



1 **I. THE PATENT**

2 **A. History**

3 Medversant owns the rights to U.S. Patent No. 7,529,682 (“the ’682 patent”), which  
4 protects an “Electronic Credentials Verification and Management System.”<sup>1</sup> Medversant filed a  
5 patent application for an automated credentialing management system on December 11, 2002,<sup>2</sup>  
6 and the patent issued on May 9, 2009.<sup>3</sup> It protects an electronic credentialing management system  
7 “for storing, continually verifying and retrieving credentials records in a global network  
8 environment.”<sup>4</sup> The system allows credentials information to be entered into the system from  
9 paper-based forms or electronic storage devices.<sup>5</sup> Credential information can also be “scanned  
10 in through the use of a teleform or directly entered by a practitioner.”<sup>6</sup> The system is designed  
11 to “continuously access external sources to validate current credentials information,”<sup>7</sup> and “prompt  
12 practitioners to renew credentials information prior to the expiration of that information.”<sup>8</sup> The  
13 invention is intended to “automate[ ] and simplif[y] existing methods of credentials information  
14 collection, verification, audit, maintenance and retrieval.”<sup>9</sup>

15 **B. Background**

16 The purpose of the patent was to streamline the credentialing process for healthcare  
17 practitioners. Healthcare practitioners are “required by federal, state and regulatory agencies to  
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19 <sup>1</sup>Complaint, ¶ 6, Docket No. 1 (Jul. 13, 2009).

20 <sup>2</sup>*Id.*

21 <sup>3</sup>United States Patent Number 7,529,628.

22 <sup>4</sup>Complaint, Exh. A (“Patent”) at col. 1:8-10.

23 <sup>5</sup>*Id.*, col. 3:5-6

24 <sup>6</sup>*Id.*, col. 3:8-9.

25 <sup>7</sup>*Id.*, col. 3:15-17.

26 <sup>8</sup>*Id.*, col. 3:24-25.

27 <sup>9</sup>*Id.*, col. 2:61-63.

1 have a thorough background check when initially applying to hospitals, health maintenance  
2 organizations, independent physician associations, and other like healthcare entities.”<sup>10</sup> The  
3 “practitioner’s background must [also] be re-checked at periodic intervals through the course of  
4 his tenure [in] the healthcare entity.”<sup>11</sup> These background checks require review and analysis of  
5 large amounts of data, including documents pertaining to education, training, licensure, work  
6 experience, and peer references.<sup>12</sup>

7 Prior art stored and managed occupational data, but was unable to “handle the wide variety  
8 of data formats that [are] typically . . . used for credentials verification.”<sup>13</sup> This resulted in  
9 significant duplication of credentials information since each healthcare facility was required to  
10 keep similar information on each practitioner. Because each entity maintained separate credentials  
11 files, it was “common for practitioner files at one entity to have credentials information that  
12 differ[ed] from the same practitioner files at another entity.”<sup>14</sup> Since practitioner information was  
13 generally not collected in one place, “adverse actions, gaps in work history and misstatements on  
14 the credentials application [were often] not . . . apparent.”<sup>15</sup> Using prior art systems, practitioners  
15 were also generally not able to review their credentials files to confirm or dispute information  
16 contained in them. Furthermore, paper-based credentialing systems made accessing specific  
17 credentials information difficult, and restricted simultaneous use of credentials by more than one  
18 entity.<sup>16</sup> The inventor thus sought to create a system that enabled users to analyze credentials  
19 quickly and efficiently by “creat[ing] and maintain[ing] all credentials information electronically  
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21 <sup>10</sup>*Id.*, col. 1:17-21.

22 <sup>11</sup>*Id.*, col. 1:21-23.

23 <sup>12</sup>*Id.*, col. 1:24-29.

24 <sup>13</sup>*Id.*, col. 1:35-37.

25 <sup>14</sup>*Id.*, col. 1:51-53.

26 <sup>15</sup>*Id.*, col. 1:61-63.

27 <sup>16</sup>*Id.*, col. 1:64-2:1.

1 and thus [ ] eliminat[ing] or supplement[ing] . . . physical data records.”<sup>17</sup>

2 **C. Description**

3 The invention is described in detail in the patent specification. It is described as a “method  
4 for electronically verifying information [that] includes requesting credentials information from  
5 applicants in a plurality of formats, collecting received credentials information from the applicants  
6 in a common format through an interface to a global network, storing collected credentials  
7 information in a dynamic database and verifying collected credentials information with external  
8 sources through an electronic interface.”<sup>18</sup> It also describes an embodiment of the web-based  
9 credentials acquisition, storage, verification and audit system, which it denominates “WebCVO.”

10 WebCVO includes “multiple remote devices . . . coupled to one or more web servers .  
11 . . . through a remote communication network. . . .”<sup>19</sup> A communication network can be “a  
12 network or combination of networks spanning any geographical area, such as a local area network,  
13 wide area network, regional network, national network, and/or global network,” e.g., the  
14 Internet. The network can be hardwire, wireless, or a combination of the two.<sup>20</sup> Remote devices  
15 are devices that can access a communication network, such as personal computers, servers, main-  
16 frame computers, laptop computers, personal data assistants, or web enabled wireless  
17 communications devices.<sup>21</sup> A web server “hosts a website comprising one or more interrelated  
18 web page files . . . [that] may be accessed via a communications network, such as the Internet.”<sup>22</sup>  
19 Data is encrypted in the embodiment described to maintain the integrity and confidentiality of  
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22 <sup>17</sup>*Id.*, col. 2:64-66.

23 <sup>18</sup>*Id.*, col. 2:7-14.

24 <sup>19</sup>*Id.*, col. 3:31-33.

25 <sup>20</sup>*Id.*, col. 3:33-40.

26 <sup>21</sup>*Id.*, col. 3:34-40.

27 <sup>22</sup>*Id.*, col. 4:4-7.

1 electronic transmissions.<sup>23</sup>

2 The system is designed to give users “freedom to manage, maintain, and utilize the  
3 functionality of the system.”<sup>24</sup> Prospective employers in the healthcare field, for example, can  
4 “create [a] new practitioner account[ ] . . . including a credentials application which a practitioner  
5 may then complete.”<sup>25</sup> The system can then send notice, via mail, fax, or Internet download, to  
6 the practitioner to log into the system and enter his or her credentials information.<sup>26</sup> It can  
7 similarly request that a practitioner update or clarify existing credentials information.<sup>27</sup>

8 Organizations that verify credentials can also log onto the system.<sup>28</sup> “A[n] [embodiment  
9 of the] . . . system [could] send requests for verification information by fax, letter or email [or  
10 phone],” as well as “via [ ] a web crawler, link, or other conventional method of querying a  
11 database,” to third parties “such as [ ] schools, hospitals, or peers. . . .”<sup>29</sup> It might also  
12 automatically check the websites of government agencies and other regulatory bodies for  
13 information concerning the practitioner’s credentials.<sup>30</sup>

14 Once verification data is received, an embodiment of the invention could “correlate the  
15 verification information received from external sources with the credentials information entered

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17 <sup>23</sup>*Id.*, col. 4:24-34.

18 <sup>24</sup>*Id.*, col. 4:40-41.

19 <sup>25</sup>*Id.*, col. 4:42-44.

20 <sup>26</sup>*Id.*, col. 4:53-56 (“[A]n exemplary system may automatically send an email to  
21 practitioners which includes instructions on how to access the credentials system electronically  
22 (e.g. online)”).

23 <sup>27</sup>*Id.*, col 4:56-57. The description of the embodiment also notes that the system can  
24 instruct practitioners how to receive a blank credentials application, fax or print for mailing  
25 complete credentials packages, and contact practitioners opting to complete a paper application/  
(*Id.*, col. 4:60-col. 5:3.)

26 <sup>28</sup>*Id.*, col. 6:8-17.

27 <sup>29</sup>*Id.*, col. 4:10-15, 4:23-26.

28 <sup>30</sup>*Id.*, col. 5:26-30.

1 by the applicant,”<sup>31</sup> and “auto-update the database with matched information.”<sup>32</sup> The verification  
2 information could then “be archived in an online data repository, allowing web access and  
3 tracking.”<sup>33</sup> The system allows “instant access to a practitioner’s electronic credentials record by  
4 authorized entities. . . .”<sup>34</sup> Additionally, a practitioner could enter the system and update  
5 information, or “provide explanations for any information not validated by an external source.”<sup>35</sup>  
6 The system could also “create and maintain accounting records associated with the verification of  
7 credentials information,”<sup>36</sup> and “generate verified credentials profile information including copies  
8 of all records from external sources.”<sup>37</sup> Finally, an embodiment of the system could “create and  
9 maintain a continuous calendar of re-verification of an applicant’s credentials information,”<sup>38</sup> and  
10 “allow applicants to request privileges based upon analysis of credentials information.”<sup>39</sup>

11 **D. The Claim Terms**

12 The patent has 36 claims. The parties indicate that ten claim terms are in need of  
13 construction; of these, two are “means-plus-function” claims. The disputed terms recur throughout  
14 the patent, but claims 1 and 23 contain all of them. The relevant portions of these two claims are  
15 recited below with the disputed terms underlined:

- 16 1. A method for electronically verifying information pertaining to applicants over a  
17 communication network including a plurality of computing devices, the method

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19 <sup>31</sup>*Id.*, col. 6:54-56.

20 <sup>32</sup>*Id.*, col. 5:36-37.

21 <sup>33</sup>*Id.*, col. 5:45-47.

22 <sup>34</sup>*Id.*, col. 5:57-59.

23 <sup>35</sup>*Id.*, col. 5:66-6:1.

24 <sup>36</sup>*Id.*, col. 9:21-24.

25 <sup>37</sup>*Id.*, col. 9:35-37.

26 <sup>38</sup>*Id.*, col. 9:50-52.

27 <sup>39</sup>*Id.*, col. 9:63-64.

1 comprising: collecting credentials information pertaining to applicants in one or  
2 more of a plurality of formats; converting credentials information in one or more  
3 of the plurality of formats into a common format of collected credentials  
4 information; storing the collected credentials information in a dynamic relational  
5 database; and verifying concurrently for a plurality of applicants the collected  
6 credentials information with external sources through an electronic interface,  
7 wherein the verifying further comprises: automatically obtaining third party  
8 credentials data wherein the obtaining comprises querying automatically on a  
9 periodic basis third party databases having third party credentials data relating to  
10 the collected credentials information; and automatically electronically comparing  
11 the obtained third party credentials data to the collected credentials information  
12 pertaining to the applicant; automatically electronically updating the relational  
13 database with the retrieved data; automatically electronically notifying a user of  
14 inconsistencies between the obtained third party credentials data and the collected  
15 credentials information pertaining to the applicant; and providing selective  
16 electronic access to the updated third party credentials information over the  
17 communication network to one or more users and to the applicant to which the third  
18 party credentialing information pertains.

- 19 23. An electronic credentials verification system, comprising: means for requesting  
20 credentials information pertaining to applicants in one or more of a plurality of  
21 formats; means for collecting credentials information pertaining to the applicants  
22 through an interface to a communication network; means for storing collected  
23 credentials information in a dynamic database; and means for automatically  
24 verifying collected credentials information with external sources through an  
25 electronic interface, wherein the means for verifying comprises: means for  
26 automatically obtaining third party credentials data, wherein the means for  
27 automatically obtaining comprises means for querying automatically on a periodic  
28 basis third party databases having third party credentials data relating to the

1 collected credentials information; and means for automatically electronically  
2 comparing the obtained third party credentials data to the collected credentials  
3 information pertaining to the applicant; means for automatically electronically  
4 updating the dynamic database with the retrieved data and images; means for  
5 automatically electronically notifying a user of inconsistencies between the obtained  
6 third party credentials data and the collected credentials information pertaining to  
7 the applicant; and means for automatically presenting the user with the updated  
8 third party credentialing information.

## 10 II. DISCUSSION

### 11 A. Legal Standard Governing Claim Construction

12 Patents grant inventors the exclusive right to make and sell their inventions in exchange for  
13 full disclosure of the invention. *Markman*, 517 U.S. at 373. “It has long been understood that  
14 a patent must describe the exact scope of an invention and its manufacture to ‘secure to [the  
15 patentee] all to which he is entitled, [and] to apprise the public of what is still open to them.’”  
16 *Id.* (quoting *McClain v. Ortmayer*, 141 U.S. 419, 424 (1891)). Two parts of the patent fulfill this  
17 function – the specification and the claims. *Id.* The specification must describe the invention “in  
18 such full, clear, concise, and exact terms as to enable any person skilled in the art . . . to make  
19 and use the same.” 35 U.S.C. § 112. The claims must “particularly point[ ] out and distinctly  
20 claim[ ] the subject matter which the applicant regards as his invention.” *Id.*

21 “Victory in an infringement suit requires a finding that the patent claim ‘covers the alleged  
22 infringer’s product or process,’ which in turn necessitates a determination of ‘what the words in  
23 the claim mean.’” *Markman*, 517 U.S. at 374 (quoting H. Schwartz, PATENT LAW AND PRACTICE  
24 1, 33 (2d ed. 1995) and 3 E. Lipscomb, WALKER ON PATENTS, § 11:2, pp. 288-90 (3d ed. 1985)).  
25 The Supreme Court’s decision in *Markman* clarified that it is the judge, not the jury, who must  
26 determine the meaning of the claim terms. *Id.* at 387.

27 To ascertain the meaning of a claim term, “the court [must] look[ ] to ‘those sources  
28 available to the public that show what a person of skill in the art would have understood disputed

1 claim language to mean.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (en  
2 banc) (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116  
3 (Fed. Cir. 2004)), cert. denied, 546 U.S. 1170 (2006). These sources include “the words of the  
4 claims themselves, the remainder of the specification, the prosecution history, and extrinsic  
5 evidence concerning relevant scientific principles, the meaning of technical terms, and the state  
6 of the art.” *Id.* at 1314; *Innova/Pure Water*, 381 F.3d at 1116. It is important to “read the claim  
7 term not only in the context of the particular claim in which the disputed term appears, but in the  
8 context of the entire patent, including the specification.” *Phillips*, 415 F.3d at 1313.

### 9 1. Intrinsic Evidence

10 Intrinsic evidence is the most important source in construing patent claims. In *Vitronics*  
11 *Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576 (Fed. Cir. 1996), the Federal Circuit reiterated the  
12 “well-settled” rule “that, in interpreting an asserted claim, the court should look first to the  
13 intrinsic evidence of record, i.e., the patent itself, including the claims, the specification and, if  
14 in evidence, the prosecution history.” *Vitronics*, 90 F.3d at 1582. The *Vitronics* court described  
15 such “intrinsic evidence” as “the most significant source of the legally operative meaning of  
16 disputed claim language,” *id.*, and recent Federal Circuit opinions confirm this. See *Phillips*, 415  
17 F.3d at 1315 (quoting *Vitronics*); see also *Power-One, Inc. v. Artesyn Technologies, Inc.*, 599  
18 F.3d 1343 (Fed. Cir. 2010) (“When construing claims, the intrinsic evidence is the primary  
19 resource”); *Atofina v. Great Lakes Chem. Corp.*, 441 F.3d 991, 996 (Fed. Cir. 2006) (“Our  
20 primary focus in determining the ordinary and customary meaning of a claim limitation is to  
21 consider the intrinsic evidence of record, viz., the patent itself, including the claims, the  
22 specification and, if in evidence, the prosecution history, from the perspective of one of ordinary  
23 skill in the art”).

24 Even within the general category of “intrinsic evidence,” there are preferences. Initially,  
25 a court should look to the words of the claims themselves to define the scope of the patented  
26 invention. *Vitronics*, 90 F.3d at 1582; see *Akamai Technologies, Inc. v. Limelight Networks, Inc.*,  
27 629 F.3d 1311 (Fed. Cir. 2010) (“‘We begin a claim construction analysis by considering the  
28 language of the claims themselves,’” quoting *Edward Lifesciences LLC v. Cook Inc.*, 582 F.3d

1 1322, 1327 (Fed. Cir. 2009));<sup>40</sup> *Liquid Dynamics v. Vaughan Co.*, 355 F.3d 1361, 1367 (Fed.  
2 Cir. 2004) (“We examine this intrinsic evidence seriatim. ‘We look first to the claim language  
3 itself, to define the scope of the patented invention. As a starting point, we give claim terms their  
4 ordinary and accustomed meaning as understood by one of ordinary skill in the art,’” quoting *Dow  
5 Chem. Co. v. Sumitomo Chem. Co.*, 257 F.3d 1364, 1372 (Fed. Cir. 2001)); *Intellectual Prop.  
6 Dev., Inc. v. UA-Columbia Cablevision of Westchester, Inc.*, 336 F.3d 1308, 1314 (Fed. Cir.  
7 2003) (“We begin our claim construction analysis with the words of the claim. . . . In construing  
8 claims, the analytical focus must begin and remain centered on the language of the claims  
9 themselves, for it is that language that the patentee chose to use to particularly point[ ] out and  
10 distinctly claim[ ] the subject matter which the patentee regards as his invention” (internal  
11 quotation marks omitted)); *Advanced Cardiovascular v. Medtronic*, 265 F.3d 1294, 1304 (Fed.  
12 Cir. 2001) (“As always, we begin our construction with the words of the claim. . . . After  
13 looking to the claim language we consider the rest of the intrinsic evidence, that is, the written  
14 description and the prosecution history if in evidence”); *Interactive Gift Express, Inc. v.  
15 Compuserve Inc.*, 256 F.3d 1323, 1331 (Fed. Cir. 2001) (“First, we look to the claim language”).

16 The words used in the claims are generally given the ordinary meaning they would have  
17 to a person skilled in the art. *Phillips*, 415 F.3d at 1313 (“We have made clear, moreover, that  
18 the ordinary and customary meaning of a claim term is the meaning that the term would have to  
19 a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective  
20 filing date of the patent application”); *Intellectual Prop. Dev.*, 336 F.3d at 1314 (“In the absence  
21 of an express intent to impart a novel meaning to claim terms, the words are presumed to take on  
22 the ordinary and customary meanings attributed to them by those of ordinary skill in the art”); see  
23 also *Tegal Corp. v. Tokyo Electron Am., Inc.*, 257 F.3d 1331, 1342 (Fed. Cir. 2001)  
24 (“Throughout the construction process, it is important to bear in mind that the viewing glass  
25 through which the claims are construed is that of a person skilled in the art”).

26 The person of ordinary skill in the art is presumed “to read [a disputed] claim term not only  
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28 <sup>40</sup>Publication page references are not available for this opinion.

1 in the context of the particular claim in which the disputed term appears, but in the context of the  
2 entire patent, including the specification.” *Phillips*, 415 F.3d at 1313; see also *ERBE*  
3 *Elektromedizin GmbH v. Canady Technology LLC*, 629 F.3d 1278 (Fed. Cir. 2010) (“[T]he  
4 person of ordinary skill in the art is deemed to read the claim term not only in the context of the  
5 particular claim in which the disputed term appears, but in the context of the entire patent,  
6 including the specification,” quoting *Phillips*, 415 F.3d at 1313);<sup>41</sup> *Medrad, Inc. v. MRI Devices*  
7 *Corp.*, 401 F.3d 1313, 1319 (Fed. Cir. 2005) (“We cannot look at the ordinary meaning of the  
8 term . . . in a vacuum. Rather, we must look at the ordinary meaning in the context of the written  
9 description and the prosecution history”); *V-Formation, Inc. v. Benetton Group SpA*, 401 F.3d  
10 1307, 1310 (Fed. Cir. 2005) (stating that the intrinsic record “usually provides the technological  
11 and temporal context to enable the court to ascertain the meaning of the claim to one of ordinary  
12 skill in the art at the time of the invention”); *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 375  
13 F.3d 1341, 1351 (Fed. Cir. 2004) (the proper definition of a claim term is the “definition that one  
14 of ordinary skill in the art could ascertain from the intrinsic evidence in the record”).

15 “When the claim language itself lacks sufficient clarity to ascertain the scope of the  
16 claims,’ the court should turn to the specification.” *Caluori v. One World Techs., Inc.*, No. CV-  
17 07-2035 CAS, 2010 WL 4794234, \*8 n. 2 (C.D. Cal. Nov. 12, 2010) (quoting *Deering Precision*  
18 *Instruments, LLC v. Vector Distrib. Sys.*, 347 F.3d 1314, 1322 (Fed. Cir. 2003)). Frequently,  
19 a review of the specification “may reveal a definition given to a claim term by the patentee that  
20 differs from the meaning it would otherwise possess. In such cases, the inventor’s lexicography  
21 governs.” *Phillips*, 415 F.3d at 1316; see also *AstraZeneca LP v. Apotex, Inc.*, \_\_ F.3d \_\_, 2010  
22 WL 4286284, \*7 (Fed. Cir. Nov. 1, 2010) (same); *Interactive Gift Express*, 256 F.3d at 1331  
23 (stating that a deviation from ordinary meaning may be required where “a patentee [has chosen]  
24 to be his own lexicographer and use terms in a manner other than their ordinary meaning,”  
25 quoting *Vitronics*, 90 F.3d at 1582); *Forest Labs., Inc. v. Abbott Labs.*, 239 F.3d 1305, 1310  
26 (Fed. Cir. 2001) (“The words of a claim are generally given their ordinary and accustomed  
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28 <sup>41</sup>Publication page references are not available for this opinion.

1 meaning, unless it appears from the specification or the file history that they were used differently  
2 by the inventor”); *Biovail Corp. Int’l. v. Andrx Pharms., Inc.*, 239 F.3d 1297, 1301 (Fed. Cir.  
3 2001) (quoting *Vitronics* and stating that the court “review[s] both the specification and the  
4 applicable prosecution history to determine whether the patentee defined claim terminology in a  
5 manner inconsistent with its ordinary meaning”); *Vitronics*, 90 F.3d at 1585 (where the  
6 specification clearly and unambiguously defines a claim term, that definition is controlling).

7 A deviation from the ordinary meaning of a term may also be necessary if a patentee has  
8 “relinquished [a] potential claim construction in an amendment to the claim or in an argument to  
9 overcome or distinguish a reference.” *Interactive Gift Express, Inc.*, 256 F.3d at 1331 (quoting  
10 *Elkay Mfg. Co. v. Ebc Co. Mfg. Co.*, 192 F.3d 973, 979 (Fed. Cir. 1999)). “[T]he specification may  
11 reveal an intentional disclaimer, or disavowal, of claim scope by the inventor. In that instance as  
12 well, the inventor has dictated the correct claim scope, and the inventor’s intention, as expressed  
13 in the specification, is regarded as dispositive.” *Phillips*, 415 F.3d at 1316.

14 Nonetheless, “[t]he written description part of the specification itself does not delimit the  
15 right to exclude. That is the function and purpose of claims.” *Markman*, 52 F.3d 967, 980; see  
16 also *Specialty Composites v. Cabot Corp.*, 845 F.2d 981, 987 (Fed. Cir. 1988). “Although claims  
17 must be read in light of the specification of which they are a part, it is improper to read limitations  
18 from the written description into a claim.” *Caluori*, 2010 WL 4794234 at \*9 (quoting *Tate Access*  
19 *Floors, Inc. v. Maxcess Techs., Inc.*, 222 F.3d 958, 966 (Fed. Cir. 2000) (citations omitted)); see  
20 also *Kraft Foods, Inc. v. Int’l Trading Co.*, 203 F.3d 1362, 1366 (Fed. Cir. 2000) (“Although the  
21 written description may aid in the proper construction of a claim term, limitations, examples, or  
22 embodiments appearing only there may not be read into the claim”).<sup>42</sup>

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24 <sup>42</sup>Where a patentee seeks to depart from the ordinary meaning of a claim term, he must  
25 “clearly set forth” or “clearly redefine” the term in the specification so as to put persons  
26 reasonably skilled in the art on notice of the intended meaning. *Bell Atlantic Network Servs., Inc.*  
27 *v. Covad Commc’ns Group, Inc.*, 262 F.3d 1258, 1268 (Fed. Cir. 2001) (quoting *Elekta*  
28 *Instrument S.A. v. O.U.R. Scientific Int’l, Inc.*, 214 F.3d 1302, 1307 (Fed. Cir. 2000)); see also  
*Schering Corp. v. Amgen, Inc.*, 222 F.3d 1347, 1353 (Fed. Cir. 2000) (stating that the  
specification must demonstrate an “express intent to impart a novel meaning” to claim terms);

1 Next, the prosecution history “is often of critical significance in determining the meaning  
2 of the claims.” *Vitronics*, 90 F.3d at 1582; see also *Phillips*, 415 F.3d at 1317 (“In addition to  
3 consulting the specification, we have held that a court ‘should also consider the patent’s  
4 prosecution history, if it is in evidence,’” quoting *Markman*, 52 F.3d at 980). “[B]ecause the  
5 prosecution history represents an ongoing negotiation between the PTO and the applicant, rather  
6 than the final product of that negotiation, it often lacks the clarity of the specification and thus is  
7 less useful for claim construction purposes.” *Phillips*, 415 F.3d at 1317. Nonetheless, it “can  
8 often inform the meaning of the claim language by demonstrating how the inventor understood the  
9 invention and whether the inventor limited the invention in the course of prosecution, making the  
10 claim scope narrower than it would otherwise be.” *Id.* Thus, the court should look to the  
11 prosecution history “to exclude any interpretation that was disclaimed during prosecution.”  
12 *CVI/Beta Ventures, Inc. v. Tura LP*, 112 F.3d 1146, 1155 (Fed. Cir. 1997), cert. denied sub nom.  
13 *Marchon Eyewear v. Tura LP*, 522 U.S. 1109 (1998); see also *Chimie v. PPG Indus., Inc.*, 402

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15 *Optical Disc Corp. v. Del Mar Avionics*, 208 F.3d 1324, 1334 (Fed. Cir. 2000) (“Without  
16 evidence in the patent specification of an express intent to impart a novel meaning to a claim term,  
17 the term takes on its ordinary meaning”). An explicit statement of redefinition is not required,  
18 however. *Bell Atlantic*, 262 F.3d at 1334; *SciMed Life Sys., Inc. v. Advanced Cardiovascular*  
19 *Sys., Inc.*, 242 F.3d 1337, 1344 (Fed. Cir. 2001) (a patentee’s description of the preferred  
20 embodiment “can provide guidance as to the meaning of the claims, thereby dictating the manner  
21 in which the claims are to be construed, even if the guidance is not provided in explicit definitional  
22 format”); see also *Astrazeneca AB v. Mutual Pharm. Co.*, 384 F.3d 1333, 1339-40 (Fed. Cir.  
23 2004). Rather, the specification may define claim terms “by implication” such that the meaning  
24 to be given to the terms is “found in or ascertained by a reading of the patent documents.”  
25 *Vitronics*, 90 F.3d at 1582, 1584 n. 6; see also *Arlington Indus. v. Bridgeport Fittings, Inc.*, \_\_\_  
26 F.3d \_\_\_, 2011 WL 179768, \*5 (Fed. Cir. Jan. 20, 2011) (a definition may be implied “if the  
27 specification manifests a clear intent to limit the term by using it in a manner consistent with only  
28 a single meaning,” citing *Irdeto Access, Inc. v. Echostar Satellite Corp.*, 383 F.3d 1295, 1303  
(Fed. Cir. 2004)); *Schoenhaus v. Genesco, Inc.*, 440 F.3d 1354, 1358 (Fed. Cir. 2006) (“The  
patentee is free to act as his own lexicographer, and may set forth any special definitions of the  
claim terms in the patent specification or file history, either expressly or impliedly”); *SciMed Life*  
*Sys., Inc.*, 242 F.3d at 1344 (“[T]he written description can provide guidance as to the meaning  
of the claims, thereby dictating the manner in which the claims are to be construed, even if the  
guidance is not provided in explicit definitional format”).

1 F.3d 1371, 1384 (Fed. Cir. 2005) (“The purpose of consulting the prosecution history in  
2 construing a claim is to ‘exclude any interpretation that was disclaimed during prosecution,’”  
3 quoting *ZMI Corp. v. Cardiac Resuscitator Corp.*, 844 F.2d 1576, 1580 (Fed. Cir. 1988));  
4 *Intellectual Prop. Dev.*, 336 F.3d at 1316 (“We have noted that, like the specification, the  
5 prosecution history may demonstrate that the patentee intended to deviate from a term’s ordinary  
6 and accustomed meaning, i.e., if it shows that the patentee characterized the invention using words  
7 or expressions of manifest exclusion or restriction before the United States Patent and Trademark  
8 Office. . . . The prosecution history limits the interpretation of claims so as to exclude any  
9 interpretation that may have been disclaimed or disavowed during prosecution in order to obtain  
10 claim allowance”); *Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1576 (Fed Cir.)  
11 (same), cert. denied, 516 U.S. 987 (1995). The prosecution history of a patent “cannot be used  
12 to limit the scope of a claim[, however,] unless the applicant took a position before the PTO that  
13 would lead a competitor to believe that the applicant had disavowed coverage of the relevant  
14 subject matter.” *Schwing GMBH v. Putzmeister Aktiengesellschaft*, 305 F.3d 1318, 1324 (Fed.  
15 Cir. 2002).

