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8 **United States District Court**  
9 **Central District of California**

10 MYMEDICALRECORDS, INC.,

11 Plaintiff,

12 v.

13 WALGREEN CO.,

14 Defendant.

Case No. 2:13-CV-00631 ODW (SHx)

15 **ORDER GRANTING DEFENDANTS'**  
16 **MOTION FOR SUMMARY**  
17 **JUDGMENT OF INVALIDITY OF**  
18 **U.S. PATENT NO. 8,498,883 [91]**

19 MYMEDICALRECORDS, INC.,

20 Plaintiff,

21 v.

22 QUEST DIAGNOSTICS INC.,

23 Defendant.

Case No. 2:13-cv-02538-ODW (SHx) -\*

1  
2 MYMEDICALRECORDS, INC.,

3 Plaintiff,

4 v.

5 JARDOGS, LLC; ALLSCRIPTS

6 HEALTHCARE SOLUTIONS, INC.

7 Defendants.  
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Case No. 2:13-cv-03560-ODW (SHx)

9 MYMEDICALRECORDS, INC.,

10 Plaintiff,

11 v.

12 WEBMD HEALTH CORP; WEBMD

13 HEALTH SERVICES GROUP INC.

14 Defendants.  
15

Case No. 2:13-cv-07285-ODW (SHx)

16 **I. INTRODUCTION**

17 Defendants Quest Diagnostics, Inc., WebMD Health Corp., WebMD Health  
18 Services Group Inc., and Allscripts Healthcare Solutions, Inc. (collectively,  
19 “Defendants”) move for Summary Judgment of Invalidity of claims 1-3 of U.S. Patent  
20 No. 8,498,883 (“the ‘883 Patent”) in these coordinated cases.<sup>1</sup> (ECF No. 91.)  
21 Defendants argue that the Court found the “means for scheduling” term indefinite in  
22 its Claim Construction Order (ECF No. 67) and therefore the asserted claims are  
23 invalid. For the reasons discussed below, the Court **GRANTS** Defendants’ Motion  
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25 \_\_\_\_\_  
26 <sup>1</sup> Facing several actions involving the same MMR patents, the Court consolidated the cases for  
27 invalidity purposes on November 18, 2014. (ECF No. 92.) The low number case,  
28 *MyMedicalRecords, Inc. v. Walgreen Co.*, No. 13-cv-00631-ODW(SHx), was designated as the lead  
case. The lead case has since settled, but the case remains open for the purposes of filing documents  
related to invalidity, which pertain to all of the MMR patent cases. Citations to the docket refer to  
the docket in the lead case unless indicated otherwise.

1 for Summary Judgment.<sup>2</sup> (ECF No. 91.)

## 2 **II. FACTUAL BACKGROUND**

3 Plaintiff MyMedicalRecords (“MMR”) is the owner of the ’883 Patent titled  
4 “Method for Providing a User with a Service for Accessing and Collecting  
5 Prescriptions.” MMR is asserting claims 1-3 of the ’883 Patent against Defendants.  
6 The asserted claims are method claims directed to providing users with a secure and  
7 private way to collect, access, and manage drug prescriptions online. Independent  
8 claim 1 recites a “means for scheduling one or more prescription refills concerning a  
9 drug prescription” limitation. Claims 2 and 3 depend on claim 1 and therefore  
10 incorporate this “means for scheduling” limitation by reference.  
11

12 On August 19, 2014, the Court held a consolidated claim-construction hearing.  
13 On September 3, 2014, the Court issued a Claim Construction Order, which held that  
14 the “means for scheduling” limitation is indefinite under 35 U.S.C. § 112. (ECF No.  
15 67 at 7-10.) Corresponding to the Post-*Markman* Scheduling Order (ECF No. 88),  
16 Defendants filed their Motion for Summary Judgment as to Invalidity on November  
17 17, 2014. (ECF No. 91.) Plaintiff timely opposed and Defendants timely replied.  
18 (ECF Nos. 95, 98.) That Motion is now before the Court for decision.

