VIDEOGRAPHER: Back on record at 3:20. This is the beginning of Videotape Number 8.

CROSS-EXAMINATION

BY MR. VÁZQUEZ:

Q Mr. Monroy -- Montroy, excuse me -- I have a few follow-up questions.

As you know, we've been here most of the day, and counsel for MDX has asked you questions. So I just need to follow up on some of the testimony that was already given and some of the questions that were asked earlier today, okay?

A Okay.

Q Okay. You recall that there were some questions at the beginning of your deposition regarding