

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BIOTRONIK, INC., LIFESCAN, INC., and SOTERA WIRELESS, INC.,
Petitioner,

v.

MY HEALTH, INC.,
Patent Owner.

Case IPR2015-00102
Patent 6,612,985 B2

Before BRIAN J. McNAMARA, JAMES A. TARTAL, and
SUSAN L. C. MITCHELL, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

DECISION

Institution of *Inter Partes* Review
37 C.F.R. § 42.108

Petitioner, Biotronik, Inc., Lifescan, Inc., and Sotera Wireless, Inc., filed a Petition requesting an *inter partes* review of claims 1–9 of U.S. Patent No. 6,612,985 B2 (“the ’985 patent”). Paper 1 (“Pet.”). Patent Owner, My Health, Inc., filed a Preliminary Response. Paper 7 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

Upon consideration of the Petition and the Preliminary Response, we conclude the information presented shows there is a reasonable likelihood that Petitioner would prevail in showing the unpatentability of the challenged claims. Accordingly, we authorize an *inter partes* review to be instituted as to claims 1–9 of the ’985 patent. Our factual findings and conclusions at this stage of the proceeding are based on the evidentiary record developed thus far (prior to Patent Owner’s Response). This is not a final decision as to patentability of claims for which *inter partes* review is instituted. Our final decision will be based on the record, as fully developed during trial.

I. BACKGROUND

A. *The ’985 Patent (Ex. 1001)*

The ’985 patent, titled “Method and System for Monitoring and Treating a Patient,” issued September 2, 2003, from U.S. Application No. 09/793,191, filed February 26, 2001. Ex. 1001. The ’985 patent describes a system and method for monitoring and treating a patient with one or more

diagnosed conditions or illnesses who is at a location remote from a treatment processing system. Ex. 1001, 5:43–46. The patient provides data including a subjective self-evaluation of each of the diagnosed conditions. *Id.* at 8:25–26. The patient also may provide information on the patient’s implementation of the treatment plan, such as the patient’s usage of pharmaceuticals and other medical devices. *Id.* at 8:37–40. The patient enters and confirms the information via a user input device. *Id.* at 8:43–46; 9:10–13. The information is transmitted to a treatment processing system where an algorithm for each diagnosed condition is used to generate and store a clinical assessment of the patient’s diagnosed conditions. *Id.* at 9:32–34, 39–43.

The treatment processing system retrieves an existing treatment plan from memory and updates the existing treatment plan for each of the diagnosed conditions based on the clinical assessment. *Id.* at 12:1–6. The treatment processing system transmits the modifications of the existing treatment plan to a provider at a provider processing system. *Id.* at 13:27–29. The provider may accept the modifications to the existing treatment plan or may make alternate modifications to the updated treatment plan. *Id.* at 13:35–39. The processing system determines whether the alternate modifications ordered by the provider to the updated treatment plan “are in compliance with the recommended . . . modifications to the existing treatment plan.” *Id.* at 13:47–51. If the modifications made by the provider are not in compliance with the modifications to the existing treatment plan as generated by the treatment processing system, information pertaining to the non-compliance is stored and analyzed to determine “a provider’s

performance over time with respect to complying with established guidelines for assessing conditions in patients and for treating conditions.” Ex. 1001, 14:15–18.

B. Illustrative Claims

Claims 1, 4, and 7 of the '985 patent are independent. Claims 2 and 3 depend from claim 1, claims 5 and 6 depend from claim 4, and claims 8 and 9 depend from claim 7. Claim 1 of the '985 patent is illustrative of the claims at issue:

1. A method for tracking compliance with treatment guidelines, the method comprising:
 - determining a current assessment of one or more diagnosed conditions in a patient based on data about each of the diagnosed conditions from the patient who is at a remote location and on one or more assessment guidelines for each of the diagnosed conditions;
 - updating an existing treatment plan for each of the diagnosed conditions based on the existing treatment plan, the current assessment, and on one or more treatment guidelines for each of the diagnosed conditions to generate an updated treatment plan for each of the diagnosed conditions;
 - reviewing the updated treatment plan for each of the diagnosed conditions;
 - determining if one or more changes are needed to the reviewed treatment plan for each of the diagnosed conditions;
 - changing the reviewed treatment plan if the one or more changes are determined to be needed;
 - providing the patient with the reviewed treatment plan for each of the diagnosed conditions; and
 - generating and providing compliance data based on the updated treatment plan and the reviewed treatment plan for each of the diagnosed conditions.