16 “It is also appropriate to examine the prior art cited in the prosecution history in order to  
17 determine what the claims do not and cannot cover.” *Vitronics*, 90 F.3d at 1583; see also *Amhil*  
18 *Enter., Ltd. v. Wawa, Inc.*, 81 F.3d 1544, 1560 (Fed. Cir. 1996) (because a patent claim cannot  
19 be construed to encompass the prior art, “[a]n examination of the prosecution history is  
20 particularly important where . . . the claimed invention is in a crowded art”). In considering a  
21 patent’s prosecution history, the applicant’s subjective intent is irrelevant; “[r]ather, the standard  
22 for determining what subject matter was surrendered is objective and depends on what a  
23 competitor, reading the prosecution history, would reasonably conclude was given up by the  
24 applicant.” *Institutform Techs., Inc. v. CAT Contracting, Inc.*, 99 F.3d 1098, 1107-08 (Fed. Cir.  
25 1996), cert. denied, 520 U.S. 1198 (1997).

## 26 2. Extrinsic Evidence

27 Although intrinsic evidence is most important, the court may also look to extrinsic  
28 evidence, such as expert and inventor testimony, dictionaries and treatises. *Phillips*, 415 F.3d at

1 1317. See also *Spanston, Inc. v. International Trade Comm’n*, 629 F.3d 1331 (Fed. Cir. 2010)  
2 (“While claim construction primarily relies on intrinsic evidence, extrinsic evidence, such as  
3 expert testimony, may also be used when given the appropriate weight by the trial court”).<sup>43</sup>  
4 Extrinsic evidence “cannot be used[, however,] to alter a claim construction dictated by a proper  
5 analysis of the intrinsic evidence.” *On-Line Techs., Inc. v. Bodenseewerk Perkin-Elmer GMBH*,  
6 386 F.3d 1133, 1139 (Fed. Cir. 2004); see also *Phillips*, 415 F.3d at 1317 (“[W]hile extrinsic  
7 evidence ‘can shed useful light on the relevant art,’ we have explained that it is ‘less significant  
8 than the intrinsic record in determining ‘the legally operative meaning of claim language,’”  
9 quoting *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 862 (Fed. Cir. 2004), and  
10 *Vanderlande Indus. Nederland BV v. Int’l Trade Comm’n*, 366 F.3d 1311, 1318 (Fed. Cir.  
11 2004)); *id.* at 1318 (“We have viewed extrinsic evidence in general as less reliable than the patent  
12 and its prosecution history in determining how to read claim terms. . . . [U]ndue reliance on  
13 extrinsic evidence poses the risk that it will be used to change the meaning of claims in derogation  
14 of the ‘indisputable public records consisting of the claims, the specification and the prosecution  
15 history,’ thereby undermining the public notice function of patents”).

16 While “extrinsic evidence . . . is unlikely to result in a reliable interpretation of patent  
17 claim scope unless considered in the context of the intrinsic evidence,” the Federal Circuit has  
18 held that the district court may, in its discretion, admit such evidence to the extent it is “useful [in]  
19 . . . provid[ing] background on the technology at issue, . . . explain[ing] how an invention works,  
20 . . . ensur[ing] that the court’s understanding of the technical aspects of the patent is consistent  
21 with that of a person of skill in the art, or . . . establish[ing] that a particular term in the patent  
22 or the prior art has a particular meaning in the pertinent field.” *Phillips*, 415 F.3d at 1319; see  
23 also *AstraZeneca*, 2010 WL 4286284 at \*9 (stating that extrinsic evidence “concerning relevant  
24 scientific principles, the meaning of technical terms, and the state of the art” can be considered);  
25 *Schindler Elevator Corp. v. Otis Elevator Co.*, 593 F.3d 1275, 1282 (Fed. Cir. 2010) (same);  
26 *Omega Eng’g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1332 (Fed. Cir. 2003) (stating that “expert  
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28 <sup>43</sup>Publication page references are not available for this opinion.

1 testimony and declarations are useful to confirm that the construed meaning is consistent with the  
2 denotation ascribed by those in the field of the art”); *Pitney Bowes, Inc. v. Hewlett-Packard Co.*,  
3 182 F.3d 1298, 1309 (Fed. Cir. 1999) (“Thus, under *Vitronics*, it is entirely appropriate, perhaps  
4 even preferable, for a court to consult trustworthy extrinsic evidence to ensure that the claim  
5 construction it is tending to from the patent file is not inconsistent with clearly expressed, plainly  
6 apposite, and widely held understandings in the pertinent technical field. This is especially the  
7 case with respect to technical terms, as opposed to non-technical terms in general usage or terms  
8 of art in the claim-drafting art, such as ‘comprising’”); *Mantech Envtl. Corp. v. Hudson Envtl.*  
9 *Servs., Inc.*, 152 F.3d 1368 (Fed. Cir. 1998) (endorsing reference to extrinsic evidence as  
10 “background in the technical area at issue”).

### 11 3. Means Plus Function Claims

12 Under 35 U.S.C. § 112, ¶ 6, an element in a patent claim may be drafted as a generic  
13 “means” for performing a function without including a description of the physical structure by  
14 which the element performs the function. A claim element is in means plus function format if it  
15 recites the performance of a function without reciting sufficient structure to perform the function.  
16 *Phillips*, 415 F.3d at 1311 (“Means-plus-function claiming applies only to purely functional  
17 limitations that do not provide the structure that performs the recited function”); *Lockheed Martin*  
18 *Corp. v. Space Systems/Loral, Inc.*, 324 F.3d 1308, 1318 (Fed. Cir. 2003) (“A  
19 means-plus-function limitation recites a function to be performed rather than definite structure or  
20 materials for performing that function”); *Altiris, Inc. v. Symantec Corp.*, 318 F.3d 1363, 1375  
21 (Fed. Cir. 2003) (“An element of a claim for a combination may be expressed as a means or step  
22 for performing a specified function without the recital of structure, material, or acts in support  
23 thereof, and such claim shall be construed to cover the corresponding structure, material, or acts  
24 described in the specification and equivalents thereof”).

25 Construction of a means plus function limitation involves two steps. First, the court must  
26 identify and interpret the claimed function using ordinary principles of claim construction.  
27 Second, it must determine what structure disclosed in the specification corresponds to the claimed  
28 function. *AllVoice Computing PLC v. Nuance Communications, Inc.*, 504 F.3d 1236, 1240 (Fed.

1 Cir. 2007); *Omega Engineering*, 334 F.3d at 1321 (“The construction of a means-plus-function  
2 limitation follows a two-step approach. First, we must identify the claimed function, . . . staying  
3 true to the claim language and the limitations expressly recited by the claims. . . . Once the  
4 functions performed by the claimed means are identified, we must then ascertain the  
5 corresponding structures in the written description that perform those functions. . . . A disclosed  
6 structure is corresponding ‘only if the specification or the prosecution history clearly links or  
7 associates that structure to the function recited in the claim.’ . . . In other words, the structure  
8 must be necessary to perform the claimed function”); *Micro Chemical, Inc. v. Great Plains  
9 Chemical Co., Inc.*, 194 F.3d 1250, 1257-58 (Fed. Cir. 1999) (“Application of § 112, ¶ 6  
10 requires identification of the structure in the specification which performs the recited function.  
11 Therefore, § 112, ¶ 6 requires both identification of the claimed function and identification of the  
12 structure in the written description necessary to perform that function”).

13 **B. The Non Means-Plus-Function Claim Terms**

14 **1. “Credentials Information”**

15 The term “credentials information” appears in almost every claim of the ’682 Patent. As  
16 the invention deals fundamentally with the collection, storage, and automatic verification of  
17 “credentials information,” a fact finder must understand the nature of such information.

18 **i. Medversant’s Proposed Construction**

19 Medversant proposes that “credentials information” be construed as “information, pertinent  
20 in a particular timeframe to the purpose of . . . verification, relating to the applicants’ identity,  
21 professional history, licensure, qualifications, ability, competence, or fitness.”<sup>44</sup> It emphasizes  
22 that this list should be read in the disjunctive.<sup>45</sup>

23 Medversant asserts that “[p]ertinence to a particular timeframe is part of the value of  
24 credentialing information, because the state of an applicant’s credentials is not static but is instead

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26 <sup>44</sup>Plaintiff’s Opening Claim Construction Brief, Docket No. 152 (January 10, 2011) (“Pl.’s  
Opening Brief”) at 9.

27 <sup>45</sup>Plaintiff’s Responding Claim Construction Brief, Docket No. 156 (January 24, 2011)  
28 (“Pl.’s Responding Brief”) at 9.

1 dynamic, relative to a particular time and changing with time; for instance, whether a particular  
2 achieved license is still valid or how long ago a particular disciplinary sanction was imposed is a  
3 part of, and adds a particular dimension to, credentials information.”<sup>46</sup> It contends that without  
4 a reference to the “temporal aspect of credentials information” “the term incorrectly suggests that  
5 verification information does not ‘age’ and the time at which it was obtained is not pertinent.”<sup>47</sup>

6 In support of its construction, plaintiff cites the summary of the invention section of  
7 specification, which describes the invention as “storing collected credentials information in a  
8 dynamic database[.]”<sup>48</sup> It also cites a portion of the specification describing an embodiment in  
9 which “the system records the user identification and date and time for each piece of data entered  
10 and any and all subsequent changes to provide a complete audit trail for credentials information  
11 entered into the system. In this manner, the system transforms a practitioner’s credentials  
12 application from a static record into a dynamic, real-time comprehensive record that may be linked  
13 to enterprise-wide databases to capture or supplement other practitioner data.”<sup>49</sup>

14 **ii. Morrisey’s Proposed Construction**

15 Morrisey’s proposed construction is drawn from the language of the background section  
16 of the specification. It proposes that the term be construed as “practitioner background data  
17 including education, training, licensure and license sanctions, work experience, malpractice  
18 insurance coverage, malpractice history and peer references.”<sup>50</sup> Morrisey contends that the  
19 language included in the background section provides an “explicit definition”<sup>51</sup> of the term, when  
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21 <sup>46</sup>Pl. ’s Opening Brief at 9.

22 <sup>47</sup>Pl. ’s Responding Brief at 10.

23 <sup>48</sup>Patent, col. 2:12-13.

24 <sup>49</sup>*Id.*, col. 8:32-39.

25 <sup>50</sup>Defendant’s Opening Claim Construction Brief, Docket No. 151 (January 10, 2011)  
26 (“Def. ’s Opening Brief”) at 5.

27 <sup>51</sup>*Id.*

1 it states that “practitioner background checks create large volumes of data that must be stored,  
2 validated, analyzed and updated on a continuous basis. Such data includes **at a minimum**,  
3 education, training, licensure and license sanctions, work experience, malpractice insurance  
4 coverage, malpractice history and peer references.”<sup>52</sup> Morrisey asserts that the use of phrase “at  
5 a minimum,” as well as “and” indicates that the list must be construed in the conjunctive.

6 Because the specification states that a notification is sent for “new practitioner accounts”  
7 that “instruct[s] the practitioner to log on to the system and input his credentials information,”<sup>53</sup>  
8 Morrisey asserts that the term “‘credentials information’ . . . represents *the minimum data set* that  
9 provides a ‘comprehensive record.’”<sup>54</sup> Stated differently, it maintains that “‘credentials  
10 information’ refers to ‘each piece of data’ for the data set of a practitioner entered into the  
11 system.”<sup>55</sup> It cites as further support for its construction the prior art of record in the prosecution  
12 history, which suggests that “credentials information” includes multiple aspects of a practitioner’s  
13 background.<sup>56</sup>

### 14 **iii. The Court’s Construction**

15 The court begins with the language of the claims. See *Phillips*, 415 F.3d at 1312. The term  
16 “credentials information” is ubiquitous throughout the patent. Claim 1 describes the invention as  
17 “[a] method for electronically verifying information pertaining to applicants,” which begins with  
18 “collecting credentials information pertaining to applicants . . . .”<sup>57</sup> Claim 1 thus appears to  
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20 <sup>52</sup>Patent, col. 1:24-29 (emphasis added).

21 <sup>53</sup>Def.’s Opening Brief at 5 (citing Patent, col. 4:41, 44-46).

22 <sup>54</sup>Def.’s Opening Brief at 5-6 (citing Patent, col. 8:38).

23 <sup>55</sup>Def.’s Opening Brief at 6 (citing Patent, col. 8:33-35).

24 <sup>56</sup>Def.’s Opening Brief at 6 (citing Declaration of Aaron R. Feigelson (“Feigelson Decl.”),  
25 Docket No. 151 (January 10, 2011), Exh. D at 136-37 (article describing trends in healthcare  
26 credentialing and stating that “core” credentials data would include fifteen items)); *id.* at 158  
27 (listing ten “credentials elements for verifying a physician’s credentials”).

28 <sup>57</sup>Patent, col. 10:40-44.

1 define “credentials information” as some set of “information pertaining to applicants[.]”<sup>58</sup> With  
2 the exception of claim 1, no other claim defines the term.

3 As the claims themselves do not provide any further definition of the term, the court must  
4 “read the claim term not only in the context of the particular claim in which the disputed term  
5 appears, but in the context of the entire patent, including the specification.” *Phillips*, 415 F.3d  
6 at 1313. Morrisey’s proposed construction draws directly from the background section of the  
7 specification. The first paragraph of the specification explains that

8 “[p]rofessionals are frequently required to be licensed and to undergo rigorous  
9 screening before practicing their profession. For example, healthcare practitioners,  
10 such as physicians, are typically required by federal, state and regulatory agencies  
11 to have a thorough background check when initially applying to hospitals . . . and  
12 other like healthcare entities. In addition, once approved by an entity, the  
13 practitioner’s background must be re-checked at periodic intervals through the  
14 course of his tenure with the healthcare entity. However, practitioner background  
15 checks create large volumes of data that must be stored, validated, analyzed and  
16 updated on a continuous basis. Such data includes at a minimum, education,  
17 training, licensure and license sanctions, work experience, malpractice insurance  
18 coverage, malpractice history and peer references.”<sup>59</sup>

19 The following paragraph of the specification then uses the term “credentials information” to  
20 describe the data that must be “collect[ed]” and “document[ed].”<sup>60</sup> The court agrees with  
21 Morrisey, therefore, that the first paragraph of the specification is a strong indicator of the type  
22 of “credentials information” the invention is meant to “store[ ], validate[ ], analyze[ ] and  
23  
24

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25 <sup>58</sup>*Id.*

26 <sup>59</sup>*Id.*, col. 1:14-29 (emphasis added).

27 <sup>60</sup>*Id.*, col. 1:37-42.

1 update[.]”<sup>61</sup>

2 Medversant’s proposed construction also includes a list of types of information. Unlike  
3 Morrisey’s, Medversant’s list is not drawn from the language of the specification and includes  
4 vague terms such as “ability,” “fitness,” and “competence.”<sup>62</sup> Use of these terms injects  
5 ambiguity into the meaning of the claim term that defendant’s construction does not.

6 This, however, does not resolve the parties’ dispute as to whether the list should be  
7 construed in the disjunctive or the conjunctive. Morrisey cites the statement in the background  
8 section of the specification that credentials information “at a minimum” includes the items listed,  
9 and asserts that “credentials information” is the “minimum data set”<sup>63</sup> necessary to have a  
10 “comprehensive record.”<sup>64</sup> In this manner, Morrisey seeks to narrow the scope of the claim term  
11 by offering a construction requiring that “all the items in [the specification’s] laundry list [must  
12 be collected and/or analyzed], on pain of avoiding the patent if any of them are missing.”<sup>65</sup> Under  
13 this construction, an invention that collected “education, training, licensure and license sanctions,  
14 work experience, malpractice insurance coverage, malpractice history,” but *not* “peer references”  
15 would not be compiling “credentials information.”

16 The court agrees with Medversant that Morrisey’s proposed construction “commit[s] one  
17 of the cardinal sins of patent law – reading a limitation from the written description into the  
18 claims.” *SciMed Life Systems, Inc. v. Advanced Cardiovascular Systems, Inc.*, 242 F.3d 1337,  
19 1341 (Fed. Cir. 2001). Nothing in the specification or claims requires that all of this information  
20 be in the database. Even the prior art references in the prosecution history that Morrisey cites  
21 suggest that construing “credentials information” so as to require that all of the types of

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23 <sup>61</sup>*Id.*, col. 1:25-26.

24 <sup>62</sup>Medversant’s list also includes “identity, professional history, [and] licensure. . . ,”  
25 which are similar to items identified on Morrisey’s list and in the specification itself.

26 <sup>63</sup>Def.’s Opening Brief at 5.

27 <sup>64</sup>Patent, col. 8:38.

28 <sup>65</sup>Pl.’s Responding Brief at 9.

1 information listed in the specification be included might be inappropriate because the types of  
2 “credentials information” that practitioners must submit may vary depending on their position or  
3 the use for which the information is being disclosed.<sup>66</sup> Malpractice insurance and malpractice  
4 history are undoubtedly aspects of “credentials information” for physicians, but it is unclear  
5 whether medical technicians or other “healthcare practitioners” and “professionals”<sup>67</sup> would be  
6 required to submit such information. Similarly, some users might mandate the submission of  
7 “peer references” for prospective employees, while others might not. The court therefore  
8 concludes that the list of types of information should be construed in the disjunctive.

9 Finally, the court addresses Medversant’s proposal that “credentials information” must be  
10 “pertinent in a particular timeframe to the purpose of . . . verification[.]” As support for its  
11 construction, Medversant cites repeated references in the specification to the fact that “credentials  
12 information” is “dynamic and changing[.]”<sup>68</sup> Claim 14 claims a method wherein “storing  
13 collected credentials information in a dynamic database comprises: time-stamping collected  
14 credentials information; comparing existing credentials information to newly entered credentials  
15 information; and archiving existing credentials information to a history table.” The language of  
16 this claim suggests that Medversant’s proposed construction is redundant. Claim 14 envisions  
17 the existence of “existing credentials information” and “newly entered credentials information,”  
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19 <sup>66</sup>See Feigelson Decl, Exh. D at 137 (“Some of the above data may not be applicable for  
20 each type of health care provider”).

21 <sup>67</sup>Patent, col. 1:14, 16.

22 <sup>68</sup>*Id.*, col. 8:32-39 (“In an exemplary embodiment, the system records the user  
23 identification and date and time for each piece of data entered and any and all subsequent changes  
24 to provide a complete audit trail for credentials information entered into the system. In this  
25 manner, the system transforms a practitioner’s credentials application from a static record into a  
26 dynamic, real-time comprehensive record that may be linked to enterprise-wide databases to  
27 capture or supplement other practitioner data.”); *id.* at 11:47-53 (Claim 14: “The method of claim  
28 1 wherein storing collected credentials information in a dynamic database comprises:  
time-stamping collected credentials information; comparing existing credentials information to  
newly entered credentials information; and archiving existing credentials information to a history  
table”).

1 which may differ and need to be “time-stamp[ed],” “compar[ed], and updated. Were the court  
2 to read a temporal element into “credentials information,” the references to “existing credentials  
3 information” and “newly entered credentials information” and suggestion that the invention is able  
4 to compare information from different time periods, would be rendered superfluous.

5 Additionally, the background section of the specification explains that credentials  
6 information “must be stored, validated, analyzed, and updated on a continuous basis[.]”<sup>69</sup> Like  
7 the language of the claims, this undermines Medversant’s concern that absent explicit  
8 incorporation of a temporal element in “credentials information,” the term will be read to suggest  
9 that “information does not ‘age’ and the time at which it was obtained is not pertinent.”<sup>70</sup>

10 For the reasons stated, the court construes the term “credentials information” to mean  
11 “practitioner background data, including education, training, licensure and license sanctions, work  
12 experience, malpractice insurance coverage, malpractice history or peer references.”<sup>71</sup>

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15 <sup>69</sup>Patent, col. 1:25-26.

16 <sup>70</sup>Pl. ’s Responding Brief at 10.

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18 <sup>71</sup>At the February 28, 2011 *Markman* hearing, Morrissey proposed that the court add the  
19 limitation “at least two” to its tentative construction, and conclude that “credentials information”  
20 means “practitioner background data, including *at least two of the following*: education, training,  
21 licensure and license sanctions, work experience, malpractice insurance coverage, malpractice  
22 history or peer references.” Morrissey asserted that the court’s proposed construction, under  
23 which a single piece or type of data could constitute “credentials information,” was inconsistent  
24 with the language of claim 1. Among the steps comprising the method claimed in Claim 1 is  
25 “collecting credentials information pertaining to applicants in one or more of a plurality of  
26 formats” and querying “third party databases.” Medversant countered that adding “at least two”  
27 would import a limitation into the claim that has no support in the claim language or the  
28 specification. It asserted that Claim 1’s use of the plural was explained by the fact that a single  
piece of data could be obtained from multiple databases or in multiple formats. While the court  
agrees with Morrissey that in the usual case, a practitioner’s credentials information will include  
more than a single piece of data, it agrees with Medversant that nothing in the specification  
mandates that this always be the case. To avoid importing a limitation into the construction of  
Claim 1 that is unsupported by the language of the claim or the specification, the court declines  
to require that “credentials information” include “at least two” types of data.

1                   **2.     “Automatically”**

2           The term “automatically” appears thirteen times in independent claims 1 and 23, as well  
3 as once in each of dependent claims 35 and 36. Claim 1 first uses the term “automatically” in  
4 describing the invention’s method of “verifying concurrently for a plurality of applicants the  
5 collected credentials information with external sources through an electronic interface.”<sup>72</sup> Claim  
6 1 states that

7           “verifying further comprises: automatically obtaining third party credentials data  
8 wherein the obtaining comprises querying automatically on a periodic basis third  
9 party databases having third party credentials data relating to the collected  
10 credentials information; and automatically electronically comparing the obtained  
11 third party credentials data to the collected credentials information pertaining to the  
12 applicant; automatically electronically updating the relational database with the  
13 retrieved data; automatically electronically notifying a user of inconsistencies  
14 between the obtained third party credentials data and the collected credentials  
15 information pertaining to the applicant[.]”<sup>73</sup>

16 Claim 23 uses the term “automatically” when it describes the invention as a

17           “means for automatically verifying collected credentials information with external  
18 sources through an electronic interface, wherein the means for verifying comprises:  
19 means for automatically obtaining third party credentials data, wherein the means  
20 for automatically obtaining comprises means for querying automatically on a  
21 periodic basis third party databases having third party credentials data relating to  
22 the collected credentials information; and means for automatically electronically  
23 comparing the obtained third party credentials data to the collected credentials  
24 information pertaining to the applicant; means for automatically electronically  
25 updating the dynamic database with the retrieved data and images means for

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27           <sup>72</sup>Patent, col. 10:50-53.

28           <sup>73</sup>*Id.*, col. 10:53-67.

1 automatically electronically notifying a user of inconsistencies between the obtained  
2 third party credentials data and the collected credentials information pertaining to  
3 the applicant; and means for automatically presenting the user with the updated  
4 third party credentialing information.”<sup>74</sup>

5 Dependent claims 35 and 36 describe a method and means of “querying automatically on a  
6 periodic basis third party databases having third party credentials data relating to the collected  
7 credentials information” comprising a method and means for “continuously querying the third  
8 party databases.”<sup>75</sup>

9 **i. Medversant’s Proposed Construction**

10 Medversant proposes that the term “automatically” be construed as “performed other than  
11 as an immediate response to a manual command by a human.”<sup>76</sup> It notes that “[t]he verification  
12 process would of course not be automatic if each step of th[e] process was performed only  
13 mechanically at the manual command of a human,” but argues that “the process . . . involve[s]  
14 some human interaction and guidance . . . [and] while the system may perform certain steps based  
15 on its processing of the information, humans remain involved in the process.”<sup>77</sup> In support of this  
16 construction, Medversant cites numerous references in the specification to situations in which  
17 “humans are involved in the automatic process.”<sup>78</sup> For example, the specification describes a  
18 scenario in which “the organization performing credentials verification may view the application  
19 and approve it for verification initiation . . . . In practice the . . . system may automatically  
20 initiate the verification process . . . for submitted applications that are approved for verification.”<sup>79</sup>

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22 <sup>74</sup>*Id.*, col. 12:59-13:11.

23 <sup>75</sup>*Id.*, col. 14:21-30.

24 <sup>76</sup>Pl.’s Opening Brief at 10.

25 <sup>77</sup>*Id.*

26 <sup>78</sup>*Id.* at 11.

27 <sup>79</sup>Patent, col. 6:41-46.

1 In this embodiment, Medversant contends, the automatic verification process would start only after  
2 the organization performing the credentials verification views and approves the application for  
3 verification.

4 **ii. Morrisey’s Proposed Construction**

5 Morrisey proposes that the term be construed as “without human intervention.” Citing  
6 numerous dictionary definitions, it contends such a construction is consistent with the ordinary and  
7 customary meaning of the term.<sup>80</sup> Morrisey notes that the specification routinely distinguishes  
8 between functions performed “automatically” and functions performed “manually.” It also cites  
9 the prosecution history, contending that “Medversant repeatedly amended its claims and  
10 emphasized automatically electronically verifying, updating and notifying [in an effort to]  
11 distinguish[ ] the invention from the prior art on the basis that all such operations [were] to be  
12 performed without human intervention.”<sup>81</sup>

13 **iii. The Court’s Construction**

14 “Automatically” is an adverb that is used throughout claims 1 and 23 to modify such verbs  
15 as “obtaining,” “querying,” “comparing,” “updating,” “notifying,” and “presenting.”  
16 Automatically is sometimes the only modifier of the verbs; at other times, it is used in conjunction  
17 with the word “electronically,” as in “automatically electronically comparing” or “automatically  
18 electronically updating[.]” The fact that the claims couple the two adverbs suggests that  
19 “automatically” means something different than “electronically”; were this not the case, the  
20 phrase “automatically electronically” would be redundant. Similarly, there would have been no  
21 reason for the inventors to use the phrase “automatically electronically” in some places and  
22

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23 <sup>80</sup>Def.’s Opening Brief at 6. See Feigelson Decl., Exh. F at 357 (WEBSTER’S THIRD NEW  
24 INTERNATIONAL DICTIONARY (1993) (defining “automatic” as “having a self-acting or  
25 self-regulating mechanism that performs a required act at a predetermined point in an operation”));  
26 *Id.* at 364-5 (IEEE STANDARD COMPUTER DICTIONARY: A COMPILATION OF IEEE STANDARD  
27 COMPUTER GLOSSARIES (1990) (defining “automatic” as “[p]ertaining to a function, operation,  
28 process, or device that, under specified conditions, functions without intervention by a human  
operator”)).

<sup>81</sup>Def.’s Opening Brief at 7.

1 “automatically” in others.

2 The specification frequently contrasts “automatically” and “manually.” It states, for  
3 example, that “[i]n operation, the . . . system may *manually or automatically* send requests to  
4 verifying sources . . . in response to a verification request from a credentialing  
5 organization. . . .”<sup>82</sup> and that “[f]or online application submissions, the . . . system may  
6 *automatically or manually* assign a login ID and password to a practitioner . . . for system  
7 access.”<sup>83</sup> The fact that the specification states the same conduct can be done either “manually”  
8 or “automatically” supports Morrisey’s contention that “[t]he patentee plainly intended  
9 ‘automatically’ to be distinct from ‘manually.’”<sup>84</sup> Medversant agrees that “‘automatic[ally]’ is  
10 distinct from ‘manual[ly];’”<sup>85</sup> it contends, however, that Morrisey’s proposed construction, which  
11 “import[s] the absurd limitation of total human exclusion[,]” “would render the ’682 Patent  
12 nonsensical[.]”<sup>86</sup>

13 The Federal Circuit recently construed “automatically” in the context of a patent for an  
14 online college admission application service. *CollegeNet, Inc. v. ApplyYourself, Inc.*, 418 F.3d  
15 1225 (Fed. Cir. 2005). The court affirmed the district court’s construction of the term as “once  
16 initiated, the function is performed by a machine, without the need for manually performing the  
17 function.” The district court had declined to construe “automatically” as a “process that occurs  
18 *without human intervention*, such that a human does not have the option to intercede and alter the  
19 flow of that process.” *Id.* at 1235 (emphasis original). The Federal Circuit noted that while the  
20 claim did “not expressly provide for human intervention,” it left open the possibility of “human  
21 actions to expressly initiate the automatic storing or inserting, or to interrupt such functions.” *Id.*

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23 <sup>82</sup>Patent, col. 7:29-32 (emphasis added).

24 <sup>83</sup>*Id.*, col. 8:21-24 (emphasis added).

25 <sup>84</sup>Def.’s Opening Brief at 7.

