EXHIBIT A

Scott D. Stimpson

From: Vazquez, Jesus [jvazquez@rothgerber.com]

Sent: Thursday, October 20, 2011 8:04 PM

To: Scott D. Stimpson; David C. Lee

Cc: Mark J. Rosenberg; Scott Murray; 'lampley@wtotrial.com'; 'ridley@wtotrial.com'

Subject: Discovery Responses, Supplement to Infringement Contentions and Depositions

Attachments: Health Grades Response to Second Request for Production (00987272).pdf; Health Grades Responses to Second Rogs (Executed) (00987268).PDF; Health Grades Respones to Requests for Admission (00987270).pdf; Second Supplemental Claim Chart 10 19 11 FINAL.pdf

Scott and David:

Attached are Health Grades' responses to MDx's discovery requests, as well as Health Grades' second supplement to its Infringement Contentions chart.

With respect to the supplement, you will see that we have added support for our literal infringement and doctrine of equivalents arguments for the term "healthcare provider-verified information" beginning on page 7 for literal infringement and page 8 for DOE.

Additionally, we have added supplemental literal infringement arguments for "compiling ... on-line patient experience surveys" begin on page 10, and DOE arguments also begin on page 10.

Supplemental literal infringement arguments for "compiling ... verified by an independent third-party source" begin on page 17, and DOE arguments begin on page 18.

Supplemental literal infringement arguments for "using healthcare provider-verified information, and the information verified by an independent third-party source" begin on page 25, and DOE arguments begin on page 26.

Supplemental DOE arguments for "report" begin on page 27.

Supplemental literal infringement arguments for "comparison ratings" begin on page 27, and DOE arguments begin on page 28.

DOE arguments for "the results list further includes an advertisement" begin on page 34.

I anticipate sending you responsive documents to MDx's requests for production tomorrow - however, due to a glitch we encountered with the bates numbering and designations we may need until Monday to complete the production. I do apologize for this short delay.

With respect to depositions, Dave Hicks is available on November 2, 3 or 4. I am trying to determine if John Neal is available in that same time frame to come to Denver for his deposition - I will let you know as soon as I hear back from him. I previously gave you Scott Montroy's availability in Florida, i.e., the week of Nov 14th-18th or Dec 5th-9th. Per our previous request, we would appreciate it if you could let us know regarding Messrs. Rothschild and LaPointe's availability in New York in November (except Thanksgiving week) and December (except from December 22 through the end of the year).

Regards, Jesus

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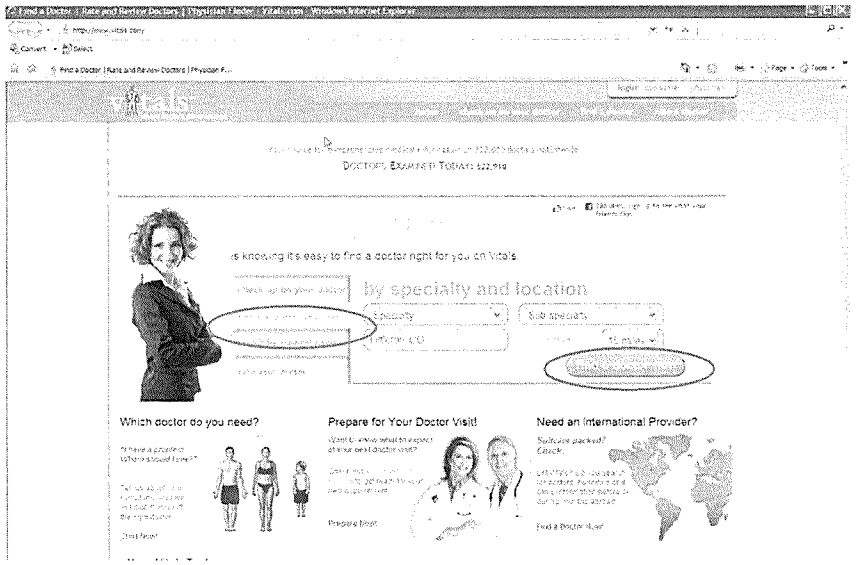
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EXHIBIT A - Claim Chart
U.S. Patent No. 7,752,060 to MDx's Current Website

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.

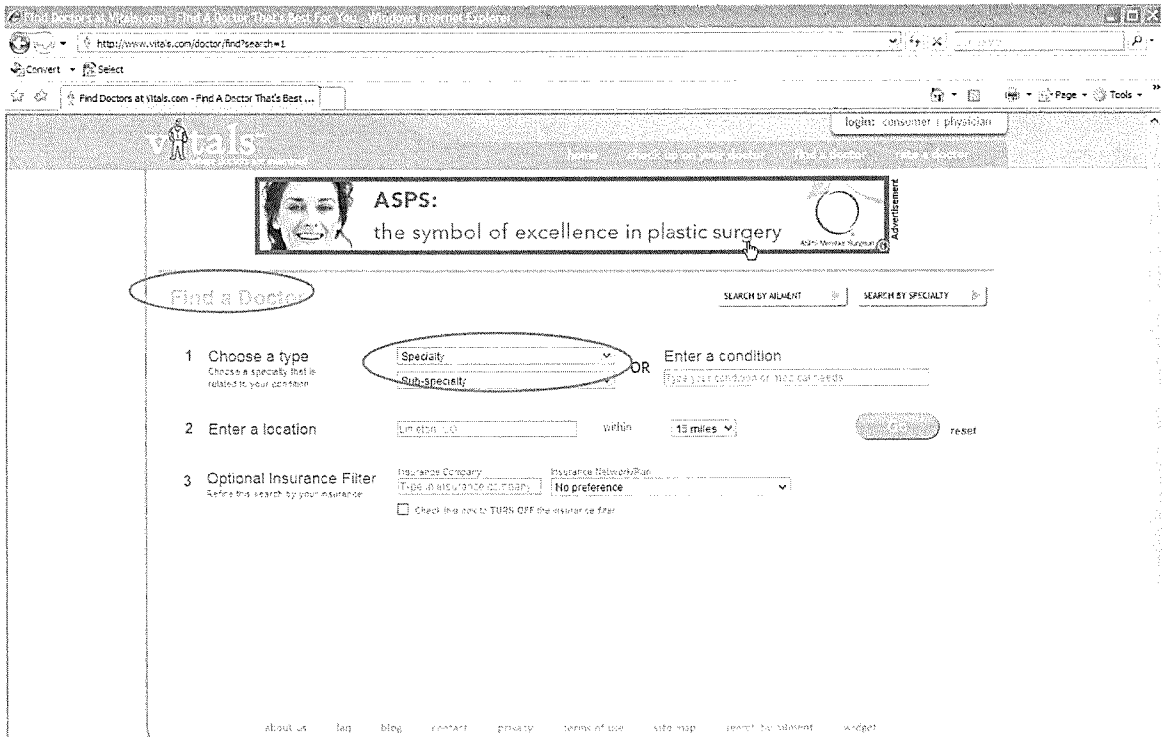
[1] Screenshots taken between 6/1/11 and 6/29/2011.

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.

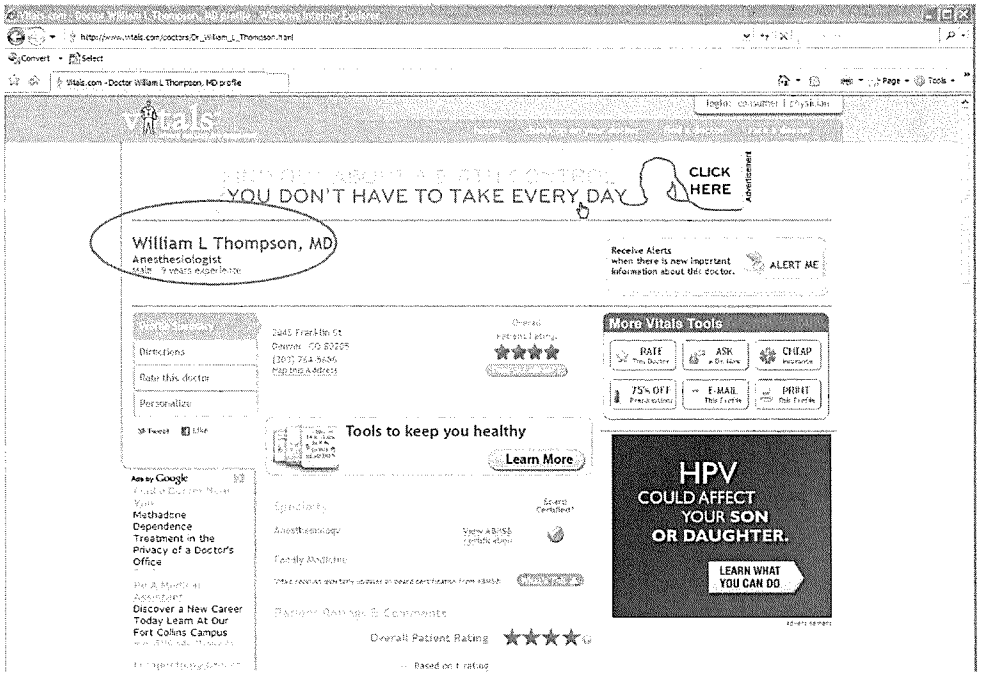
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U.S. Patent No. 7,752,060	MDx's Current On-line Information System
healthcare providers with the potential patients, a request for information regarding a first healthcare provider, wherein the Web server computer comprises at least one computer processor and memory;	Screenshot No. 2  Screenshot No. 2 shows an example of where a potential patient may initiate a search for a healthcare provider on MDx's website, i.e., request information about one or more healthcare providers. When the user clicks "find a doctor now," this prompts the patient's web browser to send a request for information about a doctor to the MDx's web server, which receives the request for information and then accesses MDx's database to find data that responds to the user's search query. Screenshot No. 3 illustrates yet another portion of MDx's website that provides for MDx's web server to receive a request for information about various doctors based on specialty or location. *See*

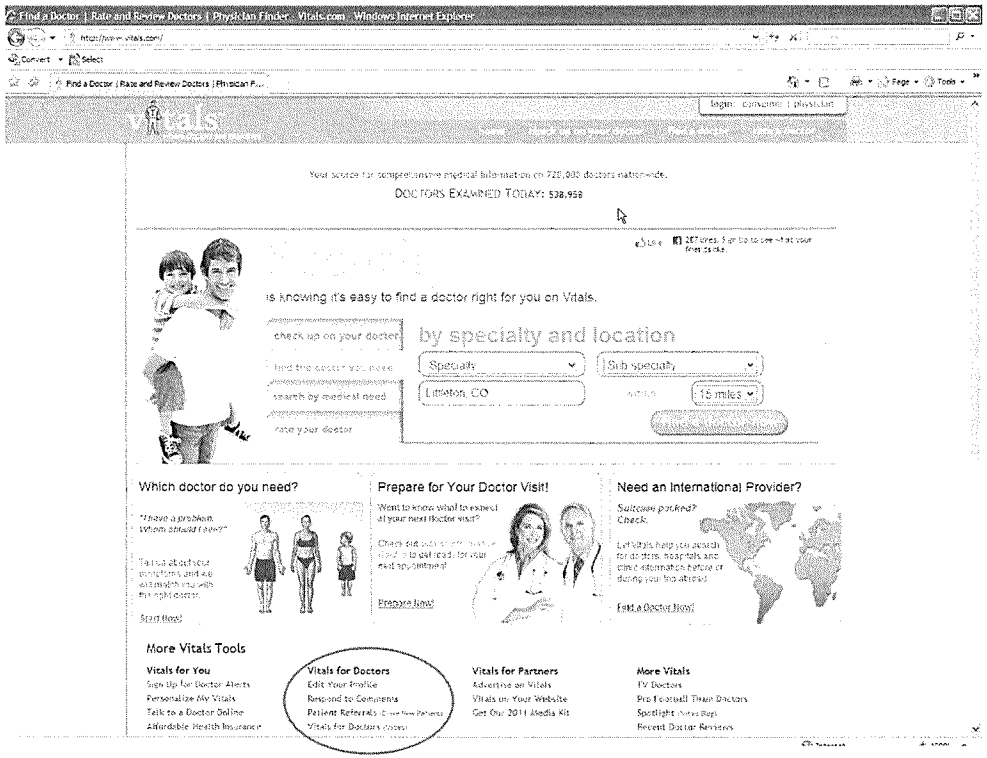
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U.S. Patent No. 7,752,060	MDx's Current On-line Information System
	Screenshot No. 3 (circled in red are ways to search for a doctor). Screenshot No. 3 
accessing healthcare	At the initiation of the potential patient/user using MDx's website, MDx's web server accesses

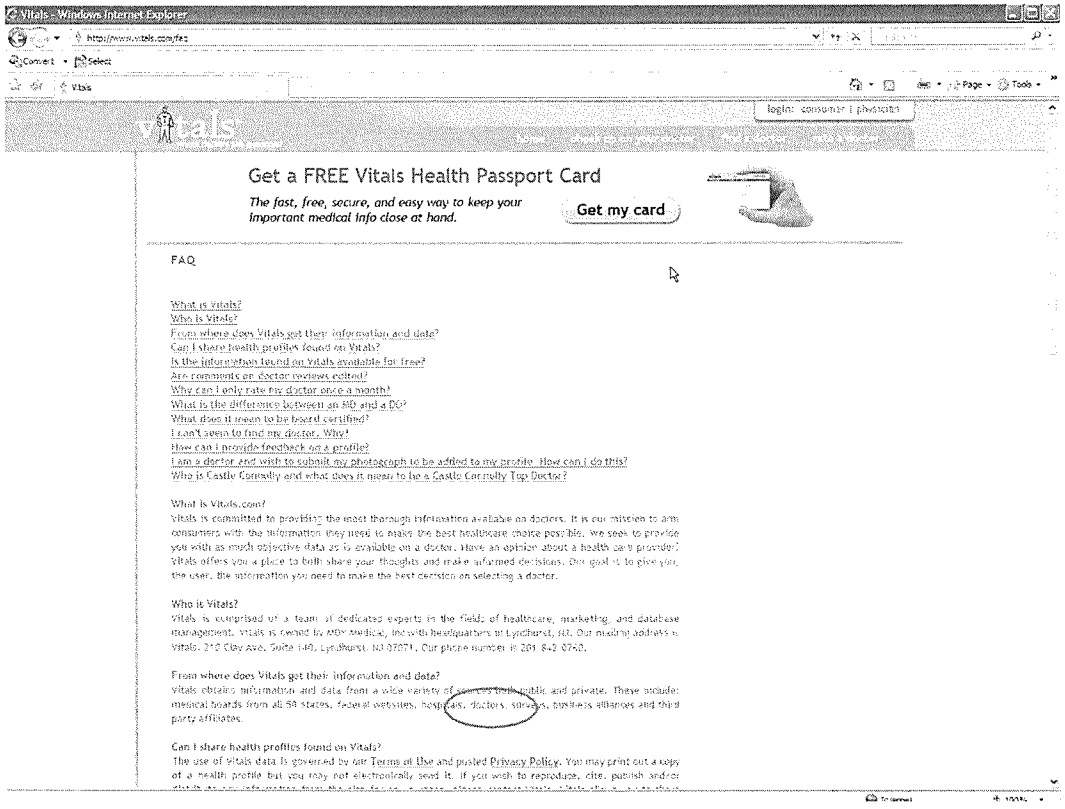
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provider-verified information about the first healthcare provider, wherein the healthcare provider-verified information is received from the first healthcare provider and comprises three or more from the group consisting of: specialty information, medical philosophy, gender, age, years in profession, years in practice, awards, honors, professional appointments, professional memberships, publications, languages, and hobbies;	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  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

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U.S. Patent No. 7,752,060	MDx's Current On-line Information System
	website provides many opportunities for doctors to edit their own profiles. *See, e.g.*, Screenshot No. 5. Screenshot No. 5  MDx states on its website that it receives, compiles, and posts doctor-supplied information. *See* Screenshot No. 6.

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U.S. Patent No. 7,752,060	MDx's Current On-line Information System
	Screenshot No. 6 

Health Grades proposed that the term "healthcare provider-verified information" be construed as "information verified by a physician or other healthcare professional." MDx accesses information

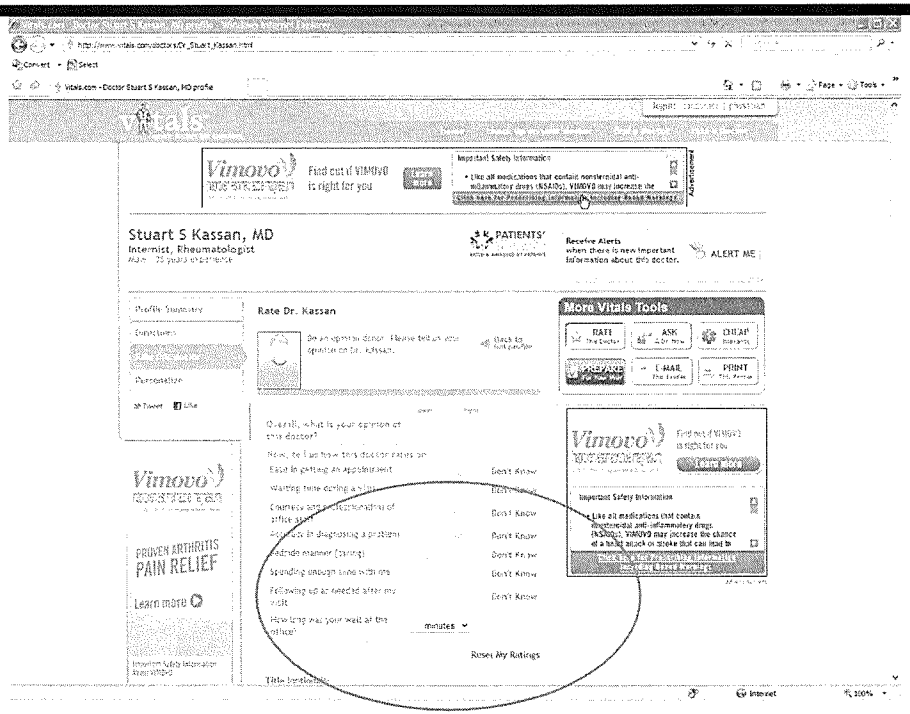
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	verified by a physician or other healthcare professional. *See, e.g.,* MDX 0000333 (noting thousands of data sources include self-reports by physicians); MDX 0000359 (noting that doctor edits, "once they go through a filter, are immediately posted to website"); MDX 0000346 (noting that "[o]nce data is loaded, doctors can Edit most profile elements"); MDX 0000347 (noting that "doctors are alerted when changes are made to their profile" to encourage doctors to add data or amend profiles); MDX 0000351 (noting that "physicians have the opportunity to update & add information, as long as it is in compliance with official sources"); MDX 0000348 (noting that MDx's front line staff assist each doctor with "tweaking" the doctor's profile); MDX 0000307 (noting that MDx gathers information from primary source with respect to procedure volume, publications, and special expertise to provide a "360° view of doctor quality".); MDX 0000303 (noting that MDx database data integrity strategy is to "[u]tilize wisdom of crowds and allow for data improvement from . . . doctors"); Should the Court adopt an alternative construction of the term "healthcare provider-verified," such as defendant's proposed construction of "information proved to be true directly and personally by the healthcare provider," MDx infringes literally and under the doctrine of equivalents. For example, MDx literally infringes because MDx admits that it accesses information that is provided to MDx by the healthcare provider, and therefore is verified by the healthcare provider. *See, e.g.,* MDX 0000333 (noting that thousands of data sources include self-reports by physicians). And MDx assumes the information to be proved as true because it was provided directly by the healthcare provider, to the extent that its internal data filter does not perform a data integrity check. MDX 0000359 (noting that doctor edits, "once they go through a filter, are immediately posted to website"). Moreover, even if every doctor does not provide every piece of his or her own personal information, and to the extent that any physician information originates with a third party, MDx still literally infringes because its system provides the capability for healthcare providers to verify and edit their own information as detailed above. As such, this editing relies on the fact that the physician is "proving to be true" information it edits.