C. *Related Proceedings*

Petitioner states that the '985 patent is a subject of numerous district court proceedings, including *My Health, Inc. v. Biotronik, Inc.*, E.D. Tex., No. 14-cv-680; *My Health, Inc. v. LifeScan, Inc.*, E.D. Tex., No. 14-cv-683; and *My Health, Inc. v. Sotera Wireless, Inc.*, E.D. Tex., No. 14-cv-663. Pet. 2. An *inter partes* review of claims 1–9 of the '985 patent was terminated based on settlement prior to issuance of a final decision in IPR2013-00320. *Cardiocom, Inc. v. University of Rochester*, IPR2013-00320, Paper 28 (February 20, 2014). Additionally, a challenge to the '985 patent was also terminated based on settlement in IPR2014-00435 prior to institution of *inter partes* review. *Click4Care, Inc. and Honeywell HomMed, LLC v. University of Rochester*, IPR2014-00435, Paper 11 (June 6, 2014).

D. Asserted Grounds of Unpatentability

Petitioner contends that claims 1–9 of the '985 patent are unpatentable based on the following grounds:

Reference[s]	Basis	Challenged Claims
Freedman ¹	§ 102(a) and (e)	1–9
Freedman and Caple ²	§ 103(a)	1–9
Freedman, Caple, and Graham ³	§ 103(a)	1–9
Freedman and Surwit '699 ⁴	§ 103(a)	1–9
Freedman, Surwit '699, and Graham	§ 103(a)	1–9
Surwit '958 ⁵	§ 102(e)	1–9
Surwit '958, Freedman, and Graham	§ 103(a)	2, 5, and 8
Goodman ⁶	§ 102(b)	1, 3, 4, 6, 7, and 9
Goodman, Freedman, and Graham	§ 103(a)	2, 5, and 8

¹ U.S. Patent No. 6,126,596, issued Oct. 3, 2000, filed June 2, 1997 (Ex. 1006, “Freedman”)

² PCT Pub. No. WO 99/04043, pub. Jan. 28, 1999 (Ex. 1007, “Caple”)

³ PCT Pub. No. WO 98/58338, pub. Dec. 23, 1998 (Ex. 1008, “Graham”)

⁴ U.S. Patent No. 6,024,699, issued Feb. 15, 2000 (Ex. 1009, “Surwit '699”)

⁵ U.S. Patent No. 6,980,958 B1, issued Dec. 27, 2005, filed Jan. 11, 2000 (Ex. 1010, “Surwit '958”)

⁶ U.S. Patent No. 5,827,180, issued Oct. 27, 1998 (Ex. 1011, “Goodman”)

II. ANALYSIS

A. *Claim Construction*

The Board interprets claims of an unexpired patent using the broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b).

1. *“treatment plan”*

Petitioner contends that “treatment plan” should be construed, as it was in the institution decision in IPR2013-00320, to include “a proposed scheme or procedure (i.e., a ‘plan’) for providing some form of therapy for a patient (or ‘treatment’).” Pet. 7–8. Patent Owner does not propose an alternative construction. Prelim. Resp. 5–7. We adopt the construction set forth above for purposes of this decision.

2. *“current assessment”*

Petitioner contends that “current assessment” should be construed, as it was in the institution decision in IPR2013-00320, to include “any present determination or evaluation of a previously diagnosed condition or illness.” Pet. 8. Patent Owner does not propose an alternative construction. Prelim. Resp. 5–7. We adopt the construction set forth above for purposes of this decision.