26 <sup>85</sup>Pl.’s Responding Brief at 1.

27 <sup>86</sup>*Id.*

1 In this regard, the court noted the patent’s use of the term “comprising.” It stated: “The  
2 transitional term comprising . . . is inclusive or open-ended and does not exclude additional,  
3 unrecited elements or method steps. A drafter uses the term comprising to mean ‘I claim at least  
4 what follows and potentially more.’” *Id.* (quoting *Georgia-Pacific Corp. v. United States Gypsum*  
5 *Co.*, 195 F.3d 1322, 1327-28 (Fed. Cir. 1999) and *Vehicular Techs. Corp. v. Titan Wheel Int’l,*  
6 *Inc.*, 212 F.3d 1377, 1383-84 (Fed. Cir. 2000) (some internal quotation marks)).

7       Morrisey’s proposed construction of “without human intervention” suffers from the same  
8 flaw as that proposed by ApplyYourself in *CollegeNet*. Morrisey asserts that “automatically”  
9 means a “process that occurs *without human intervention*, such that a human does not have the  
10 option to intercede and alter the flow of that process.” This construction would preclude the  
11 possibility of human initiation or interruption of the process, and is inconsistent with the  
12 description of the invention provided in the specification, which contemplates the possibility that  
13 humans will initiate the verification process.<sup>87</sup> As in *CollegeNet*, moreover, the ’682 Patent uses  
14 the term “comprising” when referring to the verification process.<sup>88</sup> This suggests that the  
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16       <sup>87</sup>In addition to the portion of the specification cited by Medversant, there are other  
17 references to human involvement in the verification process. See, e.g., Patent, col. 5:34-44 (“An  
18 exemplary system may then auto-update the database with matched information or manually update  
19 the database through the use of electronic work prompts or ticklers. For example, in an  
20 exemplary embodiment, a credentials specialist 118 may compile the responses to the requests for  
21 verification information and perform various other tasks to complete the application process 120.  
22 A credentials specialist may then utilize a fax server or other similar means to verify and audit the  
23 practitioner information 122” (emphasis added)); *id.*, col. 6:58-7:12 (“In addition, in one  
24 embodiment the described exemplary system may attempt to identify reasons for a mismatch  
25 between the verification data received from external sources and the credentials information  
26 entered by the applicant. For example, the system may electronically or manually attempt to  
27 identify clerical errors, such as typographical errors that may occur during the conversion of a  
28 scanned document to text by an optical character recognition program. The system may then  
request that the applicant provide an explanation for any data mismatches that cannot be attributed  
to errors in the data entry or correlation process. . . . Further, non-responsive sources may be  
routed to an electronic tickler program for distribution to and follow up by credentials staff.”  
(emphasis added)).

<sup>88</sup>See, e.g., Patent, col. 10:53-54 (Claim One: “wherein the verifying further comprises:  
automatically obtaining third party credentials data. . .”); *id.* at 10:40-42 (Claim One: claiming

1 patentees intended to make the '682 Patent “inclusive or open-ended and [ ] not [to] exclude  
2 additional, unrecited elements or method steps” that could include human intervention. Indeed,  
3 the specification expressly contemplates human initiation of activities that are then carried out  
4 “automatically.” It describes an embodiment, for example, in which “a user may also view the  
5 status of an existing practitioner[’]s . . . credential application or re-verification. . . ,” and “[t]he  
6 . . . system may then automatically contact various entities such as, for example, schools,  
7 hospitals, or peers to request verification information . . . , via for example, a web crawler, link,  
8 or other conventional method of querying a database.”<sup>89</sup> This description suggests that the  
9 automatic verification process can be triggered by a user manually viewing existing credentials  
10 information for a particular practitioner.<sup>90</sup>

11 In *CollegeNet*, the Federal Circuit considered an objection, identical to the one Morrissey  
12 advances here,<sup>91</sup> that the court’s construction “read ‘automatically’ out of the claims.” *Id.* at  
13 1235. The Federal Circuit found the district court’s definition consistent with the common  
14 meaning of automatic “because a machine still performs the claimed functions without manual  
15 operation, even though a human may initiate or interrupt the process.” *Id.* Citing two examples  
16 of commonplace objects that are considered automatic – a dishwasher and an automobile autopilot  
17 system – the court stated: “[S]imply because a human has to load [an automatic dishwasher] and  
18 press the start button, and has the ability to turn it off mid-cycle, does not mean that the device  
19 does not ‘automatically’ wash the dishes.’ Similarly, ‘an ‘autopilot’ which is turned on by a

20 \_\_\_\_\_  
21 “[a] method for electronically verifying information pertaining to applicants over a communication  
22 network including a plurality of computing devices, the method comprising . . .”).

23 <sup>89</sup>*Id.*, col. 5:4-15.

24 <sup>90</sup>See also *id.*, col. 4:42-46 (stating that “users can create new practitioner accounts . . .  
25 [,] including a credentials application[,] which a practitioner may then complete,” and that “the  
26 system may [then] automatically send a notification . . . to the practitioner preferably instructing  
the practitioner to log on to the system and input his credentials information. . .”).

27 <sup>91</sup>See Defendant’s Response to Medversant’s Opening Claim Construction Brief (“Def.’s  
28 Responding Brief”), Docket No. 155 (January 24, 2011) at 6 (“Medversant’s improper  
construction . . . seeks to remove ‘automatically’ from the claims”).

1 human and necessarily must be able to be interrupted by a human once the automatic process is  
2 engaged . . . remains an ‘automatic’ device.’” *Id.* (record citations omitted).

3 In the case of the ’682 patent, simply because a human user logs in to view a practitioner’s  
4 credentials information does not mean that the system does not thereafter “automatically” contact  
5 entities with credentials information via web crawler, link, or other conventional method of  
6 querying a database.<sup>92</sup> Additionally, simply because the third party “organization performing  
7 credentials verification” manually “view[s] the application and approve[s] it for verification  
8 initiation” does not mean that the system does not “automatically initiate the verification process  
9 . . . for submitted applications” once a human has approved it on the verification organization’s  
10 behalf.<sup>93</sup>

11 The court’s analysis in *CollegeNet* also rebuts Morrisey’s contention that Medversant’s use  
12 of the term “manually” in its construction “introduc[es] ambiguity.”<sup>94</sup> In *CollegeNet*, the district  
13 court’s construction also included “manually,” to demonstrate that, once initiated, an “automatic”  
14 process occurs “without the need for manually performing the function.” *Id.* The court’s analysis  
15 indicates that merely including manual or manually in construing their antonyms – automatic or  
16 automatically – does not render the construction ambiguous.

17 Finally, the court disagrees that during prosecution of the patent, the patentees “repeatedly  
18 . . . distinguish[ed] the invention from the prior art on the basis that all such operations are to be  
19 performed without human intervention.” Morrisey cites statements that “Heyer’s system does not  
20 automatically obtain third party credentials data. . . . Heyer makes it clear that the disclosed  
21 ‘network monitors 26’ are not computer programs, [but] rather[ ] people with the responsibility  
22 of monitoring, verifying and updating the data.”<sup>95</sup> Morrisey also cites statements that the prior  
23 art does not “teach or suggest . . . the claimed features of automatically querying third party

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24 <sup>92</sup>Patent, col. 5:4-15.

25 <sup>93</sup>*Id.*, col. 6:41-46.

26 <sup>94</sup>Def.’s Opening Brief at 8.

27 <sup>95</sup>Feigelson Decl., Exh. D at 188.

1 databases and updating credentials information in the system database on a periodic basis.”<sup>96</sup> The  
2 portions of the prosecution history Morrisey cites fail to demonstrate a “clear and unmistakable  
3 surrender” of patent coverage for acts that involve human initiation or intervention. See *Ecolab,*  
4 *Inc. v. FMC Corp.*, 569 F.3d 1335, 1342 (Fed. Cir. 2009) (“[T]he applicant disclaim[s]  
5 protection during prosecution only if the allegedly disclaiming statements constitute a clear and  
6 unmistakable surrender of subject matter,” quoting *Bayer AG v. Elan Pharm. Research Corp.*,  
7 212 F.3d 1241, 1251 (Fed. Cir. 2000) (internal quotation omitted)).<sup>97</sup> Morrisey cites no objective  
8 surrender of protection for a process that can be initiated or interrupted by a human in the  
9 amendments the patentees proffered. Nor does it cite any clear and unmistakable statement  
10 disclaiming protection for such a process in the prosecution history. All that the portions of the  
11 prosecution history Morrisey cites establish is that, unlike Heyer, the patented process does not  
12 employ human “network monitors” who “interact with the computer system,” and does not  
13 require a verification source to fill out “electronic forms” to update credentials information.<sup>98</sup> The  
14

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15 <sup>96</sup>*Id.* at 341.

16 <sup>97</sup>See also *Omega Engineering, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1324-25 (Fed. Cir.  
17 2003) (“[W]here the patentee has unequivocally disavowed a certain meaning to obtain his patent,  
18 the doctrine of prosecution disclaimer attaches and narrows the ordinary meaning of the claim  
19 congruent with the scope of the surrender. . . . To balance the importance of public notice and  
20 the right of patentees to seek broad patent coverage, we have thus consistently rejected prosecution  
21 statements too vague or ambiguous to qualify as a disavowal of claim scope. Rather, we have  
22 required the alleged disavowing statements to be both so clear as to show reasonable clarity and  
23 deliberateness, and so unmistakable as to be unambiguous evidence of disclaimer” (citations  
24 omitted)); *Invitrogen Corp. v. Biocrest Mfg., L.P.*, 327 F.3d 1364, 1369 (Fed. Cir. 2003) (“The  
25 prosecution history does not show any clear and unambiguous disavowal of steps in advance of  
26 the step of growing *E. coli* cells in the claimed temperature range. By amending the claims to  
27 replace ‘less than 37° C’ with ‘18° C to 32° C’ the applicants did not exclude all cells with  
28 ancestral growth above 32° C. . . . As the inventors stated in a declaration submitted to the PTO  
during prosecution, the invention provided improved competence ‘by growing the cells at 18° C  
to 32° C before rendering the cells competent’ compared to an otherwise identical process with  
growth at 37° C. The applicants did not disclaim all growth above 32° C but instead emphasized  
the advantages of growth at 18° C to 32° C immediately before rendering the *E. coli* competent”).

<sup>98</sup>It appears the examiner subsequently agreed that “Heyer fail[ed] to disclose ‘automatically  
obtaining third party credentials data.’” (Feigelson Decl., Exh. D at 229).

1 patentees distinguish Heyer's system from the patented invention by noting that Heyer did not  
2 teach automatically obtaining credentials information from third party websites on a periodic basis,  
3 comparing it to the credentials information in the database and updating the database accordingly.  
4 Nothing in these references excludes the possibility that the automatic obtaining, comparing and/or  
5 updating might be triggered by a human command. They merely require that the obtaining,  
6 comparing and updating itself be automatic. The court thus cannot find that these references  
7 constitute a "clear and unmistakable surrender" of patent coverage for any "automatic" acts that  
8 are initiated by humans or in which humans can intervene.

9 For these reasons, the court construes the term "automatically" to mean "once initiated,  
10 performed without the need for manual commands by a human."<sup>99</sup>

11 \_\_\_\_\_  
12 <sup>99</sup>At the February 28, 2011 hearing, neither party argued the court's tentative construction  
13 of this term. Morrissey, however, proffered with a list of cases from the Benjamin N. Cardozo  
14 School of Law Public Patent Foundation's Glossary of Judicial Claim Constructions, in which  
15 courts had construed "automatically," either alone or as part of a phrase. Of these, only  
16 *CollegeNet* is a published appellate decision. Some of the cases cited support Morrissey's proposed  
17 construction. See, e.g., *VirnetX, Inc. v. Microsoft Corp.*, NO. 6:07CV80, 2009 WL 2370727,  
18 \*12 (E.D. Tex. July 30, 2009) (construing automatically initiating the VPN as "initiating the VPN  
19 without involvement of a user"); *Timeline, Inc. v. Proclarity Corp.*, NO. C05-1013JLR, 2007 WL  
20 321387, \*3 (W.D. Wash. Jan. 31, 2007) (construing automatically as "without user input or  
21 analysis"); *Omax Corp. v. Flow Intern. Corp.*, NO. C04-2334L, 2006 WL 3249190, \*7 (W.D.  
22 Wash. Nov. 7, 2006) (construing automatically as "performed without manual intervention").  
23 Others do not. See, e.g., *Karl Storz Endoscopy-America, Inc. v. Smith & Nephew, Inc.*, NO.  
24 2:07-02702-JPM-CGC, 2010 WL 3259495, \*13 & n. 9 (W.D. Tenn. Aug. 18, 2010) (construing  
25 "bus master configuring the bus automatically" to mean that "the bus master, without manual user  
26 intervention, is able to (i) control access to the bus by newly connected stations, and (ii) cease  
27 controlling stations disconnected from the bus, without interruption of the operation of the system  
28 in either situation" and noting that "[t]he Court [did] not define 'without manual user intervention'  
to exclude, for instance, the possibility that a person connected a device to the bus"); *Lectrolarm  
Custom Services v. Vicon Industries, Inc., et al.*, NO. 03-2330 MA/A, 2005 WL 2177000, \*13  
(W.D. Tenn. Sept. 2, 2005) (construing "automatic operation" as "movement of the camera base  
that is not directly responsive to input from a monitoring person (other than initiation of the  
automatic operation)."). Still other courts have concluded that the term needs no construction. See,  
e.g., *Klausner Technologies, Inc. v. Vonage Holdings Corp.*, NO. 2:06CV275, 2007 WL  
2300789, \*5 (E.D. Tex. Aug. 7, 2007) (holding that "automatically answering incoming  
telephone calls" did "not require construction"); *Medtronic Minimed Inc. v. Smiths Medical MD  
Inc.*, NO. CIV.A. 03-776-KAJ, 2005 WL 1308050 (D. Del. June 1, 2005) (concluding that

1                   **3. “Querying . . . Third Party Databases”**

2                   The parties next seek to have the court construe the term “querying . . . third party  
3 databases[.]” This term is used in claims 1, 23, 35, and 36 to describe the process for “obtaining  
4 third party credentials data.”<sup>100</sup>

5                   **i. Medversant’s Proposed Construction**

6                   Medversant proposes that the term be construed as “making contact with databases owned  
7 or controlled by third parties to request data from the databases.”<sup>101</sup> It contends that its  
8 construction “establishes a more comprehensive understanding of the action of ‘querying’ as  
9 accessing data from a database.”<sup>102</sup> Medversant asserts that the “movement of the requested data  
10 . . . is . . . the key focus [in “querying”], and the third-party databases are . . . the key loc[i], as  
11 they contain the data set in motion during this operation.”<sup>103</sup> It contends that its understanding of  
12 the term is reflected in the claims and the specification because they “always present the act of  
13 querying in the context of a database or other source of data, reflecting that the data source and  
14 the response the source makes are central to the querying operation.”<sup>104</sup> Medversant cites a  
15 portion of the specification stating that “[t]he . . . system may then automatically contact various  
16 entities such as, for example, schools, hospitals, or peers to request verification information . .  
17 . via for example, a web crawler, link, or other conventional method of querying a database.”<sup>105</sup>

18 \_\_\_\_\_  
19 “automatically controlling” had “its plain meaning”). Having reviewed the cases cited by  
20 Morrissey, the court concludes that construing “automatically” to mean “once initiated, performed  
21 without the need for manual commands by a human” is most consistent with the language of the  
22 claims and the specification of the ’682 patent.

23                   <sup>100</sup>Patent, col. 10:54-58; 12:62-67; 14:20-30.

24                   <sup>101</sup>Pl.’s Opening Brief at 11.

25                   <sup>102</sup>*Id.*

26                   <sup>103</sup>*Id.*

27                   <sup>104</sup>*Id.*

28                   <sup>105</sup>Patent, col. 5:10-15.

1 It asserts that this description supports its assertion that “querying” includes “making contact . . .  
2 . . . to request data. . . .”

3 Medversant also cites a technical computer dictionary, which defines querying as “an  
4 interrogation of a database that allows users to count, sum, or list selected records contained in  
5 it.” Alan Freedman, *THE COMPUTER GLOSSARY* (5th ed. 1991), at 493.<sup>106</sup>

6  
7 <sup>106</sup>Medversant suggests that Morrisey’s construction is proposed in bad faith to attempt to  
8 avoid patent liability. See Pl.’s Responding Brief at 4-5 (“[A]fter instigation of the present Action  
9 Morrisey moved some of its accused equipment across the border from the Chicago area into  
10 Canada, then asserted to Medversant that Morrisey could infringe Medversant’s patent with  
11 impunity because, although the databases being queried were located in the United States and  
12 Morrisey’s querying customers were located in the United States, the querying step was performed  
13 outside the United States at the site of Morrisey’s relocated Canadian equipment. While  
14 Medversant is confident that Morrisey’s dodge of running across the border was legally  
15 insufficient, Morrisey’s ploy has raised the issue of where the querying step takes place.  
16 Morrisey’s construction aims to suggest that querying consists only of making the request.  
17 However, no querying can take place if some repository of the information is not being  
18 accessed”). While the court acknowledges Medversant’s frustration with what it considers “a  
19 ploy to shirk U.S. Patent Law” (*id.* at 5), the court cannot consider this reference to Morrisey’s  
20 product in construing the claim term at issue. “[T]he legal function of giving meaning to claim  
21 terms always takes place in the context of a specific accused infringing device or process.” *Wilson*  
22 *Sporting Goods Co. v. Hillerich & Bradsby Co.*, 442 F.3d 1322, 1326 (Fed. Cir. 2006). Thus,  
23 while claim construction is the first step in the infringement analysis, the accused product provides  
24 context for the court’s proposed construction of the claims. See *id.* (“While a trial court should  
25 certainly not prejudge the ultimate infringement analysis by construing claims with an aim to  
26 include or exclude an accused product or process, knowledge of that product or process provides  
27 meaningful context for the first step of the infringement analysis, claim construction,” citing  
28 *Multiform Dessicants, Inc. V. Medzam, Ltd.*, 133 F.3d 1473, 1476-78 (Fed. Cir. 1998)). See also  
*Pall Corp. v. Hemasure Inc.*, 181 F.3d 1305, 1308 (Fed. Cir. 1999) (“Although the construction  
of the claim is independent of the device charged with infringement, it is convenient for the court  
to concentrate on those aspects of the claim whose relation to the accused device is in dispute”);  
*Scripps Clinic & Research Found. v. Genentech, Inc.*, 927 F.2d 1565, 1580 (Fed. Cir. 1991) (“Of  
course the particular accused product (or process) is kept in mind, for it is efficient to focus on  
the construction of only the disputed elements or limitations of the claims”).

Although courts are permitted to consider underlying infringement issues contextually in  
construing the patent claims, “[p]roviding context is not the same as raising infringement issues  
for resolution.” *Board of Trustees of Leland Stanford Jr. University v. Roche Molecular Sys.,*  
*Inc.*, 528 F.Supp.2d 967, 975 (N.D. Cal. Nov. 27, 2007). As a result, the court cannot construe  
the claims in light of the accused device. See *SRI Intern. v. Matsushita Elec. Corp. of America,*  
775 F.2d 1107, 1118 (Fed. Cir. 1985) (“A claim is construed in the light of the claim language,

1                                   **ii.     Morrisey’s Proposed Construction**

2             Morrisey acknowledges that construction of this term presents a “very real and case  
3 dispositive dispute[.]”<sup>107</sup> It asserts that its construction – “making requests to third party  
4 databases” – comports with the ordinary meaning of the term “querying” and avoids the ambiguity  
5 that adopting Medversant’s construction would allegedly create.<sup>108</sup> Morrisey relies on the same  
6 language in the specification as Medversant,<sup>109</sup> but argues that what it describes is a process by  
7 which “the system actually makes requests to schools, hospitals and peers.”<sup>110</sup> Like Medversant,  
8 it cites technical dictionaries, such as the IEEE Dictionary,<sup>111</sup> and common usage dictionaries,  
9  
10  
11

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12 the other claims, the prior art, the prosecution history, and the specification, *not* in light of the  
13 accused device” (emphasis added)); see also *Exigent Technology, Inc. v. Atrana Solutions, Inc.*,  
14 442 F.3d 1301, 1309 n. 10 (Fed. Cir. 2006) (“It is true that ‘[a] claim is construed in the light of  
15 the claim language . . . not in light of the accused device.’ . . . However, it is appropriate for a  
16 court to consider the accused device when determining what aspect of the claim should be  
17 construed,” quoting *SRI Int’l v. Matsushita Elec. Corp. of America*, 775 F.2d 1107, 1118 (Fed.  
18 Cir. 1985) (en banc)). The court, therefore, cannot consider Medversant’s reference to  
19 Morrisey’s product as support for its proposed construction. While it is appropriate to refer to  
20 the accused product to determine what aspects of the claims need to be construed, the court  
21 construes the claim terms on the basis of the intrinsic evidence and such extrinsic evidence as is  
22 appropriate, not with reference to defendant’s device.

23                   <sup>107</sup>Def.’s Opening Brief at 8.

24                   <sup>108</sup>*Id.*

25                   <sup>109</sup>See Patent, col. 5:10-15 (“The described exemplary system may then automatically  
26 contact various entities such as, for example, schools, hospitals, or peers to request verification  
27 information 112 via for example, a web crawler, link, or other conventional method of querying  
28 a database.”).

<sup>110</sup>Def.’s Opening Brief at 9.

<sup>111</sup>See Feigelson Decl., Exh. F at 366 (IEEE Dictionary defining “query” as “[a] request  
to access information stored in a database”); *id.* at 370 (WEBSTER’S NEW WORLD COMPUTER  
DICTIONARY NINTH EDITION (2001) (defining “query” as “a search question that tells the program  
what kind of data should be retrieved from the database”)).

1 such as Webster's,<sup>112</sup> as evidence that its construction is correct.

2 **iii. The Court's Construction**

3 The court begins its construction by looking to the language of the claims. Claim 1 uses  
4 "querying" to describe the first step in the process of "verifying . . . the collected credentials  
5 information" by "automatically obtaining third party credentials data wherein the obtaining  
6 comprises querying . . . third party databases having third party credentials data relating to the  
7 collected credentials information[.]"<sup>113</sup> The language of the claim thus makes clear that "querying  
8 . . . third party databases" is a method of "obtaining third party credentials data."<sup>114</sup> Therefore,  
9 any construction that narrowly defines "querying" as the one-sided act of "requesting" rather than  
10 a two-way interaction with the databases being accessed would be inconsistent with the language  
11 of the claims.

12 This conclusion is supported by language surrounding the use of the term "querying . . .  
13 . third party databases" in claim 1. This portion of claim 1 describes a method for "verifying .  
14 . . the collected credentials information with external sources[.]"<sup>115</sup> It claims a method comprising  
15 (1) "automatically obtaining third party credentials data",<sup>116</sup> (2) "automatically electronically  
16 comparing the obtained third party credentials data to the collected credentials information  
17 pertaining to the applicant;"<sup>117</sup> and (3) "automatically electronically updating the relational  
18

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19 <sup>112</sup>*Id.* at 358 (WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993) (defining  
20 "query" as "to put as a question")).

21 <sup>113</sup>Patent, col. 10:54-58.

22 <sup>114</sup>The term is used almost identically in claim 23. (*Id.*, col. 12:61-67 ("wherein the means  
23 for verifying comprises: means for automatically obtaining third party credentials data, wherein  
24 the means for automatically obtaining comprises means for querying automatically on a periodic  
25 basis third party databases having third party credentials data relating to the collected credentials  
information.")).

26 <sup>115</sup>*Id.*, col. 10:50-53.

27 <sup>116</sup>*Id.*, col. 10:54.

28 <sup>117</sup>*Id.*, col. 10:59-61.

1 database. . . .”<sup>118</sup> The act of “querying” is the method used to accomplish the first step of  
2 “obtaining” the credentials data. The fact that the invention moves directly from “obtaining” by  
3 “querying” to “comparing” indicates that the inventor understood that querying is a process by  
4 which a request for information is made, a database is accessed, and information is obtained.  
5 Otherwise, there would be no information to “compar[e]” at the second step.

6 An interactive understanding is also supported by the technical dictionaries the parties  
7 reference. As these dictionaries make clear, “query” is a term of art in the computer field. All  
8 three dictionary definitions suggest that “querying” involves contacting a database and seeking to  
9 access information from that database. The Computer Glossary, which Medversant cites, defines  
10 querying as “an interrogation of a database that allows users to count, sum, or list selected records  
11 contained in it.”<sup>119</sup> The IEEE Dictionary defines “query” as “[a] request to access information  
12 stored in a database.”<sup>120</sup> Finally, Webster’s New World Computer Dictionary defines “query”  
13 as “a search question that tells the program what kind of data should be retrieved from the  
14 database.”<sup>121</sup> The fact that each of these definitions refer to the object of the request, the database,  
15 suggests that the act of querying is not completed until contact is made with the database.

16 These definitions thus support Medversant’s contention that “[a]n act cannot be called  
17 ‘querying a database’ if the database is not involved, just as Bob cannot be said to be asking Sue  
18 a question if Bob does not actually address his question to Sue.”<sup>122</sup> Expanding on Medversant’s  
19 analogy, if Bob were just to make the statement “Sue, what day is today?” but Sue was not present  
20 to hear his question, he could not be said to be “asking Sue what day it is.” Likewise, the act of  
21 “querying” is not complete until the database that is the object of the query receives the request.

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22  
23 <sup>118</sup>*Id.*, col. 10:62-63. There are further steps in the process, but they are irrelevant to this  
24 analysis.

25 <sup>119</sup>Alan Freedman, *THE COMPUTER GLOSSARY* (5th ed. 1991) at 493.

26 <sup>120</sup>Feigelson Decl., Exh. F at 366.

27 <sup>121</sup>*Id.* at 370.

28 <sup>122</sup>Pl.’s Responding Brief at 5.

1 Because both the intrinsic evidence and the extrinsic evidence support Medversant’s contention  
2 that “querying” involves “making contact with . . . to request data,” the court cannot accept  
3 Morrisey’s construction, which suggests that “querying” is complete upon the making of a one-  
4 sided request. Medversant, however, proffers no support for its definition of “third party  
5 databases” as “databases owned or controlled by third parties.” Morrisey presents only minimal  
6 argument regarding Medversant’s construction of this phrase, stating “[a]s to ‘third party  
7 databases,’ for unknown reasons Medversant substituted therefor ‘databases owned or controlled  
8 by third parties.’ The additional language proposed by Medversant . . . is not helpful to the  
9 understanding of the simple phrase.”<sup>123</sup> Medversant provided no rebuttal to this argument in its  
10 responding brief and cites no intrinsic or extrinsic support for substituting “databases owned or  
11 controlled by third parties” for the simply understood phrase “third party databases.”

12 Where commonly understood words are accorded their ordinary meaning in the patent, the  
13 court need not construe them for the jury. See, e.g., *Biotec Biologische Naturverpackungen*  
14 *GmbH & Co. KG v. Biocorp, Inc.*, 249 F.3d 1341, 1349 (Fed. Cir. 2001) (holding that the district  
15 court did not err when it declined to construe “melting” because the term was used in the patent  
16 in its ordinary meaning and did not otherwise require construction); *Orion IP, LLC v.*  
17 *Mercedes-Benz USA, LLC*, No. CV 05-322, 2007 WL 1091025, \*11 (E.D. Tex. Apr. 10, 2007)  
18 (“[T]here is no reason within the patent to believe the Applicant used ‘questions’ in any manner  
19 besides its ordinary meaning. Accordingly, there is no need to construe the term, much less to  
20 stringently limit the meaning of ‘questions’ as [d]efendants would like”); *Applera Corp. v.*  
21 *Stratagene Corp.*, No. CV 04-1881 (RNC), 2007 WL 776329, \*9 (D. Conn. Mar. 12, 2007) (“In  
22 its claim construction brief, [defendant] urged the court to construe ‘operable’ as meaning ‘capable  
23 of being used.’ However, the claim is perfectly clear on its face, and there is no significant  
24 disagreement between the parties as to its meaning. . . . Therefore, it is unnecessary to construe  
25 this term”); *Vision Advancement, LLC v. Vistakon*, No. CV 05-55, 2007 WL 275572, \*13 (E.D.  
26 Tex. Jan. 26, 2007) (rejecting plaintiff’s argument that the term “continuously” should be

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28 <sup>123</sup>Def.’s Opening Brief at 8.