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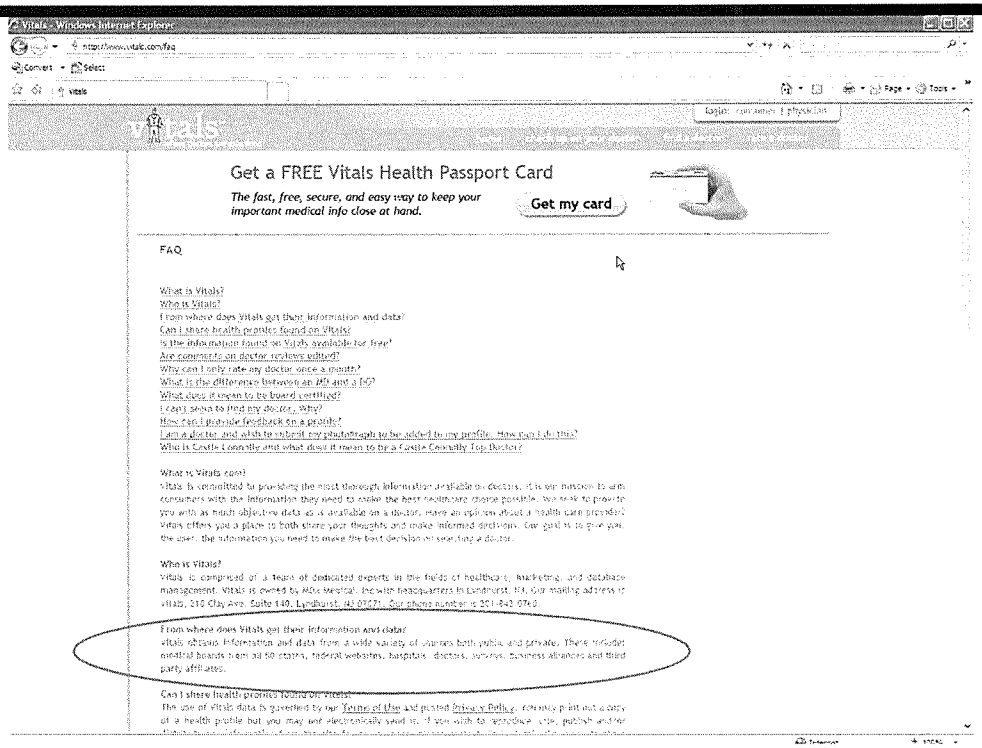
U.S. Patent No. 7,752,060	MDx's Current On-line Information System
	To the extent that MDx does not literally infringe this element, it infringes under the doctrine of equivalents at least because it accesses information that a physician has provided. To the extent that providing information is not literally the same as personally and directly proving it to be true (a position with which Health Grades disagrees), it performs substantially the same function in substantially the same way to obtain the same result. The function of having a doctor provide the information enables MDx to prove true the information the doctor provides. The way is the above mentioned computer method. The result is a data set that has been proved true because the doctor provided the information. To the extent that MDx does not literally infringe this element because the physician information is verified by a third party, it infringes under the doctrine of equivalents because it performs substantially the same function in substantially the same way to obtain the same result. The function of the claim is to make the information service more trustworthy. The way it makes it more trustworthy is to get information from a third party, the doctor. The result is that it is more trustworthy. *See, e.g.,* MDX 0000303 (noting MDx database data integrity strategy is to "[u]tilize wisdom of crowds and allow for data improvement [by] . . . doctors").
compiling, by the 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	MDx's on-line information service, which includes a computer processor, compiles patient-provided information regarding healthcare providers. MDx compiles the patient ratings from a www.vitals.com on-line patient-experience survey; this survey is shown in Screenshot No. 7, below. Screenshot No. 7

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current patients of the first healthcare provider, and wherein the patient ratings are received from an on-line patient experience survey completed on a company Web site by the one or more past or current patients of the first healthcare provider, and wherein the company Web site is managed by the company providing the service for connecting healthcare providers with the potential patients;	 Further, MDx admits that it collects information from patients using online experience surveys. *See* MDX 0000224 (noting the rules for displaying patient ratings comprise "a rating equals a submission of a doc for the 8 questions," the eight questions being the ones circled in red above). MDx argues that it does not infringe this claim element because "Not all the patient ratings come from the MDx on-line survey." However, this claim element contains no such requirement. But even if the claim did contain such a requirement, MDx infringers under the doctrine of equivalents because it performs substantially the same function in substantially the same way to obtain the same results. The function of

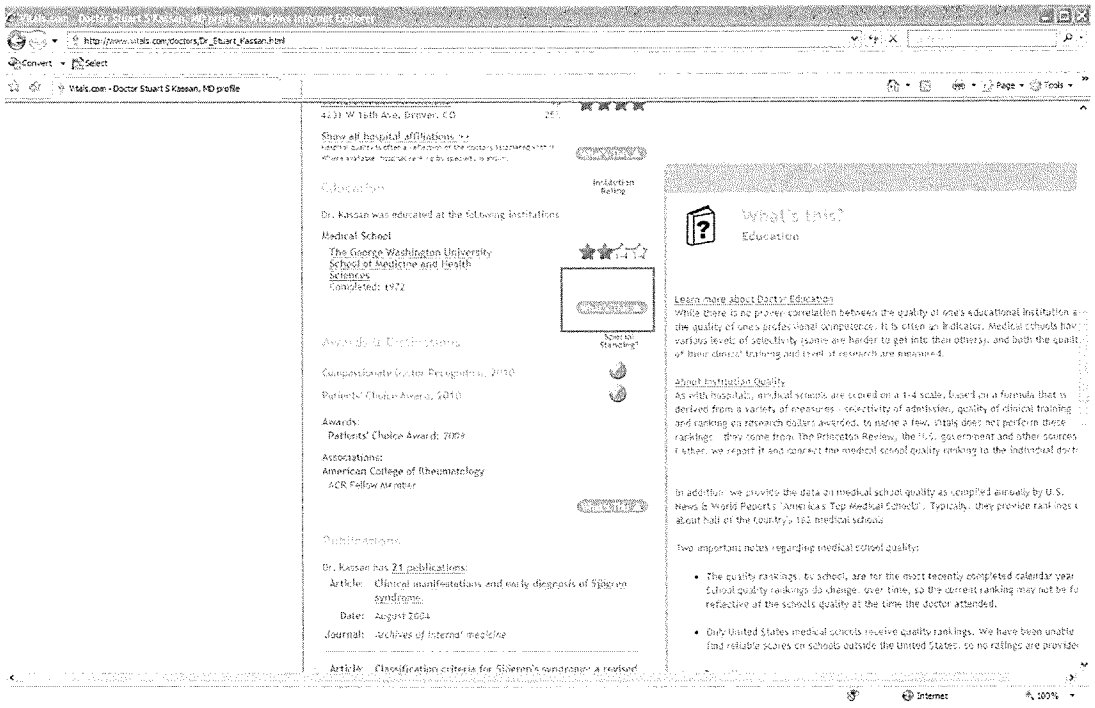
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	the claim is to collect patient ratings of doctors from patients. MDx admits that it does this. It does so with on-line experience surveys and with patient experience ratings from another source (it has not specified what this source is). The result is an aggregate data set representing past experiences of patients, a result of the claim. Further, the result is the same, namely, the compiling of patient provided information through online patient experience survey. MDX also argues that it does not infringe this claim element because "MDx compiles data on providers as scheduled – it does not compile data in response to receiving a request for information regarding a healthcare provider." It is not clear what construction of compiling MDx proposes when making this argument. However, this claim element contains no such requirement. But even if the claim did contain such a requirement, MDx infringes under the doctrine of equivalents. The purpose of this claim element is to compile patient ratings. MDx does this. The way that MDx does this apparently is by compiling on a schedule, which is substantially the same as compiling every time a patient requests information about a doctor. The results are the same, for example, an aggregate rating of doctors.
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	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

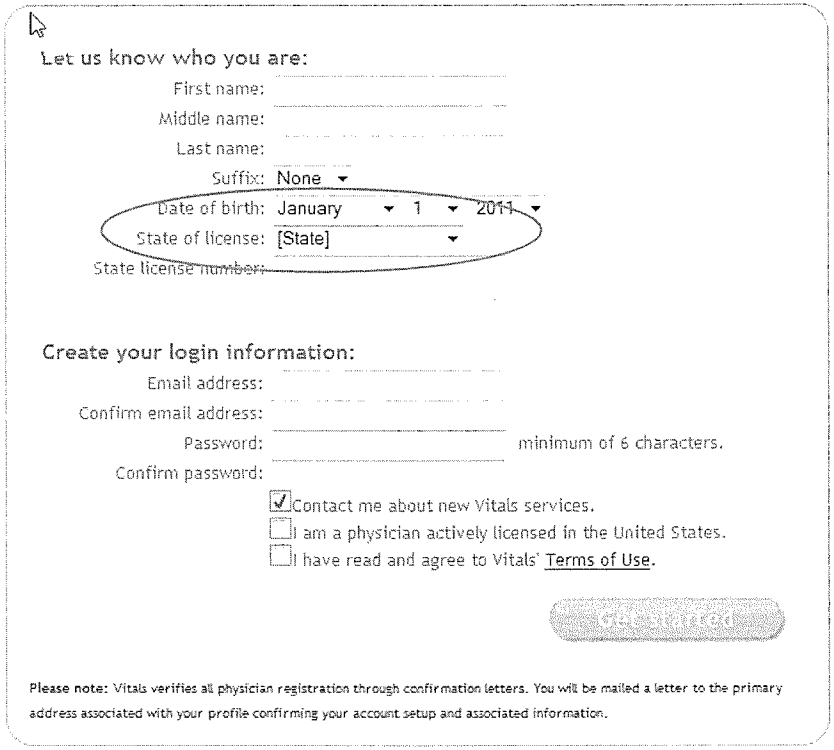
U.S. Patent No. 7,752,060	MDx's Current On-line Information System
action information, medical school, medical internship, medical residency, and medical fellowship information;	 As a specific example, MDx compiles medical school information on a given doctor from *U.S. News & World Report's* "America's 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 with a third party 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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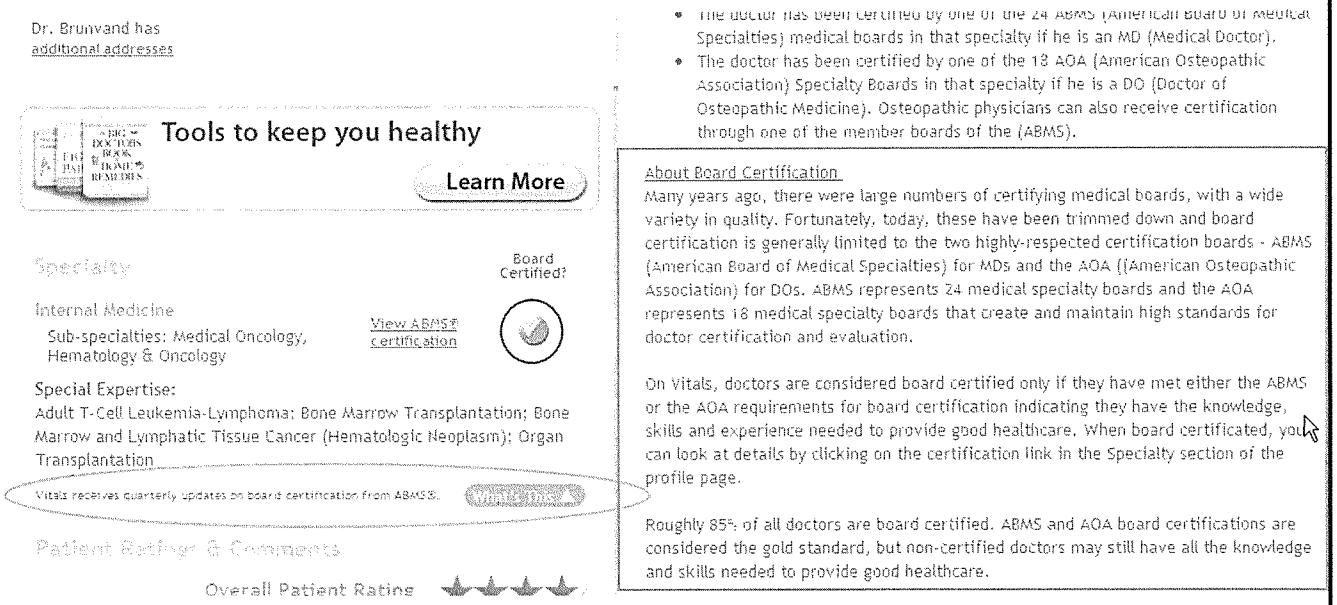


MDx admits that it compiles board certification information. *See* screenshot No. 11 below ("Vitals receives quarterly updates on board certification from ABMS", circled in orange). Further, the American Board of Medical Specialties is an independent source. *See* Screenshot No. 11, "About Board Certification"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

Screenshot No. 11

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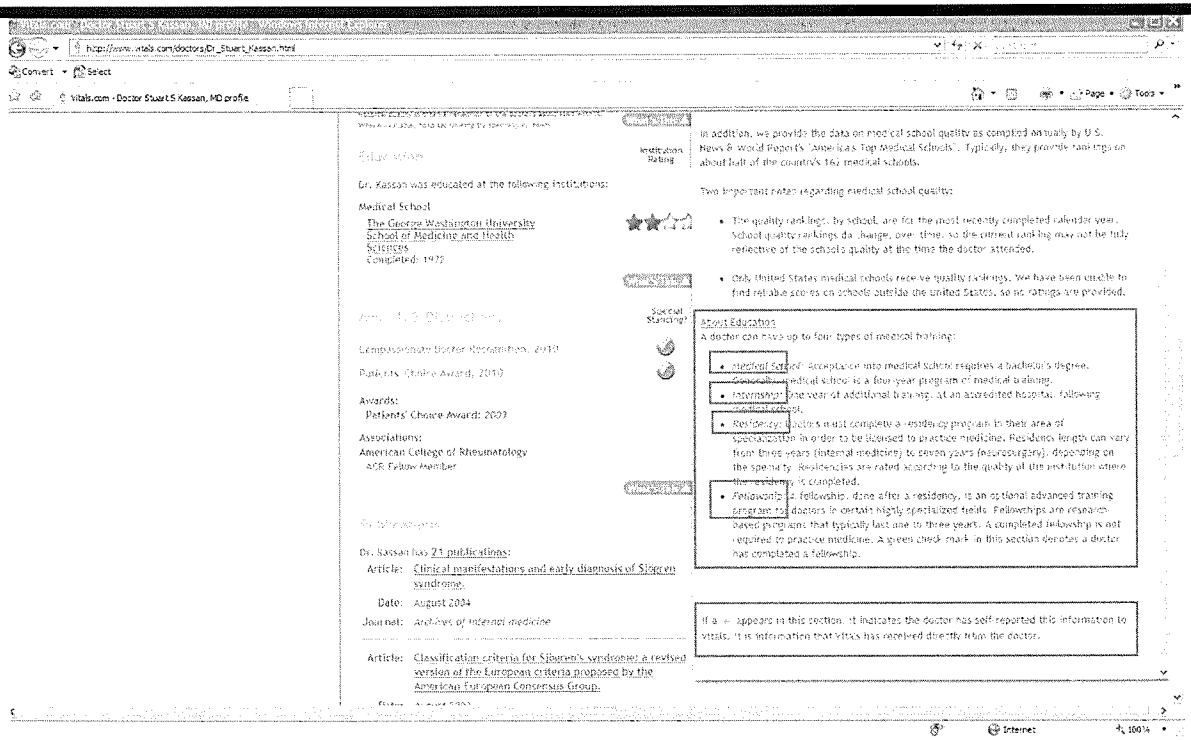
U.S. Patent No. 7,752,060	MDx's Current On-line Information System



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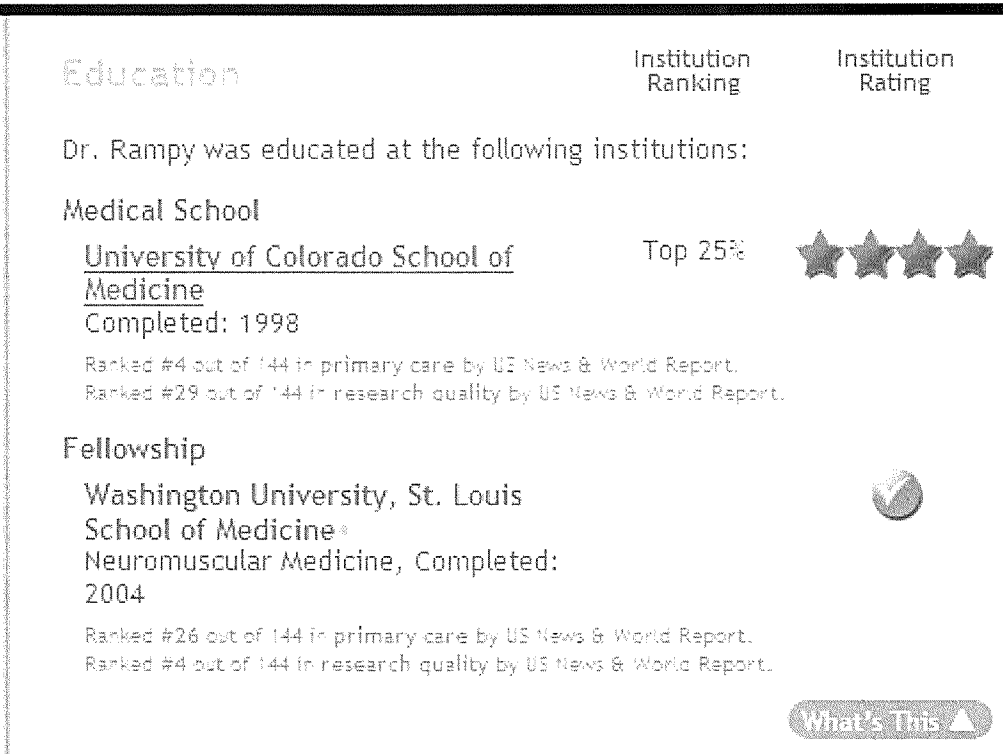
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As a specific example, Screenshot 13 provides specific evidence that MDx compiles fellowship information on at least some it its doctors.