3. *“treatment guidelines”*

Petitioner contends “treatment guidelines” should be construed, as it was in the institution decision in IPR2013-00320, to include “standards or principles by which to make a judgment or . . . course of action (i.e., ‘guidelines’) that are used to provide a course of therapy for a patient (or ‘treatment’).” Pet. 8. Patent Owner argues the construction should be

narrowed to include only guidelines “propagated by an authoritative organization.” Prelim. Resp. 6. As Patent Owner notes, the ’985 patent states that “compliance by the physician to standard NIH treatment guidelines or guidelines from other authoritative organizations is also reinforced.” Ex 1001, 4:28–30, Prelim. Resp. 6. The specification, however, does not provide a special definition of “treatment guidelines,” and does not require that only guidelines from an authoritative organization be utilized as “treatment guidelines.” Moreover, the ’985 patent provides no insight into what is, or is not, an “authoritative organization.” Thus, Patent Owner’s proposal introduces ambiguity into the meaning of the term. We adopt the construction set forth above as it was construed in IPR2013-00320 for purposes of this decision.

4. *“assessment guidelines”*

Petitioner contends “assessment guidelines” should be construed as it was in the institution decision in IPR2013-00320 to include “a standard or principle by which to make a judgment (i.e., ‘guidelines’) that is used to determine a condition of (or ‘assess’) a patient.” Pet. 8. Patent Owner argues the construction should be narrowed to include only guidelines “propagated by an authoritative organization.” Prelim. Resp. 6. For the same reasons discussed above with respect to “treatment guidelines,” we are not persuaded by Patent Owner’s argument and adopt the construction of “assessment guidelines” set forth above as it was construed in IPR2013-00320 for purposes of this decision.

5. “*compliance data*”

Claim 1 recites “generating and providing compliance data based on the updated treatment plan and the reviewed treatment plan for each of the diagnosed conditions.” The term “compliance data” was construed in the institution decision in IPR2013-00320 to include data that is generated “based on the updated treatment plan and the reviewed treatment plan for each of the diagnosed conditions.” *Cardiocom*, slip op. at 9 (Paper 12). Petitioner contends the same construction should be adopted in this case. Pet. 8–9. Patent Owner argues the proposed definition encompasses data that has no relation to “compliance,” and instead proposes a definition of “data relating to adherence to guidelines or instructions that is generated based on the updated treatment plan and the reviewed treatment plan for each of the diagnosed conditions.” Prelim. Resp. 7.

The ’985 patent states that “the present invention monitors physician and patient compliance with prescribed treatment guidelines,” and notes that such monitoring should help provide “important feedback on physician’s compliance with treatment guidelines and the patient’s compliance with treatment regimens.” Ex. 1001, 4:55–62. Because the claim expressly recites that compliance data is “based on the updated treatment plan and the reviewed treatment plan for each of the diagnosed conditions,” repeating the same language in the construction of “compliance data” would render improperly such claim language superfluous. *See Biocon, Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed. Cir. 2006) (stating “claims are interpreted with an eye toward giving effect to all terms in the claim.”) (citations omitted). For purposes of this decision, “compliance data” includes “information

about either a physician's adherence to treatment guidelines or a patient's adherence with treatment regimens.”

B. Asserted Anticipation Over Freedman

Petitioner contends claims 1–9 of the '985 patent are anticipated by Freedman. Pet. 9–18. The same ground was instituted in IPR2013-00320 (Paper 12).