1 constructed as “no discontinuities in progressivity,” because, as used in the patent, the term was  
2 given its “plain and ordinary [meaning]” and no construction was necessary); *CollegeNet, Inc. v.*  
3 *XAP Corp.*, No. CV 03-1229 HU, 2004 WL 2429843, \*14 (D. Or. Oct. 29, 2004) (“While claim  
4 terms must be construed as they would be understood by a person of ordinary skill in the art to  
5 which the invention pertains, and thus, what the claim terms would mean to laymen is irrelevant,  
6 if a person of ordinary skill in the art would understand the term in its ordinary, everyday sense,  
7 there is no need to construe the term. Both ‘application’ and ‘application form’ are easily  
8 understood terms which the patents use in their ordinary sense. Neither the claim language nor  
9 the specification suggests that the meaning is anything other than the form used to apply to an  
10 institution or an institution of higher education. To the extent any construction is needed, I agree  
11 with plaintiff that it should be limited to ‘a form corresponding to an application’” (citations and  
12 alterations omitted)); *Agere Systems, Inc. v. Broadcom Corp.*, No. CV 03-3138, 2004 WL  
13 1658530, \*22 (E.D. Pa. July 20, 2004) (declining to construe the term “predetermined” in a  
14 patent involving technology that transmitted certain wireless signals at “predetermined intervals,”  
15 since there was no indication that the term had been given anything other than its “customary  
16 meaning,” and that meaning would be equally clear to a layperson and a person skilled in the art);  
17 *Appelra Corp. v. MicrosMass, UK, Ltd.*, 186 F.Supp.2d 487, 524, 526 (D. Del. 2002) (declining  
18 to construe ‘maintain,’ ‘maintaining,’ and a ‘whereby’ clause because they were clear on their face  
19 and their meaning was “self-evident”); *Zip Dee, Inc. v. Dometic Corp.*, 63 F.Supp.2d 868, 872  
20 (N.D. Ill. 1998) (rejecting defendant’s “artificial construct” of the term “tension” because no  
21 construction beyond the “ordinary English language meaning of the term” was required and thus  
22 the patent’s “references to ‘tension’ [would] go to the jury without the interposition of any judicial  
23 gloss”). Here, the term “third party databases” is used in accordance with its ordinary meaning  
24 and the court sees no need to define it for the factfinder.

25 Consequently, the court construes “querying . . . third party databases” to mean “making  
26 contact with third party databases to request data from the databases.”

27 **4. “On a periodic basis”**

28 The term “on a periodic basis” appears in claims 1, 23, 35, and 36 of the patent. In each

1 claim, the word is used identically in the same phrase: “querying automatically on a periodic basis  
2 third party databases having third party credentials data relating to the collected credentials  
3 information.”<sup>124</sup>

4 **i. Medversant’s Proposed Construction**

5 Medversant proposes that “on a periodic basis” be construed as “repeated from time to  
6 time.”<sup>125</sup> It asserts that the specification refers to “periodic” flexibly and “does not suggest the  
7 intervals between such background checks need be identical in duration.”<sup>126</sup> Medversant cites the  
8 patent’s written description, which states that “once approved be an entity, the practitioner’s  
9 background must re-checked at periodic intervals through the course of his tenure with the  
10 healthcare entity.”<sup>127</sup> It suggests that because tenure of healthcare professionals varies, and special  
11 needs or events arise, the patent contemplates a definition of “periodic” that includes non-regular  
12 intervals.<sup>128</sup> Medversant also cites the prosecution history in support of its definition, particularly  
13 the USPTO examiner’s acknowledgment that “a periodic basis can basically be performed at any  
14 time.”<sup>129</sup>

15 **ii. Morrisey’s Proposed Construction**

16 Morrisey contends that “on a period basis” should be construed to mean “occurring at  
17 regular, preset time intervals.”<sup>130</sup> To support its argument, Morrisey cites a statement in the  
18 specification that the system “automatically check[s] the websites of all government agencies . .  
19 . or other regulatory bodies” and then makes follow-up requests “according to a pre-set  
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21 <sup>124</sup>See, e.g., Patent, col. 10:55-58.

22 <sup>125</sup>Pl.’s Opening Brief at 12.

23 <sup>126</sup>*Id.*

24 <sup>127</sup>*Id.* (citing Patent, col. 7:30-32).

25 <sup>128</sup>*Id.*

26 <sup>129</sup>*Id.* at 16.

27 <sup>130</sup>Def.’s Opening Brief at 10.

1 schedule.”<sup>131</sup> The specification also states that the system may “automatically re-send verification  
2 requests if requested information is not received. In an exemplary embodiment, time frame  
3 intervals for resending of verification requests are determined by the verifying organization.”<sup>132</sup>

4       Morrisey argues that this point is later reemphasized, as the specification notes that “the  
5 system may automatically send another request to the verifying sources in accordance with preset  
6 time intervals until the requested information is received.”<sup>133</sup> Like Medversant, Morrisey also  
7 cites the portion of the specification stating that “the practitioner’s background must be re-checked  
8 at periodic intervals through the course of his tenure with the healthcare entity.”<sup>134</sup> Morrisey  
9 contends, however, that this sentence should be read together with the description of an  
10 embodiment in which “the system sets up a ‘continuous calendar’ to query sources ‘in accordance  
11 with the prescribed schedule.’”<sup>135</sup> Morrisey asserts that the references in the specification to “time  
12 frame intervals” and “prescribed schedule” suggest that “periodic” refers to preset intervals.<sup>136</sup>

13       It also contends that the prosecution history does not support Medversant’s claim that “on  
14 a periodic basis” refers to a period that is “regular or irregular.”<sup>137</sup> During prosecution, the  
15 patentees argued that “[b]y periodic, it is meant that the information is gathered on a periodic  
16 basis, whether the period is regular or irregular.”<sup>138</sup> Morrisey contends that the examiner rejected  
17 this ground for distinguishing the prior art, since under the patentees’ definition, “‘a periodic basis  
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20       <sup>131</sup>*Id.* (citing Patent, col. 5:26-32).

21       <sup>132</sup>*Id.* (citing Patent, col. 7:6-10).

22       <sup>133</sup>*Id.* (citing Patent, col. 7:34-37).

23       <sup>134</sup>*Id.* at 10-11.

24       <sup>135</sup>*Id.* at 11 (citing Patent, col. 9:50-57).

25       <sup>136</sup>*Id.*

26       <sup>137</sup>*Id.*

27       <sup>138</sup>*Id.* (citing Feigelson Decl., Exh. D-2 at 11).

1 can basically be performed at any time.’”<sup>139</sup> It asserts that, in response, the patentees argued that  
2 the claims were patentable because, unlike prior art, the invention queried “automatically on a  
3 periodic basis.” This demonstrates, Morrisey asserts, that the patentees “had changed [their]  
4 position as to the meaning of the phrase,”<sup>140</sup> apparently contending that if the querying was  
5 “automatic,” it of necessity occurred at regular intervals.

6 Finally, Morrisey cites portions of definitions found in Webster’s and Dictionary.com that  
7 suggest periodic refers only to regular intervals.<sup>141</sup>

### 8 **iii. The Court’s Construction**

9 The court begins with the language of the claims. See *Phillips*, 415 F.3d at 1312. As used  
10 in the claims, “on a periodic basis” refers to the duration of time between the system’s queries to  
11 third party databases. Claims 1 and 23 do not specify a specific time interval or time frame in  
12 which the queries must be made. Claims 35 and 36 describe a method and means for “querying  
13 automatically on a periodic basis” comprising “continuously querying the third party databases.”  
14 During prosecution, Medversant argued: “Claims 35 and 36 are directed to a method and a  
15 system, respectively, that continuously monitor[ ] third party sources of credentialing information  
16 for inconsistencies between collected data and obtained data.”<sup>142</sup> As used in these claims, because  
17 the “periodic basis” at which queries are sent is “continuous,” the queries are sent without  
18 interruption or in an unbroken stream until the requested information is received. This concept  
19 of “periodic” does not clearly support either Morrisey’s or Medversant’s construction because  
20 continuous queries could be viewed as taking place at regular, irregular, or no interval.

21 The court therefore turns to the specification. The specification consistently uses “on a  
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23 <sup>139</sup>*Id.* (citing Feigelson Decl., Exh. D at 250).

24 <sup>140</sup>*Id.* (citing Feigelson Decl., Exh. D at 273).

25 <sup>141</sup>*Id.* at 10 (citing Feigelson Decl, Exh. F at 359 (WEBSTER’s, defining periodic as  
26 “characterized by periods: occurring at regular intervals”); *id.* at 361 (Dictionary.com, defining  
27 periodic as “occurring or appearing at regular intervals”)).

28 <sup>142</sup>Feigelson Decl., Exh. D at 273.

1 periodic basis,” to refer to the intervals at which third party databases are queried for credentialing  
2 information. Although the specification discusses situations in which the system queries on a  
3 preset schedule,<sup>143</sup> it does not preclude the possibility that there could be irregular queries. The  
4 specification notes that the verifying organization can set time frame intervals for the resending  
5 of verification requests,<sup>144</sup> without stating that they must be “regular,” and states, non-  
6 specifically, that the practitioner’s “background must be re-checked at periodic intervals.”<sup>145</sup>

7 In construing a term, the court must look to the ordinary meaning of the term in the context  
8 of the entire patent. “Although the written description may aid in the proper construction of a  
9 claim term, limitations, examples, or embodiments appearing only there may not be read into the  
10 claim.” *Kraft Foods, Inc. v. Int’l Trading Co.*, 203 F.3d 1362, 1366 (Fed. Cir. 2000). While  
11 the specification provides examples of querying that occurs on a preset schedule, it does not  
12 preclude the possibility that querying might occur irregularly. Morrisey’s construction thus  
13 imports a limitation from the specification that is not compelled by the language of the claims.

14 Contrary to Morrisey’s contention, moreover, the prosecution history is either ambiguous  
15 or provides mild support for Medversant’s construction. During prosecution, the patentees argued  
16 that “[b]y periodic, it is meant that the information is gathered on a periodic basis, whether the  
17 period is regular or irregular.”<sup>146</sup> The examiner found the patentees’ argument that the prior art  
18 “fail[ed] to teach ‘periodic’ gathering [of] third party credentials” “not persuasive” because “a  
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21 <sup>143</sup>Patent, col. 7:34-37 (“[T]he system may automatically send another request to the  
22 verifying sources in accordance with preset time intervals until the requested verification  
23 information is received.”); see also *id.*, col. 5:30-32 (“An exemplary system may make follow-up  
24 requests for verification information according to a pre-set schedule”).

25 <sup>144</sup>“[T]ime frame intervals for the resending of verification requests are determined by the  
26 verifying organization.” (*Id.*, col. 7:8-10.)

27 <sup>145</sup>*Id.*, col. 1:22-23.

28 <sup>146</sup>Pl.’s Opening Brief, Attachment 1 (Declaration of Gary Dukarich (“Dukarich Decl”)),  
Exh. B at 25.

1 periodic basis can basically be performed at any time.”<sup>147</sup> They then reasserted that the claims  
2 were patentable because, unlike the prior art, the invention would query “automatically on a  
3 periodic basis.”<sup>148</sup> Morrissey contends this latter statement indicates that the patentees had altered  
4 their position as to the meaning of “on a periodic basis” in response to the examiner’s criticism.

5 The court disagrees. First, it is unclear from the prosecution history that the patentees were  
6 responding to the examiner’s comment that querying could “basically be performed at any time”  
7 when they noted that the system would query “automatically on a periodic basis. . . .”<sup>149</sup> The  
8 portion of the reply to office action Morrissey cites concerns functions that the system performs  
9 “automatically,” not functions performed “on a periodic basis.” The patentees were attempting  
10 to demonstrate that the “automatic” functions taught by Heyer were different than those taught by  
11 their invention. The patentees’ reply did not reference the examiner’s statement that functions  
12 performed on “a periodic basis can basically be performed at any time.” Second, nothing about  
13 the patentees’ statement evinces a “clear and unmistakable surrender” of their prior argument that  
14 periodic encompassed both regular and irregular intervals. See *Ecolab*, 569 F.3d at 1342 (“[T]he  
15 applicant disclaim[s] protection during prosecution only if the allegedly disclaiming statements  
16 constitute a clear and unmistakable surrender of subject matter”). The statement merely clarifies  
17 that the invention would query and perform other functions automatically, something that the  
18 patentees contended distinguished the invention from the prior art Heyer patent application.

19 Finally, contrary to Morrissey’s contention, extrinsic evidence supports Medversant’s  
20 construction. Morrissey cites two dictionary definitions in support of its construction.<sup>150</sup> Morrissey,  
21 however, cited only a portion of the definitions. Both dictionaries note that periodic encompasses

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23 <sup>147</sup>Feigelson Decl., Exh. D at 250.

24 <sup>148</sup>*Id.* at 273 (emphasis original).

25 <sup>149</sup>*Id.*

26 <sup>150</sup>See *id.*, Exh. F at 359 (Webster’s defining “periodic” as “occurring at regular  
27 intervals”); *id.* at 361 (Dictionary.com, <http://dictionary.reference.com/browse/periodic> (last  
28 viewed December 21, 2010) (defining “periodic” as “occurring or appearing at regular  
intervals”)).

1 both regular and irregular intervals. While the first definition that Webster’s offers for periodic  
2 is “characterized by periods: occurring at regular intervals,” the second, not cited by Morrissey,  
3 defines the term as “occurring repeatedly from time to time: recurrent, intermittent.”<sup>151</sup> This  
4 second definition is consistent with Medversant’s construction of the term as “repeated from time  
5 to time.” Likewise, while Dictionary.com’s second definition of periodic – the one cited by  
6 Morrissey – is “occurring or appearing at regular intervals,” the third definition, which Morrissey  
7 does not cite, is “repeated at irregular intervals; intermittent” as in “periodic outbreaks of the  
8 disease.”<sup>152</sup>

9 While dictionary definitions are “‘less significant than the intrinsic record in determining  
10 “the legally operative meaning of claim language[,]”” they can “‘can shed useful light on the  
11 relevant art[.]’” *Phillips*, 415 F.3d at 1317 (quoting *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388  
12 F.3d 858, 862 (Fed. Cir. 2004) (citations omitted)). Here, extrinsic evidence suggests that the  
13 ordinary meaning of “periodic” encompasses both regular and irregular intervals. Given that the  
14 patent does not “clearly set forth” or “clearly redefine” the term “on a periodic basis,” the court  
15 sees no reason to depart from the ordinary meaning of the term. See *Bell Atlantic*, 262 F.3d  
16 at 1268.

17 For these reasons, the court concludes that the term “on a periodic basis” means “repeated  
18 from time to time.”

## 19 **5. “Third Party Credentials Data”**

20 The term “third party credentials data” appears in claims 1, 23, 29, 30, 35, and 36. It is  
21 frequently used in proximity to the term “credentials information,” discussed previously.

### 22 **i. Medversant’s Proposed Construction**

23 Medversant proposes that “third party credentials data” be construed to mean “data from  
24 the third party databases, the presence or absence of which confirms, supplements or contradicts  
25 all or a portion of the applicants’ collected credentials information.” It contends that this

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26  
27 <sup>151</sup>*Id.* at 359.

28 <sup>152</sup>*Id.* at 361.

1 construction “makes clear that data may not be of exactly the same scope or extent as the collected  
2 information; for example, the third party data may be of greater scope or extent, and so may  
3 supplement the collected information rather than just confirming or replacing it.”<sup>153</sup> Medversant  
4 asserts that the reference to the possible “absence” of data is “useful for the fact finder in  
5 delineating that in some situations the value derived from accessing a third party database comes  
6 from learning that particular data is absent from that database rather than from obtaining the  
7 particular data being sought.”<sup>154</sup> To support its construction, the plaintiff relies on several portions  
8 of the specification discussing the absence of data.<sup>155</sup>

9 **ii. Morrissey’s Proposed Construction**

10 Morrissey’s proposed construction incorporates its earlier construction of “credentials  
11 information,” which the court adopted in the disjunctive rather than the conjunctive. Morrissey  
12 proposes to construe “third party credentials data” as “credentials information that is maintained  
13 by third parties who keep such information, namely, schools, hospitals, peers, government  
14 agencies, and other regulatory bodies.”<sup>156</sup> It cites the “repeated usage of ‘third party credentials  
15 data’ together with the collected ‘credentials information’ in . . . claim 1” and contends this  
16 “demonstrates that the third party credentials data consists of data items that  
17 correspond to the data items contained in the ‘credentials information.’ Otherwise,  
18 the claimed method could not: (a) verify the collected credentials information  
19 pertaining to applicants [ ]; (b) automatically electronically compare third party  
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21 <sup>153</sup>Pl.’s Opening Brief at 14.

22 <sup>154</sup>*Id.* at 13.

23 <sup>155</sup>Patent, col. 1:53-55 (“Such differences may include missing data as well as differing  
24 experience, performance and license sanctions histories”); *id.*, col. 7:41-46 (“In practice the  
25 credentialing organization or the WebCVO verifies information received from the verifying source  
26 440. If a verifying source responds with a ‘Record Not Found’ response 450, the described  
27 exemplary system may notify the practitioner via email, fax or letter 460 and ask for corrected  
28 information”).

<sup>156</sup>Def.’s Opening Brief at 12.

1 credentials data to ‘the collected credentials information pertaining to the applicant’  
2 [ ]; or (c) automatically electronically notify a user of ‘inconsistencies between the  
3 obtained third party credentials data and the collected credentials information  
4 pertaining to the applicant’ [ ].”<sup>157</sup>

5 Morrissey cites the specification in support of its contention that third party credentials data is kept  
6 by schools, hospitals, peers, all government agencies, and other regulatory bodies.<sup>158</sup>

7 **iii. The Court’s Construction**

8 The court begins with the language of the claims. “Third party credentials data” appears  
9 several times in claim 1’ s description of the process for

10 “verifying . . . collected credentials information with external sources . . . ; . . .  
11 wherein verifying further comprises: automatically obtaining third party credentials  
12 data wherein the obtaining comprises querying . . . third party databases having  
13 third party credentials data relating to the collected credentials information; . . .  
14 comparing the obtained third party credentials data to the collected credentials  
15 information pertaining to the applicant; . . . [and] notifying a user of inconsistencies  
16 between the obtained third party credentials data and the collected credentials  
17 information pertaining to the applicant[.]”<sup>159</sup>

18 The term is used in identical ways in claim 23. The claims define “third party credentials data”  
19 as data possessed by “external sources” that “relat[es] to the collected credentials information.”  
20 It is data that is “obtain[ed]” from third party databases and then “compar[ed]” with the collected  
21 credentials information. The claims thus define “third party credentials data” as credentials data  
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23 <sup>157</sup>*Id.*

24 <sup>158</sup>Patent, col. 5:10-15 (“The described exemplary system may then automatically contact  
25 various entities such as, for example, schools, hospitals, or peers to request verification  
26 information . . . .”); *id.*, col. 5:26-30 (“An exemplary system may also automatically check the  
27 websites of all government agencies . . . , or other regulatory bodies for information related to  
the practitioner’s credentials. . .”).

28 <sup>159</sup>*Id.*, col. 10:50-67.

1 possessed by third party databases.

2 The language of the specification supports Morrisey's assertion that "third party credentials  
3 data" should be further defined by reference to collected "credentials information" concerning a  
4 practitioner. The specification describes an embodiment that verifies collected credentials  
5 information by "automatically check[ing] the websites of all government agencies . . . , or other  
6 regulatory bodies for information related to the practitioner's credentials."<sup>160</sup> This is part of the  
7 verification process claim 1 describes through which "third party credentials data" is obtained.<sup>161</sup>  
8 The specification uses the phrase "information related to the practitioner's credentials" to refer  
9 to the information claim 1 denominates "third party credentials data." The specification also  
10 discusses the process of comparing "verification information received from external sources to the  
11 credentials information submitted by the applicant."<sup>162</sup> This portion of the specification addresses  
12 the process claim 1 describes of "comparing the obtained third party credentials data to the  
13 collected credentials information pertaining to the applicant,"<sup>163</sup> and appears to define the term  
14 "third party credentials data" as "verification information received from external sources." The  
15 specification later uses the terms "verification information received from external sources" and  
16 "verification data received from external sources" interchangeably.<sup>164</sup>

17 Using "data" interchangeably with "information" is consistent with the ordinary meaning  
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20 <sup>160</sup>*Id.*, col. 5:26-30.

21 <sup>161</sup>See *id.*, col. 10:54-58 ("automatically obtaining third party credentials data wherein the  
22 obtaining comprises querying automatically on a periodic basis third party databases having third  
party credentials data relating to the collected credentials information").

23 <sup>162</sup>*Id.*, col. 5:33-35.

24 <sup>163</sup>*Id.*, col. 10:59-61.

25 <sup>164</sup>See *id.*, col 6:54-61 ("An exemplary system may correlate the verification information  
26 received from external sources with the credentials information entered by the applicant. . . . In  
27 addition, in one embodiment the described exemplary system may attempt to identify reasons for  
28 a mismatch between the verification data received from external sources and the credentials  
information entered by the applicant").

1 of “data,” which is known equally to persons of skill in the art and lay jurors.<sup>165</sup> Data is  
2 commonly defined as information.<sup>166</sup> Thus, Morrisey’s construction which, in effect, defines  
3 “third party credentials data” as credentials information possessed by third parties, rather than the  
4 applicant, is consistent with the plain meaning of the term, as well as the specification’s  
5 description of a particular embodiment of the invention.

6 The term “third party” is not ambiguous or used in a way that contradicts its ordinary  
7 meaning. The claims equate “third party databases” with “external sources,” i.e., an individual  
8 or entity that is not the applicant or the user. The specification clearly identifies the relevant  
9 “third parties.” While claim 1 states that the invention “automatically obtain[s] third party  
10 credentials data” to “verify[ ] . . . the collected credentials information,”<sup>167</sup> the specification  
11 describes a system that “automatically contact[s] various entities such as, for example, schools,  
12 hospitals, or peers to request verification information. . . .”<sup>168</sup> It also states that to verify  
13 credentials information, the “system may . . . automatically check the websites of all government  
14

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15 <sup>165</sup>Where a patentee uses different terms interchangeably when referring to the same thing,  
16 the terms may be given the same meaning. See, e.g., *Bid for Position, LLC v. AOL, LLC*, 601  
17 F.3d 1311, 1317–18 (Fed. Cir. 2010) (construing term “value of the bid” in a claim directed to  
18 an internet advertisement placement auction system as meaning the monetary amount a user bids,  
19 since the specification used the terms “bid” and value of bid interchangeably, showing that  
20 “value” meant the money to be paid as opposed to some other parameter); *Edward Lifesciences*  
21 *LLC v. Cook Inc.*, 582 F.3d 1322, 1328 (Fed. Cir. 2009) (ruling that different claim terms could  
22 be given a single construction where the specification used the terms interchangeably: “As an  
23 initial matter, we conclude that, although the district court separately analyzed the different terms  
24 for the claimed devices, viz., ‘graft,’ ‘graft body,’ ‘graft structure,’ ‘bifurcated base structure,’  
25 and ‘bifurcated base graft structure,’ the court was correct to come to the same conclusions, either  
26 implicitly or explicitly, with respect to all of the terms. Each of the terms ‘graft,’ ‘graft  
27 structure,’ ‘bifurcated base structure,’ and ‘bifurcated base graft structure,’ is used  
28 interchangeably in the specification and the claims”).

<sup>166</sup>See MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/data> (last visited February 9, 2011) (defining data as “factual information (as measurements or statistics) used as a basis for reasoning, discussion, or calculation”).

<sup>167</sup>Patent, col. 10:50-54.

<sup>168</sup>*Id.*, col. 5:10-15.

1 agencies. . . , or other regulatory bodies for information related to the practitioner’s  
2 credentials. . . .”<sup>169</sup> Morrisey’s construction is thus consistent with, indeed drawn directly from,  
3 the language of the specification, which indicates that credentials data is “maintained by third  
4 parties who keep such information, namely, schools, hospitals, peers, government agencies, and  
5 other regulatory bodies.”

6 One modification must be made to Morrisey’s construction, however, to avoid committing  
7 the “cardinal sin” of patent construction. See *SciMed Life Systems*, 242 F.3d at 1341. Rather  
8 than using the limiting modifier “namely,” which is defined as “that is to say; explicitly;  
9 specifically; to wit,”<sup>170</sup> and suggests that the named entities are the only third parties covered by  
10 the patent, the court will use the inclusive modifier “including,” to allow for other potential  
11 “third parties” beyond those explicitly listed in the specification.

12 For these reasons, the court construes the term “third party credentials data” as  
13 “credentials information that is maintained by third parties who keep such information, including,  
14 schools, hospitals, peers, government agencies, and other regulatory bodies.” This construction  
15 incorporates the court’s previous construction of “credentials information.”

16 **6. “Comparing the Obtained Third Party Credentials Data to the Collected**  
17 **Credentials Information”**

18 The parties next request that the court construe the term “comparing the obtained third  
19 party credentials data to the collected credentials information,” which appears in claims 1 and 23  
20 in the following phrase: “automatically electronically comparing the obtained third party  
21 credentials data to the collected credentials information pertaining to the applicant[.]”<sup>171</sup>

22 **i. Medversant’s Construction**

23 Medversant proposes that this phrase be construed to mean “checking the credentials  
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25 <sup>169</sup>*Id.*, col. 5:26-30

26 <sup>170</sup>See Dictionary.com, <http://dictionary.reference.com/browse/namely> (last viewed  
27 February 21, 2011).

28 <sup>171</sup>Patent, col. 10:59-61, 13:1-3.

1 information for matches and mismatches relative to the data kept by third parties, including the  
2 presence or absence of information or data.” It asserts that such a construction “is useful to the  
3 fact finder in making clear . . . that the absence of a sought-after data record or data can confer  
4 investigative benefits as great as specific data values returned from a present data record. . . .”<sup>172</sup>  
5 Medversant criticizes Morrisey’s proposed construction, asserting that it would exclude a  
6 preferred embodiment of the invention. See *Helmsderfer v. Bobrick Washroom Equip., Inc.*, 527  
7 F.3d 1379, 1383 (Fed. Cir. 2008) (“a construction that excludes the preferred embodiment is  
8 rarely, if ever correct. . .”). Specifically, Medversant contends that the preferred embodiment  
9 in the specification explicitly discusses “not only the case of a data match [ ]<sup>173</sup> or a data mismatch[  
10 ],<sup>174</sup> but also where a verifying record cannot be found [ ],<sup>175</sup> and even when a verifying record  
11 supplies new information not previously provided by the credentialing applicant[ ].”<sup>176</sup>

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12  
13 <sup>172</sup>Pl.’s Opening Brief at 15.

14 <sup>173</sup>Patent, col. 6:56-57 (“The described exemplary system may auto-update the database for  
15 matched data”).

16 <sup>174</sup>*Id.*, col. 6:58-7:4 (“In addition, in one embodiment the described exemplary system may  
17 attempt to identify reasons for a mismatch between the verification data received from external  
18 sources and the credentials information entered by the applicant. For example, the system may  
19 electronically or manually attempt to identify clerical errors, such as typographical errors that may  
20 occur during the conversion of a scanned document to text by an optical character recognition  
21 program. The system may then request that the applicant provide an explanation for any data  
22 mismatches that cannot be attributed to errors in the data entry or correlation process. An  
23 exemplary system may then verify newly entered data by correlating it with the verification  
24 information received from the external sources”).

25 <sup>175</sup>*Id.*, col. 7:42-49 (“If a verifying source responds with a “Record Not Found” response  
26 450, the described exemplary system may notify the practitioner via email, fax or letter 460 and  
27 ask for corrected information. The practitioner may then respond with corrected information 480  
28 and the system may then send another request to the verifying source 410 with corrected  
information”).

<sup>176</sup>Pl.’s Responding Brief at 6 (citing Patent, col. 3:18-22 (“The WebCVO system may then  
alert the practitioner and all entities to which that practitioner is assigned of any information not  
validated by an external source and to information reported by the source but not recorded in the  
practitioner’s credentials record”).

1                   **ii.     Morrisey’s Proposed Construction**

2           Morrisey suggests that the phrase be construed to mean “comparing the obtained third party  
3 credentials data to the collected credentials information to determine whether they match.”  
4 Morrisey states that this construction incorporates its proposed constructions for “third party  
5 credentials data” and “credentials information,” which the court has adopted with minor  
6 alterations. Morrisey contends that the term “comparing” has a well understood meaning that  
7 does not require a separate construction.<sup>177</sup> It asserts that the “express language” of the claim  
8 “mandates a comparison, or examination, of two specific items – the obtained third party  
9 credentials data [and] the collected credentials information,”<sup>178</sup> and notes that “the specification  
10 refers to a ‘correlation process’ . . . in which the system ‘may correlate the verification  
11 information received from external sources with the credentials information entered by the  
12 applicant.’ . . . The system then ‘auto-update[s]’ the database with matched information. . . .”<sup>179</sup>  
13 Morrisey contends that because “[t]he comparison (or correlation) is made between actual  
14 verification information obtained from third party databases and the collected credentials  
15 information,” its construction, which “mandates comparing two specific items,” is the correct  
16 one.<sup>180</sup>

17                   **iii.     The Court’s Construction**

18           The term “comparing” appears four times in the claims. In claims 1 and 23, it is used in  
19 the following phrase: “automatically electronically comparing the obtained third party credentials  
20 data to the collected credentials information pertaining to the applicant.”<sup>181</sup> Dependent claim 14  
21

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22           <sup>177</sup>Feigelson Decl., Exh. F at 367, IEEE Dictionary (defining “compare” as “to examine  
23 two items to determine their relative magnitude, their relative positions in a given sequence, or  
24 whether they are identical”); *id.* at 360, 362.