Screenshot No. 13

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Further, MDx compiles information that is verified by third-party sources. *See* MDX 0000317 (noting MDx compiles independently verified information from 29 third-party sources); MDX 0000318 (intimating that MDx pulls insurance information); MDX 0000333 (noting that MDx uses data from the following sources: state and federal boards of medicine; sanction and disciplinary action databases; ABMS, DEA, NP, and UPIN databases; 160+ individual medical school websites; 5000+ individual hospital websites; many thousand group practice sites, association and medical specialty sites; insurance

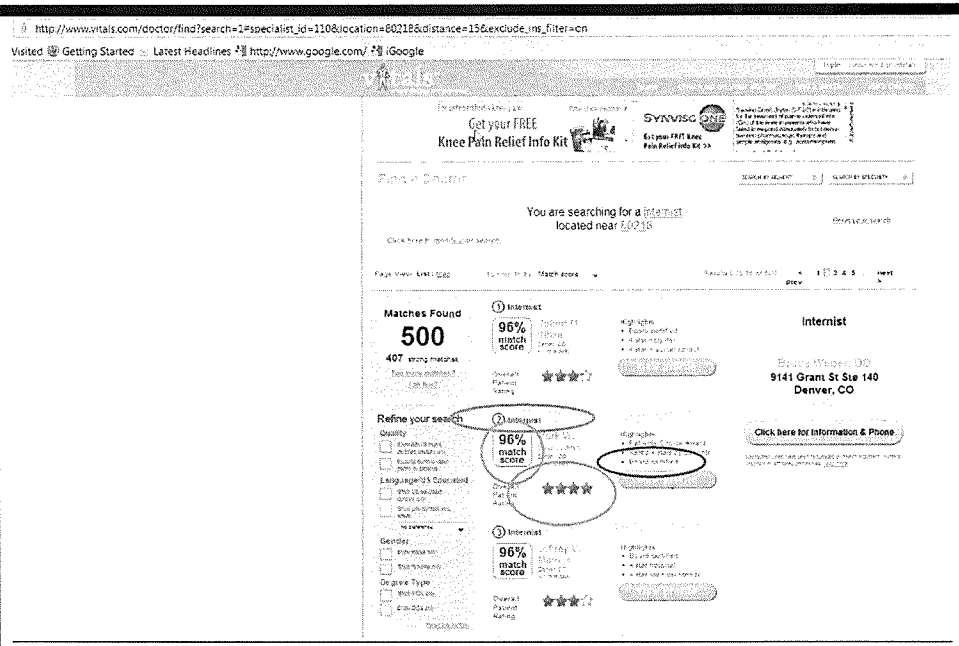
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	sites, data feeds and provider directories; top doctor survey results and data bases; NCOA, DSF and address-validation compiled files; and publication databases); MDX 0000359 (noting "[i]ndependent quality measures are based on yearly data and updated annually: medical school ratings, hospital ratings, procedure volumes"). It uses a computer processor to perform this step. To the extent that MDx does not literally infringe this element, it infringes under the doctrine of equivalents. Should the court adopt an alternative construction of the term "information verified by the independent third-party source," such as defendant's construction of "proved to be true by an independent third-party source," MDx infringes literally and under the doctrine of equivalents. MDx infringes literally because, for example, MDx assumes that certain sources provide MDx with truthful information. MDX 0000353 (noting that ABMS is highest tier for purposes of a data integrity check). MDx infringes under the doctrine of equivalents because it compiles information that an independent third-party source has verified. The function of this compilation is to prove true the already existing data set, or to prove true new data that will be further verified by, for example, a physician. MDX 0000353 (noting that ABMS is highest tier for purposes of a data integrity check). The way in which this information is compiled is substantially the same, i.e., through the above mentioned computer method. The result is substantially similar, i.e., a data set that has been proven to be true by the additional step of having used independent third-party verified information. MDx also argues that it does not infringe this claim element because "MDx compiles data on providers as scheduled – it does not compile data in response to receiving a request for information regarding a healthcare provider." However, this claim element contains no such requirement. It is not clear what construction of compiling MDx proposes when making this argument. Assuming, without limitation, that this construction means "gathering," MDx infringes under the doctrine of equivalents. The purpose of this claim element is to compile information verified by a third party. MDx does this. The way that MDx

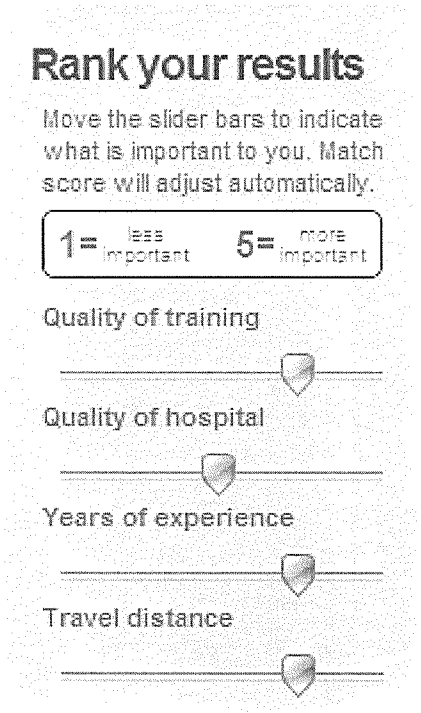
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	does this, apparently, is by compiling on a schedule, which is substantially the same as compiling every time a patient requests information about a doctor. The result is the same.
creating, by the at least one computer processor, a healthcare provider report on the first healthcare provider using the healthcare 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	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 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

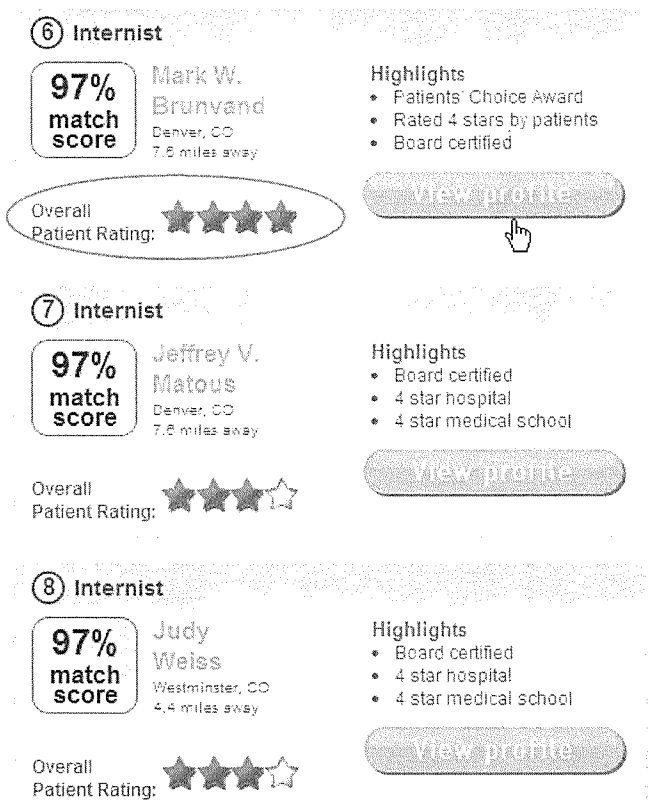
U.S. Patent No. 7,752,060	MDx's Current On-line Information System
	 The "match score" comparison rating provides the patient with information regarding how well physicians listed in the results list satisfy the patient's specified criteria, e.g. "specialty or location [state], and [city] [criteria]." 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

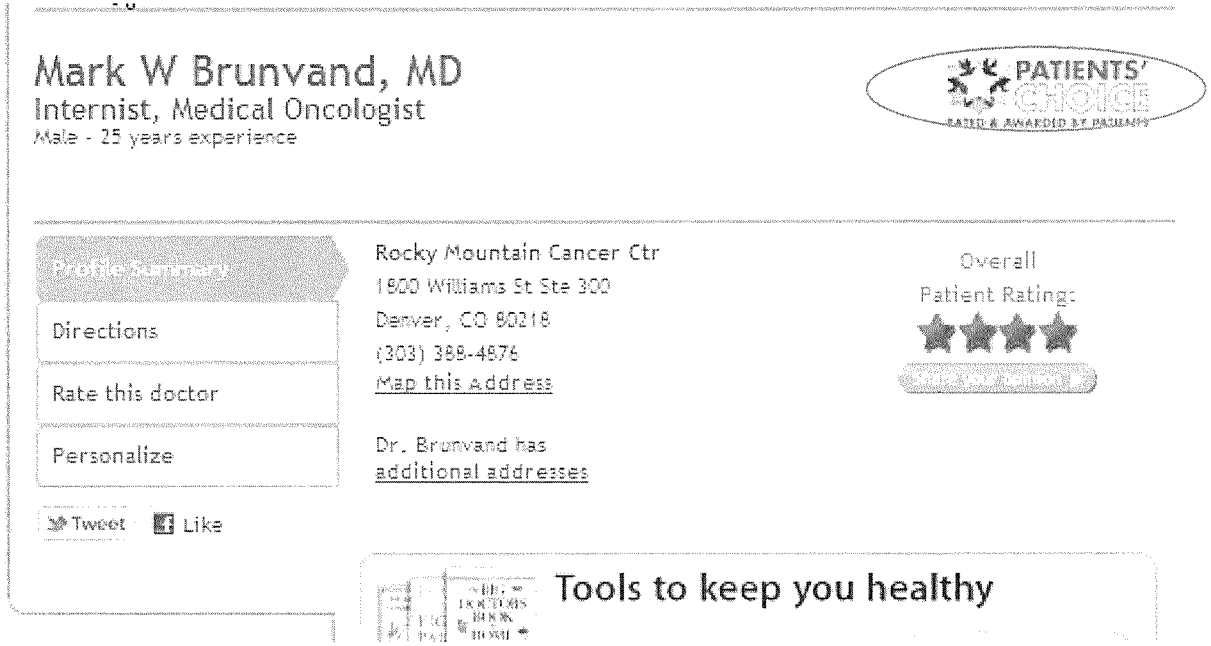
U.S. Patent No. 7,752,060	MDx's Current On-line Information System



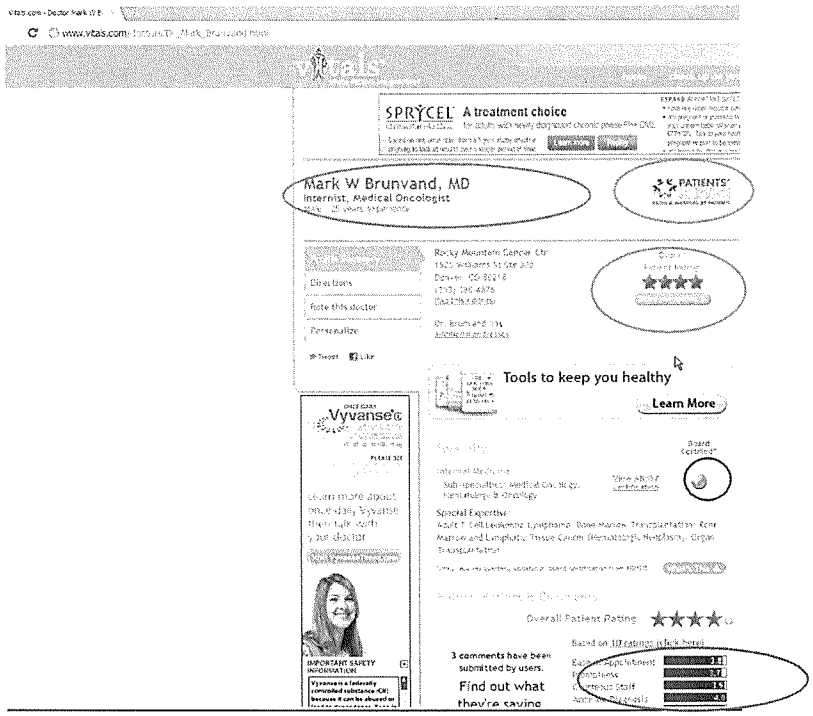
MDx includes another comparison rating of healthcare providers when it includes the "Patients' Choice" mark next to the physician's name. MDx gives this award to physicians when the physician has "received near perfect scores as rated by patients" compared to other physicians. *See* Screenshot No. 17.

Screenshot No. 17

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	 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): 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

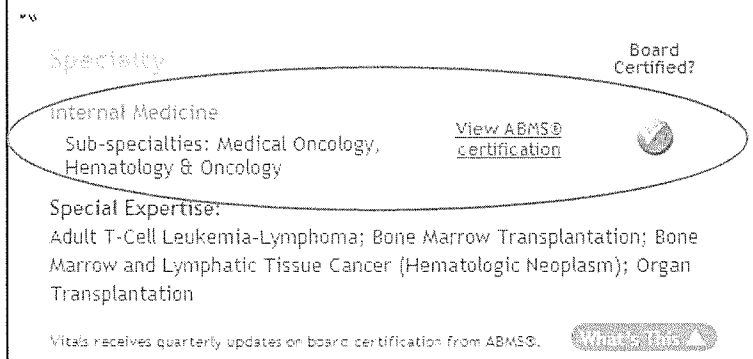
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	the doctrine of equivalents because they performs substantially the same function in substantially the same way to obtain the same result as comparison ratings in a healthcare provider report. *See* Screenshot No. 18. Screenshot No. 18 

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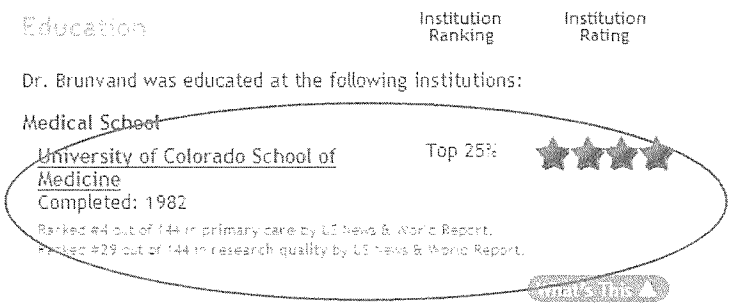
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	The report on Dr. Brunvand uses the following doctor-verified information: (1) specialty information, gender, years in practice, shown in Screenshot No. 19, and; (2) professional memberships shown in Screenshot No. 20 below: Screenshot No. 19 Mark W Brunvand, MD Internist, Medical Oncologist Male - 25 years experience Screenshot No. 20 Awards & Distinctions Special Standing? Compassionate Doctor Recognition, 2010 On-Time Physician Award, 2009 Patients' Choice Award, 2010 Awards: Compassionate Doctor Recognition: *2009* Patients' Choice Award: *2008 – 2009* Associations: American Society of Clinical Oncology Member American Society of Hematology Member

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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. Screenshot 21  Screenshot 22

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MDx argues that it does not infringe this claim because "[t]he reports on the MDx Website do not include three or more of the information verified by the independent third party source." Health Grades disagrees, as MDx has apparently replaced the claim term "using" with the term "include." But even if this replacement is adopted, MDx's website includes at least three kinds of information verified by an independent third party. Therefore, if performs substantially the same function in substantially the same way to obtain the same result as the claimed invention.

MDx also argues that it does not infringe because it does not use "all of the compiled information." However, this claim element contains no such requirement. It is not clear what construction of compiling MDx proposes when making this argument. Even under this construction, however, MDx infringes literally and based on the doctrine of equivalents.

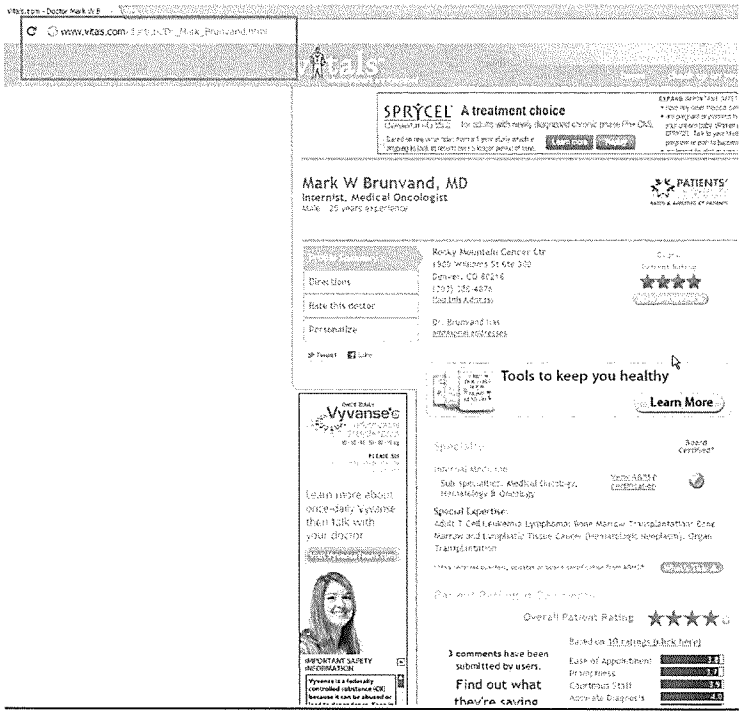
It infringes literally because MDx has used all of the information it compiled. MDx stores third-party and patient provided information in a database. *See, e.g.*, MDX 0000352 (displaying a "data hierarchy" database table). It is axiomatic that information stored in a computer database must have been used by a computer processor. Additionally, the use of this was at least in preparation to create a report.