Freedman discloses a computer-based system that can collect data from a client and use the data to diagnose the client's condition, to establish the severity of the condition, to look-up treatments according to treatment guidelines, and to monitor whether the medical provider makes decisions consistent with the guideline. Ex. 1006, Abstract. The patient, who may be located remotely from the health care facility, enters answers to health-related questions into the computer system. *Id.* at 3:13–15, 30–33. The computer system checks the patient's past medical record and previously assigned diagnosis to suggest diagnostic options based on treatment guidelines retrieved from memory. *Id.* at 4:5–7, 30–32. The clinician receives the suggested diagnostic option information, including the patient's record and suggested treatment guidelines, and selects a diagnosis based on the received information. *Id.* at 4:36–43. The clinician is informed by the system if the diagnosis selected by the clinician deviates from the diagnosis provided by the treatment guidelines. *Id.* at 4:43–46, 49–53. In such a case, the clinician may enter additional information and may confirm the diagnosis. *Id.* at 4:58–60. The system stores the sequence in memory for quality review. *Id.* at 4:67–5:2.

1. *Claims 1, 4, and 7*

Petitioner contends, with the support of a Declaration from Dr. Bryan P. Bergeron, M.D. (Ex. 1002), that Freedman explicitly or inherently describes all elements of independent claims 1, 4, and 7. Pet. 9–16. According to Petitioner, Freedman discloses the use of assessment guidelines described as “suggested [Diagnostic and Statistical Manual] DSM-IV criteria.” Pet. 10. Petitioner further contends that Freedman inherently discloses that the patient provided information about the treatment. *Id.* at 11.

Patent Owner argues that Freedman does not disclose a current assessment that is “based on two distinct factors: (1) data about each of the diagnosed conditions from the patient who is at a remote location, and (2) one or more assessment guidelines for each of the diagnosed conditions.” Prelim. Resp. 12. Patent Owner also argues that Freedman does not disclose “assessment guidelines” because the DSM-IV guidelines are for diagnosing conditions, rather than a “current assessment” of a previously diagnosed condition. *Id.* at 12–13. Patent Owner contends that the DSM-IV guidelines cannot encompass both assessment guidelines and treatment guidelines. *Id.* at 13. Next, Patent Owner argues that Freedman does not suggest an existing treatment plan is updated in any manner, or that the existing treatment plan is updated based on the existing treatment plan, the current assessment, and one or more treatment guidelines. *Id.* at 14–15. Patent Owner further argues that Freedman does not inherently disclose that the reviewed treatment plan is provided to the patient because there is no indication any information is provided to the patient, and that even if

information is provided, it is not inherently disclosed that the reviewed treatment plan for each diagnosed condition is provided. *Id.* at 15–16. Finally, Patent Owner argues that Freedman does not disclose generating and providing compliance data based on the updated treatment plan and reviewed treatment plan because Freedman does not indicate there was an existing treatment plan that could be updated. Prelim. Resp. 16–18.

We have carefully considered each of the issues raised by Patent Owner, which at this stage of the proceeding are unsupported by expert testimony. For example, we are not persuaded on the current record that DSM-IV guidelines cannot encompass both assessment guidelines and treatment guidelines, or that information about prior medication history, as disclosed in Freedman, fails to constitute an existing treatment plan, as claimed. *See* Ex. 1006, 6:49. Taking into account Patent Owner’s arguments and the contentions of Petitioner, as supported by Dr. Bergeron, Petitioner has demonstrated there is a reasonable likelihood that it would prevail in showing Freedman anticipates claims 1, 4, and 7 of the ’985 patent.

2. *Claims 2, 5, and 8.*

Claims 2, 5, and 8 further recite “wherein the compliance data comprises provider information on the number of reviewed treatment plans which are different from a corresponding one of the updated treatment plans for each provider.” Ex. 1001, 16:12–16, 16:48–52, 18:4–8. Petitioner contends that Freedman discloses this limitation, including “a comparison between the ‘reviewed treatment plan’ and the ‘treatment guidelines,’ which form[s] the basis for the “updated treatment plans.” Pet. 17. Patent Owner

argues that Freedman only discloses “data regarding adherence to guidelines,” not the difference between updated and reviewed treatment plans. Prelim. Resp. 19. On the present record, Freedman’s disclosure of “monitoring data on consistency of clinician treatment with treatment guidelines” is sufficient to encompass “information on the number of reviewed treatment plans which are different from a corresponding one of the updated treatment plans,” as claimed. Taking into account the information provided by both Patent Owner and Petitioner, Petitioner has demonstrated a reasonable likelihood that it would prevail in showing Freedman anticipates claims 2, 5, and 8 of the ’985 patent.