25           <sup>178</sup>Def.’s Opening Brief at 15.

26           <sup>179</sup>Def.’s Responding Brief at 14.

27           <sup>180</sup>*Id.*

28           <sup>181</sup>Patent, col. 10:59-61, 13:1-3.

1 describes “[t]he method of claim 1 wherein storing collected credentials information in a dynamic  
2 database comprises: . . . comparing existing credentials information to newly entered credentials  
3 information. . . .”<sup>182</sup> Dependent claim 17 describes “[t]he method of claim 16 wherein verifying  
4 collected credentials information with external sources further comprises: comparing verification  
5 information with credentials information submitted by the practitioner; auto-updating the database  
6 with matched information; . . . and providing real-time notification of adverse information.”<sup>183</sup>

7 None of the claims uses the term “comparing” in anything other than its “ordinary,  
8 everyday sense.” *CollegeNet, Inc.*, 2004 WL 2429843 at \*14. The court therefore concludes that  
9 there is no need to construe the term. *Id.* Neither the claim language nor the specification  
10 suggests that “comparing” has any different meaning than the act of examining two data sets to  
11 “discover resemblances or differences,”<sup>184</sup> or in the language of the patent, “matche[s]” or  
12 “mismatch[es].”<sup>185</sup> This common usage of the word “comparing” will be clear to the factfinder.

13 Because the court has already construed “third party credentials data” and “credentials  
14 information,” these terms need no further definition in the context of “comparing the obtained  
15 third party credentials data to the collected credentials information.” The question is whether the  
16 modifiers “obtained” (“third party credentials data”) and “collected” (“credentials information”)  
17 require construction. *Morrissey’s* construction does not substitute other words for these terms;<sup>186</sup>  
18 it clearly believes that the terms “obtained” and “collected” do not need construction and do not  
19 alter the meaning of the terms they modify. *Medversant’s* proposed construction, “checking the  
20 credentials information for matches and mismatches relative to the data kept by third parties”  
21

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22 <sup>182</sup>*Id.*, col. 11:47-52.

23 <sup>183</sup>*Id.*, col. 11:65-12:6.

24 <sup>184</sup>See MERRIAM-WEBSTER ONLINE DICTIONARY, [http://www.merriam-webster.com/  
25 dictionary/comparing](http://www.merriam-webster.com/dictionary/comparing) (last visited February 15, 2011).

26 <sup>185</sup>Patent, col. 6:57,59.

27 <sup>186</sup>See Def.’s Opening Brief at 13 (“comparing the obtained third party credentials data to  
28 the collected credentials information to determine whether they match”).

1 simply drops the modifiers altogether, suggesting that they add nothing to the meaning of the claim  
2 term. The parties thus appear to agree that the terms “obtained third party credentials data” and  
3 “collected credentials information” do not need additional construction once “third party  
4 credentials data” and “credentials information” have been construed. The court agrees. In the  
5 context of the patent, it is clear that “collected credentials information” means the “credentials  
6 information” that has been “collected” from applicants and users. Likewise “obtained third party  
7 credentials data” means “third party credentials data” that has been obtained from third parties  
8 through the querying process. Because the terms “collected” and “obtained” are used in  
9 accordance with their ordinary meanings, a factfinder needs no assistance in understanding them.

10 The parties also appear to agree that the claim term must be supplemented with a phrase  
11 that describes the purpose of “comparing” the data sets. Morrisey asserts the purpose is “to  
12 determine whether the [data sets] match,” while Medversant contends it is to “check[ ] . . . for  
13 matches and mismatches . . . , including the presence or absence of information or data.”  
14 Although the ordinary meaning of “comparing” incorporates the concept of searching for  
15 resemblances and differences, the additional explanatory phrase Medversant proposes will be  
16 helpful to the jury in that it highlights the type of comparisons that are important.

17 The specification suggests that Medversant’s construction, which includes comparing for  
18 “matches” *and* “mismatches,” is the more appropriate. Claim 17 indicates that “comparing”  
19 involves determining if there is “matched information” and “adverse information.”<sup>187</sup> Other  
20 claims also mention adverse information in describing the verification process.<sup>188</sup>

21 The specification describes an embodiment of the comparison process in which the “system  
22 . . . correlate[s] the verification information received from external sources with the credentials  
23

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24 <sup>187</sup>Patent, col. 11:65-12:6.

25 <sup>188</sup>See *id.*, col. 11:8-10 (Claim 3: “The method of claim 1 further comprising identifying  
26 adverse information or errors in verification of credentials information”); *id.*, col. 12:7-12 (Claim  
27 18: “The method of claim 3 wherein identifying adverse information or errors in verification of  
28 credentials information comprises: requesting explanations for adverse information or errors from  
the practitioner; and re-verifying the credentials information, if warranted”).

1 information entered by the applicant,” and “auto-update[s] the database for matched data. In  
2 addition, in one embodiment the . . . system may attempt to identify reasons for a mismatch  
3 between the verification data received from external sources and the credentials information  
4 entered by the applicant,”<sup>189</sup> and “request that the applicant provide an explanation for any data  
5 mismatches that cannot be attributed to errors in the data entry or correlation process.”<sup>190</sup> The  
6 specification also describes a system that “may route mismatched data as well as matched data to  
7 an electronic tickler for distribution to and manual verification by credentials staff.”<sup>191</sup> It clearly  
8 contemplates, therefore, the possibility that there will be both data matches and mismatches.  
9 While Morrissey’s description of the purpose of the comparison – “to determine whether the[ data  
10 sets] match” – does not preclude the possibility of data mismatches, the court agrees with  
11 Medversant that a definition that specifically mentions the possibility of a mismatch is more  
12 consistent with the language of the claims and specification and more helpful to the factfinder.

13 The same is true of Medversant’s suggestion that the court include the phrase “including  
14 the presence or absence of information or data” to explain what a “mismatch” might entail. The  
15 specification repeatedly discusses situations in which the verification process results in a “no  
16 records” response from the third party. It states, for example, that “[i]f a verifying source  
17 responds with a ‘Record Not Found’ response . . . , the . . . system [can] notify the practitioner  
18 via email, fax or letter . . . and ask for corrected information.”<sup>192</sup> Morrissey argues that this  
19 portion of the specification, and Figure 4, which it discusses, concern the audit process rather than  
20 the verification process that includes the comparing step. Having studied Figure 4, the court  
21 cannot agree. The process depicted in Figure 4 begins with a request for third party credentials  
22 information from third party databases. This is part of the method for electronically verifying  
23 information pertaining to applicants claimed in claim 1. Figure 4 reflects that, after a response

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24 <sup>189</sup>*Id.*, col. 6:54:61.

25 <sup>190</sup>*Id.*, col. 6:66-7:1.

26 <sup>191</sup>*Id.*, col. 7:20-22.

27 <sup>192</sup>*Id.*, col. 7:42-46.

1 is received from the third party database, a verification is performed; one possible result of the  
2 verification is that the system discovers that a third party database has returned a Record Not  
3 Found response, i.e., has failed to verify the collected credentials information. In the embodiment  
4 discussed in the specification, this may trigger certain additional steps. If, however, the collected  
5 credentials information is verified – i.e., there is a match between the collected credentials  
6 information and the third party credentials data – an audit process commences as depicted in  
7 Figure 4. The specification signals this by stating: “The described exemplary system may route  
8 verified credentialing information to an electronic work distribution program for auditor  
9 review.”<sup>193</sup>

10 Moreover, parts of the specification that do not describe the audit process indicate that the  
11 system compares “mismatched” information. The specification states, for example, that “[t]he  
12 WebCVO system may then alert the practitioner and all entities to which that practitioner is  
13 assigned of *any information not validated by an external source and to information reported by*  
14 *the source but not recorded in the practitioner’s credentials record.*”<sup>194</sup> This portion of the  
15 specification describes not only “no records” responses – i.e., information not validated by an  
16 external source – but also situations in which a third party database provides data not included in  
17 the credentials information collected from the applicant – i.e., the presence of additional  
18 information.

19 As these descriptions make clear, the patent envisions a comparative process that reveals  
20 data mismatches, including the fact that credentials information provided by the applicant is

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21  
22 <sup>193</sup>*Id.*, col. 7-50-52. The court finds further support for its interpretation of Figure 4 and  
23 the specification by looking at Figure 3. Morrissey concedes that Figure 3 reflects the verification  
24 process generally claimed in claim 1. The last box on Figure 3 is labeled “Audit.” The preceding  
25 box is labeled “Verification.” Verification occurs after requests are sent to a practitioner’s school,  
26 hospital and agencies and a response is “received.” This portion of Figure 3 is duplicated at the  
27 top of Figure 4, which commences with a box labeled “Send Request,” followed by a box labeled  
28 “Receive Request,” and then a box labeled “Verification.” It is immediately after these boxes,  
and before the box labeled “First Audit” that “If Record Not Found,” and “Verified?” boxes  
appear.

<sup>194</sup>*Id.*, col. 3:17-21 (emphasis added).

1 “absent” from third party responses, and that third parties have additional data that does not  
2 correspond to the credentials information provided by the applicant. Contrary to Morrisey’s  
3 contention that “[t]he claim[s] do[ ] not permit . . . checking for the absence of other data[.]”<sup>195</sup>  
4 the possibility of a “no records” response or additional data obtained from third parties is precisely  
5 the kind of mismatch discussed in the specification.<sup>196</sup> The court does not agree with Morrisey’s  
6 suggestion that the claims do not encompass a “no records” response from a third party database  
7 because in such a situation no third party credentials data is obtained.<sup>197</sup> The “no records”  
8 response itself is “third party credentials data” that is obtained and can be compared with the  
9

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10 <sup>195</sup>Def.’s Responding Brief at 14.

11 <sup>196</sup>Morrisey argues that the portions of the specification that discuss No Record Found  
12 responses concern an earlier version of the claim that was disallowed by the patent examiner. It  
13 asserts that initially, Medversant claimed a method of verifying information that included  
14 comparing collected credentials information and third party credentials data manually. (See  
15 Feigelson Decl., Exh. D at 181 (claiming “a method for electronically verifying information  
16 comprising[, *inter alia*, the step of] verifying collected credentials information with external  
17 sources through an electronic interface, wherein the verifying further comprises: automatically  
18 obtaining third party credentials data and images of primary source data corresponding to the third  
19 party credentials data; comparing the obtained third party credentials data to the collected  
20 credentials information from the applicant; notifying a user of inconsistencies between the obtained  
21 third party credentials data and the collected credentials information from the applicant; and  
22 presenting the user with the third party credentialing information and the image of the primary  
23 source data”). This iteration of the claim did not require that any of the last three steps be  
24 completed automatically or electronically. After the claim was disallowed, Medversant amended  
25 the claim to provide that each of these steps would be performed “automatically electronically.”  
(See *id.* at 260). While one portion of the specification describes an embodiment that “attempt[s]  
26 to identify reasons for a mismatch between the verification data received from external sources  
27 and the credentials information entered by the applicant” by “electronically or manually  
28 attempt[ing] to identify clerical errors,” the reference to electronic identification of errors appears  
to describe, at least in part, the “automatically electronically comparing” step that was allowed  
by the patent examiner and is claimed in claim 1. Consequently, the court cannot accept  
Morrisey’s assertion that all references to mismatches and Record Not Found responses in the  
specification concern the broader claims that were disallowed.

<sup>197</sup>*Id.* at 13 (“If the third party database has third party credentials data relating to the  
collected credentials information and such information is obtained by the system, then it is  
available for comparing. By contrast, a Record Not Found response cannot be used for  
comparing”).

1 collected credentials information.<sup>198</sup>

2 The court therefore, construes the term “comparing the obtained third party credentials data  
3 to the collected credentials information” to mean “comparing the obtained third party credentials  
4 data to the collected credentials information to identify matches and mismatches, including the  
5 presence or absence of information or data.”

6 **7. “Updating the Relational Database with the Retrieved Data”**

7 The parties next dispute the meaning of the term “updating the relational database with the  
8 retrieved data.” The term appears only in claim 1, which claims a method for “automatically  
9 electronically updating the relational database with the retrieved data.”<sup>199</sup>

10 **i. Medversant’s Construction**

11 Medversant asserts that the term should be construed as “making a change to an aspect of  
12 the relational database where the change is based on the data or absence of data from the third  
13 party databases; may include data that has not been compared with other information or data.”<sup>200</sup>

14 Medversant contends that “updating” is not limited to “just dumping [the] retrieved data itself into  
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18 <sup>198</sup>Although the court did not adopt Medversant’s proposed construction of “third party  
19 credentials data,” which included a reference to the absence of data, it did so not because it  
20 rejected the notion that the absence of certain information in a third party database was relevant  
21 in comparing the third party credentials data to the collected credentials information, but because  
22 Medversant’s proposed construction incorporated concepts such as confirming, supplementing or  
23 contradicting the collected credentials information, thereby addressing what the data did rather  
24 than what it was. The court therefore adopted Morrissey’s proposed construction – “credentials  
25 information that is maintained by third parties who keep such information, including schools,  
26 hospitals, peers, government agencies, and other regulatory bodies” – as it more properly focused  
27 on the nature of the data itself, rather than the results of comparing that data with the collected  
28 credentials information. That definition, however, does not exclude the possibility of a “no  
records” response. Such a response is a form of practitioner background data that concerns  
education, training, licensure, experience, license sanctions, experience, etc. in the sense that it  
advises that a practitioner lacks one or more of those types of background.

<sup>199</sup>Patent, col. 10:62-63.

<sup>200</sup>Pl.’s Opening Brief at 16.

1 the database.”<sup>201</sup> Rather, it asserts, “updating” is “an activity that may be additive,  
2 supplementary, and augmenting,”<sup>202</sup> and that involves “making a change to an aspect of the  
3 relational database . . . which need not ‘replace a prior version.’”<sup>203</sup>

4 Medversant contends, for example, that if the third party database finds no data, no data  
5 is added to the relational database, but changes in the form of a warning log or work tickler will  
6 be made to the system.<sup>204</sup> It asserts that these changes constitute updates to the relational  
7 database.<sup>205</sup> By contrast, it argues, if the obtained third party credentials data is consistent with  
8 the collected credentials information, the “updating” consists of “merely making a change to an  
9 aspect of the relational database (e.g., the most recent date or time that the data was verified  
10 (brought) up to date).”<sup>206</sup>

11 Medversant cites technical dictionaries as support for its construction. It notes that The  
12 Computer Glossary defines “updating” as “to change data in a file or database. Update and edit

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14 <sup>201</sup>*Id.*

15 <sup>202</sup>*Id.* at 19.

16 <sup>203</sup>*Id.* at 17.

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18 <sup>204</sup>Patent, col. 5:35-38 (“An exemplary system may then auto-update the database with  
19 matched information or manually update the database through the use of electronic work prompts  
20 or ticklers”); *id.*, col. 8:67-9:1 (“An exemplary credentials system may also include a warning  
log comprised of data mismatches and identified adverse actions and common field level history  
tracking data”).

21 <sup>205</sup>Pl.’s Opening Brief at 16 (“These would constitute a change to the database that is based  
22 on the presence or absence of data, rather than retrieved data itself from a record pertaining to the  
23 applicant”).

24 <sup>206</sup>*Id.* at 17. See also *id.* at 16 (“In either instance, the change to the database may further  
25 include the recording of a date and time of updates or changes to the database,” citing Patent, col.  
26 8:32-39 (“In an exemplary embodiment, the system records the user identification and date and  
27 time for each piece of data entered and any and all subsequent changes to provide a complete audit  
28 trail for credentials information entered into the system. In this manner, the system transforms  
a practitioner’s credentials application from a static record into a dynamic, real-time  
comprehensive record that may be linked to enterprise-wide databases to capture or supplement  
other practitioner data”).

1 are often used synonymously; however, edit implies changing existing data, while update also  
2 implies adding and deleting records.”<sup>207</sup> Likewise, the Dictionary of Computing defines  
3 “updating” as “changing a set of values in a file, especially a data file, without changing the  
4 organization or semantics of the file.”<sup>208</sup>

5 Medversant proposes that “the retrieved data” be construed as any data that has been  
6 retrieved, and that it not be limited to the third party credentials data that is compared with the  
7 collected credentials information.<sup>209</sup> It asserts that “the claim’s use of the term ‘retrieved data’  
8 rather than, say, ‘retrieved and compared data’ in conjunction with updating the relational database  
9 makes clear that the data usable for updating the database may be any data that has been retrieved,  
10 rather than only data that has also been used in comparison.”<sup>210</sup>

11 **ii. Morrissey’s Proposed Construction**

12 Morrissey proposes that the term be construed to mean “replacing the collected credentials  
13 information in the relational database with the obtained third party credentials data.”<sup>211</sup> It asserts  
14 that “updating” refers only to the replacement of data in the relational database with third party  
15 credentials data.<sup>212</sup> Morrissey contends the separation between “stor[ing]” data and “updat[ing]”  
16 data in the language of the specification supports its interpretation.<sup>213</sup> It states: “[I]t is insufficient  
17 simply to store new information in the database with old information. Instead, the old information  
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20 <sup>207</sup>*Id.* at 16.

21 <sup>208</sup>*Id.* at 17.

22 <sup>209</sup>*Id.* at 18.

23 <sup>210</sup>*Id.*

24 <sup>211</sup>Def.’s Opening Brief at 15.

25 <sup>212</sup>*Id.*; Def.’s Responding Brief at 17.

26 <sup>213</sup>Patent, col:1:24-26 (“[P]ractitioner background checks create large volumes of data that  
27 must be stored, validated, analyzed and updated on a continuous basis”).  
28

1 must be somehow made different or deleted.”<sup>214</sup> Morrisey argues that Medversant’s reliance on  
2 passages in the specification concerning manual updates are not relevant in interpreting claim 1’s  
3 reference to “updating the relational database” since the claim refers only to “automatic[ ]  
4 electronic[ ]” updates.<sup>215</sup>

5 Morrisey also disputes the aspect of Medversant’s construction that permits  
6 supplementation of data in the relational database because the portions of the specification on  
7 which it relies include “examples of different operations that are not included in the claims.”<sup>216</sup>  
8 In fact, Morrisey contends, the specification contemplates only the automatic updating of matched  
9 data.<sup>217</sup> It maintains that “mismatches are treated as exceptions,”<sup>218</sup> and are not automatically  
10 updated in the system.<sup>219</sup> It contends that when mismatches are detected, the system “attempt[s]

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14 <sup>214</sup>Def.’s Opening Brief at 15.

15 <sup>215</sup>Def.’s Responding Brief at 17.

16 <sup>216</sup>*Id.* at 17-18. In particular, Morrisey objects to Medversant’s references to manual  
17 updating (see Patent, col. 12:4-5 (Claim 17: “manually updating the database through the use of  
18 electronic work ticklers”)), and auto-updates performed as a result of information obtained from  
19 non-electronic sources (see *id.*, col. 11:63-64 (Claim 16: “receiving verification information from  
20 non-electronic sources and storing as scanned images”)). Morrisey asserts that these shed little  
21 light on construction of the term “updating the relational database” because that is an “automatic[ ]  
22 electronic[ ]” function. Morrisey also contends that “[i]n other passages referenced by  
23 Medversant (see, e.g., *id.*, col.] 8:32-35; 8:67-9:1), information is entered into a credentials  
24 application by any of the practitioner, credentialing specialist or otherwise.” It asserts that  
25 “[c]laim 1 is not drawn to these embodiments.” (Def.’s Responding Brief at 17).

26 <sup>217</sup>Def.’s Opening Brief at 15 (“Further, the specification discloses that the system may  
27 ‘auto-update’ the database only with matched information,” citing Patent, col. 5:35-38 (“An  
28 exemplary system may then auto-update the database with matched information”); *id.*, col. 6:56-  
57 (“The described exemplary system may auto-update the database for matched data”)).

<sup>218</sup>Def.’s Opening Brief at 16 (“The system ‘may attempt to identify reasons for a mismatch  
between the verification data received from external sources and the credentials information  
entered by the applicant,’” quoting Patent, col. 6:59-61).

<sup>219</sup>Def.’s Responding Brief at 17.

1 to identify [the] reasons for a mismatch,”<sup>220</sup> and “may . . . request that the applicant provide an  
2 explanation for any data mismatches.”<sup>221</sup>

3       Morrisey further contends that “the retrieved data” refers only to “third party credentials  
4 data” because claim 1 references “third party credentials data” in the “obtaining”/“querying” step  
5 of the system.<sup>222</sup> Consequently, it asserts, “‘the retrieved data’ can only fairly be read to mean  
6 the obtained third party credentials data that was actually compared to the collected credentials  
7 information.”<sup>223</sup> It thus construes “updating” as “replacing” and “the retrieved data” as “third  
8 party credentials data.”

9                               **iii. The Court’s Construction**

10       As noted, this claim term appears only in claim 1, which describes as one step of the  
11 method for electronically verifying information pertaining to applicants “automatically  
12 electronically updating the relational database with the retrieved data.”<sup>224</sup> Although dependent  
13 Claim 17 does not use the claim term, it describes the updating component of the verification  
14 process as “auto-updating the database with matched information,”<sup>225</sup> and “manually updating the  
15 database through the use of electronic work ticklers.”<sup>226</sup> Because it is dependent, however, claim  
16 17 is presumed to be narrower in scope than claim 1, upon which it depends. See *AK Steel Corp.*  
17 *v. Sollac and Ugine*, 344 F.3d 1234 (Fed. Cir. 2003) (“Under the doctrine of claim  
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19       <sup>220</sup>Def.’s Opening Brief at 16 (quoting Patent, col. 6:59-61).

20       <sup>221</sup>*Id.* (quoting Patent, col. 6:66-7:1).

21       <sup>222</sup>*Id.* See Patent, col. 10:54-57 (“[O]btaining third party credentials data wherein the  
22 obtaining comprises querying automatically . . . third party databases having third party  
23 credentials data”); *Id.*, col.10:59-61 (“[C]omparing the obtained third party credentials data to the  
collected credentials information”).

24       <sup>223</sup>Def.’s Responding Brief at 17.

25       <sup>224</sup>Patent, col. 10:62-63.

26       <sup>225</sup>*Id.*, col. 12:3.

27       <sup>226</sup>*Id.*, col. 12:4-5. Claim 17 is dependent on claim 16, which is in turn dependent on claim  
28 1.

1 differentiation, dependent claims are presumed to be of narrower scope than the independent  
2 claims from which they depend,” citing *RF Del., Inc. v. Pac. Keystone Techs., Inc.*, 326 F.3d  
3 1255, 1264 (Fed. Cir. 2003) (stating that an independent claim is usually accorded a scope greater  
4 than its dependent claims)). Thus, the process of “automatically electronically updating the  
5 relational database” described in claim 1, presumably includes more than the updating “with  
6 matched information” described in claim 17. Claim 23 describes a “means for automatically  
7 electronically updating the dynamic database with the retrieved data and images.”<sup>227</sup> The  
8 patentees’ decision to use “relational database” in claim 1 and “dynamic database” in claim 23  
9 suggests that the claims are meant to have a different scope. See *Seachange Intern., Inc. v.*  
10 *C-COR, Inc.*, 413 F.3d 1361 (Fed. Cir. 2005) (“there is still a presumption that two independent  
11 claims have different scope when different words or phrases are used in those claims”). This  
12 presumption of differing scope is further supported by the fact that only “retrieved data” is used  
13 to update the relational database described in claim 1, while “retrieved data and images” are used  
14 to update the dynamic database described in claim 23. Thus, the specification’s discussion of  
15 changes made to the “dynamic database,” such as “record[ing] the user identification and date and  
16 time for each piece of data entered and any and all subsequent changes to provide a complete audit  
17 trail for credentials information entered into the system[, which] transforms a practitioner's  
18 credentials application from a static record into a dynamic, real-time comprehensive record,”<sup>228</sup>  
19 appear to refer only to changes made in the “dynamic database,” not changes to the “relational  
20 database.”

21 The claims and specification support Morrisey’s contention that “the retrieved data” refers  
22 to “the obtained third party credentials data.” The portion of claim 1 that contains the disputed  
23 term discusses a method for “automatically obtaining third party credentials data,”<sup>229</sup>

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26 <sup>227</sup>*Id.*, col. 13:4-5.

27 <sup>228</sup>*Id.*, col. 8:32-39.

28 <sup>229</sup>*Id.*, col. 10:54.

1 “automatically electronically comparing the obtained third party credentials data,”<sup>230</sup> and  
2 “automatically electronically notifying a user of inconsistencies between the obtained third party  
3 credentials data and the collected credentials information.”<sup>231</sup> In context, therefore, it is clear that  
4 the claim’s reference to “the retrieved data” that is used to update the relational database is the  
5 data that is “obtained” and “compar[ed],” and about which users are “notif[ie]d.” Consequently,  
6 the “retrieved data” is the “third party credentials data,” a term the court has already construed.

7 This construction is supported by the specification. The specification describes an  
8 embodiment that “compare[s] the verification information received from external sources to the  
9 credentials information submitted by the applicant [and] then auto-update[s] the database with  
10 matched information. . . .”<sup>232</sup> The specification states that the information used to “auto-update”  
11 the database is that “received from external sources.” As discussed, the external sources are third  
12 parties and the information is thus the third party credentials data. Consequently, the court agrees  
13 with Morrisey that “the retrieved data” referenced in claim 1 is the “the obtained third party  
14 credentials data,” a term that incorporates the court’s construction of “third party credentials  
15 data.”

16 The court next considers whether “updating” should be construed to mean “replacing,” as  
17 Morrisey proposes, or whether it should instead be construed as “making a change to an aspect  
18 of the relational database,” as Medversant suggests. Morrisey’s argument that “updating” the  
19 database is limited to replacing matched data is not supported by the claims or the specification.  
20 Morrisey contends that only matches are updated because both the specification and claim 17 state  
21 that the “system may auto-update the database with matched data.”<sup>233</sup> As the court has noted,

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23 <sup>230</sup>*Id.*, col. 10:59-60.

24 <sup>231</sup>*Id.*, col. 10:64-66.

25 <sup>232</sup>*Id.*, col. 5:33-37.

26 <sup>233</sup>Patent, col. 12:3 (Claim 17: “auto-updating the database with matched information”);  
27 *id.*, col. 5:35-38 (“An exemplary system may then auto-update the database with matched  
28 information”); *id.*, col. 6:56-57 (“The described exemplary system may auto-update the database  
for matched data”).

1 however, claim 17 is presumed to be narrower in scope than claim 1; by limiting “updating” to  
2 “replacing . . . with matched data,” Morrisey’s construction improperly imports a limitation from  
3 the specification into the claim. While the specification states that the system “may auto-update  
4 the database with matched data,” this description does not preclude the other kinds of updates  
5 Medversant suggests, which includes supplementation of data in the database with data obtained  
6 from third parties.

7 Moreover, Morrisey’s proposed limitation is actually inconsistent with the description of  
8 the invention in the specification. The specification expressly describes changes to the relational  
9 database other than the replacement of matched data. It discusses, for example, the possibility that  
10 verification process will result in the discovery of supplemental data, which does not “match” the  
11 collected credentials information.<sup>234</sup> In order for the invention to “archive[ ]” this “received  
12 verification information” “in an online data repository, allowing web access and tracking”<sup>235</sup> or  
13 to “archive existing data into a history table,”<sup>236</sup> the system must update the relational database  
14 with unmatched data. Limiting the “updating” function to “matched data” only, therefore, is  
15 inconsistent with the described embodiments.

16 Medversant’s proposed construction is not only consistent with the specification, but with  
17 a technical dictionary, The Computer Glossary, which defines “update” as “to change data in a  
18 file or database. Update and edit are often used synonymously; however, edit implies changing  
19 existing data, while update also implies adding and deleting records.”<sup>237</sup> Morrisey’s use of the  
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21 <sup>234</sup>See Patent, col. 3:21-22 (describing and exemplary embodiment that would “alert the  
22 practitioner and all entities to which that practitioner is assigned of any . . . information reported  
23 by the source but not recorded in the practitioner’s credentials record” (emphasis added)); *id.*, col.  
24 8:38-39 (“the system transforms a practitioner’s credentials application from a static record into  
25 a dynamic, real-time comprehensive record that may be linked to enterprise-wide databases to  
capture or supplement other practitioner data” (emphasis added)).

26 <sup>235</sup>Patent, col. 5:45-47.

