

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the *Inter Partes* Review of:

Trial Number: To Be Assigned

U.S. Patent No. 7,870,249

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12771.0106USW1

Inventors: Stephen J. Brown

Assignee: Health Hero Network, Inc.

Title: NETWORKED SYSTEM FOR  
INTERACTIVE COMMUNICATION  
AND REMOTE MONITORING OF  
INDIVIDUALS

Panel: To Be Assigned

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**PETITION FOR *INTER PARTES* REVIEW UNDER 37 C.F.R. § 42.100**

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Medtronic, Inc., (“Medtronic”), in accordance with 35 U.S.C. § 311 and 37 C.F.R. § 42.100, respectfully requests *inter partes* review for claims 1, 2, 6-8, and 11-13 (the “challenged claims”) of U.S. Patent No. 7,870,249 (“the ’249 patent”). (Ex. 1001.)

## I. INTRODUCTION

The challenged claims of the ’249 patent cover previously-known methods for remote health care monitoring. Remote monitoring of patients has long been used by health care professionals to reduce the cost of delivering healthcare services while maintaining quality of care and customized treatment of patients. As microprocessors and communication technologies became less expensive and more powerful, remote health care monitoring technologies proliferated.

The claims involve the use of a “script program.” Scripts have been commonly used since at least the 1970s to automate the execution of tasks that could otherwise be executed one-by-one by a human operator, including health monitoring tasks. Ex. 1009, Declaration by Robert T. Stone, Ph. D., regarding U.S. Patent No. 7,870,249 (“Stone Decl.”) ¶¶18-19. Transmitting scripts to remote devices to gather and communicate information was also known prior to the effective filing date of the ’249 patent. *See* Stone Decl. ¶¶23, 29, 176-81, 194-95.

The challenged claims further involve the use of a “data merge program.” Cardiocom (now a wholly owned subsidiary of the Petitioner) sought *inter partes*

review of the '249 patent previously. The Board denied the request based on a finding that the cited art failed to teach a “data merge program.” This element also was critical in the original allowance of the challenged claims of the '249 patent. The concept, however, is not new. The present Petition cites prior art recognized in another *inter partes* review proceeding as disclosing such programs. Other art cited herein was not cited in the prior petition and discloses a mail merge application which similarly merges personal health data with other data. The Patent Owner admitted that mail merge applications are analogous to the claimed data merge application and were “standard,” i.e. used in prior art systems. The other claimed elements are also found in the cited, analogous prior art systems.

As shown below, it would have been obvious to a person of ordinary skill in the art at the time of the alleged invention to combine script programming and other claimed elements to perform the methods of the '249 patent. It was known that script programs addressed the desire to collect information at remote devices and transmit the information to a central server. *See* Stone Decl. ¶¶23, 27, 29, 176-81, 194-95. It was also known to customize such programs to address the differences among remote devices and patients. *Id.* at ¶¶23-24, 134-38, 191-95, 213-14. Data merge programs were known as an effective tool to automatically and efficiently customize programs. *Id.* at ¶¶24-25, 99, 117-19, 134-38, 243-46. Moreover, the art cited herein, as stated in the Field of the Invention of the '249

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