3. *Claims 3, 6, and 9.*

Claims 3, 6, and 9 further recite “wherein the compliance data further comprises data on patient compliance with at least one of the existing treatment plan for each diagnosed condition.” Ex. 1001, 16:17–20, 16:53–56, 18:9–12. Petitioner asserts that Freedman inherently discloses this limitation because the Freedman system determines whether a patient had a previous positive response with medications, had significant side effects, and had an adequate trial. Pet. 18. Patent Owner argues that no such data “comes close to disclosing data about whether the patient complied with an existing treatment plan.” Prelim. Resp. 20. Taking into account the information provided by both Petitioner, as supported by Dr. Bergeron, and Patent Owner, Petitioner has demonstrated a reasonable likelihood that it would prevail in showing Freedman anticipates claims 3, 6, and 9 of the ’985 patent.

C. Asserted Obviousness Over Freedman, Caple, and Graham

Petitioner contends claims 1–9 of the '985 patent would have been obvious over Freedman, Caple, and Graham. Pet. 19–27. The same ground was instituted in IPR2013-00320 (Paper 12).

Caple discloses an automatic medical test reporting process and system. Ex. 1007, 7:22–23. The patient uses a “test kit” to obtain a sample and submits the sample to a computer or a laboratory for testing and analysis. *Id.* at 7:30, 8:22, 11:18–20. The collection and testing of the patient’s sample may be used to monitor the status of the patient’s disease progression or the patient’s compliance with medication and treatment regimens. *Id.* at 13:8–10. The patient’s test results and history, along with recommended changes to the patient’s medication or treatment regimen, are sent to a health care provider. *Id.* at 1007, 13:23–24. The system also automatically calls the patient with the doctor’s recommendations. *Id.* at 13:23–26, 35–36, 14:1–2.

Graham discloses a system that enables a physician to follow a guided diagnostic evaluation and treatment recommendation for a patient. Ex. 1008, 7:17–18. The physician enters a patient’s symptoms into the computer system. *Id.* at 18:27–28. Based on the patient’s symptoms, the system provides recommended actions to the physician as a decision support tool during the physician’s decision process. The recommended actions may be presented in a lookup table. *Id.* at 14:4–7; 22:19–21. The system also generates reports and statistical analyses that may include statistics concerning the physician. *Id.* at 44:16–17; 50:8. The statistics may concern

actions selected by physicians including any guideline deviations. Ex. 1008, at 50:13–15.

1. *Claims 1, 4, and 7*

Petitioner contends, with the support of the Declaration from Dr. Bryan P. Bergeron, M.D. (Ex. 1002), that independent claims 1, 4, and 7 would have been obvious over Freedman, Caple, and Graham. Pet. 19–26. Petitioner contends that Caple provides explicit disclosure of providing the treatment plan to a patient, a feature that Petitioner contends is inherent in Freedman, as well as explicit discussion related to a provider working with a remote patient. Pet. 19–20. Petitioner further contends that Graham provides explicit discussion related to generating and providing compliance data, particularly with respect to the number of reviewed treatment plans that are different from the corresponding updated treatment plans. *Id.* at 20. Petitioner contends the combination of Freedman, Caple, and Graham is, among other rationales, a simple combination of known elements according to known methods to obtain predictable results. *Id.* at 22.