27 <sup>236</sup>*Id.*, col. 4:58-59.

28 <sup>237</sup>Pl.’s Opening Brief at 16-17.

1 term “replacing” is more consistent with the narrower definition of “edit” rather than “update,”  
2 as the latter “implies adding and deleting records.”

3 The court thus construes the term “updating the relational database with the retrieved data”  
4 to mean “making a change to the collected credentials information in the relational database based  
5 on obtained third party credentials data, including adding and deleting information.”

6 **8. “Notifying a User of Inconsistencies Between the Obtained Third Party**  
7 **Credentials Data and the Collected Credentials Information”**

8 The parties next request construction of the term “notifying a user of inconsistencies  
9 between the obtained third party credentials data and the collected credentials information.” This  
10 term appears in claims 1 and 23, in the phrase “automatically electronically notifying a user of  
11 inconsistencies between the obtained third party credentials data and the collected credentials  
12 information pertaining to the applicant.”<sup>238</sup>

13 **i. Medversant’s Construction**

14 Medversant contends that the term should be construed to mean “making a disclosure  
15 regarding the absence, mismatch or supplementation of data between the applicant’s collected  
16 credentials information and the third party credentials data.” It maintains that this definition  
17 “explains the nature of the inconsistencies of which the user is being notified, [i.e.,] that such  
18 inconsistencies may take the form of data absence, data mismatch, or data supplementation.”<sup>239</sup>  
19 In support of its construction, Medversant cites portions of the specification that refer to data  
20 absences, data mismatches, and data supplementation.<sup>240</sup>

21 \_\_\_\_\_  
22 <sup>238</sup>Patent, col. 10:64-67, 13:6-9.

23 <sup>239</sup>Pl.’s Opening Brief at 20.

24 <sup>240</sup>Medversant cites the following portions of the specification:

25 Data absences: Patent, col. 1:46-54 (“However, due to inefficiencies with current methods  
26 of data collection and verification, including the inability of current electronic systems to allow  
27 for the sharing of a central record of practitioner data, it is common for practitioner files at one  
28 entity to have credentials information that differs from the same practitioner files at another entity  
within the same system. Such differences may include missing data as well as differing  
experience, performance and license sanctions histories”); *id.*, col. 3:21-22 (“The WebCVO

1 Medversant contends that Morrisey’s construction improperly limits the term to one type  
2 of inconsistency and impermissibly imports into the claim the limitation of active transmission of  
3 an alert to a particular user, which is inconsistent with the specification.

4 **ii. Morrisey’s Proposed Construction**

5 Morrisey proposes that the term be construed to mean “sending an alert to a user  
6 identifying data mismatches between the obtained third party credentials data and the collected  
7 credentials information.” It asserts that this definition tracks the intrinsic evidence, which  
8 “dictates that ‘inconsistencies’ refer to ‘data mismatches’ between the obtained third party  
9 credentials data and the collected credentials information.”<sup>241</sup> Morrisey cites both the specification  
10 and the prosecution history in support of its construction. First, it cites the specification’s

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13 system may then alert the practitioner and all entities to which that practitioner is assigned of any  
14 information not validated by an external source and to information reported by the source but not  
15 recorded in the practitioner’s credentials record”); *id.*, col. 7:41-46 (“In practice the credentialing  
16 organization or the WebCVO verifies information received from the verifying source 440. If a  
17 verifying source responds with a ‘Record Not Found’ response 450, the described exemplary  
18 system may notify the practitioner via email, fax or letter 460 and ask for corrected information”).

19 Data mismatches: Patent, col. 3:20 (“any information not validated by an external  
20 source”); *id.*, col. 6:58-7:1 (“In addition, in one embodiment the described exemplary system may  
21 attempt to identify reasons for a mismatch between the verification data received from external  
22 sources and the credentials information entered by the applicant. For example, the system may  
23 electronically or manually attempt to identify clerical errors, such as typographical errors that may  
24 occur during the conversion of a scanned document to text by an optical character recognition  
25 program. The system may then request that the applicant provide an explanation for any data  
26 mismatches that cannot be attributed to errors in the data entry or correlation process”); *id.*, col.  
27 7:20-22 (“In addition, an exemplary system may route mismatched data as well as matched data  
28 to an electronic tickler for distribution to and manual verification by credentials staff”); *id.*, col.  
8:65-9:2 (“The application may also include . . . a warning log comprised of data mismatches and  
identified adverse actions 750 and common field level history tracking data. . .”).

24 Data supplementation: Patent, col. 8:38-39 (“In this manner, the system transforms a  
25 practitioner’s credentials application from a static record into a dynamic, real-time comprehensive  
26 record that may be linked to enterprise-wide databases to capture or supplement other practitioner  
27 data” (emphasis added)); *id.*, col. 9:12-13 (“The utilization of a standardized programming  
28 language further promotes the automatic utilization of the credentials information across  
enterprise-wide databases to capture or supplement other practitioner data” (emphasis added)).

<sup>241</sup>Def.’s Opening Brief at 16.

1 repeated references to “data mismatches,” and contends that Medversant used the term  
2 “inconsistencies” in the claims to refer to the “mismatches” discussed in the specification. It  
3 asserts that “[t]he patentee[s]’ statements upon introduction of the term ‘inconsistencies’ during  
4 prosecution . . . support [this] construction,”<sup>242</sup> and that “[t]here is no indication that  
5 ‘inconsistencies’ are anything other than ‘data mismatches’ between the two sets of credentials  
6 data,” as [t]he patent specification and prosecution history . . . do not refer to the ‘absence’ of  
7 data or ‘supplementation of data[.]”<sup>243</sup>

### 8 **iii. The Court’s Construction**

9 Morrisey is correct that this “claim element is closely related to the step of ‘comparing the  
10 obtained third party credentials data to the collected credentials information’” because it is as a  
11 result of the comparing step that a user is notified of inconsistencies between the obtained third  
12 party credentials data and the collected credentials information.”<sup>244</sup> As the court noted in its  
13 discussion of the “comparing” step, however, Medversant’s inclusion of language in the claim  
14 term definition regarding the absence or supplementation of data is consistent with the language  
15 of the claims and the specification.

16 Morrisey is incorrect that the specification envisions only a data mismatch in which the  
17 credentials information collected from the applicant and the credentials data obtained from third  
18 parties concerns the same historic facts. Morrisey’s proposed construction would cover the type  
19 of mismatch that would occur if an applicant reported that she attended a particular medical school  
20 from 1976 to 1980, but a query of the school’s database revealed that she had attended only from  
21 1976 to 1978. As the specification makes clear, this is not the only kind of “inconsistency” that

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23 <sup>242</sup>“The invention then compares the third party credentials data to the credentials  
24 information from the applicant and notifies a user of the inconsistencies between the two credential  
25 information [sic].” (Feigelson Decl, Exh. D at 186). “Applicants’ system provides a number of  
26 benefits not found in prior art systems. These features include . . . automatically electronically  
presenting the user with inconsistencies between the collected data and the obtained data.” (*Id.* at  
27 271).

28 <sup>243</sup>Def.’s Opening Brief at 17-18.

<sup>244</sup>*Id.* at 16.

1 can occur. The specification clearly discusses the possibility of an inconsistency arising from an  
2 absence of data, e.g., where an applicant reports his attendance at a particular medical school, but  
3 a query of the medical school’s database results in a no records response.<sup>245</sup> The specification  
4 makes clear that the system will “notify[ ] a user” about inconsistencies caused by an absence of  
5 data. Describing one embodiment, it states that “[i]f a verifying source responds with a ‘Record  
6 Not Found’ response 450, the . . . system may notify the practitioner via email, fax or letter . . .  
7 and ask for corrected information.”<sup>246</sup> The fact that “notify” is used both in this portion of the  
8 specification and in the claim term suggests that the reference in claims 1 and 23 to “notifying a  
9 user of inconsistencies” includes “notify[ing] the practitioner” of “a ‘Record Not Found’  
10 response.”

11 The specification also allows for the possibility that an applicant will have failed to report  
12 an event, such as a malpractice action, which is revealed by querying public websites or private  
13 databases.<sup>247</sup> This is what Medversant refers to as the “supplementation of data.” The  
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15 <sup>245</sup>Patent, col. 1:46-54 (“However, due to inefficiencies with current methods of data  
16 collection and verification, . . . it is common for practitioner files at one entity to have credentials  
17 information that differs from the same practitioner files at another entity within the same system.  
18 Such differences may include missing data as well as differing experience, performance and  
19 license sanctions histories” (emphasis added)); *id.*, col. 3:21-22 (“The WebCVO system may then  
20 alert the practitioner and all entities to which that practitioner is assigned of any information not  
21 validated by an external source and to information reported by the source but not recorded in the  
22 practitioner’s credentials record” (emphasis added)); *id.*, col. 7:41-46 (“In practice the  
23 credentialing organization or the WebCVO verifies information received from the verifying source  
24 440. If a verifying source responds with a ‘Record Not Found’ response 450, the described  
25 exemplary system may notify the practitioner via email, fax or letter 460 and ask for corrected  
26 information” (emphasis added)).

23 <sup>246</sup>*Id.*, col. 7:41-46 (emphasis added).

24 <sup>247</sup>*Id.*, col. 1:46-54 (“However, due to inefficiencies with current methods of data collection  
25 and verification, . . . it is common for practitioner files at one entity to have credentials  
26 information that differs from the same practitioner files at another entity within the same system.  
27 Such differences may include missing data as well as differing experience, performance and  
28 license sanctions histories” (emphasis added)); *id.*, col. 3:21-22 (“The WebCVO system may then  
alert the practitioner and all entities to which that practitioner is assigned of any information not  
validated by an external source and to information reported by the source but not recorded in the

1 specification describes an embodiment that “alert[s] the practitioner and all entities to which that  
2 practitioner is assigned of any . . . information reported by the source but not recorded in the  
3 practitioner’s credentials record.”<sup>248</sup> This is an embodiment of the notification process claimed  
4 in claims 1 and 23, and expressly anticipates a scenario in which a third party database – i.e., a  
5 source – provides supplemental information not previously “recorded in the practitioner’s  
6 credentials record” – i.e., the collected credentials information. The specification also explains  
7 that “the system transforms a practitioner’s credentials application from a static record into a  
8 dynamic, real-time comprehensive record that may be linked to enterprise-wide databases to  
9 capture or supplement other practitioner data.”<sup>249</sup> While this portion of the specification concerns  
10 the time-stamping and auditing functions of the invention, it supports Medversant’s contention that  
11 the system is designed to supplement “collected credentials information” provided by practitioners  
12 with the “obtained third party credentials data,” not simply to identify mismatches between data  
13 sets that concern the same historic facts.

14 While the term “mismatch” is broad enough to include inconsistencies resulting from  
15 absent or supplemental information, it would do a disservice to the factfinder not to highlight this  
16 aspect of the term’s definition expressly. The term “mismatch” is ambiguous; it could be given  
17 the narrow interpretation Morrisey proposes or could encompass the broader types of mismatches  
18 that are covered by the patent. Construing “inconsistencies” only as “mismatches” would inject  
19 ambiguity into the term, and risk an interpretation by the factfinder that is at odds with the patent.  
20 See *Saffran v. Johnson & Johnson*, \_\_ F.Supp.2d \_\_, 2010 WL 3766568, \*10 (E.D. Tex. Sept.

21 \_\_\_\_\_  
22 practitioner’s credentials record” (emphasis added)); *id.*, col. 8:38-39 (“In this manner, the system  
23 transforms a practitioner’s credentials application from a static record into a dynamic, real-time  
24 comprehensive record that may be linked to enterprise-wide databases to capture or supplement  
25 other practitioner data” (emphasis added)); *id.*, col. 9:12-13 (“The utilization of a standardized  
26 programming language further promotes the automatic utilization of the credentials information  
across enterprise-wide databases to capture or supplement other practitioner data” (emphasis  
added)).

27 <sup>248</sup>*Id.*, col. 3:21-22 (emphasis added).

28 <sup>249</sup>*Id.*, col. 8:38-39 (emphasis added).

20, 2010) (rejecting plaintiff’s construction because it “adds ambiguity to the phrase”); *Glaxo Group LTD v. Teva Pharmaceuticals USA, Inc.*, No. 07-713-JJF, 2009 WL 1220544, \*4 (D.Del. April 30, 2009) (“Furthermore, the Court is concerned that GSK’s proposed construction will not clarify the claims, but introduce ambiguity”); see also *Becton, Dickinson and Co. v. Tyco Healthcare Group, LP*, 616 F.3d 1249, 1262 (Fed. Cir. 2010) (Gajarsa, J., dissenting) (disagreeing with the majority’s construction because it “injects ambiguity into the claims”).

For these reasons, the court construes the term “notifying a user of inconsistencies between the obtained third party credentials data and the collected credentials information” as “disclosing to a user the absence in the obtained third party credentials data of information that appears in an applicant’s collected credentials information, the absence in an applicant’s collected credentials information of information that appears in the obtained third party credentials data, a mismatch between information reported in the obtained third party credentials data and the applicant’s collected credentials information, or information in the obtained third party credentials data that supplements the applicant’s collected credentials information.”<sup>250</sup>

**C. Means-Plus-Function Terms**

**1. Standard for Determining the Corresponding Structure of a Means-Plus-Function Claim Involving a Computer**

As noted, construction of a means-plus-function limitation involves two steps. First, the court must identify and interpret the claimed function using ordinary principles of claim construction. Second, it must determine what structure disclosed in the specification corresponds to the claimed function. If no corresponding structure is disclosed, the claim is invalid for indefiniteness. Because the second step is a central focus of the parties’ dispute in this case, the

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<sup>250</sup>The court added the phrase “to a user” because the claim language is clear to whom the “disclosure” is made. Medversant’s construction – “making a disclosure regarding” – failed to take into account this aspect of the claim language. The specification similarly notes that in one embodiment, both “practitioner[s] and all entities to which th[ose] practitioner[s] [are] assigned” receive notification “of information not validated by an external source and . . . information reported by a source but not recorded in the practitioner’s credentials record.” (Patent, col. 3:18-22).

1 court offers a more detailed discussion of the legal standard governing identification of the  
2 corresponding structure of a claimed computer program.

3 Patent claims are generally afforded “a presumption of validity based on compliance with,  
4 *inter alia*, § 112 ¶ 2.” *S3 Inc. v. NVIDIA Corp.*, 259 F.3d 1364, 1367 (Fed. Cir. 2001) (citing  
5 *Budde v. Harley Davidson, Inc.*, 250 F.3d 1369, 1376 (Fed. Cir. 2001)).<sup>251</sup> “[A] claim is not  
6 indefinite merely because it poses a difficult issue of claim construction; if the claim is subject to  
7 construction, i.e., it is not insolubly ambiguous, it is not invalid for indefiniteness.” *Bancorp*  
8 *Servs., L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367, 1371 (Fed. Cir. 2004) (citing *Honeywell*  
9 *Int’l, Inc. v. Int’l Trade Comm’n*, 341 F.3d 1332, 1338-39 (Fed. Cir. 2003)). “[C]lose questions  
10 of indefiniteness in litigation involving issued patents are [thus] properly resolved in favor of the  
11 patentee.” *Id.* (quoting *Exxon Research & Eng’g Co. v. United States*, 265 F.3d 1371, 1380  
12 (Fed. Cir. 2001)).

13 “The test for indefiniteness [is] . . . whether the claim delineates to a skilled artisan the  
14 bounds of the invention.” *SmithKline Beecham Corp. v. Apotex Corp.*, 403 F.3d 1331, 1340-41  
15 (Fed. Cir. 2005). Therefore, “a challenge to a claim containing a means-plus-function limitation  
16 as lacking structural support requires a finding, by clear and convincing evidence, that the  
17 specification lacks disclosure of structure sufficient to be understood by one skilled in the art as  
18 being adequate to perform the recited function.” *Budde*, 250 F.3d at 1377. If insufficient  
19 structure is disclosed in the specification, the claim is invalid for failure to satisfy the definiteness  
20 requirement of § 112, ¶ 2. *Id.* at 1376.

21 Generally, once an overall structure is disclosed, the details of each element of the structure  
22 need not be recited in detail. See *Raytheon Co. v. McData Corp.*, CV 03-013 TJW, 2004 WL  
23 952284, \*6 (E.D. Tex. Feb. 10, 2004) (“Usually, once a court is able to identify an overall  
24 structure that performs the claimed function, there is no need to delve deeper and identify the  
25 internal components of that structure that, individually or collectively, enable the overall structure

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27 <sup>251</sup>35 U.S.C. § 112 ¶ 2 states: “The specification shall conclude with one or more claims  
28 particularly pointing out and distinctly claiming the subject matter which the applicant regards as  
his invention.”

1 to perform the claimed function”).

2 Specialized rules apply, however, when the disclosed structure of a means-plus-function  
3 limitation is a computer or microprocessor programmed to carry out a function. The Federal  
4 Circuit addressed the scope of the corresponding structure that must be disclosed with respect to  
5 a claim involving a programmed computer in *WMS Gaming, Inc. v. International Game*  
6 *Technology*, 184 F.3d 1339 (Fed. Cir. 1999). It held that where the written description describes  
7 the use of software to perform a claimed function of a means-plus-function claim, a district court  
8 errs if it does not limit the corresponding structure to the algorithm of the software actually  
9 disclosed in the specification. Specifically, the court stated:

10 “The district court determined that the structure disclosed in the specification to  
11 perform the claimed function was ‘an algorithm executed by a computer.’ While  
12 this finding accurately reflected the parties’ stipulation, the court erred by failing  
13 to limit the claim to the algorithm disclosed in the specification. The structure of  
14 a microprocessor programmed to carry out an algorithm is limited by the disclosed  
15 algorithm. *A general purpose computer, or microprocessor, programmed to carry*  
16 *out an algorithm creates ‘a new machine, because a general purpose computer in*  
17 *effect becomes a special purpose computer once it is programmed to perform*  
18 *particular functions pursuant to instructions from program software.’” *Id.* at 1348  
19 (emphasis added).*

20 Courts since *WMS Gaming* have uniformly held that merely identifying a general purpose  
21 computer as the corresponding structure is insufficient. See *Aristocrat Tech. Australia Pty Ltd.*  
22 *v. Int’l Game Technology*, 521 F.3d 1328, 1333 (Fed. Cir. 2008) (the Federal Circuit has  
23 “consistently required that the structure disclosed in the specification be more than simply a  
24 general purpose computer or microprocessor”), cert denied, 129 S.Ct. 754 (2008); see also  
25 *Blackboard Inc. v. Desire2Learn, Inc.*, 574 F.3d 1371, 1384 (Fed. Cir. 2009) (same); *Net*  
26 *MoneyIN, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 1367 (Fed. Cir. 2008) (same).

27 Nine years after *WMS Gaming*, the Federal Circuit, in *Aristocrat*, 521 F.3d at 1328,  
28 further clarified the requirements for disclosing an algorithm where a computer is the

1 corresponding structure of a means-plus-function claim. Discussing the need to disclose more than  
2 a general purpose computer, the court noted:

3 “The point of the requirement that the patentee disclose particular structure in the  
4 specification and that the scope of the patent claims be limited to that structure and  
5 its equivalents is to avoid pure functional claiming. . . . ‘If the specification is not  
6 clear as to the structure that the patentee intends to correspond to the claimed  
7 function, then the patentee has not paid the price but is attempting to claim in  
8 functional terms unbounded by any reference to structure in the specification.’ . . .  
9 Because general purpose computers can be programmed to perform very different  
10 tasks in very different ways, simply disclosing a computer as the structure  
11 designated to perform a particular function does not limit the scope of the claim to  
12 ‘the corresponding structure, material, or acts’ that perform the function, as  
13 required by section 112 paragraph 6.” *Id.* at 1333.

14 Applying this standard, the court examined whether the specification in the patent before it  
15 adequately described a corresponding structure. It stated: “Aristocrat acknowledges that the only  
16 portion of the specification that describes the structure corresponding to the three functions  
17 performed by the ‘control means’ is the statement that it is within the capability of a worker in the  
18 art ‘to introduce the methodology on any standard microprocessor base[d] gaming machine by  
19 means of appropriate programming.’ That description goes no farther than saying that the claimed  
20 functions are performed by a general purpose computer.” *Id.* at 1334. The court noted  
21 additionally that “[t]he reference to ‘appropriate programming’ imposes no limitation whatever. . .  
22 . The term “appropriate programming” simply references a computer that is programmed so that  
23 it performs the function in question, which is to say that the function is performed by a computer  
24 that is capable of performing the function.” *Id.*

25 The *Aristocrat* court also explained that merely disclosing the *results* to be achieved by  
26 performing the recited functions did not provide a sufficient disclosure of corresponding structure  
27 since that level of generality did not show what means were to be used to perform the function.  
28 See *id.* (“Aristocrat also points to language in claim 1 that, according to Aristocrat, ‘sets forth the

1 mathematical equation that describes the result of practicing the third function.’ . . . The problem  
2 with Aristocrat’s argument is underscored by Aristocrat’s very characterization of the role of the  
3 equation: It describes the result of practicing the third function. . . . [T]he equation describes an  
4 outcome, not a means for achieving that outcome. The equation thus does not disclose the  
5 structure of the claimed device, but is only another way of describing the claimed function”).

6 Despite the need to disclose an algorithm, courts have repeatedly recognized that the  
7 specification need not disclose all of the specific details of the algorithm, such as computational  
8 routines or formulas.<sup>252</sup> As with other claims, “[w]hether a specification discloses adequate  
9 structure corresponding to a means-plus-function limitation is determined from the viewpoint of  
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11 <sup>252</sup>See, e.g., *Tech. Patents LLC v. Deutsche Telekom AG*, \_\_\_ F.Supp.2d \_\_\_, 2010 WL  
12 3385397, \*21 (D. Md. Aug. 25, 2010) (“the patent need not [itself] disclose an algorithm; a  
13 description of an algorithm that would allow someone skilled in the art to envision structures  
14 capable of carrying out the corresponding function is sufficient,” citing *Med. Instrumentation &*  
15 *Diagnosics Corp. v. Elekta AB*, 344 F.3d 1205, 1214 (Fed. Cir. 2003) (there is “no need for a  
16 disclosure of the specific program code if software [is] linked to the [claimed] function and one  
17 skilled in the art would know the kind of program to use”)); *SPX Corp. v. Bartec USA, LLC*, 557  
18 F.Supp.2d 810, 819-20 (E.D. Mich. 2008) (“The evidence shows that modulation is a simple  
19 process that is well known in the art, and not some new development on the cutting edge of  
20 electrical and computer engineering. To ask a patentee to outline the steps for providing  
21 modulation would be to ask for a level of detail that is both unnecessary and problematic. If  
22 details of this variety were required, the purpose behind § 112, ¶6 would be defeated and every  
23 patent would have to ‘include a technical treatise for the unskilled reader.’”); see also *AllVoice*  
24 *Computing PLC v. Nuance Communications, Inc.*, 504 F.3d 1236, 1245 (Fed. Cir. 2007)  
25 (reversing a summary judgment of invalidity for indefiniteness of a means-plus-function claim with  
26 software as the corresponding structure, because flowcharts included in the specification provided  
27 sufficient algorithmic structure to allow one of skill in the art to program the claimed functions);  
28 *Bedrock Computer Technologies, LLC v. Softlayer Technologies, Inc.*, No. 6:09cv269 LED-JDL,  
2011 WL 91089, \*13 (E.D. Tex. 2011) (rejecting an accused infringer’s contention that a  
means-plus-function claim claiming the function of using a search key to access a linked list failed  
to disclose corresponding structure; the court construed the structure to require a CPU, a RAM  
memory, and software that executed instructions identified in flow charts in the patent figures or  
disclosed in the specification); *Better Educ., Inc. v. EInstruction Corp.*, No. 2:08-CV-446-CE,  
2010 WL 1711254, \*5 (E.D. Tex. Apr. 27, 2010) (denying a motion for summary judgment and  
finding that the steps shown in a flow chart were the steps of the algorithm and not just a list of  
desired results or functions); *DR Systems, Inc. v. Eastman Kodak Co.*, No. 08-CV-669-H (BLM),  
2009 WL 3756765, \*8 (S.D. Cal. Nov. 9, 2009) (denying a motion for summary judgment where  
the court found that the specification disclosed a process that served as the algorithm).

1 one of ordinary skill in the art.” *Aristocrat Technologies Australia Pty Ltd. v. Multimedia Games,*  
2 *Inc.*, 266 Fed. Appx. 942, 946 (Fed. Cir. Feb. 22, 2008) (Unpub. Disp.) (citing *Atmel Corp. v.*  
3 *Info. Storage Devices, Inc.*, 198 F.3d 1374, 1378 (Fed. Cir. 1999) (“[I]t is well-established that  
4 the determination whether a claim is invalid as indefinite ‘depends on whether those skilled in the  
5 art would understand the scope of the claim when the claim is read in light of the specification,’”  
6 quoting *N. Am. Vaccine, Inc. v. Am. Cyanamid Co.*, 7 F.3d 1571, 1579, (Fed. Cir. 1993)).  
7 Therefore, “the patentee need not disclose details of structures well known in the art.” *Default*  
8 *Proof Credit Card Sys., Inc. v. Home Depot U.S.A., Inc.*, 412 F.3d 1291, 1302 (Fed. Cir. 2005).

9 Because “patents are presumed to be valid,” the party challenging the patent “bears the  
10 burden of proving that an ordinary artisan would not understand the disclosure.” *Telcordia*  
11 *Techs., Inc. v. Cisco Sys., Inc.*, 612 F.3d 1365, 1377 (Fed. Cir. 2010) (citing 35 U.S.C. § 282;  
12 *Aero Prods. Int’l, Inc. v. Intex Rec. Corp.*, 466 F.3d 1000, 1015 (Fed. Cir. 2006)). The Federal  
13 Circuit has “been generous in finding something to be a corresponding structure when the  
14 specification contain[s] a generic reference to structure that would be known to those in the art and  
15 that structure was clearly associated with performance of the claimed function.” *Elekta AB*, 344  
16 F.3d at 1213-14.

17 **2. “Means for Querying Automatically on a Periodic Basis Third Party**  
18 **Databases”**

19 This means-plus-function term appears in claims 23 and 36. The parties agree that the  
20 terms that comprise the recited function have the same meaning as “querying . . . third party  
21 databases,” “automatically,” and “on a periodic basis,” terms the court has already construed.  
22 The parties agree, therefore, that the court need not separately construe this multi-word claim  
23 term.<sup>253</sup> They disagree as to the identification of corresponding structure.

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25 <sup>253</sup>See Pl.’s Opening Brief at 21 n. 3 (“To the extent that this term includes other construed  
26 terms as parts of it, the constructions proposed above for those terms should be applied to them.  
27 Given this, there is little need to apply a special construction to the overall term itself”); Def.’s  
28 Opening Brief at 20 (“The parties agree that . . . the terms and phrases of the recited function  
include the same meanings as the ‘querying . . . third party databases,’ ‘automatically,’ and ‘on  
a periodic basis’ terms and phrases which are discussed above”).

1                   **i.       Medversant’s Proposed Structure**

2           Medversant argues that the corresponding structure is “one or more general purpose  
3 computing devices operatively coupled in a distributed system by a communication network with  
4 one or more associated servers, the computing devices programmed to query automatically, or  
5 operatively cause the servers to query automatically, on a periodic basis third party databases  
6 having third party credentials data relating to the collected credentials information (e.g., via web  
7 crawler, link, conventional database queries).”

8           Medversant contends that its construction “strictly conforms to Federal Circuit  
9 pronouncements on the proper corresponding structure to be identified when a means-plus-function  
10 term claims a programmed computing device performing a specified function,” because the “term  
11 pertains to computer hardware performing programmed functions, [and] the proper corresponding  
12 structure is therefore straightforwardly the various identified functions/algorithms and the  
13 hardware performing those functions/algorithms.”<sup>254</sup>

14           Medversant asserts that the specification identifies computer hardware, including many  
15 different types of data processing and communications equipment, in FIG. 1 and in the written  
16 description.<sup>255</sup> It contends that the “algorithm for performing the disclosed function is disclosed  
17 in the specification both graphically in drawings and in words . . . in the written description and  
18

19 \_\_\_\_\_  
20           <sup>254</sup>Pl.’s Opening Brief at 22.

21           <sup>255</sup>See, e.g., Patent, col. 3:29-4:35 (“The described exemplary electronic credentials system  
22 10 includes multiple remote devices 20a and 20b coupled to one or more web servers 30 through  
23 a remote communication network 40. The communication network may refer to a network or  
24 combination of networks spanning any geographical area, such as a local area network, wide area  
25 network, regional network, national network, and/or global network. . . . In addition, the  
26 communication network may be a hardwire network, wireless network, or a combination of  
27 hardwire and wireless networks. . . . The remote devices 20a-20b may be general purpose  
28 computing devices that allow users to remotely communicate with the web server over the  
communication network 40. The computing devices may be any processor controlled device that  
permits access to the communication network, including terminal devices, such as personal  
computers. . . , personal digital assistants, interactive or web enabled wireless communications  
devices. . .”).