## 19 **III. LEGAL STANDARD**

20 Summary judgment is appropriate when there is no genuine dispute of material  
21 fact for trial and one party is entitled to judgment as a matter of law. Fed. R. Civ. P.  
22 56; *see also Digitech Image Techs., LLC v. Fujifilm Corp.*, No. 8:12-cv-1679-  
23 ODW(MRWx), 2013 U.S. Dist. LEXIS 108007, at \*3-4 (C.D. Cal. July 31, 2013).  
24 The moving party bears the initial burden of establishing the absence of a genuine  
25 dispute as to any material facts. *Digitech*, No. 8:12-cv-1679-ODW (MRWx), 2013  
26 U.S. Dist. LEXIS 108007, at \*3-4. The nonmoving party must then identify specific  
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28 <sup>2</sup> After carefully considering the papers filed in support of and in opposition to the Motion, the Court  
deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 facts that show a genuine dispute for trial. *Id.*; Fed. R. Civ. P. 56(c). Whether a  
2 patent is invalid for indefiniteness is a question of law appropriate for summary  
3 judgment. *See Ibormeith IP, LLC v. Mercedes-Benz USA, LLC*, 732 F.3d 1376, 1379  
4 (Fed. Cir. 2013).

#### 5 IV. DISCUSSION

6 The Court has already determined that the “means for scheduling” claim  
7 limitation, found in all asserted claims 1-3, is indefinite, as the '883 Patent itself  
8 discloses no algorithm for performing the recited function. (ECF No. 67 (“Although a  
9 person of skill in the art might be able to choose an appropriate scheduling algorithm  
10 and program it onto a microprocessor, the '883 Patent itself discloses no algorithm at  
11 all.”)); *see e.g., Triton Tech of Tx., LLC v. Nintendo of Am., Inc.*, 753 F.3d 1375, 1378  
12 (Fed. Cir. 2014) (holding that a means-plus-function limitation is indefinite if the  
13 stated function is performed by a general-purpose computer or microprocessor and the  
14 specification fails to disclose the algorithm that the computer performs to accomplish  
15 that function). A claim that includes an indefinite limitation is invalid pursuant to 35  
16 U.S.C. § 112. *Ibormeith IP, LLC v. Mercedes-Benz USA, LLC*, 732 F.3d 1376, 1382  
17 (Fed. Cir. 2013).

18  
19 Plaintiff attempts to re-litigate the issue of indefiniteness as to the '883 Patent in  
20 its Opposition. (ECF No. 95.) The parties had the opportunity to fully brief and argue  
21 indefiniteness during Claim Construction. As Defendants contend, the arguments  
22 Plaintiff makes at this time should have been raised in a motion for reconsideration of  
23 the Court’s Claim Construction Order as opposed to in its Opposition brief to a  
24 motion for summary judgment. (Reply 9-10.)

25 Nevertheless, Plaintiff argues there is a factual dispute regarding the level of  
26 ordinary skill, but this argument is irrelevant and immaterial. (Reply 5.)  
27 Indefiniteness is a question of law resolvable during claim construction. *Personalized*  
28 *Media Commc’ns., LLC v. Int’l Trade Comm’n*, 161 F.3d 696, 705 (Fed. Cir. 1998)

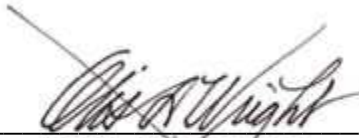
1 (“[I]ndefiniteness is a legal conclusion that is drawn from the court’s performance of  
2 its duty as the construer of patent claims.”). Further, while it is true that claims are to  
3 be construed and indefiniteness is to be determined from the perspective of a  
4 hypothetical person of ordinary skill in the art (POSITA), this Court’s Claim  
5 Construction Order itself makes clear that the Court’s indefiniteness ruling was made  
6 from the perspective of a POSITA. (See ECF No. 67 at 9-10.) There are no factual  
7 disputes to be resolved as to the asserted claims 1-3 of the ’883 Patent.

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9 **V. Conclusion**

10 Accordingly, the Court holds that claims 1-3 of the '883 Patent are invalid as  
11 indefinite under 35 U.S.C. § 112 and **GRANTS** the Defendants’ Motion for Summary  
12 Judgment. (ECF No. 91.)

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14 **IT IS SO ORDERED.**

15  
16 December 22, 2014

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20 **OTIS D. WRIGHT, II**  
21 **UNITED STATES DISTRICT JUDGE**  
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