Patent Owner argues that neither Freedman, Caple, nor Graham discloses the use of “assessment guidelines” to determine a current assessment (Prelim. Resp. 23–27); updating an existing treatment plan based on treatment guidelines (*id.* at 28–29); or generating compliance data or a compliance system as claimed (*id.* at 29–30). To the extent Patent Owner repeats its arguments regarding Freedman addressed above with respect to the anticipation ground, we find those arguments unpersuasive on the present record. Patent Owner also has not shown persuasively on this record that Caple and Graham do not disclose the limitations as asserted by

Petitioner. Further, Petitioner has sufficiently articulated a rationale for the asserted combination for purposes of this decision. *See* Pet. 19–22. Taking into account Patent Owner’s arguments and the contentions of Petitioner, as supported by Dr. Bergeron, Petitioner has demonstrated there is a reasonable likelihood that it would prevail in showing claims 1, 4, and 7 of the ’985 patent would have been obvious over Freedman, Caple, and Graham.

2. *Claims 2, 5, and 8.*

Petitioner relies on both Freedman and Graham as disclosing the additional limitations of claims 2, 5, and 8. Pet. 26–27. Patent Owner does not dispute that Graham discloses generating statistics regarding deviations from pretest or stress test recommendations, but instead argues that Graham fails to disclose comparing the number of reviewed treatment plans which are different from a corresponding updated treatment plan. Prelim. Resp. 31. According to Petitioner, Graham teaches the desirability of incorporating physician compliance reporting into diagnostic and treatment systems such as Freedman and Graham. Pet. 21–22. Taking into account the information provided by both Petitioner, as supported by Dr. Bergeron, and Patent Owner, Petitioner has demonstrated there is a reasonable likelihood that it would prevail in showing claims 2, 5, and 8 of the ’985 patent would have been obvious over Freedman, Caple, and Graham.

3. *Claims 3, 6, and 9.*

Petitioner relies on Freedman as disclosing the additional limitations of claims 3, 6, and 9. Pet. 27. Patent Owner raises the same arguments against Freedman asserted with regard to the anticipation ground discussed above. Taking into account the information provided by Petitioner, as

supported by Dr. Bergeron, and Patent Owner, Petitioner has demonstrated there is a reasonable likelihood that it would prevail in showing claims 3, 6, and 9 of the '985 patent would have been obvious over Freedman, Caple, and Graham.

D. Asserted Obviousness Over Freedman, Surwit '699, and Graham

Petitioner contends claims 1–9 would have been obvious over Freedman, Surwit '699, and Graham. Pet. 28–37. The same ground was instituted in IPR2013-00320 (Paper 12).

Surwit '699 discloses a medical data processing system that receives and stores patient data and generates treatment options for the patient. Ex. 1009, 1:10–11; 2:40–42, 45–47. The patient transmits patient data to a central processing system. *Id.* at 7:64–66; 9:25–26. The processing system analyzes and stores the patient data and identifies medical conditions of the patient that require treatment. *Id.* at 9:50–51; 11:60–63. A list of identified prioritized medical conditions is provided and the selection of a medical condition results in an expanded list of corresponding available actions that may be taken for the selected medical condition. *Id.* at 17:42–43; 18:35–38. The definition and specification of a medical condition is configurable and to trigger identification of a given problem, parameters may reflect individual patient differences or may utilize default values inherited from the doctor or higher levels within the system. *Id.* at 16:50–56. The available actions, or treatment information, may be communicated to the patient. *Id.* at 18:45. In addition, the system tracks a patient's appointment compliance and the patient's "compliance to medical regime," and "tracks whether a

patient has performed actions associated with treatment recommended by a [physician].” Ex. 1009, 3:22–24, 7:28–30, 20:64–66.

1. *Claims 1, 4, and 7*

Petitioner contends, with the support of the Declaration from Dr. Bergeron (Ex. 1002), that independent claims 1, 4, and 7 would have been obvious over Freedman, Surwit ’699, and Graham. Pet. 28–35. Petitioner asserts that Surwit ’699 describes providing a treatment plan to a patient and utilizes assessment guidelines contained in software to make a current assessment from data collected from the patient. *Id.* at 28. According to Petitioner, “it would have been obvious to modify the Freedman system to incorporate remote patient input and to provide the patient with his/her treatment plan as in Surwit ’699.” *Id.* at 29. Petitioner contends that the combination of Freedman, Surwit ’699, and Graham is, among other rationales, a simple combination of known elements according to known methods to obtain predictable results. *Id.*