MDx infringes under the doctrine of equivalents. To the extent that MDx has not used the three kinds of

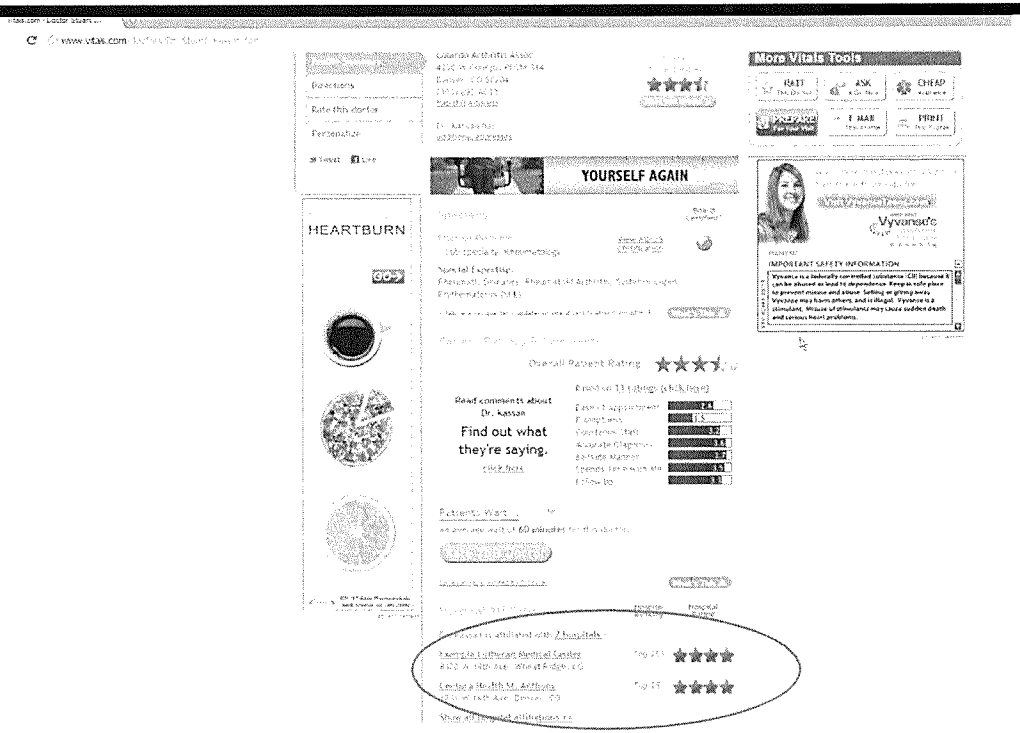
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	information, the storing and indexing of all of the information in a database enables MDx to generate a report. Additionally, the purpose of the claim is to include three kinds of information about a healthcare provider – MDx's website has the same function. The claim fulfills this function by accessing and compiling three kinds of information. MDx's website works the same way. The result is to provide patients with a robust amount of information – MDx's website achieves this result. It performs substantially the same function in substantially the same way to obtain the same result MDx appears to argue that it does not infringe because its "report" is limited to screens shown after one clicks the "VIEW PROFILE," as shown in Screenshot No. 16. Health Grades disagrees for many reasons, including those listed above, and further disagrees that the claim contains no such requirements. However, to the extent that the court adopts an alternative construction of "report," MDx infringes under the doctrine of equivalents. The purpose of this element is to provide a patient with a report containing information about at least one healthcare provider, e.g., a first healthcare provider, who matches a patient's search criteria. Additionally, it facilitates comparisons among the matching healthcare providers. MDx's website is capable of doing this. In fact, it is capable of providing the claimed information about multiple healthcare providers and has multiple ratings systems that facilitate comparisons among the healthcare providers that match the search query as described above. To the extent that MDx does not include comparison ratings in its report, MDx infringes under the doctrine of equivalents at least because it includes ratings that function to allow customers to compare physicians against other physicians. The way in which these ratings are included is substantially the same, i.e., through the above mentioned computer method. The result is substantially similar, i.e., a website that allows a customer to compare physicians using ratings.
providing access to the healthcare provider report on the first healthcare provider over a computer network.	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). Screenshot No. 23

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4. The method as defined in claim 1, wherein the healthcare provider report includes a hyperlink to an affiliated hospital, medical center, or	MDx provides a link to affiliated hospitals in the healthcare provider report. *See* Screenshot Screenshot No. 24 (displaying affiliated hospital hyperlink, circled in red). Screenshot No. 24

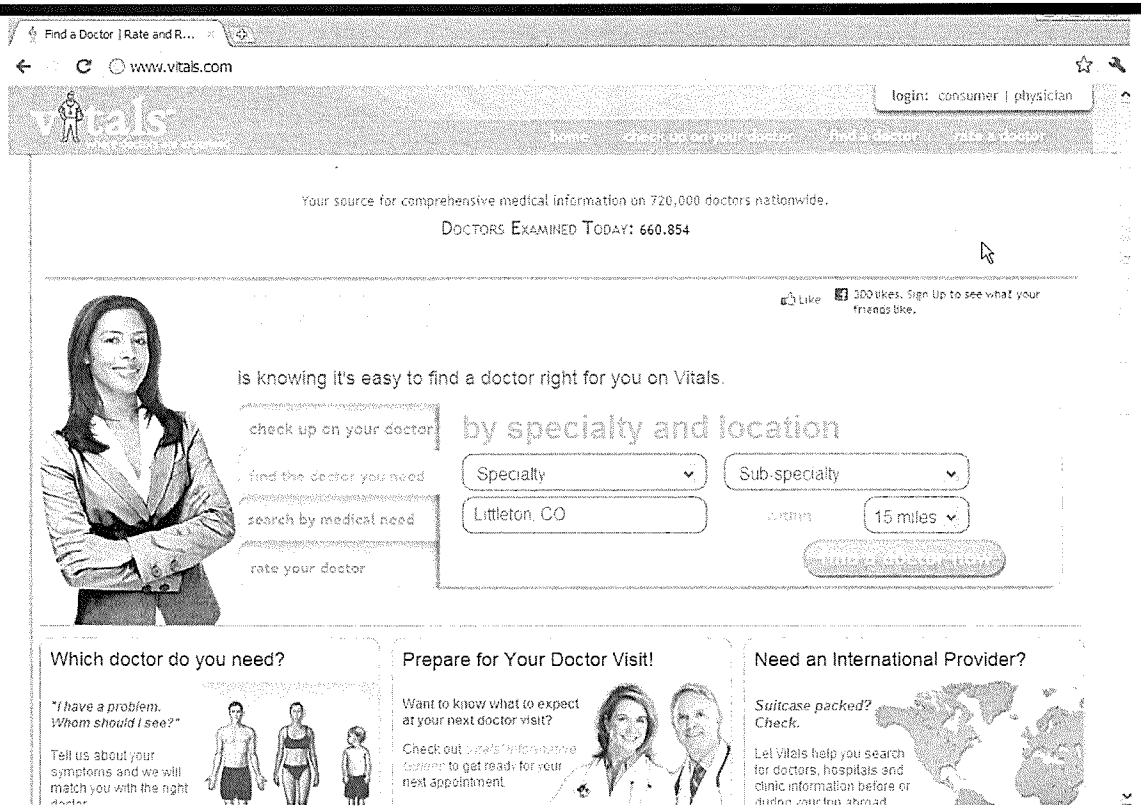
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other type of treatment center.	 MDx says it does not infringe the claim element because "the required hyperlink is completely missing, and the alleged links cited by Health Grades in its Infringement Contentions and Supplemental Infringement Contentions would vitiate this term, and could not possibly be equivalent." Health Grades disagrees. MDx appears to base this argument on its proposal that this term be construed as: "Hyperlink to a website of the affiliated hospital, medical center, or other type of treatment center." Health Grades opposes this construction. Nevertheless, even if the claim requires that the hyperlink be directed to a

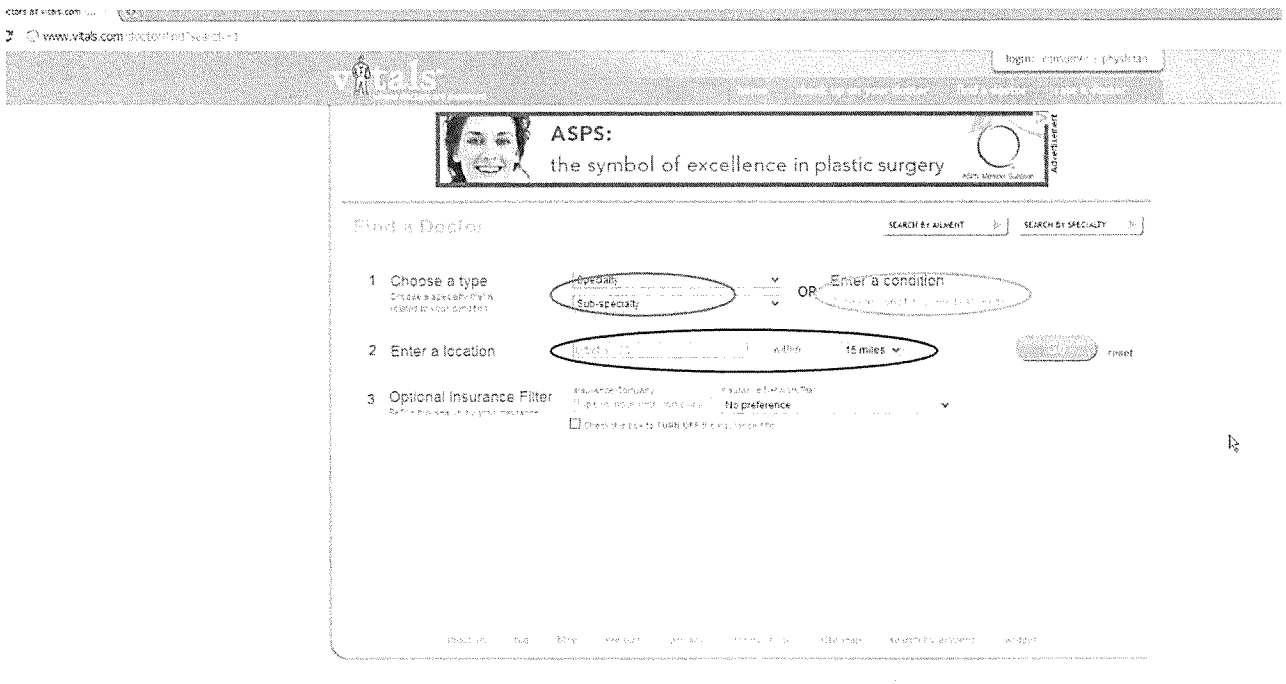
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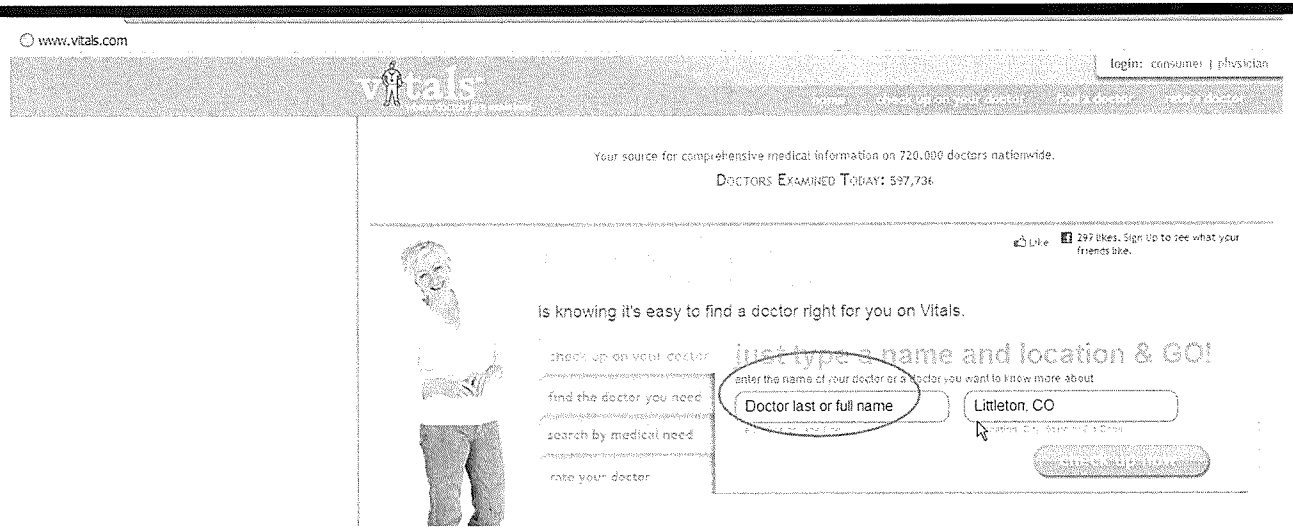
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	hospitals website, MDx infringes under the doctrine of equivalents. The purpose of the claim is to provide the patient with information about a healthcare provider's affiliated hospital. That is the purpose of MDx's hyperlink. The way the claim does this, according to MDx, is providing a hyperlink to the hosptial's website. MDx provides a hyperlink to another webpage with information about the specified hospital. This is substantially the same as the claim. The result is the same.
5. The method as defined in claim 1, wherein the access to the healthcare provider report is obtained through a predetermined Webpage that provides search capabilities for a database comprised of healthcare provider information.	MDx uses a predetermined web page for patient search purposes. *See* Screenshot 25 (displaying the MDx web page that allows patients to search for doctors). Screenshot No. 25

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6. The method as defined in claim 5, wherein the search capabilities permit a search based on one or more from	MDx allows a user to search based on specialty, diagnosis (condition), state, city, and location criteria. *See* Screenshot No. 26 (displaying specialty, circled in red, condition, circled in orange, and location, circled in purple.) Screenshot No. 26

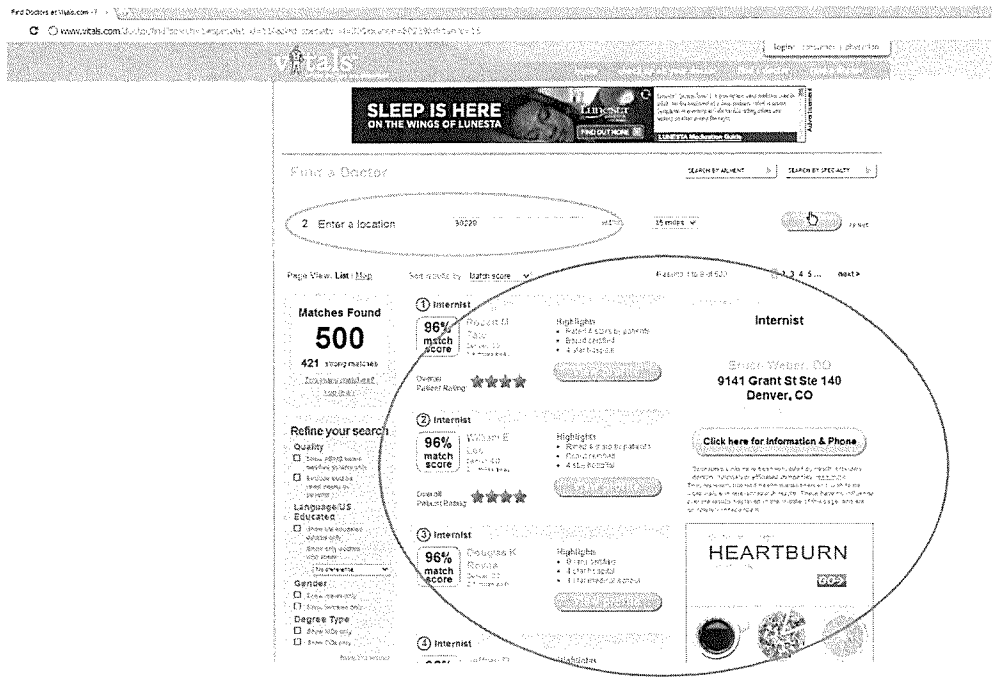
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the group consisting of: name, medical specialty, gender, state, city, procedure, diagnosis, procedure, and location criteria.	 MDx allows a user to search by doctor name. *See* Screenshot No. 27 (displaying doctor search query by doctor name, circled in red). Screenshot No. 27

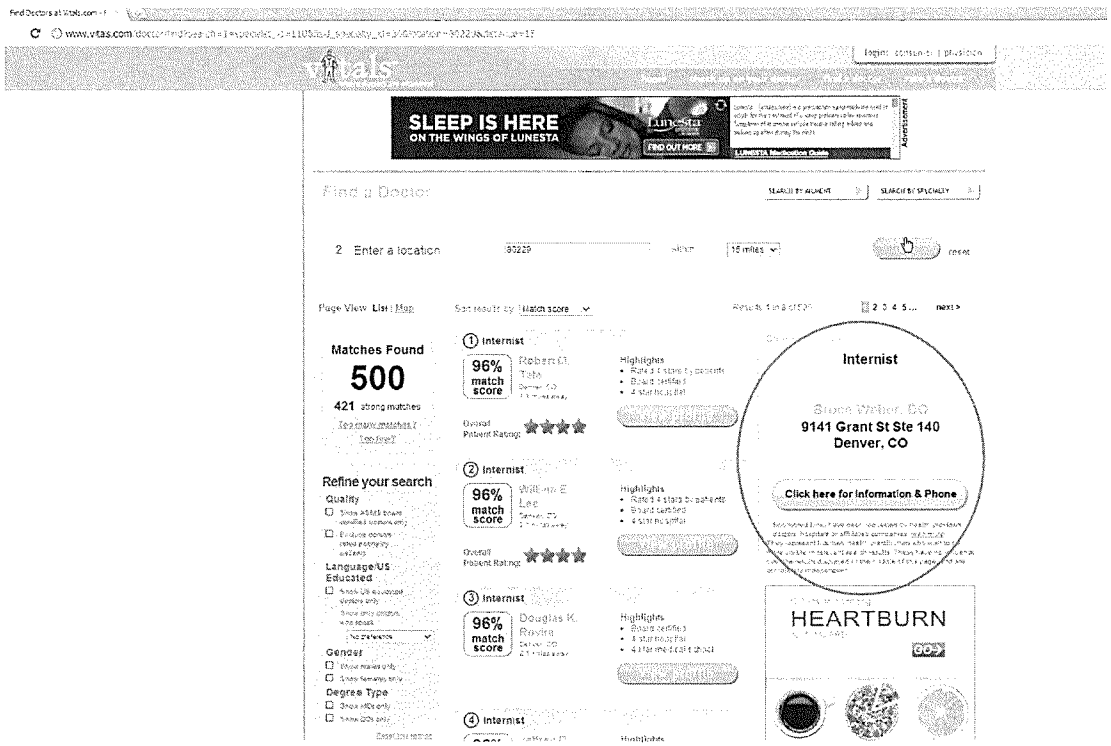
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7. The method as defined in claim 6, wherein the search of the database produces a results list of one or more	MDx provides a list of physicians based on specialty and location input from the patient. Screenshot No. 28, below, demonstrates MDx displaying a list of internists (i.e., first healthcare providers), circled in red, based upon location criteria, circled in orange. Screenshot No. 28

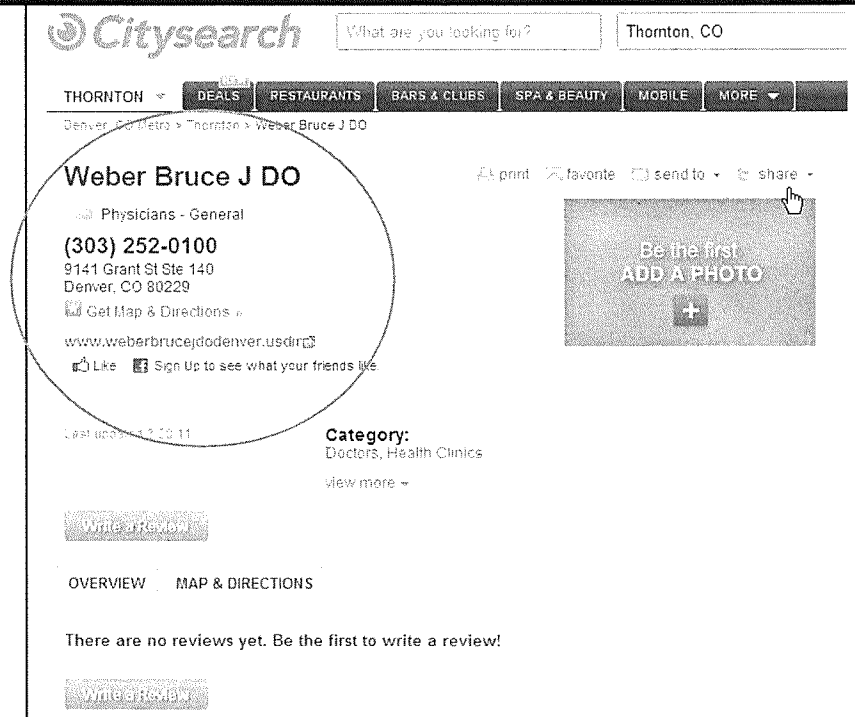
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healthcare providers satisfying the search criteria, wherein the results list includes the first healthcare provider.	
8. The method as defined in claim 7, wherein the results list further includes an advertisement for the first	As part of the list detailed in claim 7, *supra*, MDx provides "sponsored links" at the request of "health providers, doctors, hospitals, or affiliated companies." *See* Screenshot No. 29 (sponsored link circled in red). Screenshot No. 29

