IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 14-CV-1268

HEALTH GRADES, INC.,

Plaintiff,

vs.

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

Defendant.

COMPLAINT FOR PATENT INFRINGEMENT AND JURY DEMAND

Plaintiff Health Grades, Inc., by and through its undersigned counsel, asserts the following complaint for patent infringement against Defendant MDx Medical, Inc. d/b/a Vitals.com:

THE PARTIES

1. Plaintiff Health Grades, Inc. ("Health Grades") is a Delaware corporation with its principal place of business located in Denver, Colorado.

2. Defendant MDx Medical, Inc. d/b/a Vitals.com ("MDx") is a Delaware corporation having its principal place of business in Lyndhurst, New Jersey.

3. Health Grades and MDx are opposing parties in a related patent infringement action in this District, civil action no. 11-cv-00520-RM-BNB, which concerns U.S. Patent No. 7,752,060 ("the '060 patent"), which is the parent to the patent that is the subject of this complaint.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the United States Patent Act, 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. § 271.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

6. This Court has personal jurisdiction over MDx pursuant to section 13-1-124 of the Colorado Revised Statutes because MDx has intentionally and purposely availed itself of the privilege of doing business in the State of Colorado by soliciting and making contacts with the citizens of the state of Colorado via MDx's interactive Vitals.com website.

7. MDx has further intentionally and purposely availed itself of the privilege of doing business in the State of Colorado by entering into agreements and relationships with numerous Colorado-based physicians listed on its Vitals.com website.

8. Further, MDx has committed infringing acts giving rise to this action in Colorado and, in doing so, has injured Health Grades.

9. Venue is proper in this District pursuant to at least 28 U.S.C. § 1391. For venue purposes, MDx is deemed to reside in Colorado pursuant to 28 U.S.C. § 1391(c). MDx has committed infringing acts giving rise to this action in the State of Colorado, among other places, and MDx solicits and transacts business in the State of Colorado. In doing so, MDx has caused Health Grades to suffer injuries and losses in this District.

FACTUAL BACKGROUND

10. Health Grades is a pioneer in the field of on-line healthcare information systems. Health Grades provides the leading web-based health information system for the distribution of

healthcare provider ratings and other healthcare information through its website at www.healthgrades.com.

11. On May 5, 2014 at 10:01 pm MDT (May 6, 2014 at 12:01 am EDT), United States Patent No. 8,719,052 ("the '052 Patent") for *Internet System For Connecting Healthcare Providers and Patients* was duly and legally issued to Health Grades by the United States Patent & Trademark Office. (Issue Notification dated April 16, 2014 (Ex. A hereto); Notice of Allowability dated October 1, 2013 (Ex. B hereto); Amendment & Response to Non-Final Office Action dated September 5, 2013 (Ex. C hereto); Original Application and Preliminary Amendment filed on July 17, 2012 (Ex. D hereto).)

12. Health Grades is the assignee and owner of the '052 patent.

13. The '052 patent is a continuation of the '060 patent, which was filed on August 29, 2006, which claims priority to U.S. Provisional App. 60/771,751, which was filed on February 8, 2006.

14. MDx is a competitor of Health Grades and owns and operates an on-line healthcare information system that includes the website, www.Vitals.com, a database of information about healthcare professionals that is accessed through the website, and the software and hardware associated therewith ("Vitals.com system"). The Vitals.com system is accessible for all purposes by residents of all states, including Colorado.

15. MDX first used the VITALS mark in interstate commerce on June 30, 2007 in connection with the following services: providing an interactive forum for researching, discussing and exchanging information regarding health-care providers, namely, physicians, hospitals, short-term, medium-term and long-term care facilities, and other entities capable of

providing health-care services, via a global computer network. (U.S. Trademark Registration No. 3,612,937.)

16. MDx launched the Vitals.com system in January 2008.

17. MDx makes, uses, offers for sale, sells, and/or imports one or more systems, methods, and/or apparatuses that are covered by and claimed in the '052 Patent, including but not limited to the Vitals.com system.

18. The patent application that issued as the '052 patent was published on November 8, 2012. (U.S. Patent Application Publ. No. 2012/0284045 A1 (Ex. E hereto).) The claims of the foregoing published application are substantially identical to the claims of the '052 Patent.

19. MDx had actual notice that the application that issued as the '052 patent was pending at least as early as October 31, 2013, when Health Grades produced a copy of its file history in connection the pending lawsuit relating to the '060 patent.

FIRST CLAIM FOR RELIEF

(Direct Infringement of United States Patent No. 8,719,052)

20. Health Grades re-alleges and incorporates by reference the allegations of paragraphs 1–20 above as if fully set forth herein.

21. Without the permission, authority, or license of Health Grades, MDx has used, made, offered for sale, sold, and/or imported one or more systems, methods, and/or apparatuses that infringe the '052 Patent claims under 35 U.S.C. § 271(a), including at least MDx's Vitals.com system.

22. Health Grades has been and continues to be damaged by MDx's infringement of the '052 Patent in an amount to be proven at trial.

23. Health Grades will continue to suffer damages and irreparable harm unless the Court enjoins MDx from further patent infringement and unlawful conduct pursuant to 35 U.S.C. § 283.

24. MDx directly infringed the ‘052 Patent despite having full knowledge of the existence and scope of the patent claims and of Health Grades' rights in the same.

PRAYER FOR RELIEF

WHEREFORE, Health Grades respectfully requests a judgment against MDx and in favor of Health Grades and seeks the following relief:

A. A declaration that MDx has infringed the ‘052 Patent;

B. Preliminary and permanent injunctions enjoining MDx, its agents, principals, employees, and any other parties acting in concert with MDx from continuing to make, use, offer to sell, sell, or import the systems, methods, and/or apparatuses that infringe the ‘052 Patent;

C. An accounting for damages in an amount adequate to compensate Health Grades for MDx’s infringement, including those provided under U.S.C. § 154(d), but in no event less than a reasonable royalty, together with interest thereon;

D. An award of pre-judgment under 35 U.S.C. § 284 and post-judgment interest under 35 U.S.C. § 1961 on all damages awarded;

E. A judgment in favor of Health Grades that this is an exceptional case under 35 U.S.C. § 285 and an award of Health Grades’ costs, reasonable attorneys’ fees, and other expenses incurred in connection with this action; and

F. Any additional relief the Court may deem just and proper.

JURY DEMAND

Plaintiff Health Grades demands a trial by jury.

Dated: May 5, 2014.

Respectfully submitted,

/s/ Kris J. Kostolansky
Gregory B. Kanan, Esq.
Kris J. Kostolansky, Esq.
Adam L. Massaro, Esq.
LEWIS ROCA ROTHGERBER LLP
1200 17th Street, Suite 3000
Denver, Colorado 80202
Tel: (303) 623-9000
Fax: (303) 623-9222
Email: gkanan@lrrlaw.com
kkostolansky@lrrlaw.com
amassaro@lrrlaw.com

Attorneys for Plaintiff Health Grades, Inc.