analytical approach. I then cut the reduced prospective rate in half to reflect that "A rationale negotiation would lead to a near split between a rate in low single digits and or low rate and HealthGrades' starting point—either 16.5 % or 23% (or mid-point of approximately 20%). This would reasonably yield a royalty rate of approximately 10% prior to a full evaluation of the Georgia Pacific factors." See ¶89, Ex. A). This negotiation split would reasonably include MDx's negotiation point that the starting point based on the analytical method does not fully account for its unpatented features. See my deposition 141:21-15; 142:8-16; 144:2-22; 180:22-24; and 221:21-22 (Ex. D) for my testimony on reducing the royalty rate to account for unpatented features.

22. **I** then concluded with a comprehensive analysis of the all of the *Georgia Pacific* factors to arrive at a 12% royalty rate (see ¶78 through ¶91 and Attachment 9, Ex. A).

HealthGrades' Advertising Revenue As The Basis For The Royalty Base Is Supported By HealthGrades' License Agreements.

23. One of the reasons that I believe it is reasonable and appropriate to apply an adjusted rate (adjusted lower to account for unpatented features) to Vitals' infringing advertising revenue is that HealthGrades had established a history of applying a license rate to advertising revenue. I referenced this point in ¶62 Ex. A ("structure of licenses") and Attachment 6a. I also testified to this point at 142:11-16; 244:8-14 (Ex. D). **My *Mor-Flo* Analysis Was Mischaracterized**

24. MDx's counsel's mischaracterizes my *Mor-Flo* analysis and ignores the fact that I also performed a *Mor-Flo* analysis using MDx's damages expert's (Mr. Napper's) market share analysis (see Napper report page 8, Ex. E). See my deposition: 8:11-10:14 and 303:7-17 (Ex. D) and also see Ex. A, Attachments 3a, 4; Ex. I to Opposition, Attachment 3a--Napper Market Share (Hall Depo. Exhibit 76); Ex. J hereto, Attachment 4--Napper Market Share Data (Hall Depo. Exhibit 77). Using Mr. Napper's

market share analysis does not significantly change my lost profits damages and in fact, increases it slightly.

25. The following table from Napper's report was the basis for my Attachment 3a--Napper Market Share, Ex. I to the Opposition (Hall Depo. Exhibit 76); Attachment 4--Napper Market Share Data, Ex. J hereto (Hall Depo. Exhibit 77), and; Attachment 16, Ex. H to the Opposition (Hall Depo. Exhibit 79).

26. Mr. Napper identified these companies as competitors and indicated his source's market share. See Ex. E page 8. In the first column, I note whether or not Vitals (pre-litigation), Mr. Neal, and I all agree with Mr. Napper's inclusion of these Website/ Companies in HealthGrades' market. 'All include' indicates that Vitals, Neal, Napper and I all agree that referenced Website/Company is in HealthGrades' market.

		Market Share		
Who Identified as Competitor	Website / Company	Jul-10	Jan-11	Jul-11
All include	**Healthgrad es**	36.7%	40.3%	51.5%
All include	**Vitals**	**15.5%**	18.4%	17.3%
Vitals did not include (MDX 0012724-25, Ex. G) and Mr. Neal did not identify as competitor	**Wellness.com**	13.4%	14.8%	16.8%
All include	**UCompareHealthCare**	**10.0%**	10.1%	13.4%
Vitals did not include (Ex. G) and Mr. Neal testified ***NOT*** a competitor, p. 93 (Ex. F)	**Healthcare.com**	8.2%	3.3%	0.0%
All include	**Angie's List**	7.4%	5.4%	0.0%
All include	**Rate MDs**	4.9%	3.2%	0.5%
Vitals did not include (Ex. G) and Mr. Neal did not identify as competitor	**Doctor.com**	1.1%	0.8%	0.5%
Vitals did not include (Ex. G) and Mr. Neal did not identify as competitor	**Physician Reports**	0.7%	0.3%	0.0%
Vitals did not include (Ex. G) and Mr. Neal "not familiar with Vimo" p. 85 (Ex. F)	Vimo	0.6%	0.6%	0.0%
Vitals did not include (Ex. G) and Mr. Neal recalls as a competitor, p.88 (Ex. F)	**Dr Score**	0.5%	0.3%	0.0%
Vitals did not include (Ex. G) and Mr. Neal did not identify as competitor	**Doctors Dig**	0.5%	0.5%	0.0%
Hall includes; Vitals did not include (Ex. G); and Mr. Neal did not identify as competitor	**ZocDoc**	0.2%	0.4%	0.0%
Vitals did not include (Ex. G) and Mr. Neal did not identify as competitor	**Check MD**	0.1%	0.0%	0.0%
Vitals did not include (Ex. G) and Mr. Neal did not identify as competitor	**Suggest a Doctor**	0.1%	0.0%	0.0%
Vitals did not include (Ex G) and Mr. Neal did not identify as competitor	**Doctor Directory**	**0.1%**	0.0%	0.0%