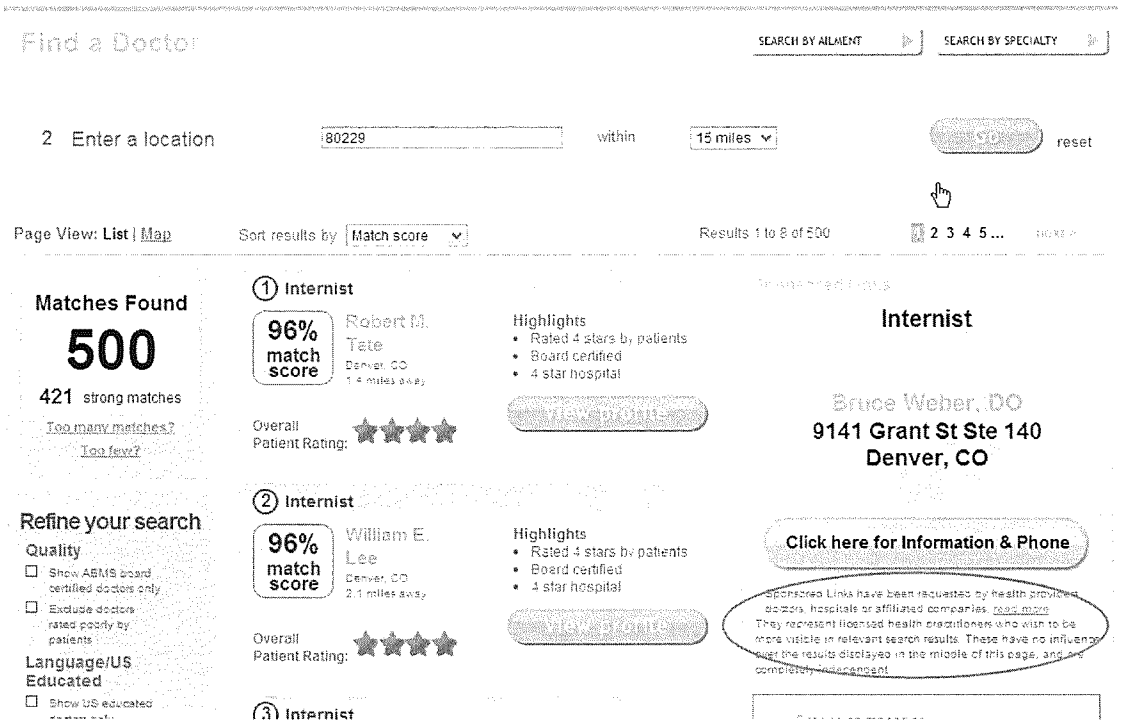
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healthcare provider with a hyperlink to information on the first healthcare provider.	 MDx directs a patient who clicks on the sponsored link to a webpage that provides information about the doctor. *See* Screenshot No. 30 (information circled in red). Screenshot No. 30

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9. The method as defined in claim 7, further comprising: determining from the results list whether a particular	MDx determines which doctors are sponsors, or members, based on whether the physician has paid a fee to MDx. *See* Screenshot No. 31 (circled portion providing that MDx determines physicians based on whether the physician has chosen to be a sponsor). <u>Screenshot No. 31</u>

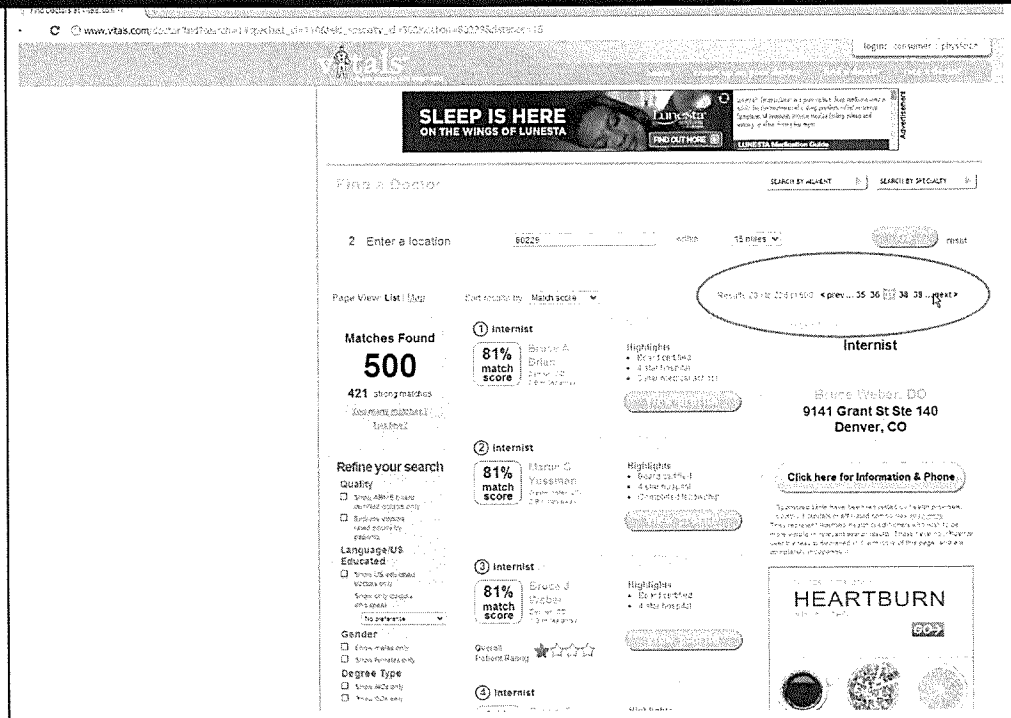
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healthcare provider is a member of the company managing the Web site;	 MDx says it does not infringe the claim element presumably based on its proposal that this term be construed as: "The results list contains an advertisement as a part of the results list." Health Grades opposes this construction. Nevertheless, even if the claim requires that the ad be part of the results list (it does not) and even if MDx's above-shown ad is not part of the results list, MDx still infringes under the doctrine of equivalents. The purpose of the claim is advertise a doctor. That is the purpose of MDx's hyperlink. The way the claim does this, according to MDx, is by providing an ad as part of the results

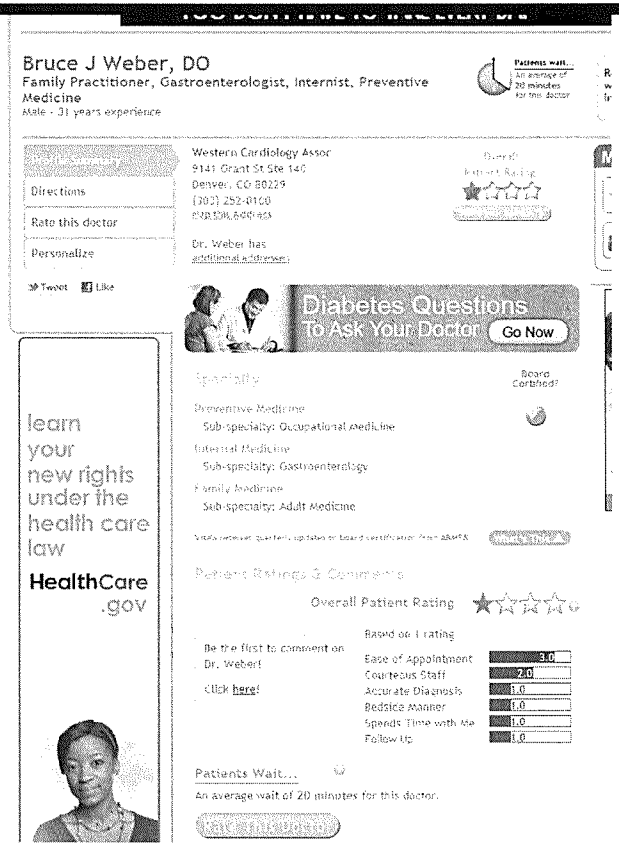
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	list. MDx provides an ad on the same page as the results list. This is substantially the same as the claim. The result is the same.
and if the particular healthcare provider is a member of the company managing the Web site, providing enhanced services for the member healthcare provider on the Web site.	MDx provides the enhanced service of prominently displaying a member physician. Consider Dr. Bruce Weber displayed at the top of the results list. *See* Screenshot No. 31, *supra*. Absent a sponsored link, MDx would not have displayed Dr. Bruce's information until the user scrolled through the first 291 doctors (page 37 of the results list). *See* Screenshot No. 32. By becoming a sponsor, MDx provided Dr. Weber with prominence among all doctors; he is at the top of every page of the results list. Screenshot No. 32

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	 Screenshot No. 33

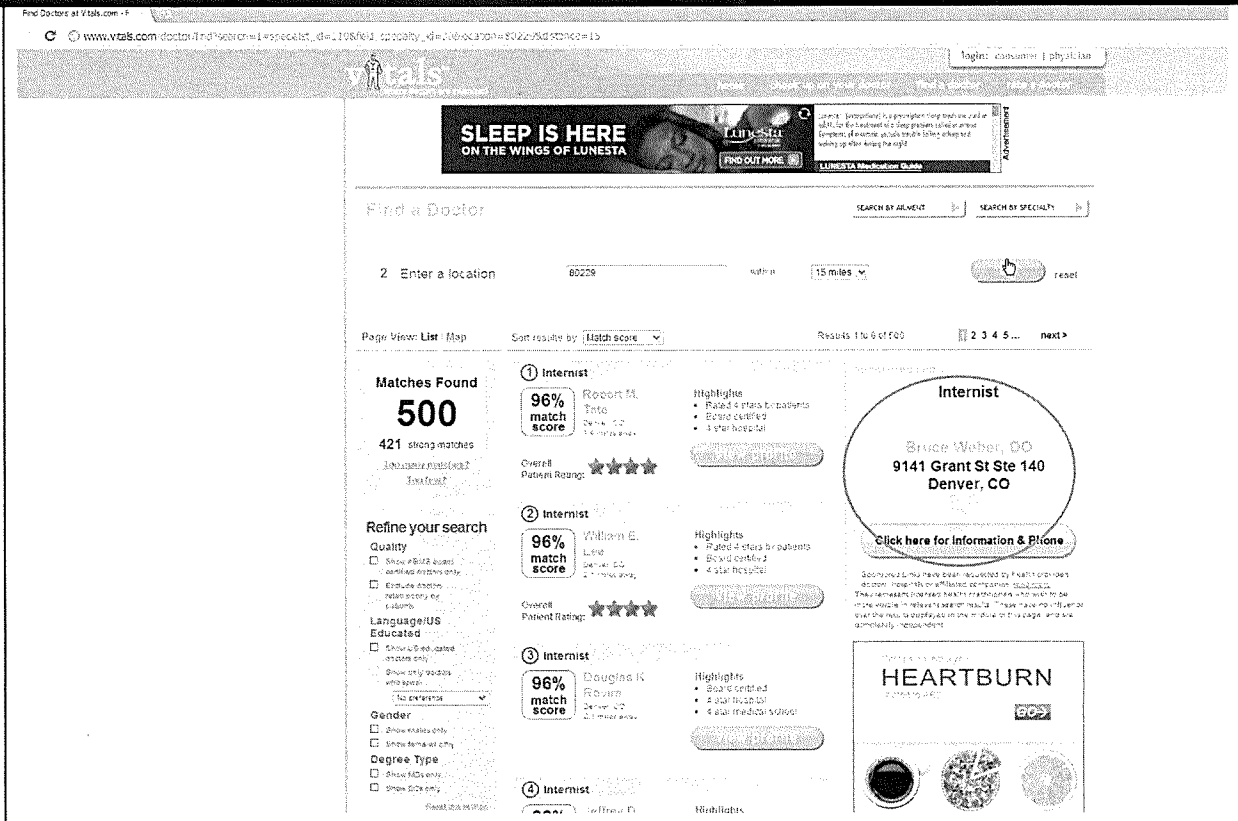
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	 MDx allows doctors to become members of its website, wherein these doctors pay a fee to MDx if patients are directed to the doctor by MDx.

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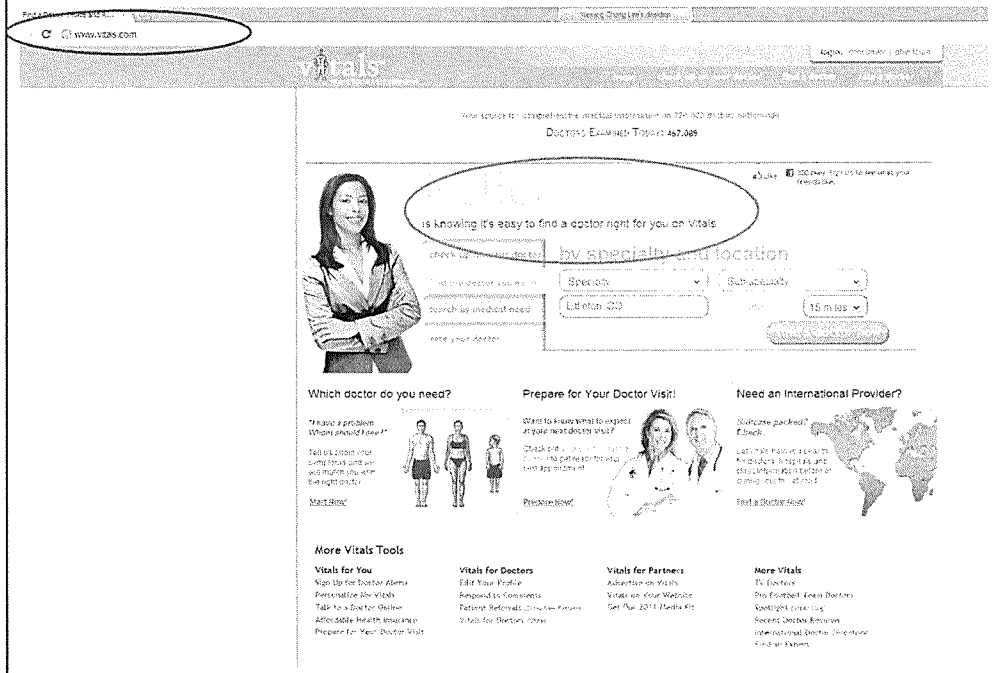
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11. The method as defined in claim 9, wherein the enhanced services comprise favorable positioning in the results list.	MDx displays the member doctor in a prominent position. *See* Screenshot No. 34 (circled portion showing favorable position of member doctor). Screenshot No. 34

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14. The method as defined in claim 1, wherein the first healthcare provider is a	MDx provides reports on physicians. *See* Screenshot No. 35 (displaying a report for an internist). Screenshot No. 35

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physician.	
15. An on-line information system for connecting healthcare providers with potential	MDx provides an online information system for connecting healthcare providers with potential patients. MDx's homepage displays a tagline that reads "Relief . . . is knowing it's easy to find a doctor right for you on Vitals." *See* Screenshot No. 36 (tagline circled in red). M); MDx's homepage is accessible via the internet. *See* Screenshot No. 36 (web address circled in purple).

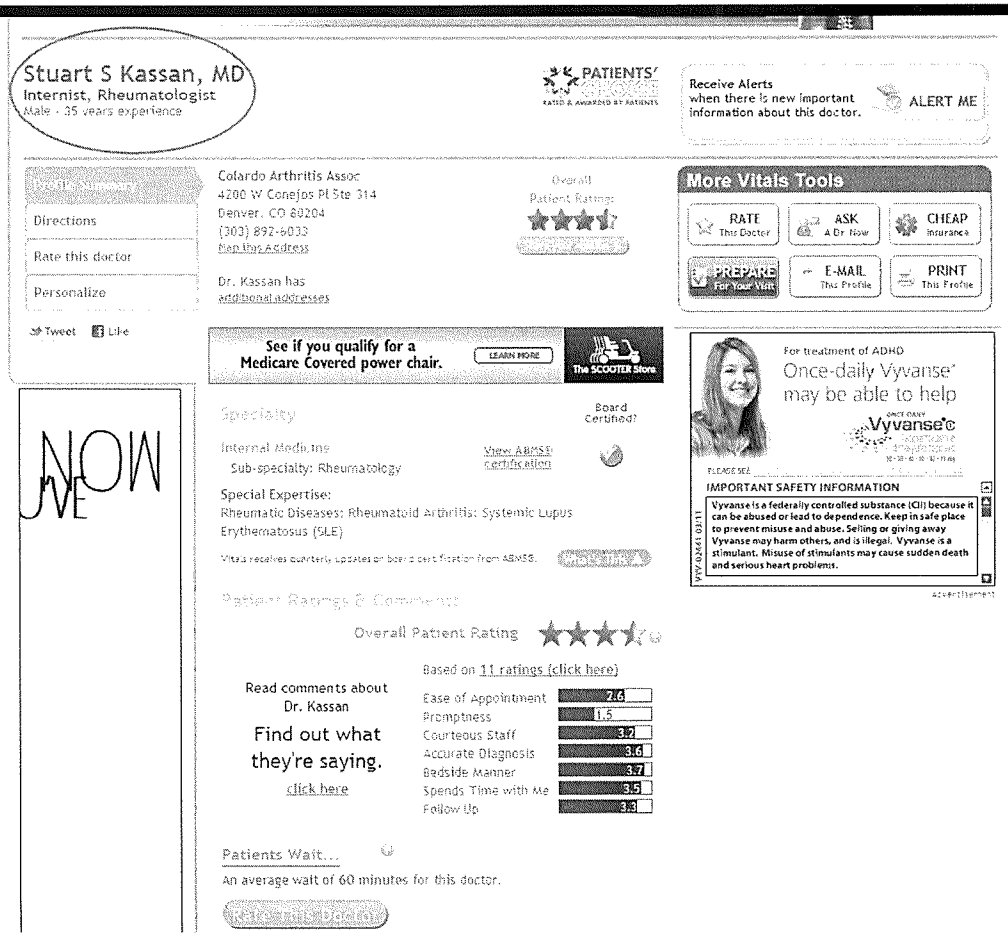
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patients, the system comprising:	Screenshot No. 36 
at least one computer processor; and	MDx uses a web server program, which is housed on a web server machine, to deliver its webpage to a potential patient's web browser. A web server machine is a computer, and all computers have computer processors.

