IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

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

HEALTH GRADES, INC.,

Plaintiff,

vs.

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

Defendant.

PARTIES' JOINT MOTION TO EXTEND DEADLINES TO EXCHANGE PROPOSED TERMS FOR CONSTRUCTION AND TO EXCHANGE THEIR PRELIMINARY CLAIM CONSTRUCTIONS AND EXTRINSIC EVIDENCE

Plaintiff Health Grades, Inc. ("Health Grades") and Defendant MDX Medical, Inc. d/b/a Vitals.com ("MDX") (collectively the "Parties"), jointly and by their undersigned counsel, pursuant to D.C.Colo.LCivR 6.1(C) and (D) and Sections 12 and 13 of the Scheduling Order in this case [Doc. 34], respectfully submit their Joint Motion To Extend Deadlines To Exchange Proposed Terms For Construction And To Exchange Their Preliminary Claim Constructions And Extrinsic Evidence, and state in support:

Conferral pursuant to D.C.Colo.LCivR 7.1(A)

Undersigned counsel have conferred with each other and certify that they move jointly for the relief requested herein.

Joint Motion

1. In accordance with Section 6(f)(1) of the Scheduling Order in this case [Doc. 34], the Parties are to exchange the claim terms they propose for construction on September 2, 2011 ("Exchange of Proposed Terms for Construction"), and to exchange their respective proposed

preliminary constructions for the terms and any extrinsic evidence supporting their proposed constructions on September 23, 2011 ("Exchange of Preliminary Claim Constructions and Extrinsic Evidence").

2. The Parties respectfully request that the deadline to exchange the claim terms they propose for construction be extended to September 13, 2011, and that the deadline to exchange their respective proposed preliminary constructions for the terms and any extrinsic evidence supporting the constructions be extended to September 30, 2011. Good cause exists for the requested extensions.

3. The Parties have just recently exchanged a significant number of documents in support of their respective infringement and invalidity contentions. The contents of these documents may influence what terms the Parties will propose for construction, as well as the constructions the Parties will propose for the terms. The Parties require additional time to adequately review and analyze these documents before proposing terms for construction and before exchanging their respective proposed constructions.

4. The requested extensions will not impact or require that the *Markman* hearing currently scheduled for January 19, 2012, be re-scheduled.

5. The Parties have not previously requested an extension of the deadlines at issue in this motion. A copy of this motion will be simultaneously served on the Parties by their respective undersigned counsel.

6. Thus, for good cause shown, the Parties respectfully request the Court extend the deadline for the Parties to exchange their proposed terms for construction ("Exchange of Proposed Terms for Construction") from September 2, 2011, to September 13, 2011, and to

extend the deadline for the Parties to exchange their respective proposed preliminary constructions for the terms and any extrinsic evidence supporting the constructions ("Exchange of Preliminary Claim Constructions and Extrinsic Evidence") from September 23, 2011, to September 30, 2011.

WHEREFORE, Health Grades respectfully requests that the Court grant its motion and extend the deadlines for the Exchange of Proposed Terms for Construction to September 13, 2011, and for the Exchange of Preliminary Claim Constructions and Extrinsic Evidence to September 30, 2011, and that the Court amend the Scheduling Order accordingly.

Respectfully submitted this 2nd day of September, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2011, I electronically filed the foregoing **PARTIES' JOINT MOTION TO EXTEND DEADLINES TO EXCHANGE PROPOSED TERMS FOR CONSTRUCTION AND TO EXCHANGE THEIR PRELIMINARY CLAIM CONSTRUCTIONS AND EXTRINSIC EVIDENCE** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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