1 in the claims themselves.”<sup>256</sup> Specifically, Medversant argues that in the specification there is  
2 “clear disclosure of a distributed computer system with a client-server architecture  
3 including an XML enabled dynamic relational database that contains practitioner  
4 records arranged in fields according to the practitioners’ areas of practice. The  
5 database is linked to external databases for retrieving information pertinent to the  
6 practitioner’s record via web crawlers or links. Web crawlers are a well known  
7 artifact of computer code for accessing a database, and links are fundamental, well  
8 known aspects of a dynamic relational database. Moreover, the specification goes  
9 into considerable detail as to how to program the database to correlate or compare  
10 the retrieved information with the collected information.”<sup>257</sup>

11 In support of its position, Medversant proffers the testimony of two expert witnesses:  
12 Professor Yuval Tamir,<sup>258</sup> who opines on the information technology aspects of the invention, and  
13 Dr. Jeffrey Guterman,<sup>259</sup> who offers opinions concerning the professional credentialing aspects

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14  
15 <sup>256</sup>Pl.’s Opening Brief at 23.

16 <sup>257</sup>Pl.’s Responding Brief at 18.

17 <sup>258</sup>Tamir is an associate professor of computer science at the University of California, Los  
18 Angeles (“UCLA”). (Notice of Errata, Docket No. 157 (January 24, 2011), Attachment 1  
19 (Declaration of Yuval Tamir (“Tamir Decl.”)), ¶ 2). He is the founder and director of UCLA’s  
20 Computer Science Concurrent Systems Laboratory. (*Id.*) He holds a Ph.D. degree from the  
21 University of California, Berkeley in Electrical Engineering and Computer Sciences, and has  
thirty-five years of experience in the field of computer science. (*Id.*).

22 <sup>259</sup>Guterman is the Medical Director for Clinical Resource Management at the Los Angeles  
23 County Department of Health Services, as well as the Chief Medical Officer of 4PatientCare, Inc.  
24 in Los Angeles. (Notice of Errata, Attachment 3 (Declaration of Dr. Jeffrey Guterman  
25 (“Guterman Decl.”)), ¶ 2). In addition to his medical degree, Guterman has a master of science  
26 degree from the University of Chicago, where his thesis topic was “The Computer Enhancement  
27 of Triage and Management Decision in the Department of Emergency Medicine.” (*Id.*) He has  
28 “more than 25 years of experience as a physician, and nearly 20 years of experience in medical  
management, including direct responsibility as the senior-most executive responsible for the  
credentialing of professionals at Olive-View UCLA Medical Center. [He is] experienced in the  
use of computers and software in the health professions including clinical and administrative use.”  
(*Id.*). Guterman has written software for the operations of a medical staff office, poison control

1 of the invention. Tamir states that the “patent specification discloses numerous details about  
2 performing” the function of “querying automatically on a periodic basis third party databases.”<sup>260</sup>

3 He states that

4 “[a] person skilled in the art would be very familiar with standard computer terms,  
5 such as ‘database’, ‘querying a database’, ‘updating a database’, ‘sending a request  
6 to a database’, ‘HTTP request’, ‘HTTPS query’, and ‘web crawler.’ They would  
7 also be familiar with mechanisms for causing a computer system to perform various  
8 functions according to a schedule. Knowledge of these standard terms and  
9 mechanisms, together with the implementation details disclosed in the ’682 patent  
10 . . . would enable one skilled in the art to understand the way or ways in which the  
11 function is performed and the results of performing the function.”<sup>261</sup>

12 Guterman echoes Tamir’s opinion, stating that “[t]o a person skilled in the art, the specification  
13 provides clear guidance by providing both standard, familiar computer terms and standard,  
14 familiar terms for medical staff credentialing. A person skilled in the art would be familiar with  
15 how to implement the actions specified using a number of approaches available for computer  
16 systems. . . . The specification allows one skilled in the art to understand what would be required  
17 to program a general-purpose computer to perform this function.”<sup>262</sup>

18 **ii. Morrisey’s Proposed Structure**

19 Morrisey contends that the specification of the ’682 patent “lacks sufficient algorithmic  
20 disclosure to implement the claimed ‘querying’ function.” It asks the court to hold that no such  
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22  
23 \_\_\_\_\_  
24 centers, cardio-vascular risk assessment and chronic disease management. (*Id.*). He teaches the  
25 Medical Informatics course at UCLA’s Anderson School of Management and is an executive in  
several healthcare technology companies. (*Id.*).

26 <sup>260</sup>Tamir Decl., ¶ 8.

27 <sup>261</sup>*Id.*, ¶ 9.

28 <sup>262</sup>Guterman Decl., ¶ 11.

1 algorithm is disclosed in the patent.<sup>263</sup> Morrissey proposes that the structure corresponding to  
2 “means for querying automatically on a periodic basis third party databases” be defined as “an  
3 algorithm running on a computer that automatically makes requests to, on a periodic basis, the  
4 schools, hospitals, peers, all government agencies, and other regulatory bodies that maintain such  
5 information.”<sup>264</sup> Building on this definition, it asserts that the patent specification lacks detail as  
6 to how the querying function, and the larger functions of “automatically obtaining” and  
7 “automatically verifying” information, are implemented.<sup>265</sup>

8 Morrissey proffers the expert testimony of Dr. H. E. Dunsmore, a professor of computer  
9 science at Purdue University, to support its contention that the '682 patent fails adequately to  
10 identify a structure corresponding to “means for querying automatically on a periodic basis third  
11 party databases.”<sup>266</sup> Dunsmore opines that the specification’s discussion of web crawlers, links,  
12 and conventional methods of querying a database, “are simply statements of outcome; they do not  
13 explain how the outcome is achieved.”<sup>267</sup> He asserts that the specification’s statement that “in an  
14 online verification system an encrypted request for verification may be included as parameters on  
15 an HTTPS query string to verification sites” is “only . . . an indication of a protocol that may be  
16 used. It does not provide an algorithm to be used.”<sup>268</sup> Dunsmore states that the specification of

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17  
18 <sup>263</sup>Def.’s Opening Brief at 22.

19 <sup>264</sup>*Id.*

20 <sup>265</sup>*Id.* at 20-21.

21 <sup>266</sup>Dunsmore has worked in the computer industry for more than thirty years. (Def.’s  
22 Opening Brief, Attachment 1 (Declaration of Dr. H.E. Dunsmore (“Dunsmore Decl.”)), ¶ 2).  
23 He received a B.S. in mathematics and physics from the University of Tennessee in Knoxville in  
24 1968 with a concentration in computer science. (*Id.*) In 1970, he received the first M.S. degree  
25 in computer science granted by the University of Tennessee. (*Id.*) In 1978, he received a Ph.D.  
26 in computer science from the University of Maryland. (*Id.*) During his thirty-two years on the  
faculty at Purdue, he has consulted with several firms, including IBM and AT&T, has co-authored  
books on the internet and software engineering, and has written numerous technical papers. (*Id.*)

27 <sup>267</sup>*Id.*, ¶ 13.

28 <sup>268</sup>*Id.*, ¶ 14.

1 the '682 patent provides “only high-level descriptions of the claimed function” and, in his opinion,  
2 “lacks details that a person skilled in the art would need to know in order to implement any  
3 specific algorithm.”<sup>269</sup> As an example, he asserts that “the specification lacks any indication as  
4 to a set of steps the web crawler should follow to find the third party credentials data. A web  
5 crawler could continuously follow all possible links that may contain verification information.  
6 Alternatively, a web crawler could be modified to target only specified links to capture the  
7 credentials data for the targeted practitioners.”<sup>270</sup>

8 Dunsmore also maintains that “the specification lacks any indication as to how a link would  
9 be used to find the third party credentials data. For example, a link to a specific third party site  
10 could be used or a link to an intermediary site could be used to find the specific third party site.  
11 The specification lacks details as to [the] further steps that will occur after a link is established.”<sup>271</sup>  
12 He also contends that “[i]f [the patent envisions that] a conventional method of querying a database  
13 [will be] used, the patent specification provides no details as to how to determine what databases  
14 to query, how to reach those databases, how to access them, or how to query them.”<sup>272</sup>

15 **iii. The Court’s Conclusion Regarding the Corresponding Structure**

16 The parties do not dispute that the “querying” function is carried out by “multiple remote  
17 devices . . . coupled to one or more web servers . . . through a remote communication network”  
18 described in Figure 1.<sup>273</sup> This, among other features depicted in Figure 1, is what Medversant  
19 describes as the “general-purpose hardware”<sup>274</sup> or the “different types of computing and  
20 communications hardware and data structures that do or may implement the functions set forth by  
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22 <sup>269</sup>*Id.*, ¶¶ 17-18.

23 <sup>270</sup>*Id.*, ¶ 18.

24 <sup>271</sup>*Id.*, ¶ 19.

25 <sup>272</sup>*Id.*, ¶ 20.

26 <sup>273</sup>Patent, col. 3:30-34.

27 <sup>274</sup>Pl.’s Opening Brief at 23.

1 the patent.”<sup>275</sup> Morrissey appears to concede that Medversant has correctly identified the computer  
2 hardware associated with the querying function. The parties’ dispute centers on whether the patent  
3 sufficiently discloses the algorithm required to carry out the querying function.

4 As stated previously, whether the specification adequately discloses a corresponding  
5 structure must be judged from the perspective of one of ordinary skill in the art. See *Elekta AB*,  
6 344 F.3d 1213-14; *Atmel Corp.*, 198 F.3d at 1380 (“[I]nterpretation of what is disclosed must be  
7 made in light of the knowledge of one skilled in the art”); *Medtronic, Inc. v. Advanced*  
8 *Cardiovascular Sys., Inc.*, 248 F.3d 1303, 1313 (Fed. Cir. 2001) (holding that particular  
9 structures were not corresponding because “one skilled in the art would not perceive any clear link  
10 or association between these structures and the [recited] function of connecting adjacent elements  
11 together”).

12 Morrissey contends that the specification “provides only high-level descriptions of the  
13 claimed ‘querying automatically’ function”<sup>276</sup> and therefore “lacks details that a person skilled in  
14 the art would need to know in order to implement any specific algorithm.”<sup>277</sup> Medversant counters  
15 that “the structural disclosures in the ’682 Patent specification are . . . sufficient to allow those  
16 of skill in the art to know the algorithms that could be used for these functions” because “the  
17 specification deals in standard information technology building blocks that are well known in the  
18 art.”<sup>278</sup> Medversant also asserts that “additional structure is disclosed in the patent regarding the  
19 information processing hardware itself,” in that “[t]he patent does not claim a generic computing  
20 device, but rather discloses a particular hardware configuration of interconnected computers and  
21 data communications networks organized in the well-known ‘client-server computing’  
22  
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24 <sup>275</sup>*Id.* at 22.

25 <sup>276</sup>Def.’s Opening Brief at 21.

26 <sup>277</sup>Dunsmore Decl., ¶ 18.

27 <sup>278</sup>Pl.’s Responding Brief at 20.

1 structure.”<sup>279</sup>

2 Medversant identifies the following as disclosures of the “particular hardware  
3 configuration” in the specification:

4 “FIG. 1 illustrates an exemplary electronic credentials system [ ]. The described  
5 electronic credentials system [ ] includes multiple remote devices [ ] coupled to one  
6 or more web servers [ ] through a remote communication network [ ]. The  
7 communication network may refer to a network or combination of networks  
8 spanning any geographical area, such as a local area network, wide area network,  
9 regional network, national network, and/or global network. The Internet is an  
10 example of a current global computer network. In addition, the communication  
11 network may be a hardwire network, wireless network, or a combination of  
12 hardwire and wireless networks.

13 Hardwire networks may include, for example, fiber optic lines, cable lines, ISDN  
14 lines, copper lines, etc. Wireless networks may include, for example, cellular  
15 systems, personal communications service (PCS) systems, satellite communication  
16 systems, packet radio systems, and mobile broadband systems. A cellular system  
17 may use, for example, code division multiple access (CDMA), time division  
18 multiple access (TDMA), personal digital phone (PDC), Global System Mobile  
19 (GSM), or frequency division multiple access (FDMA), among others.

20 The remote devices . . . may be general purpose computing devices that allow users  
21 to remotely communicate with the web server over the communication  
22 network. . . . The computing devices may be any processor controlled device that  
23 permits access to the communication network, including terminal devices, such as

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24  
25 <sup>279</sup>*Id.* at 20 (citing Tamir Decl., ¶ 15 (“The hardware devices being described would be  
26 known to one of ordinary skill in the art. It would further be clear to a person of ordinary skill  
27 in the art that this portion of the specification is referring to an information technology structure  
28 and data communication scheme known as ‘client-server computing,’ and such person of ordinary  
skill in the art would recognize the algorithms and programs, which are well-known in the art, that  
would be used to implement this disclosed structure and scheme”)).

1 personal computers, workstations, servers, clients, mini-computers, main-frame  
2 computers, laptop computers, a network of individual computers, mobile  
3 computers, palm-top computers, hand-held computers, set top boxes for a  
4 television, other types of web enabled televisions, interactive kiosks, personal  
5 digital assistants, interactive or web enabled wireless communications devices,  
6 mobile web browsers, or a combination thereof.”<sup>280</sup>

7 Based on this portion of the specification, Medversant argues that the structure that corresponds  
8 to “means for querying automatically on a periodic basis third party databases” is “one or more  
9 general purpose computing devices operatively coupled in a distributed system by a  
10 communication network with one or more associated servers. . . .” Medversant’s expert, Tamir,  
11 opines that “[t]he hardware devices being described would be known to one of ordinary skill in  
12 the art.”<sup>281</sup> Morrissey does not appear to dispute this.

13 As respects specific programming algorithms disclosed in the specification, Medversant  
14 cites the following:

15 “The . . . system may then automatically contact various entities such as, for  
16 example, schools, hospitals, or peers to request verification information . . . , via  
17 for example, a web crawler, link, or other conventional method of querying a  
18 database. [¶] For example, in an online verification system an encrypted request  
19 for verification may be included as parameters on an HTTPS query string to  
20 verification sites. . . . The described exemplary system may also auto-generate  
21 email, fax or letter requests to non-electronic verification sources including payment  
22 of verification fees. [¶] An exemplary system may send requests for verification  
23 information by fax, letter or email. . . . An exemplary system may also  
24 automatically check the websites of all government agencies (for example, via a  
25 web crawler, link or other conventional method of querying a database), or other

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27 <sup>280</sup>*Id.*, col. 3:29-4:3 (emphasis added).

28 <sup>281</sup>Tamir Decl., ¶ 15.

1 regulatory bodies for information related to the practitioner’s credentials. . . .”<sup>282</sup>

2 The specification continues:

3 “The . . . system may retrieve electronic data from primary source verification  
4 websites. . . . The . . . system may send requests to non-electronic data sources  
5 via email, letter or fax, (or phone) including a copy of a release from the  
6 corresponding practitioner with electronic signature and delineation of privileges,  
7 if desired. . . .”<sup>283</sup>

8 The specification states that, “[i]n one embodiment, the system may automatically track the receipt  
9 of verification information and may automatically re-send verification requests if information is  
10 not received. In an exemplary embodiment, time frame intervals for the resending of verification  
11 requests are determined by the verifying organization. Further, non-responsive sources may be  
12 routed to an electronic tickler program for distribution to and follow up by credentials staff.”<sup>284</sup>

13 Medversant contends that these portions of the specification disclose an algorithm by which  
14 the “querying” function is accomplished. In particular, it cites the specification’s references to  
15 “a web crawler, link or other conventional method of querying a database,”<sup>285</sup> which are  
16 incorporated into its proposed construction of the corresponding structure. Tamir explains that  
17 a person skilled in the art “would be very familiar with the[se] standard computer terms” and  
18 “with mechanisms for causing a computer system to perform various functions according to a  
19 schedule.”<sup>286</sup> Therefore, he opines that “[k]nowledge of these standard terms and mechanisms,  
20 together with the implementation details disclosed in the ’682 patent, . . . would enable one skilled  
21 in the art to understand the way or ways in which the function is performed and the results of  
22

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23 <sup>282</sup>Patent, col. 5:10-32 (emphasis added).

24 <sup>283</sup>*Id.*, col. 6:47-53.

25 <sup>284</sup>*Id.*, col. 7:5-12.

26 <sup>285</sup>*Id.*, col. 5:10-32 (emphasis added).

27 <sup>286</sup>Tamir Decl., ¶ 9.

1 performing the function.”<sup>287</sup>

2 Medversant likens the basic algorithmic structure disclosed in the specification to that  
3 which the Federal Circuit found sufficient in *AllVoice Computing PLC*, 504 F.3d 1236. There,  
4 the patent claimed an interface between a speech recognition engine and various end-user  
5 application programs. *Id.* at 1238. The district court found that two means plus function  
6 limitations – “determining positions of the recognized words” and “updating word positions after  
7 edits” – were indefinite because the specification and drawings did not set forth sufficient  
8 algorithmic structure to perform the functions. *Id.* at 1244. One drawing, for example, contained  
9 a box in a flowchart marked “Determine Word Location in Text.” *Id.* at 1245.

10 The Federal Circuit reversed. It held that the record did not contain clear and convincing  
11 evidence that the specification and the drawings failed to disclose sufficient structure for ordinarily  
12 skilled artisans. *Id.* The court relied on the statement of an expert, who asserted that the box  
13 marked “Determine Word Location in Text” “could be implemented by one skilled in the art using  
14 well-known features of the Windows operating system (messages, operating system function calls,  
15 and hooking).” *Id.* The expert asserted that “[a] person skilled in the art reading the ’273  
16 specification would know that any of these techniques could be used to determine the position of  
17 a recognized word in the third party application, would know the software to use and how to  
18 implement it.” *Id.* at 1245-46. Because there was no evidence contradicting this opinion, the  
19 Federal Circuit concluded that “the record . . . contain[ed] sufficient algorithmic structure to give  
20 meaning to the claim terms from the vantage point of an ordinarily skilled artisan,” and that the  
21 claims were sufficiently definite under § 112, ¶ 2. *Id.* at 1246.

22 Morrissey counters that, “while the patent specification provides general statements of  
23 outcome, it does not indicate any specifics as to how to achieve the outcome[s].”<sup>288</sup> It cites three  
24 recent Federal Circuit cases holding that a computer-related patent failed to provide sufficient  
25 disclosure of an algorithm. See *Aristocrat*, 521 F.3d at 1334-38; *Blackboard*, 574 F.3d at 1382-4;

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26  
27 <sup>287</sup>*Id.*

28 <sup>288</sup>Def.’s Responding Brief at 23.

1 *Net MoneyIN*, 545 F.3d at 1366-67.

2 As noted, in *Aristocrat*, 521 F.3d at 1334, the Federal Circuit affirmed summary judgment  
3 on the ground that claims directed to a computer game of chance that claimed a “game control  
4 means” were indefinite because the specification disclosed only a microprocessor with  
5 “appropriate programming.” The court noted that the inventor “was not required to produce a  
6 listing of source code or a highly detailed description of the algorithm to be used to achieve the  
7 claimed functions in order to satisfy 35 U.S.C. § 112 ¶6,” but that “[i]t was required . . . to at  
8 least disclose the algorithm that transforms the general purpose microprocessor to a ‘special  
9 purpose computer programmed to perform the disclosed algorithm.’” *Id.* at 1338. The court held  
10 that merely “referenc[ing] . . . ‘appropriate programming’ impose[d] no limitation whatever, as  
11 any general purpose computer must be programmed.” *Id.* at 1334.

12 In *Blackboard*, 574 F.3d at 1383, the Federal Circuit affirmed the district court’s finding  
13 that claims directed to a system for managing on-line educational courses were invalid as  
14 indefinite. The claims claimed a “means for assigning a level of access to and control of each data  
15 file,” and the specification described an “access control manager” as the structure that performed  
16 the functions of the assigning means. The court noted that the specification described the access  
17 control manager as “essentially a black box that performs a recited function. [H]ow it does so is  
18 left undisclosed.” *Id.* at 1383.<sup>289</sup>

19 Finally, in *Net MoneyIN*, 545 F.3d. 1367, the Federal Circuit affirmed a district court  
20 ruling that a specification’s description of a “bank computer” failed to disclose the corresponding  
21 structure for a “means for generating” limitation because it did not disclose the algorithm the bank  
22 computer allegedly performed. The court noted: “There is no dispute in this case that the

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24 <sup>289</sup>The court noted that Blackboard’s counsel had argued “‘that the corresponding structure  
25 for [assigning a level of access to and control of each data file was] the access control manager.  
26 That’s not really a revolutionary thought. The access control manager manages access control.’  
27 Counsel also stated of the access control manager that ‘the name of it pretty much describes what  
28 it does. It assigns a level of access to and control of a user’s role in a course.’” *Id.* at 1383.  
Summarizing this argument, the court stated: “In other words, the access control manager,  
according to Blackboard, is any computer-related device or program that performs the function  
of access control.” *Id.*

1 specification fails to disclose an algorithm by which a general purpose bank computer ‘generat[es]  
2 an authorization indicia.’ . . . At oral argument, counsel for NMI conceded that ‘[t]here is nothing  
3 in the written description that expressly states what is going on inside that bank computer.’” *Id.*  
4 at 1367 & n. 3.

5 These cases are distinguishable from the patent-in-suit. The specification of the ’682 patent  
6 does not suggest that the querying function will be carried out by a general purpose computer with  
7 “appropriate programming,” as did the patent in *Aristocrat*. Rather, it identifies both specialized  
8 hardware – i.e., a particular hardware configuration of interconnected computers and data  
9 communications networks – and specific types of software programs – i.e., web crawlers, links,  
10 and conventional querying methods – by which that function is carried out.<sup>290</sup> As Tamir opines,  
11 the specification’s references to these well known mechanisms would “enable[ ] one skilled in the  
12 art to understand the programming algorithms that would be usable to implement the claimed  
13 function.”<sup>291</sup> Because the mechanisms were well known in the art, the specification did not need  
14 to disclose the precise details or program code for carrying them out. See *Default Proof Credit*  
15 *Card Sys.*, 412 F.3d at 1302 (“the patentee need not disclose details of structures well known in  
16 the art”); *Elekta AB*, 344 F.3d at 1214 (there is “no need for a disclosure of the specific program  
17 code if software [is] linked to the [claimed] function and one skilled in the art would know the  
18 kind of program to use”).

19 Similarly, the ’682 patent is unlike that described in *Blackboard*, which disclosed a “black  
20 box” that performed the prescribed function, but did not explain how it was performed. Here,  
21 the portions of the ’682 patent specification cited indicate that the invention carries out the  
22 “querying function” by means of web crawlers, links, and conventional querying methods known  
23 to persons of skill in the art. Finally, the case is unlike *Net MoneyIN*, in which all parties agreed  
24 that the only structure disclosed was a “bank computer” – a designation that is only marginally  
25 more specific than a “general purpose computer” – and that the specification was devoid of

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27 <sup>290</sup>See Patent, col. 5:13-15, 5:27-29.

28 <sup>291</sup>Tamir Decl., ¶ 9.

1 references as to how the “bank computer” was to be programmed to carry out the claimed  
2 functions.

3         Although the specification does not include source code for causing a web crawler, link,  
4 or other conventional querying mechanism to query third party databases for records, Morrisey  
5 has not shown by clear and convincing evidence that the specification fails to disclose structure  
6 sufficient to direct a person skilled in the art how to perform the querying function. See *Budde*,  
7 250 F.3d at 1376 (“Because the claims of a patent are afforded a statutory presumption of validity,  
8 overcoming the presumption of validity requires that any facts supporting a holding of invalidity  
9 must be proved by clear and convincing evidence”); *Eastman Kodak Co. v. Goodyear Tire &*  
10 *Rubber Co.*, 114 F.3d 1547, 1556 (Fed. Cir. 1997) (“This court seeks to interpret claims to  
11 preserve, rather than defeat, their validity”), abrogated in part on other grounds by *Cybor Corp.*  
12 *v. FAS Technologies, Inc.*, 138 F.3d 1448 (Fed. Cir. 1998). The specification mentions two  
13 methods by which the computer system can carry out the querying function – web crawlers and  
14 links – and also incorporates, as appropriate,<sup>292</sup> other “conventional” means, well known in the  
15 art, of performing the function. It thus describes the process, or algorithm, that carries out the  
16 querying function. Additionally, as in *AllVoice*, Medversant’s expert has provided a declaration  
17 stating that a person skilled in the art would have known how to perform the querying function  
18 using familiar programming mechanisms described in the specification.<sup>293</sup> For this reason, the  
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20         <sup>292</sup>See *In re Dossel*, 115 F.3d 942, 946-47 (Fed. Cir. 1997) (“While the written description  
21 does not disclose exactly what mathematical algorithm will be used to compute the end result, it  
22 does state that ‘known algorithms’ can be used to solve standard equations which are known in  
23 the art. . . . [I]n the medical imaging field, it is well within the realm of common experience that  
24 computers are used to generate images for display by mathematically processing digital input”).

24         <sup>293</sup>The court acknowledges Dunsmore’s testimony that the specification of the ’682 patent  
25 provides “only high-level descriptions of the claimed function” and, in his opinion, “lacks details  
26 that a person skilled in the art would need to know in order to implement any specific algorithm.”  
27 (Dunsmore Decl., ¶¶ 17-18). This opinion, although it directly contradicts the opinions offered  
28 by of Medversant’s experts, does not, however, constitute the kind of “clear and convincing”  
evidence that Morrisey is required to adduce to overcome the presumption of validity. Faced with  
dueling expert testimony regarding the ability of a person skilled in the art to discern from the  
specification the described mechanism for carrying out the claimed function, the burden is on the

1 court concludes that the specification discloses sufficient structure and that the claims are not  
2 indefinite.<sup>294</sup>

3 The court therefore concludes that the structure associated with the “means for querying  
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5 party claiming invalidity to prove that its position is the correct one. Morrisey, through  
6 Dunsmore, has failed to do so. Cf. *Seed Lighting Design Co., Ltd. v. Home Depot*, No.  
7 04-cv-2291, 2005 WL 1868152, \*8 (N.D. Cal. Aug. 3, 2005) (stating that invalidity must be  
8 proved by clear and convincing evidence and granting summary judgment of invalidity where  
9 defendant offered expert testimony and admissions by the inventor regarding inconsistencies, and  
10 plaintiff failed to adduce “any evidence, facts, or expert testimony . . . to demonstrate the  
11 existence of genuine factual issues sufficient to preclude summary judgment”); *Australia Vision  
12 Servs. Pty. Ltd. v. Dioptics Med. Prods., Inc.*, 29 F.Supp.2d 1152, 1159 (C.D. Cal. 1998)  
13 (denying defendant’s motion for summary judgment of invalidity based on a claim of  
14 indefiniteness because defendant “did not include any evidence or declarations by experts in the  
15 field to attest to the indefiniteness of the [the design patent],” and concluding that “there [was] a  
16 factual dispute whether the drawings can enable a person skilled in the art to replicate the patented  
17 design”).

18 <sup>294</sup>See *AllVoice Computing PLC*, 504 F.3d at 1246; *WMS Gaming*, 184 F.3d at 1349  
19 (“Accordingly, the structure disclosed for the ‘means for assigning’ limitation of claim 1 of the  
20 Telnaes patent is a microprocessor programmed to perform the algorithm illustrated in Figure 6.  
21 In other words, the disclosed structure is a *microprocessor programmed to assign* a plurality of  
22 single numbers to stop positions such that: 1) the number of single numbers exceeds the number  
23 of stop positions; 2) each single number is assigned to only one stop position; 3) each stop position  
24 is assigned at least one single number; and 4) at least one stop position is assigned more than one  
25 single number” (emphasis added)); *TruePosition Inc. v. Andrew Corp.*, 507 F.Supp.2d 447, 458-  
26 59 (D. Del. 2007) (“Defendant argues that, because a ‘[database means for storing location data  
27 identifying the cellular telephones and their respective locations, and for providing access to said  
28 database to subscribers at remote locations]’ is implemented by a computer, the disclosure of an  
algorithm, formula, and/or series of steps performed by a computer to perform the data storage  
function is required. Defendant argues that plaintiff’s evidence cannot ‘fill the gap’ in the ’144  
patent specification, which discloses no algorithm corresponding to the computer-implemented  
‘database means’ function. . . . In the case at bar, the court concludes that a ‘database’ means  
is not so complex as to necessitate the disclosure of software code, steps, formulae or procedures  
for the simple function of ‘storing data”); *BillingNetwork Patent, Inc. v. Cerner Physician  
Practice, Inc.*, CV 04-1515 T, 2006 WL 263601, \*19 (M.D. Fla. Feb. 2, 2006) (“The  
specification reveals that the structure performing the function is the computer system programmed  
to transfer data forms from the PC type computer (38, 106) to the database server (32, 90), to the  
subscriber area (28, 80), to the subscriber PC (12, 72), then to return the completed forms from  
the subscriber PC to the subscriber area and back to the database server. These specification  
provisions, when read with Figures 1 and 3, provide sufficient information indicating the  
algorithm by which the computer system performs the disclosed function”).