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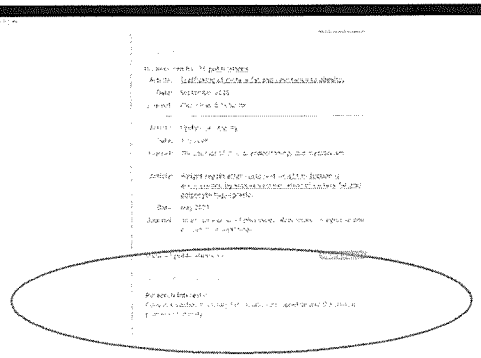
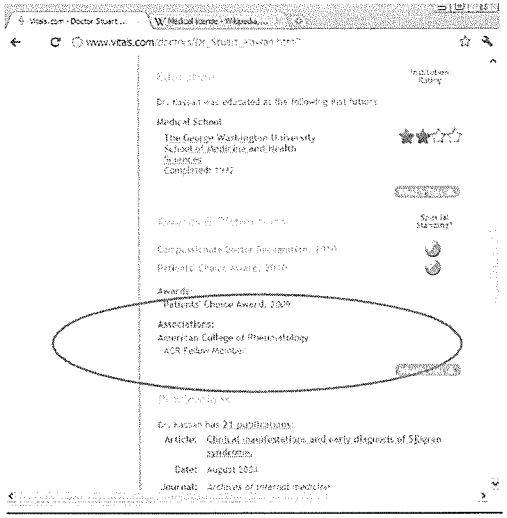
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memory coupled with and readable by the at least one computer processor and comprising a series of instructions that, when executed by the at least one computer processor, cause the at least one computer processor to:	MDx's web server machine, like any computer, has memory readable by at least one computer processor.
receive a request for information regarding a first healthcare provider;	MDx's web server receives a request for information regarding a first healthcare provider from a potential patient's web browser. *See, e.g.*, Screenshot 2 and Screenshot 3.
access 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,	MDx's web server accesses healthcare provider-verified information at the prompting of a potential patient. To display the healthcare provider-verified information in the patient's browser, the server must access the information. Screenshot No. 37 displays the following healthcare provider-verified information: specialty information, gender, and years in practice (information circled in red). Screenshot No. 38 displays hobbies (information circled in red). Screenshot No. 39 displays membership information (information circled in red). Screenshot No. 40 displays publications (information circled in red). Screenshot No. 37

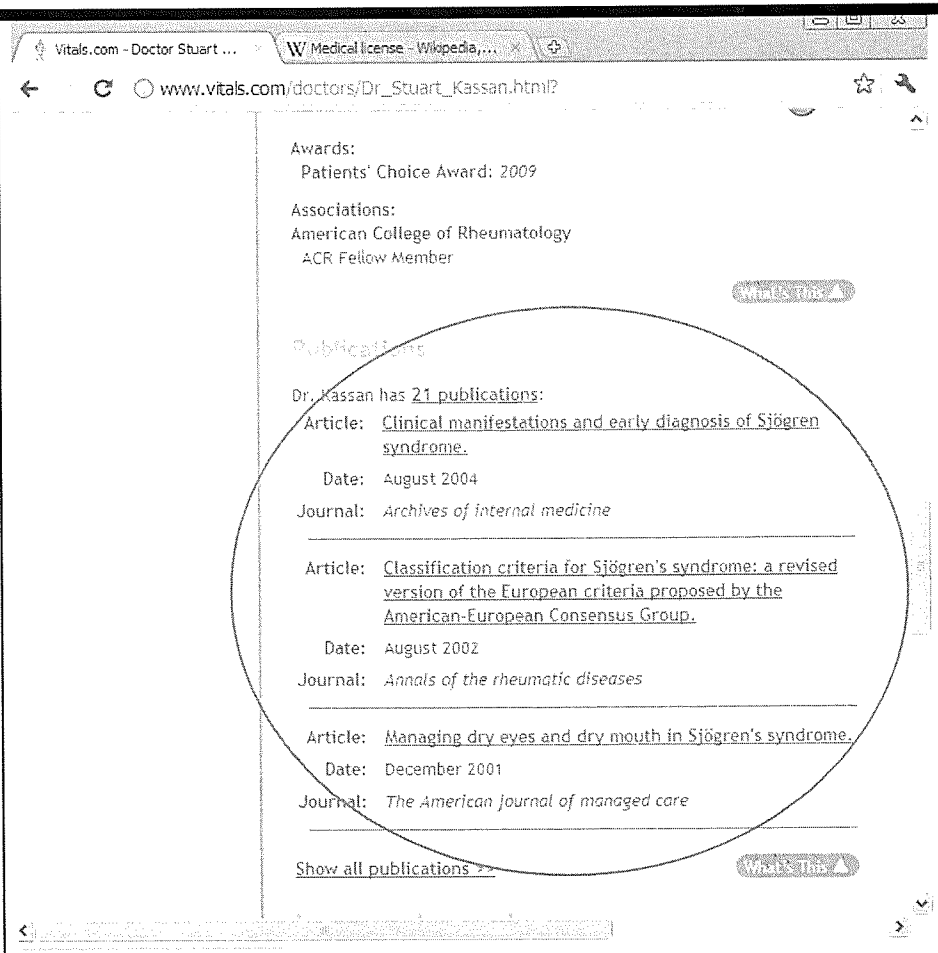
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medical philosophy, gender, age, years in profession, years in practice, awards, honors, professional appointments, professional memberships, publications, languages, and hobbies;	

Screenshot No. 38

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	 Screenshot No. 39  Screenshot No. 40

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	 Health Grades proposed that the term "healthcare provider-verified information" be construed as

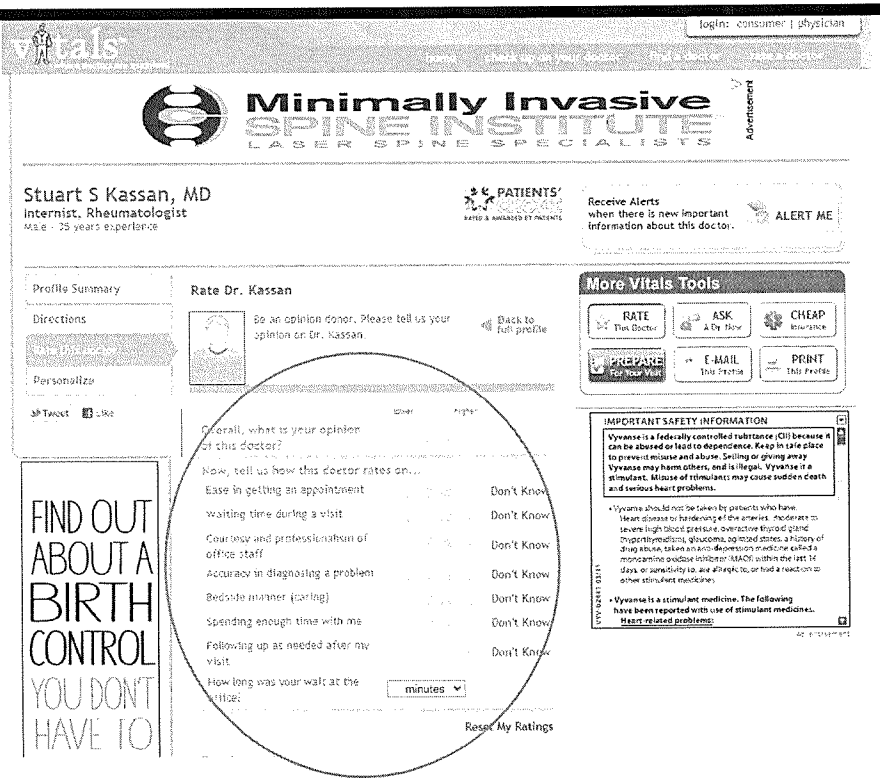
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	"information verified by a physician or other healthcare professional." MDx accesses information verified by a physician or other healthcare professional. *See, e.g.,* MDX 0000333 (noting thousands of data sources include self-reports by physicians); MDX 0000359 (noting that doctor edits, "once they go through a filter, are immediately posted to website"); MDX 0000346 (noting that "[o]nce data is loaded, doctors can Edit most profile elements"); MDX 0000347 (noting that "doctors are alerted when changes are made to their profile" to encourage doctors to add data or amend profiles); MDX 0000351 (noting that "physicians have the opportunity to update & add information, as long as it is in compliance with official sources"); MDX 0000348 (noting that MDx's front line staff assist each doctor with "tweaking" the doctor's profile); MDX 0000307 (noting that MDx gathers information from primary source with respect to procedure volume, publications, and special expertise to provide a "360° view of doctor quality".); MDX 0000303 (noting that MDx database data integrity strategy is to "[u]tilize wisdom of crowds and allow for data improvement from . . . doctors"); Should the Court adopt an alternative construction of the term "healthcare provider-verified," such as defendant's proposed construction of "information proved to be true directly and personally by the healthcare provider," MDx infringes literally and under the doctrine of equivalents. For example, MDx literally infringes because MDx admits that it accesses information that is provided to MDx by the healthcare provider, and therefore is verified by the healthcare provider. *See, e.g.,* MDX 0000333 (noting that thousands of data sources include self-reports by physicians). And MDx assumes the information to be proved as true because it was provided directly by the healthcare provider, to the extent that its internal data filter does not perform a data integrity check. MDX 0000359 (noting that doctor edits, "once they go through a filter, are immediately posted to website"). Moreover, even if every doctor does not provide every piece of his or her own personal information, and to the extent that any physician information originates with a third party, MDx still literally infringes because its system provides the capability for healthcare providers to verify and edit their own information as detailed above. As such, this editing relies on the fact that the physician is "proving to be

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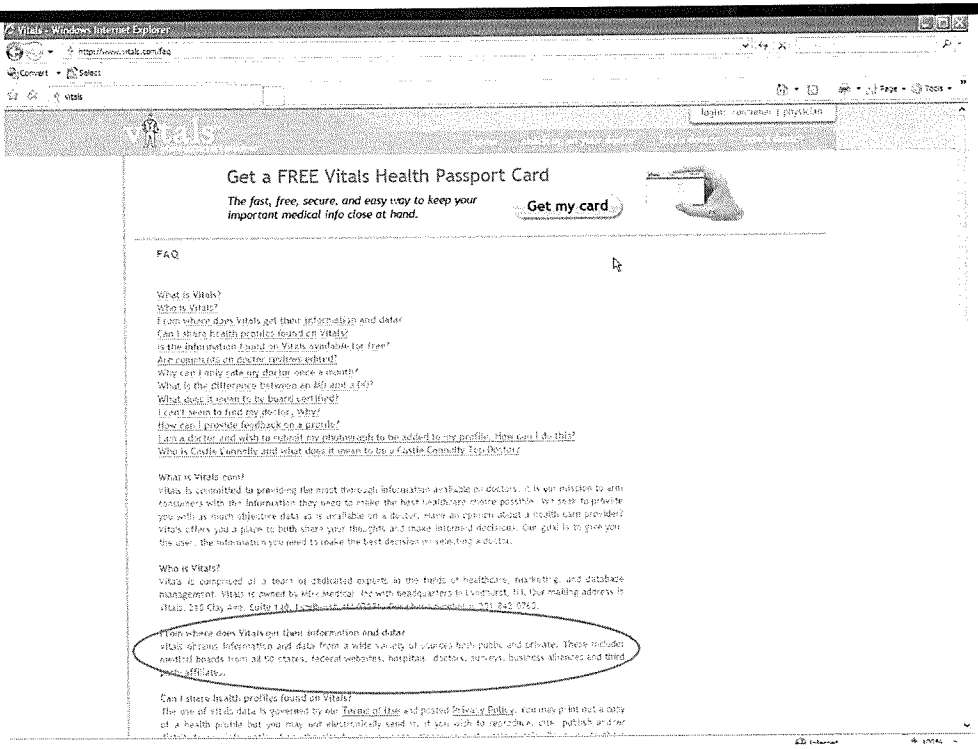
U.S. Patent No. 7,752,060	MDx's Current On-line Information System
	true" information it edits. To the extent that MDx does not literally infringe this element, it infringes under the doctrine of equivalents at least because it accesses information that a physician has provided. To the extent that providing information is not literally the same as personally and directly proving it to be true (a position with which Health Grades disagrees), it performs substantially the same function in substantially the same way to obtain the same result. The function of having a doctor provide the information enables MDx to prove true the information the doctor provides. The way is the above mentioned computer method. The result is a data set that has been proved true because the doctor provided the information. To the extent that MDx does not literally infringe this element because the physician information is verified by a third party, it infringes under the doctrine of equivalents because it performs substantially the same function in substantially the same way to obtain the same result. The function of the claim is to make the information service more trustworthy. The way it makes it more trustworthy is to get information from a third party, the doctor. The result is that it is more trustworthy. *See, e.g.,* MDX 0000303 (noting MDx database data integrity strategy is to "[u]tilize wisdom of crowds and allow for data improvement [by] . . . doctors").
compile patient-provided information regarding the first healthcare provider, wherein the patient-provided information comprises patient ratings from one or more past or current patients of the first	MDx compiles patient-provided information through an online survey on its www.vitals.com website. Screenshot No. 41 displays the MDx on-line patient experience survey. MDx manages the website where the on-line surveys are collected. *See* Screenshot No. 40 (displaying on-line patient survey, circled in red, and the Vitals logo, circled in purple). Screenshot No. 41 

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healthcare provider, and wherein the patient ratings are received from an on-line patient experience survey completed on a company Web site by the one or more past or current patients of the first healthcare provider, and wherein the company Web site is managed by a company providing a service for connecting healthcare providers with the potential patients;	 Further, MDx admits that it collects information from patients using online experience surveys. *See* MDX 0000224 (noting the rules for displaying patient ratings comprise "a rating equals a submission of a doc for the 8 questions," the eight questions being the ones circled in red above). MDx argues that it does not infringe this claim element because "Not all the patient ratings come from the MDx on-line survey." However, this claim element contains no such requirement. But even if the claim did contain such a requirement, MDx infringers under the doctrine of equivalents because it performs

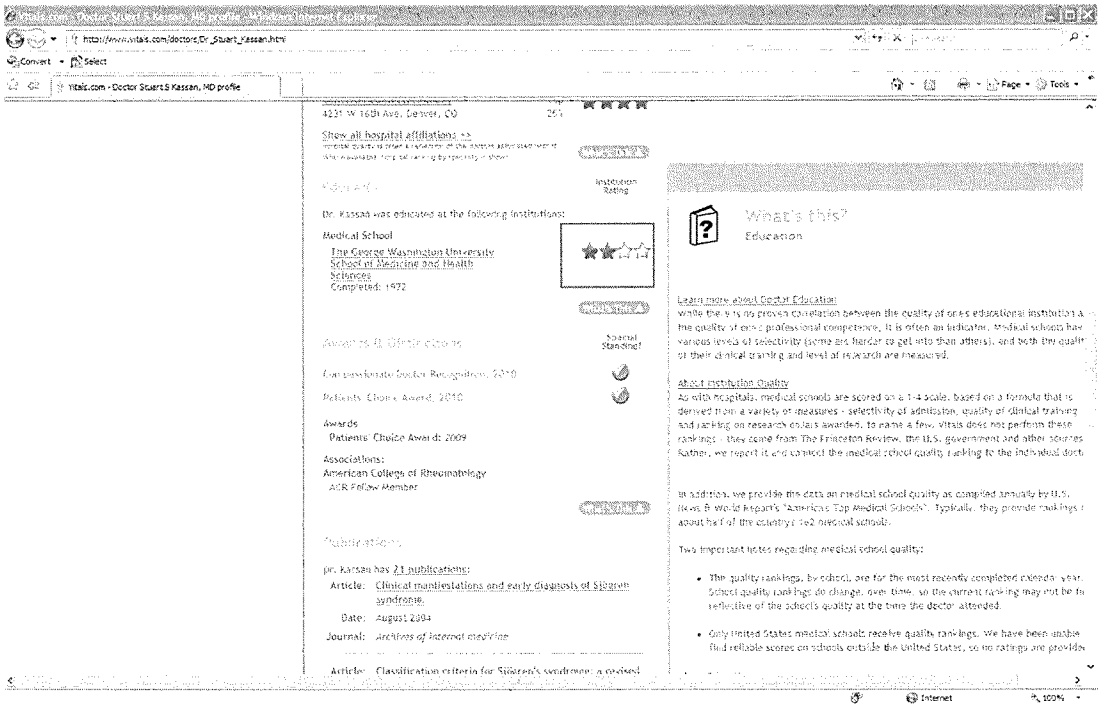
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	substantially the same function in substantially the same way to obtain the same results. The function of the claim is to collect patient ratings of doctors from patients. MDx admits that it does this. It does so with on-line experience surveys and with patient experience ratings from another source (it has not specified what this source is). The result is an aggregate data set representing past experiences of patients, a result of the claim. Further, the result is the same, namely, the compiling of patient provided information through online patient experience survey. MDX also argues that it does not infringe this claim element because "MDx compiles data on providers as scheduled – it does not compile data in response to receiving a request for information regarding a healthcare provider." It is not clear what construction of compiling MDx proposes when making this argument. However, this claim element contains no such requirement. But even if the claim did contain such a requirement, MDx infringes under the doctrine of equivalents. The purpose of this claim element is to compile patient ratings. MDx does this. The way that MDx does this apparently is by compiling on a schedule, which is substantially the same as compiling every time a patient requests information about a doctor. The results are the same, for example, an aggregate rating of doctors.
compile healthcare provider 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,	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. 42 (displaying a portion of the FAQ from the vitals.com website stating that the information comes from various third parties). Screenshot No. 42

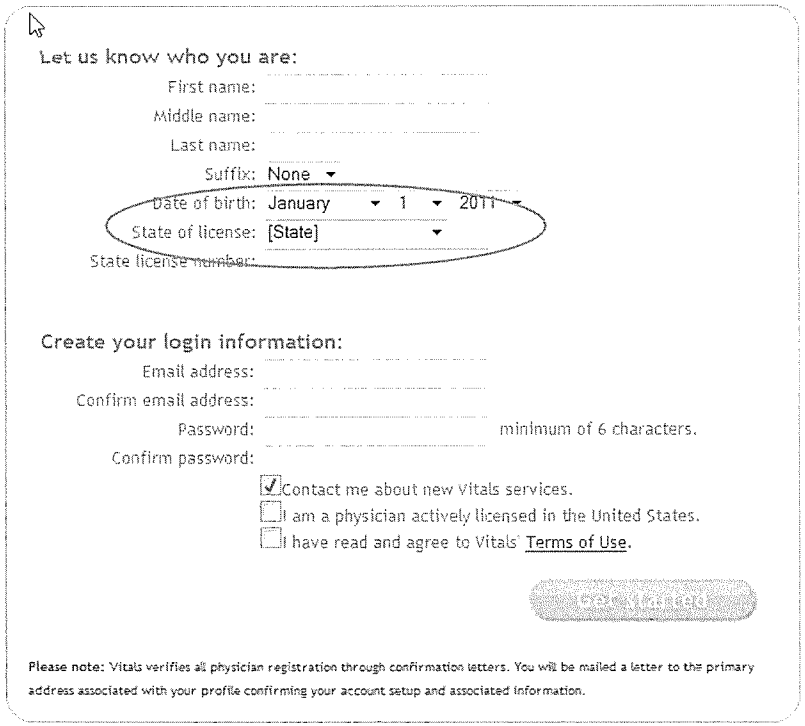
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licensure, disciplinary action information, medical school, medical internship, medical residency, and medical fellowship information;	 As a specific example, MDx compiles medical school information on a given doctor from *U.S. News & World Report's* "America's Top Medical Schools." *See* Screenshot No. 43 ("What's this?" section describing that MDx compiles medical school information from *U.S. News & World Report*). M); MDx then provides potential patients with medical school information associated with a given physician's academic and fellowship history. Screenshot No. 43