Patent Owner argues that Surwit ’699 does not disclose the use of “assessment guidelines” to determine a current assessment (Prelim. Resp. 33–35), or generating compliance data or a compliance system as claimed (*id.* at 36–37). Patent Owner further asserts that Graham does not overcome the deficiencies of Freedman and Surwit ’699, and contends no rationale was provided for the combination of references. *Id.* at 37, 47. Taking into account the information provided by Petitioner, as supported by Dr. Bergeron, and Patent Owner, Petitioner has demonstrated there is a reasonable likelihood that it would prevail in showing claims 1, 4, and 7 of

the '985 patent would have been obvious over Freedman, Surwit '699, and Graham.

2. *Claims 2, 5, and 8.*

Petitioner relies on both Freedman and Graham as disclosing the additional limitations of claims 2, 5, and 8. Pet. 36. Patent Owner does not raise additional arguments with respect to claims 2, 5, and 8 other than those asserted with respect to the grounds discussed above. Taking into account the information provided by Petitioner, as supported by Dr. Bergeron, and Patent Owner, Petitioner has demonstrated there is a reasonable likelihood that it would prevail in showing claims 2, 5, and 8 of the '985 patent would have been obvious over Freedman, Surwit '699, and Graham.

3. *Claims 3, 6, and 9.*

Petitioner relies on Freedman and Surwit '699 as disclosing the additional limitations of claims 3, 6, and 9. Pet. 37. Patent Owner argues that “there is no indication that compliance data is generated based on patient compliance with an existing treatment plan for a diagnosed condition.” Prelim. Resp. 38. As Petitioner notes, Surwit '699 describes a portable patient monitor (PPM), which includes as a feature collecting “patient supplied data on health status, compliance to medical regimen, and psychological data.” Ex. 1009, 7:28–30, Pet. 37. Taking into account the information provided by Petitioner, as supported by Dr. Bergeron, and Patent Owner, Petitioner has demonstrated there is a reasonable likelihood that it would prevail in showing claims 3, 6, and 9 of the '985 patent would have been obvious over Freedman, Surwit '699, and Graham.

E. Additional Grounds of Unpatentability

The patent rules promulgated for AIA post-grant proceedings, including those pertaining to institution, are “construed to secure the just, speedy, and inexpensive resolution of every proceeding.” 37 C.F.R. § 42.1(b); *see also* 35 U.S.C. § 316(b) (regulations for AIA post-grant proceedings take into account “the efficient administration of the Office” and “the ability of the Office to timely complete [instituted] proceedings”). Therefore, we exercise our discretion and, for reasons of administrative necessity to ensure timely completion of the instituted proceeding, do not institute a review of claims 1–9 as anticipated by Surwit ’958; of claims 2, 5, and 8 as obvious over Surwit ’958, Freedman, and Graham; of claims 1, 3, 4, 6, 7, and 9 as anticipated by Goodman; or of claims 2, 5, and 8 as obvious over Goodman, Freedman, and Graham. *See* 37 C.F.R. § 42.108(a).

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that *inter partes* review is *instituted* in IPR 2015-00102 with respect to the following grounds of unpatentability:

- (1) claims 1–9 as anticipated by Freedman under 35 U.S.C. § 102;
- (2) claims 1–9 as obvious over Freedman, Caple, and Graham under 35 U.S.C. § 103; and,
- (3) claims 1–9 as obvious over Freedman, Surwit ’699, and Graham under 35 U.S.C. § 103;

FURTHER ORDERED that no ground other than those specifically instituted above is authorized for the *inter partes* review;

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FURTHER ORDERED that pursuant to 35 U.S.C. § 314(a), *inter partes* review of the '985 patent is hereby instituted in IPR2015-00102 commencing on the entry date of this Order, and pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial.

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