1 automatically on a periodic basis third party databases” is “one or more general purpose  
2 computing devices coupled to one or more web servers through a remote communication network  
3 with one or more associated servers, the computing devices programmed to query automatically,  
4 or operatively cause the servers to query automatically, on a periodic basis third party databases  
5 having third party credentials data relating to the collected credentials information (e.g., via web  
6 crawler, link, conventional database queries).”<sup>295</sup>

7 **3. “Means for Automatically Electronically Comparing the Obtained Third**  
8 **Party Credentials Data to the Collected Credentials Information”**

9 This means-plus-function term appears only in claim 23. The parties agree that the terms  
10 in the recited function have the same meanings as terms already construed by the court –  
11 “automatically” and “comparing the obtained third party credentials data to the collected  
12 credentials information.” They disagree, however, as to whether the ’682 patent adequately  
13 discloses the algorithm by which this function is to be carried out.

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16 <sup>295</sup>The court replaced Medversant’s proposed construction, which used “operatively coupled  
17 in a distributed system by a communication network,” with the language found in the specification  
18 itself – “coupled to one or more web servers through a remote communication network.” (See  
19 Patent, col. 3:29-3:31). This substitution avoids injecting into the construction the ambiguity that  
20 would result from including undefined terms such as “operatively” and “distributed system,”  
21 which are not derived from the patent.

22 During the February 28, 2011 *Markman* hearing, Morrissey argued that because the court’s  
23 construction includes the phrase “[’e.g. web crawlers, links, and conventional database  
24 queries, [’] the corresponding structure is opened up to the possibility of yet other structures as  
25 undefined as we believe [’]web crawlers, links, and conventional database queries [’] are. And  
26 [Morrissey] certainly do[es]n’t think that helps in the definiteness of what the structure is. . . .”  
27 Medversant favored the court’s construction “because that’s what the specification says. And if  
28 one of ordinary skill in the art is looking at an open-ended list, what’s being triggered in the mind  
of that person is what [Medversant is] allowed to claim under the corresponding structure.” The  
court believes Medversant has the better of the argument. While Morrissey is correct that use of  
the term “e.g.” leaves the corresponding structure somewhat open-ended, it is not so “[in]definite[  
]” as to constitute a failure to disclose a corresponding structure. By indicating that the querying  
function is carried out by “web crawlers, links, and conventional database queries,” the  
specification limits the algorithm to these and related mechanisms known to those of skill in the  
art to perform the same querying function.

1                                    **i.        Medversant’s Proposed Structure**

2            Medversant asserts that the structure corresponding to this term is “one or more general  
3 purpose computing devices operatively coupled in a distributed system by a communication  
4 network with one or more associated servers, the computing devices programmed to automatically  
5 electronically compare, or operatively cause the servers to automatically electronically compare,  
6 the obtained third party credentials data to the collected credentials information pertaining to the  
7 applicant.”<sup>296</sup> Medversant contends that “the specification goes into considerable detail as to how  
8 to program the database to correlate or compare the retrieved information with the collected  
9 information. [It] discusses the circumstances of a comparison resulting in a data match . . . ,<sup>297</sup>  
10 resulting in a data mismatch . . . ,<sup>298</sup> when a verifying record cannot be found . . . ,<sup>299</sup> and when  
11 a verifying record supplements with new information not previously provided by the credentialing  
12 applicant. . . .”<sup>300</sup>

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14            <sup>296</sup>Pl.’s Opening Brief at 23-24.

15            <sup>297</sup>Pl.’s Responding Brief at 18 (citing Patent, col. 6:56-57 (“The described exemplary  
16 system may auto-update the database for matched data”)).

17            <sup>298</sup>*Id.* (citing Patent, col. 6:58-7:4 (“In addition, in one embodiment the described  
18 exemplary system may attempt to identify reasons for a mismatch between the verification data  
19 received from external sources and the credentials information entered by the applicant. For  
20 example, the system may electronically or manually attempt to identify clerical errors, such as  
21 typographical errors that may occur during the conversion of a scanned document to text by an  
22 optical character recognition program. The system may then request that the applicant provide  
an explanation for any data mismatches that cannot be attributed to errors in the data entry or  
correlation process. An exemplary system may then verify newly entered data by correlating it  
with the verification information received from the external sources”)).

23            <sup>299</sup>*Id.* (citing Patent, col. 7:42-49 (“If a verifying source responds with a “Record Not  
24 Found” response 450, the described exemplary system may notify the practitioner via email, fax  
25 or letter 460 and ask for corrected information. The practitioner may then respond with corrected  
26 information 480 and the system may then send another request to the verifying source 410 with  
corrected information”)).

27            <sup>300</sup>*Id.* (citing Patent, col. 3:18-22 (“The WebCVO system may then alert the practitioner  
28 and all entities to which that practitioner is assigned of any information not validated by an  
external source and to information reported by the source but not recorded in the practitioner’s

1 Medversant proffers Tamir’s opinion that a person “of ordinary skill in the art would  
2 recognize both the capability of the disclosed building blocks to perform these operations, and the  
3 programming algorithms that would be usable to implement them.”<sup>301</sup> Tamir notes that

4 “[a] person skilled in the art would be very familiar with standard computer terms  
5 and technologies, such as ‘database,’ ‘querying a database,’ ‘updating a database,’  
6 ‘markup language,’ and ‘XML.’ They would also be familiar with the fact that: (i)  
7 a database record contains multiple fields; (ii) different fields may be updated at  
8 different times; (iii) different fields can be accessed and compared independently;  
9 and (iv) there are commonly-used programming tools that facilitate accessing and  
10 comparing fields in databases, including databases where data is stored in XML  
11 format.”<sup>302</sup>

12 Citing Figures 2, 3, 4, 5, and portions of the written description, Guterman similarly opines that  
13 “[t]he specification provides disclosure both on the types of comparisons to be performed, such  
14 as data value match, data value mismatch, and supplementation where data has not previously been  
15 provided. It also discusses the situations in which comparisons may be made, and the significance  
16 of those comparisons to the credentialing process. The specification allows one skilled in the art  
17 to understand what would be required to program a general-purpose computer to perform this  
18 function.”<sup>303</sup>

19 **ii. Morrisey’s Proposed Structure**

20 Morrisey contends that the ’682 patent specification “lacks sufficient algorithmic disclosure  
21 supporting the ‘means for comparing’ limitation,” and asks the court to hold that no such  
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24 \_\_\_\_\_  
25 credentials record”)).

26 <sup>301</sup>Tamir Decl., ¶ 12.

27 <sup>302</sup>*Id.*, ¶ 13.

28 <sup>303</sup>Guterman Decl., ¶¶ 15-16.

1 algorithm is disclosed.<sup>304</sup> It proposes that the corresponding structure be defined as “[a]n  
2 algorithm running on a computer that automatically electronically compares the obtained third  
3 party credentials data to the collected credentials information to determine whether they match.”<sup>305</sup>  
4 Morrissey contends that instead of specifying the algorithm by which the “comparing” function can  
5 be carried out, the specification merely restates the result to be achieved by the function, in  
6 violation of the rule announced in *Aristocrat*.

7 Morrissey proffers Dunsmore’s opinion that the “patent specification treats ‘comparing’ on  
8 a functional level only,” and “does not provide an algorithm to be used.”<sup>306</sup> Dunsmore notes that,  
9 even where the “specification refers to this activity as a ‘correlation process,’” it provides “no  
10 details as to how the correlation process [is to] occur[ ]. . . .”<sup>307</sup> Dunsmore also opines that “the  
11 patent specification provides no details as to a set of criteria that should be used to indicate an  
12 inconsistency or mismatches between the obtained third party credentials data and the collected  
13 credentials information.”<sup>308</sup>

### 14 **iii. The Court’s Conclusion as to the Corresponding Structure**

15 The key question is whether the ’682 patent discloses an algorithm from which a person  
16 of ordinary skill in the art could determine how the “comparing” function is to be performed. See  
17 *Atmel*, 198 F.3d at 1380. Medversant’s proposed construction does not identify such an  
18 algorithm. By defining the corresponding structure as “. . . computing devices programmed to  
19 automatically electronically compare, or operatively cause the servers to automatically  
20 electronically compare, the obtained third party credentials data to the collected credentials  
21 information pertaining to the applicant,” Medversant does nothing more than describe a computer  
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23 <sup>304</sup>Def.’s Opening Brief at 24-25.

24 <sup>305</sup>*Id.* at 23.

25 <sup>306</sup>Dunsmore Decl., ¶ 24.

26 <sup>307</sup>*Id.*, ¶ 25.

27 <sup>308</sup>*Id.*, ¶ 26.

1 programmed to perform the specified function – i.e., a computer programmed to compare  
2 obtained third party credentials data to collected credentials information. This is precisely the type  
3 of disclosure that the Federal Circuit has repeatedly held is inadequate. Merely stating that the  
4 computer must be “programmed,” or as in *Aristocrat*, “appropriately programmed,” to perform  
5 a function does not disclose an algorithm. An algorithm is adequately disclosed if the specification  
6 tells a person of ordinary skill how to perform the function. Medversant’s proposed construction  
7 merely describes what the invention aims to accomplish. See *Encyclopaedia Britannica, Alpine*  
8 *Electronics, Inc.*, 355 Fed. Appx. 389, 395 (Fed. Cir. Dec. 4, 2009) (Unpub. Disp.) (“At best,  
9 the specification for the ’671 patent discloses only the functional result claimed by this limitation.  
10 Neither the written portions of the specification, nor the specification’s figures, disclose any  
11 structure or algorithm employed by the system. Thus, Britannica’s proposed one-step algorithm  
12 amounts to pure functional claiming, which does not comply with the disclosure requirement of  
13 § 112 ¶6”).

14 Putting aside Medversant’s construction, the question remains whether the specification  
15 adequately discloses a corresponding structure for the “comparing” function. Medversant cites  
16 several statements in the specification that appear to do nothing more than recite the claimed  
17 function. It cites, for example, the description of an embodiment that can

18 “correlate the verification information received from external sources with the  
19 credentials information entered by the applicant. The . . . system [can] auto-update  
20 the database for matched data. In addition, in one embodiment the . . . system  
21 [can] attempt to identify reasons for a mismatch. . . . [¶] For example, the system  
22 [can] electronically or manually attempt to identify clerical errors, such as  
23 typographical errors that may occur during the conversion of a scanned document  
24 to text by an optical character recognition program. . . . [The] . . . system [can]  
25 then verify newly entered data by correlating it with the verification information  
26 received from the external sources.”<sup>309</sup>

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28 <sup>309</sup>Patent, col. 6:54-7:4.

1 As Dunsmore notes, this description merely elaborates on the claimed function and “does not  
2 provide a person skilled in the art with sufficient details of any specific algorithm.”<sup>310</sup> The  
3 specification states that the function of “comparing” involves “correlat[ing]” and “auto-updat[ing]  
4 . . . matched data,” and “identify[ing] clerical errors,” but it fails to explain the algorithm by  
5 which these tasks are to be performed.

6 Medversant also cites a portion of the specification stating that “[t]he . . . system [can]  
7 compare the verification information received from external sources to the credentials information  
8 submitted by the applicant.”<sup>311</sup> Once again, however, this description simply recites the claimed  
9 function – “comparing the obtained third party credentials data to the collected credentials  
10 information” – using different words. Tamir asserts that “[t]he ’682 Patent specification indicates  
11 the various results of flagging a record in the case of matches[ ],<sup>312</sup> mismatches,<sup>313</sup> absence of  
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19 <sup>310</sup>Dunsmore Decl., ¶ 26.

20 <sup>311</sup>Patent, col. 5:33-38.

21 <sup>312</sup>Tamir Decl., ¶ 12 (citing Patent, col. 6:56-57 (“The described exemplary system may  
22 auto-update the database for matched data”)).

23 <sup>313</sup>*Id.* (citing Patent, col. 6:58-7:4 (“In addition, in one embodiment the described  
24 exemplary system may attempt to identify reasons for a mismatch between the verification data  
25 received from external sources and the credentials information entered by the applicant. For  
26 example, the system may electronically or manually attempt to identify clerical errors, such as  
27 typographical errors that may occur during the conversion of a scanned document to text by an  
28 optical character recognition program. The system may then request that the applicant provide  
an explanation for any data mismatches that cannot be attributed to errors in the data entry or  
correlation process. An exemplary system may then verify newly entered data by correlating it  
with the verification information received from the external sources”)).

1 data,<sup>314</sup> or supplementation of data from a third party source.<sup>315</sup> One of ordinary skill in the art  
2 would recognize both the capability of the disclosed building blocks to perform these operations,  
3 and the programming algorithms that would be usable to implement them.”<sup>316</sup> As was the case  
4 in *Aristocrat*, however, the references cited “simply [provide] examples of the results of the  
5 operation of an unspecified algorithm.” *Aristocrat*, 521 F.3d at 1334. Tamir fails to identify  
6 what “building blocks” the patent discloses and how those “building blocks . . . perform” the  
7 claimed function or produce the results described.

8 The Federal Circuit has repeatedly made clear that an algorithm is not a list of results to  
9 be achieved by the invention, but steps in a process that leads to those results. See, e.g., *Lucent*  
10 *Technologies, Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1340 (Fed. Cir. 2009) (“ Lucent further did  
11 not identify the algorithms used in the accused products. Lucent’s evidence, . . . did ‘nothing  
12 more than demonstrate that the accused products reach the same result; the evidence [did] not  
13 demonstrate circumstantially or otherwise anything about the steps used by the accused products  
14 to arrive at the result ’”); *Encyclopaedia Britannica, Inc.*, 355 Fed. Appx. at 395.

15 The same is true of Tamir’s statement that “[a] person skilled in the art would be very  
16 familiar with standard computer terms and technologies, such as ‘database’, ‘querying a database’,  
17 ‘updating a database’, ‘markup language’, and ‘XML’. They would also be familiar with the fact  
18 that: (i) a database record contains multiple fields; (ii) different fields may be updated at different  
19 times; (iii) different fields can be accessed and compared independently; and (iv) there are

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21 <sup>314</sup>*Id.* (citing Patent, col. 7:42-49 (“If a verifying source responds with a “Record Not  
22 Found” response 450, the described exemplary system may notify the practitioner via email, fax  
23 or letter 460 and ask for corrected information. The practitioner may then respond with corrected  
24 information 480 and the system may then send another request to the verifying source 410 with  
corrected information”)).

25 <sup>315</sup>*Id.*, (citing Patent, col. 3:18-22 (“The WebCVO system may then alert the practitioner  
26 and all entities to which that practitioner is assigned of any information not validated by an  
27 external source and to information reported by the source but not recorded in the practitioner’s  
credentials record”)).

28 <sup>316</sup>*Id.*

1 commonly-used programming tools that facilitate accessing and comparing fields in databases,  
2 including databases where data is stored in XML format.”<sup>317</sup> While this opinion is similar to the  
3 opinion Tamir offered regarding the “querying” function, closer examination reveals that his  
4 reference to the “standard computer terms and technologies” disclosed in the specification is a  
5 reference to terms that, in the specification, are not related to the “comparing” function. While  
6 a person skilled in the art might well have been familiar with these technologies, Tamir fails to  
7 demonstrate that the specification discloses they should be used to perform the “comparing”  
8 function. Simply referencing the fact that “there are commonly-used programming tools that  
9 facilitate . . . comparing fields in databases” is insufficient when those tools, i.e. the algorithm,  
10 are not disclosed in the specification itself. In contrast to its discussion of the “querying”  
11 function, the specification fails entirely to describe the “commonly-used programming tools” that  
12 “facilitate . . . comparing fields in databases,” and references only the results or outcomes of the  
13 “comparing” function. Medversant’s expert declarations, which attempt to describe those tools,  
14 do “not . . . shed light on this field of art, but . . . rewrite the patent’s specification” by  
15 suggesting that building blocks are disclosed, when they are not. *Omega Eng’g, Inc. v. Raytek*  
16 *Corp.*, 334 F.3d 1314, 1332 (Fed. Cir. 2003) (“Omega impermissibly relies on expert  
17 declarations to clearly link the claimed function and the laser splitting device, lenses, and prisms.  
18 Although expert testimony and declarations are useful to confirm that the construed meaning is  
19 consistent with the denotation ascribed by those in the field of the art, such extrinsic evidence  
20 cannot be used to vary the plain language of the patent document” (citations omitted)).

21 Consequently, the court concludes that the specification of the ’682 patent explains the  
22 “comparing” function, but fails to describe the structure through which that function is to be  
23 achieved. Stated differently, this aspect of the ’682 patent involves the type of “pure functional  
24 claiming” that was rejected in *Aristocrat*.<sup>318</sup>

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26 <sup>317</sup>*Id.*, ¶ 13.

27 <sup>318</sup>After reading the court’s tentative order, which concluded that the patent failed to  
28 disclose the corresponding structure for the “comparing” function, Medversant proposed an

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3 alternate definition of the corresponding structure at the February 28, 2011 hearing. It argued that  
4 the court should determine that the structure was “one or more general purpose computing devices  
5 operatively coupled in a distributed system by a communication network with one or more  
6 associated servers, the computing devices operatively coupled to a dynamic database containing  
7 collected credentials information organized in fields, wherein the database is programmed to  
8 compare (correlate) the collected credentials information with data obtained from third party  
9 databases.” Medversant contends that a person skilled in the art would understand from the  
10 description of the dynamic database found in the specification that certain “basic programming  
11 tools” could be used to program the invention to perform the “comparing” function. This  
12 proposed structure does not cure the lack of an algorithm the court identified previously. Rather,  
13 it has the flaw identified by the Federal Circuit in *In re Katz Interactive Call Processing Patent*  
14 *Litigation*, \_\_\_ F.3d \_\_\_, 2011 WL 607381 (Fed. Cir. Feb. 18, 2011), a case cited during the  
15 *Markman* hearing. In *Katz*, the Federal Circuit considered a patentee’s argument that the district  
16 court erred in holding a means-plus-function claim indefinite because “the corresponding structure  
17 for the means-plus-function terms [was] not limited to the general purpose microprocessor 92, but  
18 also include[d] the interface 20, disclosed in the common specification of the Statistical Interface  
19 patents.” *Id.* at \*8. This argument is similar to Medversant’s assertion that the structure  
20 corresponding to the means for automatically electronically comparing the obtained third party  
21 credentials data to the collected credentials information is not a general purpose computer but a  
22 computer “operatively coupled to a dynamic database.” The Federal Circuit noted that “Katz  
23 [was] correct that the interface 20 [might] perform analysis on data,” but found this to be “beside  
24 the point.” It stated; “If a function’s corresponding structure is a type of computer or processor,  
25 *indefiniteness analysis does not turn on the name of the structure that does the processing*. The  
26 key inquiry is whether one of ordinary skill in the art would understand the patent to disclose  
27 structure that sufficiently corresponds to the claimed function, which in the case of a specific  
28 function implemented on a general purpose computer *requires an algorithm*.” *Id.* (emphasis added  
and citations omitted). The *Katz* court thus reaffirmed the understanding of every court since  
*WMS Gaming* that what must be disclosed is an explanation of the steps or process by which the  
function is carried out, albeit not a “highly detailed” one. *Aristocrat*, 521 F.3d at 1338. See *DE*  
*Technologies, Inc. v. Dell, Inc.*, 428 F.Supp.2d 512, 521-22 (W.D. Va. 2006) (“[M]ore is  
required of a corresponding structure for a computer-implemented means-plus-function term. DE  
claims that the novelty of the claimed invention is in the integration of processes, but *nowhere in*  
*the specification is there an explanation of the steps by which the processes are integrated*. . . .  
The court has concluded that *WMS Gaming* . . . require[s] the specification to disclose an  
algorithm as the corresponding structure for a means-plus-function term” (emphasis added)).

The Federal Circuit in *Katz* also rejected an argument similar to Medversant’s assertion that  
the specification’s reference to a “dynamic database” would bring basic programming tools to  
mind, so that the particular process or mechanism that performed the claimed function need not  
be disclosed. Evaluating a means-plus-function limitation that recited a “processing means . . .  
for receiving customer number data entered by a caller and for storing the customer number data  
. . . and based on a condition coupling an incoming call to the operator terminal . . . ,” the  
Federal Circuit noted that “[c]omputers can be programmed to conditionally couple calls in many

1  
2 ways. Without any disclosure as to the way Katz's invention conditionally couples calls, the  
3 public is left to guess whether the claims cover only coupling based on particular system  
4 conditions, such as the availability of an operator, or are broad enough to cover any coupling in  
5 conjunction with an if-then statement in source code. Katz's claims therefore fail to fulfill the  
6 'public notice function' of 35 U.S.C. § 112 ¶ 2 by 'particularly pointing out and distinctly  
7 claiming' the invention." *Katz*, 2011 WL 607381 at \*7 (citing *Praxair, Inc. v. ATMI, Inc.*, 543  
8 F.3d 1306, 1319 (Fed. Cir. 2008)). The court continued: "[B]y claiming a processor programmed  
9 to perform a specialized function without disclosing the internal structure of that processor in the  
10 form of an algorithm, Katz's claims exhibit the 'overbreadth inherent in open-ended functional  
11 claims,' *Halliburton Energy Servs. v. M-I LLC*, 514 F.3d 1244, 1256 n. 7 (Fed. Cir. 2008), in  
12 violation of the limits Congress placed on means-plus-function claims in section 112, paragraph  
13 6." *Id.* Medversant's alternate construction suffers from the same defect. Medversant  
14 acknowledges that there are many ways in which a computer can be programmed to compare data.  
15 Without any disclosure as to the way Medversant's dynamic database compares credentials  
16 information, the public is left to guess what methods and mechanisms for comparing the invention  
17 claims. The fact that the comparison takes place within a dynamic database provides no additional  
18 disclosure of the algorithm, or process, by which it is performed.

19 The court further notes that the portions of the specification to which Medversant referred  
20 during the *Markman* hearing fail to cure this defect in disclosure. As noted earlier, several of the  
21 cited portions merely recite the claimed "comparing" function, but provide no additional  
22 disclosure of the algorithm by which it is carried out. (See Patent, col. 5:32-35 ("The described  
23 exemplary system may *compare* the verification information received from external sources to the  
24 credentials information submitted by the applicant" (emphasis added)); *id.*, col. 6:54-57 ("An  
25 exemplary system may *correlate* the verification information received from external sources with  
26 the credentials information entered by the applicant" (emphasis added))). Medversant also cites  
27 portions of the specification that describe the dynamic database in an attempt to demonstrate how  
28 the algorithm is disclosed or would be known to a person of skill in the art. (See *id.*, col. 2:12-14  
("storing collected credentials information in a dynamic database and verifying collected  
credentials information with external sources through an electronic interface"); *id.*, col. 6:27-40  
("An exemplary system may require practitioners to complete all mandatory data fields before  
submitting a credentials application for verification 250. An exemplary embodiment of the present  
invention allows for the assigning of required data fields by practitioner type and verification  
phase. For example, in one embodiment practitioners may be required to complete a set of data  
fields pertinent to their field of practice. Practitioners may also be required to complete an initial  
set of data fields (also pertinent to their field of practice) and upon satisfactory verification of those  
fields, the practitioner may then be required to complete a secondary, tertiary, etc. set of data  
fields. In accordance with an exemplary embodiment the required fields are assigned when a  
practitioner's record is created")). The fact that Medversant asserts the "comparing" function  
occurs within a dynamic database, in which the credentials information is "stor[ed,]" does not  
disclose the process by which the function is carried out. Medversant does not explain, moreover,  
how the portion of specification stating that "[a]n exemplary system may require practitioners to  
complete all mandatory data fields before submitting a credentials application for verification"

1  
2 The court is mindful that it must not “impose a lofty standard in . . . indefiniteness cases.”  
3 Absent “any corresponding structure, [however,] one of skill simply cannot perceive the bounds  
4 of the invention.” *Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1341 (Fed. Cir. 2008).  
5 It thus concludes that the specification does not disclose corresponding structure for the “means  
6 for automatically electronically comparing the obtained third party credentials data to the collected  
7 credentials information.”

### 8 9 III. CONCLUSION

10 For the reasons stated, the court construes the claim terms in dispute as follows:

- 11 • Credentials Information: practitioner background data, including education,  
12 training, licensure and license sanctions, work experience, malpractice insurance  
13 coverage, malpractice history or peer references
- 14 • Automatically: once initiated, performed without the need for manual commands  
15 by a human

16  
17 \_\_\_\_\_  
18 discloses an algorithm to be used in the “comparing” function. While this portion of the  
19 specification makes it clear how a practitioner inputs credentials information and how such  
20 information is “assign[ed]” to a “data field[,]” it does not explain the process by which the  
21 credentials information that is input is compared to obtained third party credentials data.

22 Medversant’s experts similarly fail to identify any algorithm disclosed in the patent  
23 specification by which the dynamic database is programmed to carry out the comparing function.  
24 Guterma n, for example, states that “[t]he specification allows one skilled in the art to understand  
25 what would be required to program a general purpose computer to perform this function[.]”  
26 (Guterma n Decl., ¶ 16). This testimony is insufficient for the reasons articulated in *Katz*, where  
27 the court held that “by claiming a processor programmed to perform a specialized function without  
28 disclosing the internal structure of that processor in the form of an algorithm, Katz’s claims exhibit  
the ‘overbreadth inherent in open-ended functional claims[.]’” *Katz*, 2011 WL 607381 at \*7  
(citation omitted); see also *Omega*, 334 F.3d at 1332 (holding that expert testimony cannot be used  
to “link the claimed function” to the proposed corresponding structure, when to do so would “vary  
the plain language of the patent document”). Tamir’s declaration is similarly insufficient. He  
asserts that “the disclosures indicate a limited number or class of algorithms included within the  
claim limitation[,]” but never identifies what this “class of algorithms” includes or where it is  
disclosed. (Tamir Decl., ¶ 14).

- 1 • Querying . . . Third Party Databases: making contact with third party databases
- 2 to request data from the databases
- 3 • On a Periodic Basis: repeated from time to time
- 4 • Third Party Credentials Data: credentials information that is maintained by third
- 5 parties who keep such information, including schools, hospitals, peers,
- 6 government agencies, and other regulatory bodies
- 7 • Comparing the Obtained Third Party Credentials Data to the Collected
- 8 Credentials Information: comparing the obtained third party credentials data to
- 9 the collected credentials information to identify matches and mismatches,
- 10 including the presence or absence of information or data
- 11 • Updating the Relational Database with the Retrieved Data: making a change to
- 12 the collected credentials information in the relational database based on the
- 13 obtained third party credentials data, including adding and deleting information.
- 14 • Notifying a User of Inconsistencies Between the Obtained Third Party
- 15 Credentials Data and the Collected Credentials Information: disclosing to a user
- 16 the absence in the obtained third party credentials data of information that
- 17 appears in an applicant's collected credentials information, the absence in an
- 18 applicant's collected credentials information of information that appears in the
- 19 obtained third party credentials data, a mismatch between information reported
- 20 in the obtained third party credentials data and the applicant's collected
- 21 credentials information, or information in the obtained third party credentials
- 22 data that supplements the applicant's collected credentials information
- 23 • Means Plus Function Terms:
- 24 ▶ Means for Querying Automatically on a Periodic Basis Third Party
- 25 Databases: The corresponding structure is "one or more general purpose
- 26 computing devices operatively coupled in a distributed system by a
- 27 communication network with one or more associated servers, the
- 28 computing devices programmed to query automatically, or operatively

1 cause the servers to query automatically, on a periodic basis third party  
2 databases having third party credentials data relating to the collected  
3 credentials information (e.g., via web crawler, link, conventional  
4 database queries)”


5 ▶ Means for Automatically Electronically Comparing the Obtained Third  
6 Party Credentials Data to the Collected Credentials Information:

7 Inadequate corresponding structure disclosed

8 The court sets the following case management dates:

- 9 Deadline to designate expert witnesses
- 10 and exchange expert witness reports September 6, 2011
- 11 Deadline to designate rebuttal experts
- 12 and exchange rebuttal expert reports September 26, 2011
- 13 Expert discovery cut-off date October 17, 2011
- 14 Deadline for the completion of mediation November 4, 2011
- 15 Motion hearing cut-off date December 12, 2011 at 10 a.m.
- 16 Pretrial Conference January 23, 2012 at 9 a.m.
- 17 Trial February 14, 2012 at 8:30 a.m.

18  
19 DATED: August 5, 2011

  
MARGARET M. MORROW  
UNITED STATES DISTRICT JUDGE