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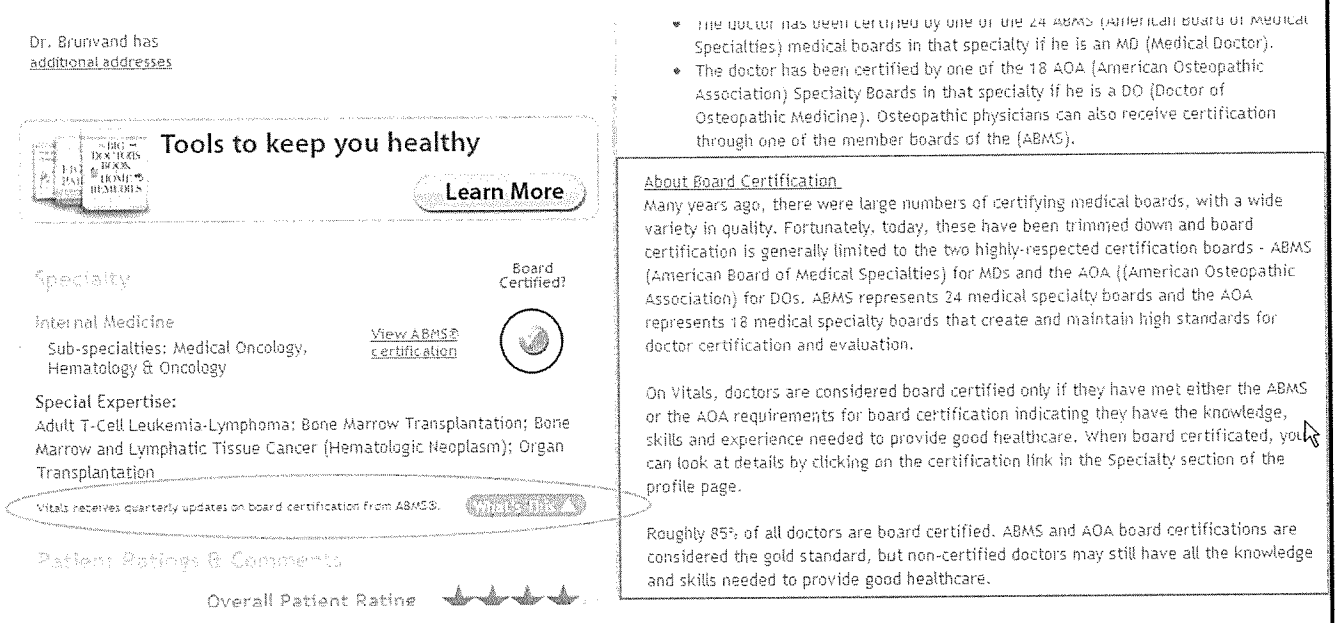
U.S. Patent No. 7,752,060	MDx's Current On-line Information System
	 MDx compiles licensure information. Screenshot No. 44 evidences that MDx verifies each physician's license before adding the physician to the results list; to do this, MDx must compile the information first in order to compare it to the entry field. Screenshot No. 44

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	 MDx admits that it compiles board certification information. *See* screenshot No. 45 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. 45, "About Board Certification" boxed in red below.) Screenshot No. 45

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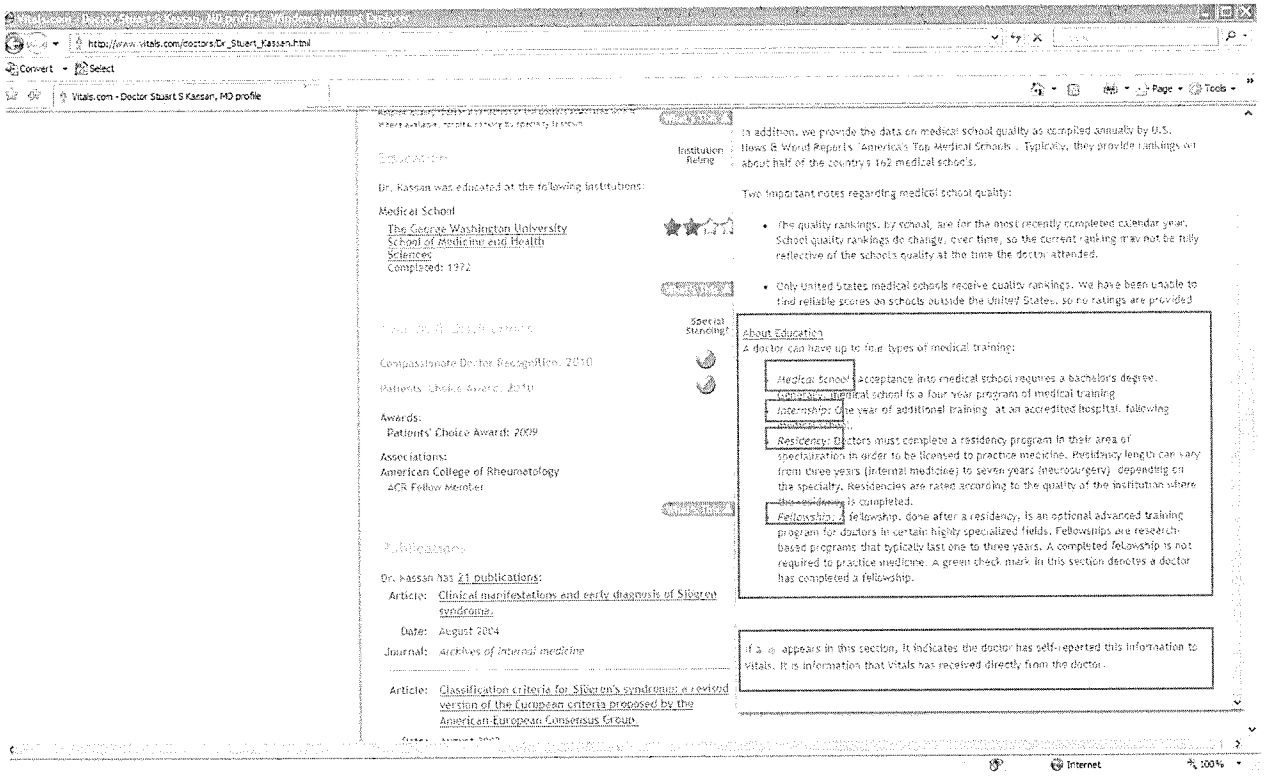
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MDx admits that it compiles additional information regarding a physician's medical school, internship, residency, and fellowship positions using independent, third-party resources unless otherwise noted. *See* Screenshot No. 46 (noting that MDx obtains all educational information from independent third parties unless otherwise noted).

Screenshot No. 46

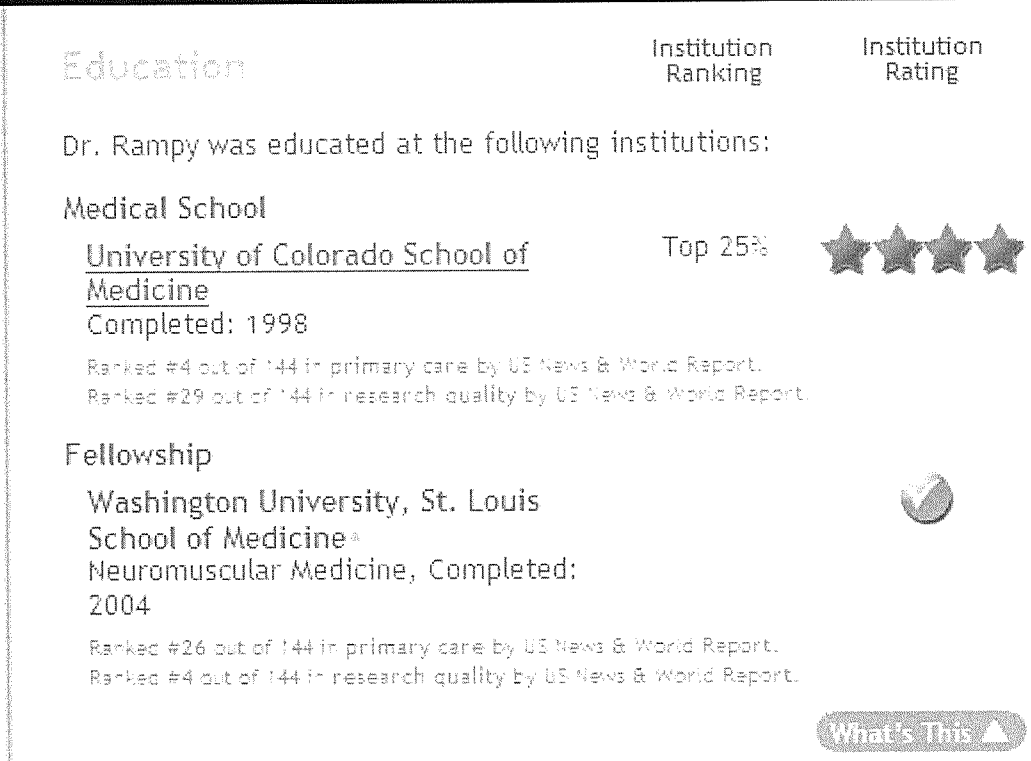
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As a specific example, Screenshot 47 provides specific evidence that MDx compiles fellowships information on at least some it its doctors.

Screenshot No. 47

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	 Further, MDx compiles information that is verified by third-party sources. *See* MDX 0000317 (noting MDx compiles independently verified information from 29 third-party sources); MDX 0000318 (intimating that MDx pulls insurance information); MDX 0000333 (noting that MDx uses data from the following sources: state and federal boards of medicine; sanction and disciplinary action databases; ABMS, DEA, NP, and UPIN databases; 160+ individual medical school websites; 5000+ individual

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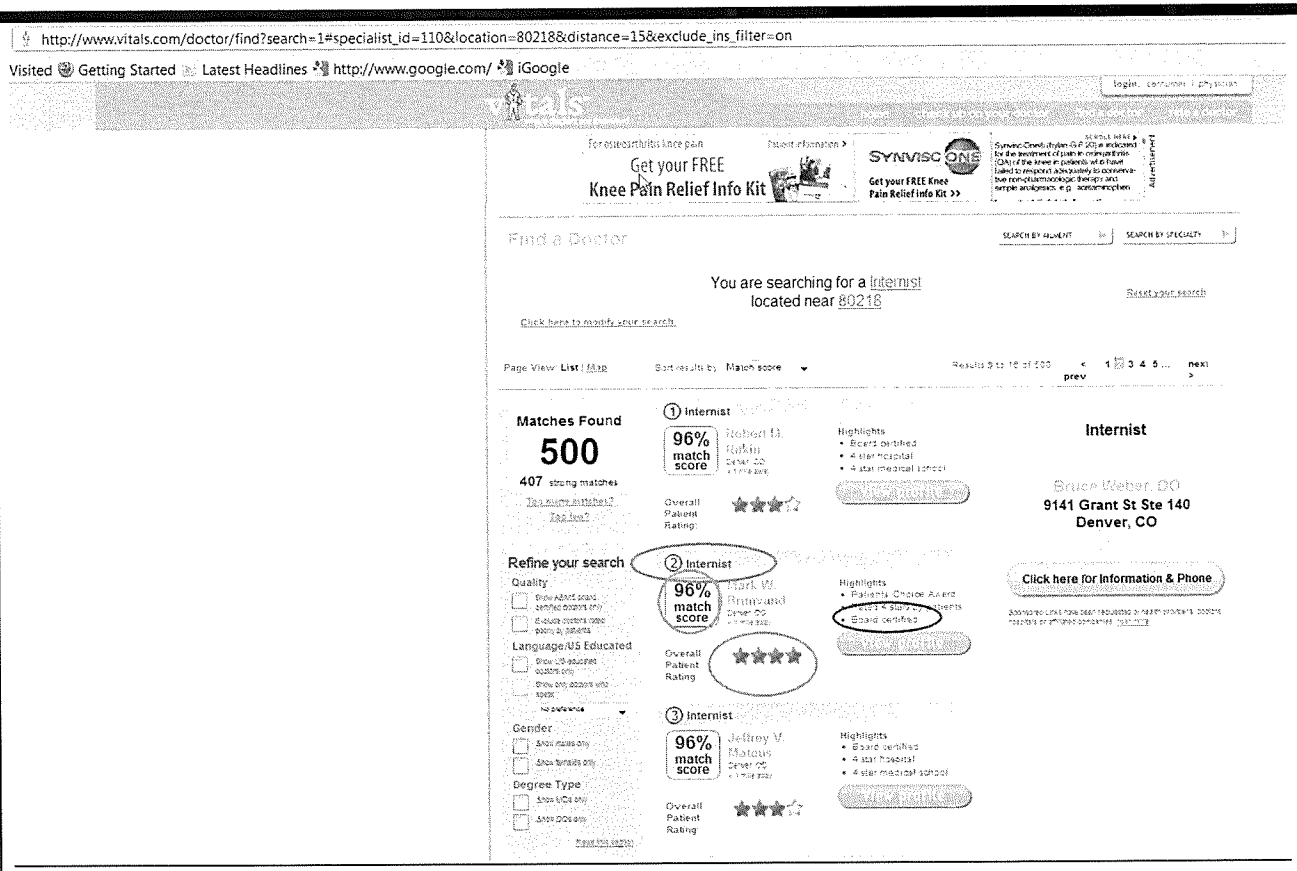
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	hospital websites; many thousand group practice sites, association and medical specialty sites; insurance sites, data feeds and provider directories; top doctor survey results and data bases; NCOA, DSF and address-validation compiled files; and publication databases); MDX 0000359 (noting "[i]ndependent quality measures are based on yearly data and updated annually: medical school ratings, hospital ratings, procedure volumes"). It uses a computer processor to perform this step. To the extent that MDx does not literally infringe this element, it infringes under the doctrine of equivalents. Should the court adopt an alternative construction of the term "information verified by the independent third-party source," such as defendant's construction of "proved to be true by an independent third-party source," MDx infringes literally and under the doctrine of equivalents. MDx infringes literally because, for example, MDx assumes that certain sources provide MDx with truthful information. MDX 0000353 (noting that ABMS is highest tier for purposes of a data integrity check). MDx infringes under the doctrine of equivalents because it compiles information that an independent third-party source has verified. The function of this compilation is to prove true the already existing data set, or to prove true new data that will be further verified by, for example, a physician. MDX 0000353 (noting that ABMS is highest tier for purposes of a data integrity check). The way in which this information is compiled is substantially the same, i.e., through the above mentioned computer method. The result is substantially similar, i.e., a data set that has been proven to be true by the additional step of having used independent third party verified information. MDx also argues that it does not infringe this claim element because "MDx compiles data on providers as scheduled – it does not compile data in response to receiving a request for information regarding a healthcare provider." However, this claim element contains no such requirement. It is not clear what construction of compiling MDx proposes when making this argument. Assuming, without limitation, that this construction means "gathering," MDx infringes under the doctrine of equivalents. The purpose of

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	this claim element is to compile information verified by a third party. MDx does this. The way that MDx does this, apparently, is by compiling on a schedule, which is substantially the same as compiling every time a patient requests information about a doctor. The result is the same.
create a healthcare provider report on the first healthcare provider using the healthcare 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	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. 48 & 50-52 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 red; (2) patient-provided information, circled in green; and (3) information verified by an independent third-party source circled in purple. The report also includes comparison ratings, circled in orange.

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	Screenshot No. 48

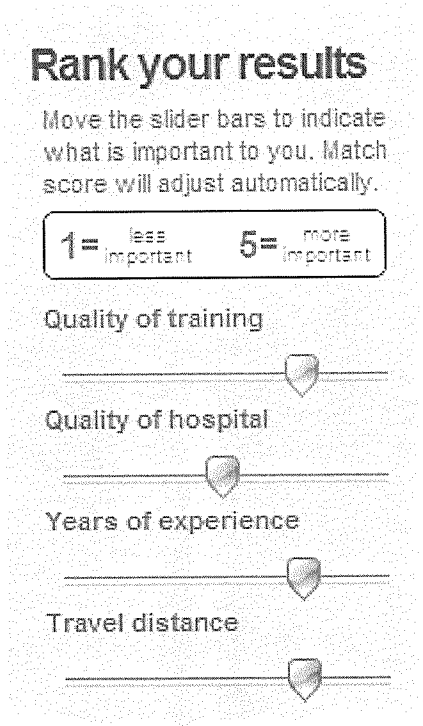
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The "match score" comparison rating provides the patient with information regarding how well physicians listed in the results list satisfy the patient's specified criteria, e.g. "specialty or location [state],

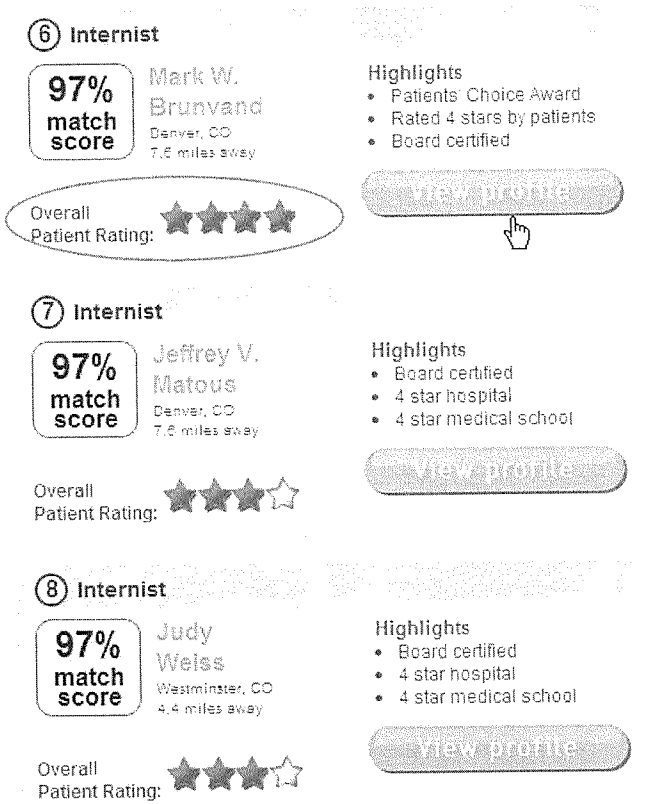
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	and [city] [criteria]." The "match score" is determined based on four criteria, which may be changed by the patient by manipulating the slider bars shown in screenshot No. 49, below. Screenshot No. 49  Additionally, the "overall patient rating," comprising 0-4 purple stars, comprises comparison ratings of healthcare providers. *See* Screenshot No. 50.

