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**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

16 CLINICOMP INTERNATIONAL,
 17 INC.,
 18 Plaintiff,
 19 vs.
 20 CERNER CORPORATION,
 21 Defendant.

CASE NO. 17-cv-2479-GPC-DEB
 Hon. Gonzalo P. Curiel
**DEFENDANT CERNER
 CORPORATION'S RESPONSIVE
 CLAIM CONSTRUCTION BRIEF**

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1 ClinComp’s Opening Brief (“CliniComp’s Brief”) reveals its intention to
2 assert infringement against acts not covered by the plain language of the claims and
3 beyond the claim scope CliniComp itself argued for during the IPR. Cerner opposes
4 this effort and respectfully requests that this Court resolve the disputed claim scope
5 by adopting Cerner’s proposed constructions. *See In re Qualcomm Litig.*, No. 17-cv-
6 00108-GPC-MDD, 2018 WL 1406944, at *20–21 (S.D. Cal. Mar. 21, 2018)
7 (declining to adopt a “plain and ordinary meaning” construction that would “fail to
8 resolve the parties’ active dispute over the scope of the [claim] terms”).

9 **I. RESPONSE TO CLINIComp’S USE OF THE *ATHENAHEALTH* LITIGATION**

10 ClinComp’s Brief begins by overstating the claim construction proceedings in
11 the *athenahealth* litigation. Notably, the claim construction process in *athenahealth*
12 occurred before CliniComp made most of the relevant IPR arguments. *See* Dkt. 71-1
13 ¶¶ 4–9, 12. As set forth in Cerner’s opening brief and herein, those IPR arguments
14 were critical to allowing CliniComp’s claims to survive the IPR, and the claims must
15 now be construed in light of those arguments to prevent infringement allegations
16 against subject matter disclaimed in the IPR.

17 Instead of completing the claim construction process in *athenahealth*, the
18 parties negotiated a stipulation under which CliniComp dismissed *with prejudice*
19 several claims not asserted in this case in exchange for an agreement that the claim
20 terms would take their plain and ordinary meaning. *See* Dkt. 70-2 at 2. As a result,
21 the *athenahealth* court did not issue a *Markman* decision and only addressed certain
22 claim construction issues, in a limited fashion, in ruling on summary judgment
23 motions. *See* Dkt. 70-3 at 6–7. Given this history, Cerner submits that little, if any,
24 weight should be afforded to the claim construction results in *athenahealth*.

25 **II. ARGUMENTS**

26 **A. “[first/second] portion of the database . . .”**

27 In its brief, CliniComp challenges both the first and second parts of Cerner’s
28 proposed construction. As to the first part, CliniComp argues Cerner’s proposal is

1 unhelpful and that the claim language needs no clarification. But the IPR record
2 demonstrates the need for this Court to construe the phrase given the drastically
3 different interpretations of this claim language taken by the parties and their technical
4 experts. Indeed, both parties' experts considered the precise quote cited in
5 CliniComp's Brief at page 6 regarding "logical or physical" partitions and came to
6 opposite conclusions as to the scope of the claim language. *See* Dkt. 71-2 at D-85–
7 86. The PTAB resolved this dispute in CliniComp's favor, adopting a narrower view
8 of the claimed "portion." *Id.* The first part of Cerner's proposal incorporates the
9 PTAB's holding nearly verbatim (*see id.*), and CliniComp's attempt to recapture a
10 broader "plain and ordinary" meaning for this claim term should be rejected.¹

11 As to the second part of Cerner's proposal, CliniComp concedes Cerner's
12 proposal is "not incorrect" but proposes a new alternative for completeness: "the
13 claimed 'portion' is not created by merely identifying data or associating subsets of
14 data with common values (i.e., indexing by an identifier) [and] these portions are
15 created, as set forth in the claim, to protect one healthcare enterprise facility's data
16 from access by the other healthcare enterprise facility." CliniComp's Br. at 7–8. While
17 this helps narrow the issues, CliniComp's proposal does not resolve the dispute.

18 First, CliniComp's proposal that the claimed portions are created "as set forth
19 in the claims" ignores the specific requirements CliniComp advanced in the IPR
20 governing how the "portions" are created. As detailed in Cerner's opening brief,
21 CliniComp argued in the IPR that the claimed "portions" must be created in the
22 database before "storing the data." *See, e.g.*, Dkt. 71-2 at E-7, ll. 13–15 ("Once that
23 partition is done, and it's associated with that particular enterprise, **only then** do you
24

25
26 ¹ A simple, non-substantive edit fixes the "grammatical error" CliniComp
27 identifies, and Cerner modifies the first portion of its proposal to read: "a specific data
28 structure in the database that separates the data associated with the [first/second]
healthcare enterprise facility from data associated with any other healthcare enterprise
facility."

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