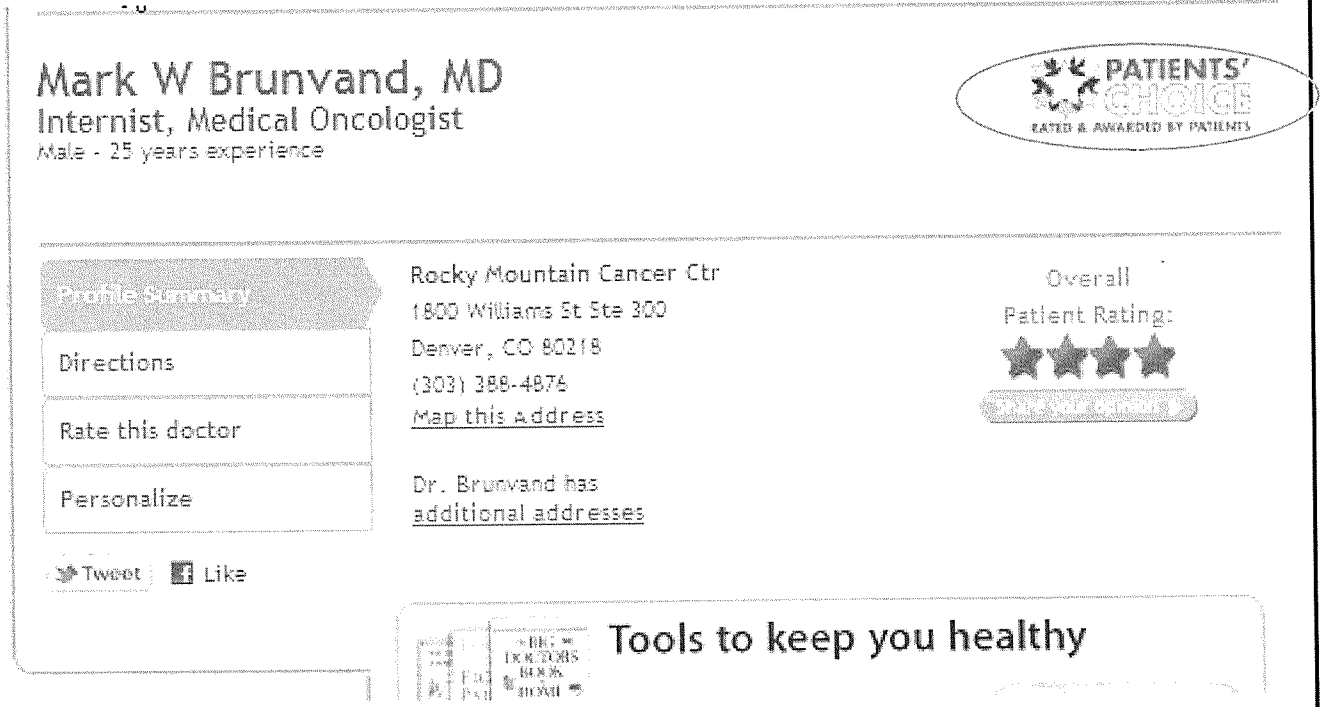
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Screenshot No. 50

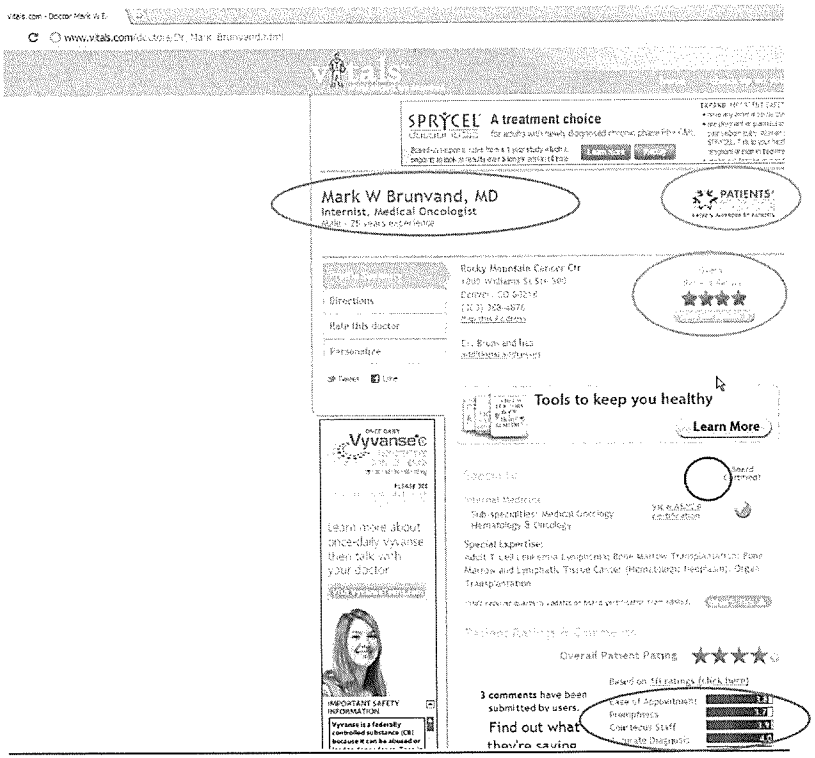


MDx includes another comparison rating of healthcare providers when it includes the "Patients' Choice" mark next to the physicians name. MDx gives this award to a physician when the physician has

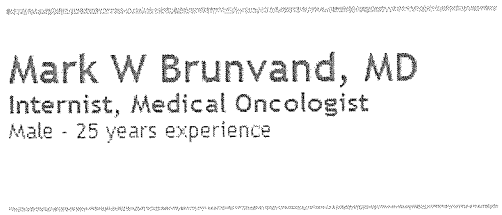
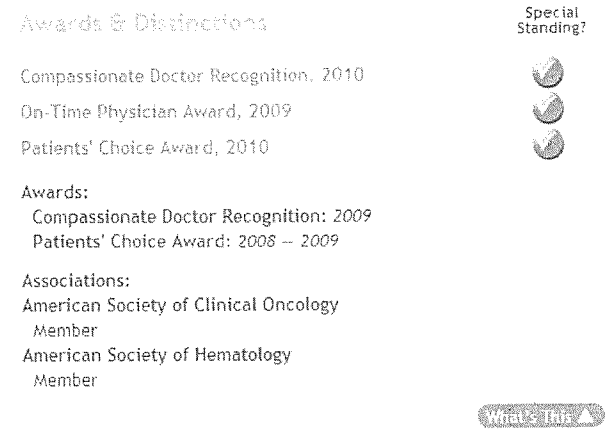
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	"received near perfect scores as rated by patients" compared to other physicians. *See* Screenshot No. 51. Screenshot No. 51  To the extent that MDx asserts that these three ratings do not literally satisfy the limitation of a healthcare provider report that includes comparison ratings, these ratings meet the claim limitations under

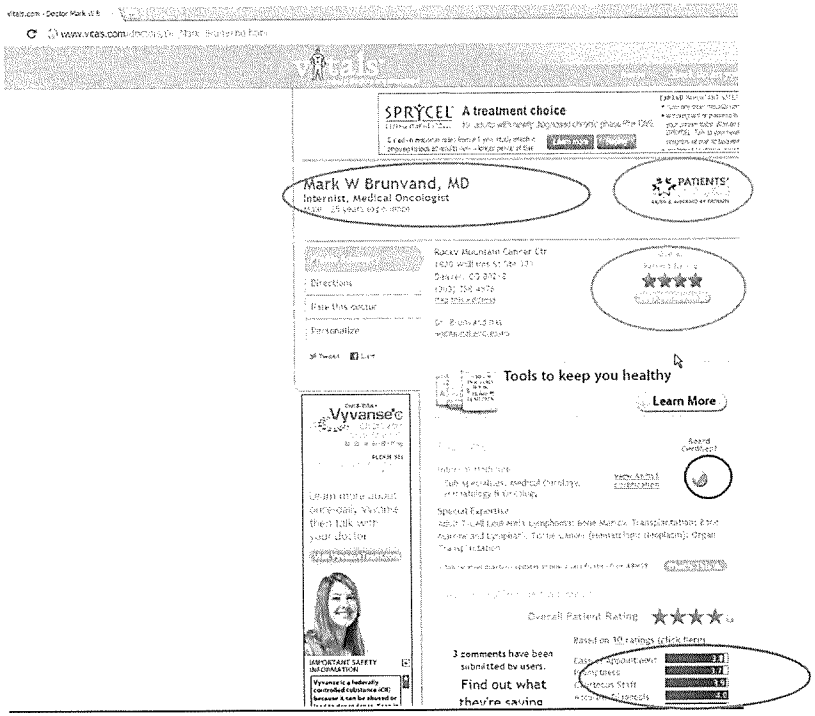
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	the doctrine of equivalents because they have the same function and operate in the same way to achieve the same result as comparison ratings on a healthcare provider report. *See* Screenshot 52. Screenshot No. 52  The report on Dr. Brunvand uses the following doctor-verified information: (1) specialty information, gender, years in practice, shown in Screenshot No. 53, and; (2) professional memberships shown in

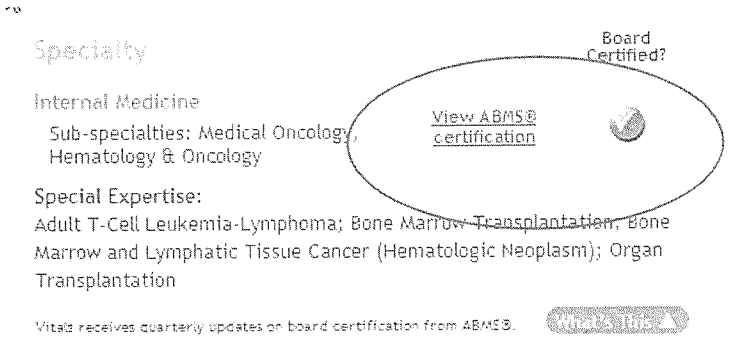
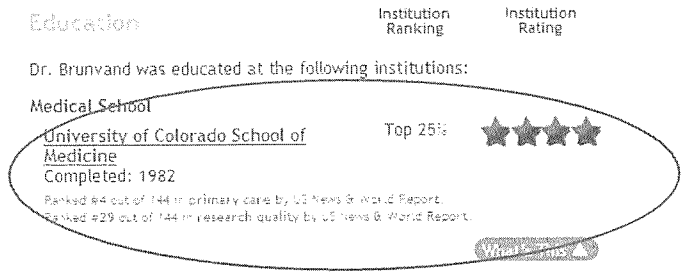
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	Screenshot No. 54 below: Screenshot No. 53  Screenshot No. 54  The report on Dr. Brunvand uses the following patient provided information: patient ratings compiled from a www.vitals.com on-line patient-experience survey (circled in green in Screenshot No. 52 below):

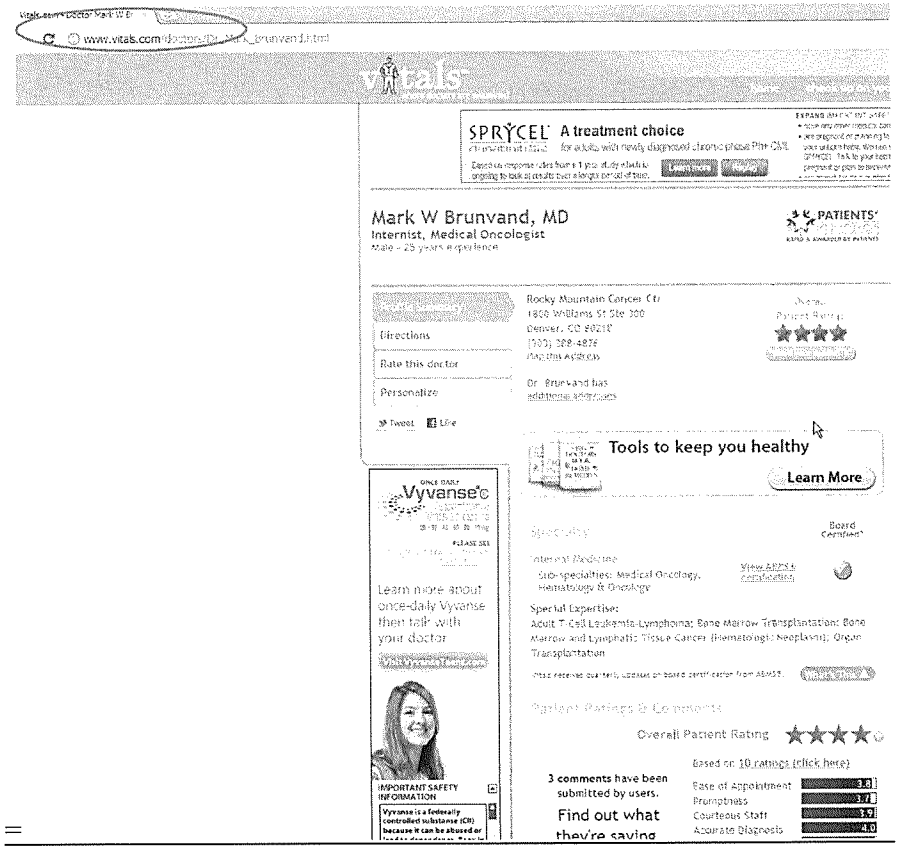
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	Screenshot No. 52  Additionally, the report on Dr. Brunvand uses information verified by the independent third-party

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	sources, namely, board certifications and medical school information as shown in Screenshot Nos. 55-56 below. MDx also uses compiled licensure information to ensure that only licensed physicians, including Dr. Brunvand, are displayed in the search results. Screenshot 55  Screenshot 56 
and provide access to	MDx provides access to the healthcare provider report over the internet. *See* Screenshot No. 57 (web

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the healthcare provider report on the first healthcare provider over a computer network.	address circled in red). Screenshot No. 57 

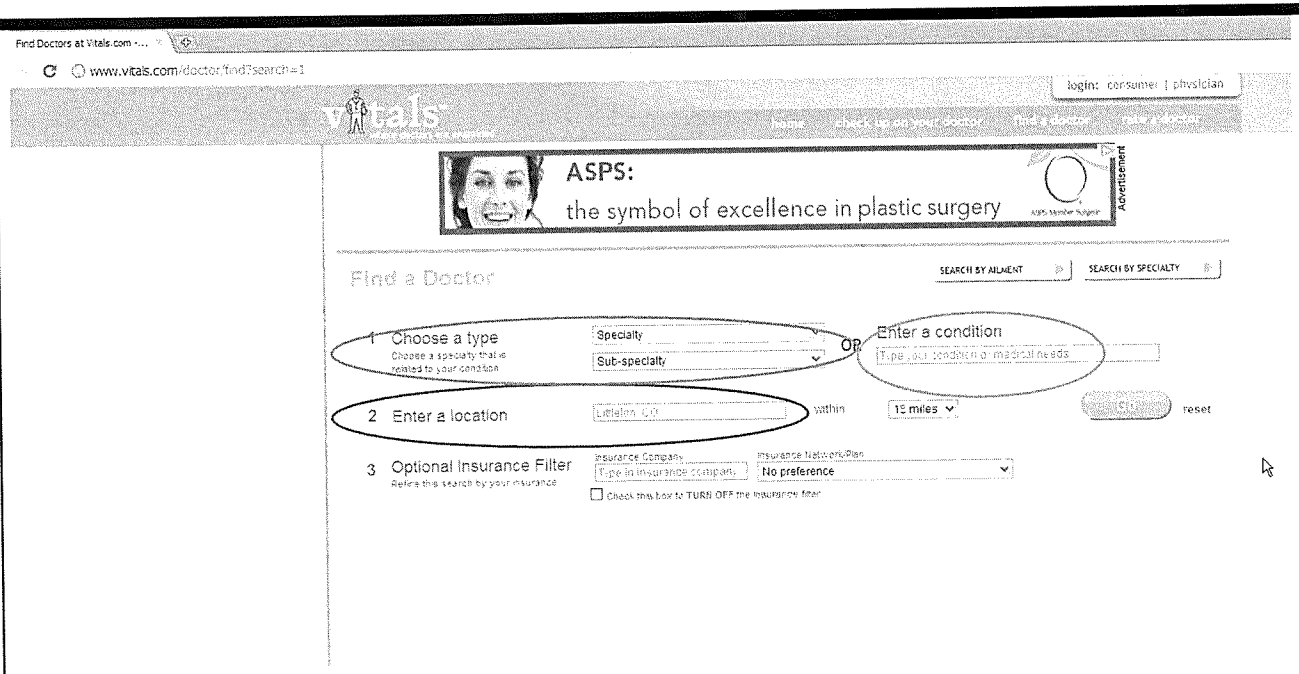
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	MDx argues that it does not infringe this claim because "[t]he reports on the MDx Website do not include three or more of the information verified by the independent third party source." Health Grades disagrees, as MDx has apparently replaced the claim term "using" with the term "include." But even if this replacement is adopted, MDx's website includes at least three kinds of information verified by an independent third party. Therefore, if performs substantially the same function in substantially the same way to obtain the same result as the claimed invention. MDx also argues that it does not infringe because it does not use "all of the compiled information." However, this claim element contains no such requirement. It is not clear what construction of compiling MDx proposes when making this argument. Even under this construction, however, MDx infringes literally and based on the doctrine of equivalents. It infringes literally because MDx has used all of the information it compiled. MDx stores third-party and patient provided information in a database. *See, e.g.*, MDX 0000352 (displaying a "data hierarchy" database table). It is axiomatic that information stored in a computer database must have been used by a computer processor. Additionally, the use of this was at least in preparation to create a report. MDx infringes under the doctrine of equivalents. To the extent that MDx has not used the three kinds of information, the storing and indexing of all of the information in a database enables MDx to generate a report. Additionally, the purpose of the claim is to include three kinds of information about a healthcare provider – MDx's website has the same function. The claim fulfills this function by accessing and compiling three kinds of information. MDx's website works the same way. The result is to provide patients with a robust amount of information – MDx's website achieves this result. It performs substantially the same function in substantially the same way to obtain the same result MDx appears to argue that it does not infringe because its "report" is limited to screens shown after one clicks the "VIEW PROFILE," as shown in Screenshot No. 16. Health Grades disagrees for many reasons, including those listed above, and further disagrees that the claim contains no such requirements.

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	However, to the extent that the court adopts an alternative construction of "report," MDx infringes under the doctrine of equivalents. The purpose of this element is to provide a patient with a report containing information about at least one healthcare provider, e.g., a first healthcare provider, who matches a patient's search criteria. Additionally, it facilitates comparisons among the matching healthcare providers. MDx's website is capable of doing this. In fact, it is capable of providing the claimed information about multiple healthcare providers and has multiple ratings systems that facilitate comparisons among the healthcare providers that match the search query as described above. To the extent that MDx does not include comparison ratings in its report, MDx infringes under the doctrine of equivalents at least because it includes ratings that function to allow customers to compare physicians against other physicians. The way in which these ratings are included is substantially the same, i.e., through the above mentioned computer method. The result is substantially similar, i.e., a website that allows a customer to compare physicians using ratings.
16. The on-line information system defined in claim 15, wherein: the healthcare provider report is obtained through one or more from the group consisting of: a predetermined Webpage that provides search capabilities on its database and a third-party search engine; and the search capabilities of the predetermined Webpage permit searching based on	MDx provides a predetermined webpage. This webpage permits a patient to search based on medical specialist, diagnosis, and location criteria. *See* Screenshot No. 58 (specialist, location criteria circled, and diagnosis in red, blue, and orange respectively). Screenshot No. 58

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one or more from the group consisting of: name, medical specialty, gender, state, city, procedure, diagnosis, and location criteria.	

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